



City Council REGULAR MEETING

December 15, 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'.

VIRTUAL MEETING LINK

1. Due to a water main break, City Hall is closed this evening. The City Council meeting will be held virtually. Below is a link to view the meeting live stream.

<https://www.youtube.com/@IndependenceMissouri/streams>

If you wish to speak at tonight's meeting, please send an email to the City Clerk at cityclerk@indepmo.org to sign up. All requests must be received by 5:30 p.m.

INVOCATION

1. The invocation will be given by Stephen Ballentyne, Assistant Pastor at the Mount Zion Restoration Branch.

THE PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENTATION RESOLUTIONS

1. 25-810 A resolution recognizing Eric Michel, Battalion Chief of the Independence Fire Department, as the ISTAR Recipient for Service and Teamwork Above Responsibilities Award for December 2025 **Postponed to January 5, 2026**

PROCLAMATIONS

1. Van Horn Boys Soccer Team - State Champions **Postponed to January 5, 2026**

2. Elementary Students Heroism **Postponed to January 5, 2026**

CITIZEN REQUESTS

CONSENT AGENDA

Reports and Recommendations of the City Manager

1. Council action is requested to issue a purchase order to Allied Power Group, in the amount of \$425,000.00, and authorizing change orders of up to ten percent (10%) of the authorized amount, for a major offsite repair of the J-2 substation combustion turbine rotor for the Power & Light Department. **Item passes 7-0**
2. Council action is requested to issue a purchase order to GE Vernova, in the amount of \$2,015,015.33, and authorizing change orders of up to ten percent (10%) of the authorized amount, for a major inspection of the J-2 substation combustion turbine for the Power & Light Department. **Item passes 7-0**
3. Council action is requested to issue a purchase order to GE Vernova in the amount of \$114,421.75, and authorizing change orders of up to ten percent (10%) of the authorized amount, for SEL generator protection relay upgrades to both gas turbine generating units located at Sub-H for the Power & Light Department (IPL).
Approved
4. Council approval has been requested to direct the City Manager to enter into a purchase agreement with Precision Fire Apparatus for the purchase of a Precision/Spartan Custom 4-Door Heavy Duty Extruded Aluminum Top Mount Pumper for the sale price of \$873,100.00. **Approved**
5. Council action is requested to authorize the City Manager to issue a purchase order to Crossland Heavy Construction for an amount not to exceed \$569,336, and to authorize change orders of up to ten percent (10%) of the authorized amount, for the design and construction of a new maintenance building at the Courtney Bend Water Treatment Plant (Project No. 401703). **Approved**
6. Council action is requested to issue a purchase order to Remco Demolition, LLC, in the amount of \$248,200.00, and authorizing change orders of up to ten percent (10%) of the authorized amount, for the demolition of 111 E Maple Avenue. **Approved**
7. Council action is requested to authorize the City Manager to execute a Letter of Intent with Mid-Continent Public Library outlining the general terms for the potential sale of a portion of City-owned property located at 111 E. Maple Ave. **Item passes 6-1**

8. Council action is requested to authorize the City Manager to execute the Purchase and Sale Agreement between the City of Independence and Community Services League for the property at 136 E. White Oak Avenue. **Approved**
9. Council action is requested to issue purchase orders to Ceridian for the continuation of licensing and vendor support for the Ceridian/Dayforce Human Capital Management System in the amount of \$347,000 for fiscal year 2025-26, and to approve change orders of up to ten percent (10%) of the authorized amount.
Approved

REGULAR AGENDA

PUBLIC HEARING(S)

1. A public hearing for the application to rezone the property at 19405 E. 40th Street Court S from R-6, Single Family Residential, to O-1, Office-Residential. ***New Information Only.***

25-121 **2R** An ordinance approving a rezoning from District R-6 (Single-Family Residential) to District O-1 (Office-Residential) for the property located at 19405 E. 40th Street Court S. **2R Item passes 7-0 Ord. No. 19763**

2. A full public hearing for Retail Selling of Intoxicating Liquor by the Drink for Fringe Beerworks that will be located at 4354 S. Noland Rd. *Full Public Hearing.*

Council action is requested on the application received from Fringe Beerworks for Retail Selling of Intoxicating Liquor by the Drink that will be located at 4354 S. Noland Rd. **Item passes 7-0**

3. A full public hearing for a Restaurant Selling Intoxicating Liquor for Bleu House Bistro that will be located at 15800 E. US Hwy. 24. *Full Public Hearing.*

Council action is requested on the application received from Bleu House Bistro, Inc. for Restaurant Selling Intoxicating Liquor for Bleu House Bistro that will be located at 15800 E. US Hwy. 24. **Item passes 7-0**

ORDINANCES

1. 25-117 **2R** An ordinance authorizing the City to enter into a Cooperative Agreement relating to the Pavilions at Hartman Heritage Community Improvement District. **2R Item passes 7-0 Ord. No. 19764**
2. 25-118 **2R** An ordinance authorizing the City to enter into a Cooperative Agreement relating to the Eastgate Commerce Center Community Improvement District. **2R Item passes 7-0 Ord. No. 19765**

3. 25-119 **2R** An ordinance declaring the vacant lot at 320 E. Elm St, as surplus property; and authorizing the disposition of said property in accordance with Chapter 20 of the City Code. **2R Item passes 7-0 Ord. No. 19766**
4. 25-120 **2R** An ordinance adopting amendments to the Fiscal Year 2024-2025 Budget, which was approved by Ordinance No. 19561. **2R Item passes 7-0 Ord. No. 19767**
5. 25-126 **2R** An ordinance approving the Wally's Tax Increment Financing Plan, establishing a redevelopment area, designating the redevelopment as a blighted area, making other required findings for the redevelopment plan, designating a developer, approving a redevelopment agreement with that developer, and directing staff to implement the redevelopment plan. **2R Item passes 7-0 Ord. No. 19768**
6. 25-123 **2R** An ordinance approving a redevelopment project for the Wally's Tax Increment Financing Plan and initiating tax increment financing therein. **2R Item passes 7-0 Ord. No. 19769**
7. 25-125 **2R** An ordinance approving a plan for an industrial development project for the Wally's Redevelopment Project; authorizing the City of Independence, Missouri to issue taxable industrial development revenue bonds in a principal amount not to exceed \$52,050,000; and authorizing certain documents and actions in connection therewith. **2R Item passes 7-0 Ord. No. 19770**
8. 25-124 **2R** An ordinance supporting the formation of the Wally's Transportation Development District and approving a cooperative agreement. **2R Item passes 7-0 Ord. No. 19771**

FIRST READING(S)

1. 25-127 **1R** An ordinance finding, determining and declaring the necessity of acquiring general utility easements and temporary construction and grading easements for the Woodbury Drainage Improvements Project (Project No. 132401); authorizing the negotiation and eminent domain proceedings if necessary; approving the plans and specifications for the project; authorizing the use of experts as needed; authorizing and directing the execution of documents and the payment of funds to property owners or others holding property rights, in conjunction with the project. **1R Read**

INFORMATION ONLY

1. Item 25-122 An ordinance amending Ordinance No. 19250, which authorized the imposition of a Fire Protection Sales Tax subject to approval by the voters of the City

of Independence, with said approval occurring at the November 2, 2021 general election, that was read aloud during the 12/1 meeting did not appear on the meeting agenda and will not be considered by council at this time.

2. **Please Note:** In accordance with RSMo. 610.021, the City Council may convene in a Closed Executive Session during or after the 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

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

Council action is requested to issue a purchase order to Allied Power Group, in the amount of \$425,000.00, and authorizing change orders of up to ten percent (10%) of the authorized amount, for a major offsite repair of the J-2 substation combustion turbine rotor for the Power & Light Department. **Item passes 7-0**

Recommendations:

Council approval is recommended.

Background:

Inspections of the combustion turbines are performed periodically to assess the condition of the unit to meet the load demand as well as safety and reliability requirements. Identification and repair of problem areas are essential to maintain unit availability and reduce ongoing maintenance. The purpose of the major inspection is to examine all internal rotating and stationary components from the inlet of the turbine through the exhaust.

During a borescopic inspection of the turbine performed in 2024, it was recommended to replace the Stg-1 buckets that were found to have varying degrees of damage that could contribute to a failure. Failure would be highly detrimental to the turbine and costly to repair. The unit operates frequently due to demand by the Southwest Power Pool (SPP) integrated market.

The requested major rotor repair, tentatively scheduled for April 2026, is required for continual, safe and reliable operation of the unit. The major rotor repair will include offsite disassembly and inspection of all rotating components, replacing known and as-found damaged components. The rotor repair will be conducted offsite by Allied Power Group. APG is a firm that is highly recommended by other local utilities. APG can accommodate our time frame to help ensure that J-2 gets back into the SPP pool as quickly as possible to help secure our current capacity. Any emergency findings requiring repair work will be addressed separately as determined during the inspection.

Following approval, a budget transfer of \$3,172,700 will be requested on a supplemental appropriation from existing capital improvement project (CIP) 202504 - Blue Valley Chimney Demolition, to a newly created CIP 202620 – J-2 Substation Inspection (Combustion Turbine) & Repair (Rotor).

Emergency Justification:**Fiscal Impact:**

Total fiscal impact of this purchase order is an amount up to \$467,500. This purchase order is in addition to a fiscal impact of \$2,684,017 to GE Vernova for a final project cost up to \$2,684,017. Funding for the newly created J-2 Substation Inspection (Combustion Turbine) & Repair (Rotor), project account number 0217021-5406-202620-C will include a transfer from existing project account number 0217021-5406-202504-C, Blue Valley Chimney Demolition included in the fiscal year 2025-26 proposed budget, page 260, IPL Fund 021 on a future supplemental appropriation.

Council Action:

Department / Contact	Power and Light /
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REVIEWERS

Khristina Irvine
Joseph Hegendeffer
Melissa Cabrera
Jeremy Cover
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. Q25-11704 COI Frame 5 Rotor rev1 20251003 LEK 10.14.25 APG 20251030
2. Director's Approval for Sole Source Form
3. APG rotor sole source J-2



Allied Power Group, LLC

Independence Power and Light

Frame 5LA J-2 Rotor Inspection

APG Quote Q25-11704

Quotes for 30 Days



October 30, 2025

Proposal # 25 - 11704

Independence Power & Light
21500 E Truman Rd
Independence, MO 64056

RE: J-2 Rotor Inspection

Mr. Toby Grogan

Allied Power Group, LLC (APG), is pleased to provide this proposal to support the inspection and repair the GE Frame 5LA turbine rotor from your J-2 unit.

We have provided a quote for the base disassembly, inspection, repairs, assembly and final operations. In addition to the base scope we have provided pricing for some standard options and adders that can be selected as needed.

We look forward to hearing from you. Please feel free to contact me with any questions.

Sincerely,

Marty Magby

VP, Business Development for Bundled Services
Allied Power Group, LLC
Mobile: (316)303-4201
Email: mmagby@alliedpg.com

1. SAFETY

APG utilizes the following procedures and documentation to ensure compliance with Customer, APG and OSHA safety requirements and regulations.

- 1. APG’s Field Safety & Operations Manual is the top-level procedure that establishes APG’s safety policy, requirements, and documentation.
- 2. APG develops a site-specific Health & Safety Plan (HASP) for each site it works on in advance of mobilization.
- 3. APG develops an outage specific Job Safety Analysis (JSA) for each outage it performs based upon the outage specific work scope details and utilizes this document on a daily and task basis during the execution of the work.
- 4. APG’s APG is registered ISNetWorld and has an “A” rating

APG OSHA Incident Rate for Previous Three Years	
Year	Incident Rate
2024	0.73
2023	1.09
2022	1.23
Year	EMR
2024	.65
2023	.71
2022	.70

2. PRICING

Base Inspection and Repair			
Item	Scope	Price	Unit
1	Rotor De-stack & Inspection (items 1-20)	\$132,250	per rotor
2	Rotor Repair, Assembly & Final Operations (Items 21-46)	\$100,700	per rotor
Extra Work Scope Items			
3	De-blade/re-blade Individual compressor wheels (stages 1-16)	\$5,700	per wheel
4	Thrust runner machining	\$14,250	per rotor
5	Male or Female Patch Rings on stages 2 – 15	\$2,850	each
6	Burnish probe areas and record ERO	\$2,850	per location
7	Stage 1 Female Patch Ring (Fwd. Stub)	\$3,800	each
8	16 Stage Female Patch Ring (25" Rabbet)	\$6,840	each
9	Repair Fwd. Coupling Face and Rabbet	\$2,850	each
10	Repair Aft Coupling Face and Rabbet	\$2,850	each
11	Grind Compressor Wheel Faces	\$2,475	per face
Replacement Parts or Additional Services			
12	New Compressor Bolts (1-set)	\$34,725	Set
13	New Bucket Sealing & Locking hardware	\$18,500	Set
14	New marriage bolts	\$9,753	Set
15	Coat bladed compressor wheels (Unstacked)	\$35,979	per rotor
16	Coat the turbine wheels - anti-corrosion (Unstacked)	\$18,422	per rotor
17	Apply anit-rock coating - disc restoration	\$27,590	per wheel

3. SCOPE OF WORK

Turbine & Compressor Full De-stack - F5LA

	Scope of Work
1	Receive and inspect for shipping damage
2	Visual and dimensional inspection
3	Incoming check balance
4	Balance machine run-outs
5	Remove 1 st and 2 nd stage buckets
6	Check balance bare rotor
7	Drill and un-stretch marriage bolts
8	Stand up and remove compressor from turbine section
9	Check balance compressor.
10	Un-stretch and un-stack compressor
11	Blast clean all wheels
12	Magnetic particle inspect all wheels
13	Clean and inspect all bolts and nuts. (See replacement option)
14	Measure all compressor wheel fits and record compressor wheel runouts
15	Check balance turbine
16	Unstretch and unstack turbine section
17	Blast clean and NDT the turbine rotor parts and bolting (See replacement option)
18	Measure all turbine wheel rabbet fits and compare for proper fit
19	Record runouts on each turbine component
20	Perform a gap, lift and axial movement check on stage 1 and stage 2 buckets.
	Hold at this point and report Compressor findings to customer.
21	Perform required repairs to turbine & compressor components (customer approved)
22	Balance each wheel within 5 gr.
23	Re-assemble compressor rotor.
24	Stretch bolts to OEM spec.
25	Check balance compressor.
26	Record full set lathe run-outs.
27	Grind marriage face and witness mark.
28	Burnish probe areas and record electrical runouts.
29	Final balance compressor and hold for marriage to turbine section
30	Stack and stretch turbine section
31	Check balance turbine section
32	Record full set of lathe runouts on turbine
33	Grind marriage face and witness mark on turbine

34	NDE turbine marriage face
35	Weigh and sequence marriage bolts (See replacement option)
36	Prep and assemble turbine to compressor
37	stretch marriage bolts to OEM spec
38	Record full set of lathe run-outs, radial and axial.
39	Burnish probe areas and record electrical runouts.
40	Temporarily balance the unit without the turbine buckets.
41	Install and balance 2 nd stage buckets and temporarily balance.
42	Install and balance 1 st stage buckets and temporarily balance.
43	Remove temporary weight and final balance the unit rotor to industry standards.
44	Prep for final inspection.
45	Final engineering inspection.
46	Prep and ship.

4. NOTES AND CLARIFICATIONS

1. The supplied terms and conditions are the basis for this proposal.
2. Shipping terms for this proposal is EXW APG Dock.
3. No taxes have been included in this proposal
4. All invoices are due net 30.
5. APG would invoice the inspection 100% upon completion and supply of the inspection report. The rotor repair would be invoice 100% upon completion of the repairs, rotor ready to ship and supply of the repair report
6. The standard duration for the base scope of inspection and repairs is 8 weeks excluding holidays.
7. The base scope does not include bucket inspections or repair.
8. The base scope does not include any of the quoted adders or replacement parts.
9. There is potential for discovery of work required that has not been quoted. A quote for additional scope items will be provided upon identification of the needed scope.
10. Disassembly and reassembly of components will be performed utilizing standard industry practices unless otherwise specified. If disassembly or reassembly activities require effort above and beyond standard industry practice such as: Destructive means or other nonstandard significant effort then an Extra Work Authorization (EWA) shall be presented for approval prior to completion of this work.

5. STANDARD TERMS AND CONDITIONS

1. As used in these Terms and Conditions of Sale/Service ("Terms"), the term "Service(s)" shall mean all services (including, without limitation, coating, repairing, reworking, remanufacturing, inspection or other processing services) or goods (including, without limitation, materials, equipment, parts, replacement parts or supplies) furnished by APG, including services of APG personnel and equipment, tools, trucks and/or any other tangible item necessary to perform any such personnel's job; the term "Buyer" shall mean the entity or person to whom such Services are furnished or offered. These Terms are an essential part of the offer for Service by APG and contain all of the terms applicable to any such transaction which shall be exclusively governed by these Terms. APG hereby offers to sell such Services to Buyer only upon these Terms; and the submission of any articles by Buyer to APG for processing as described herein or Buyer's accepting any Services described herein shall constitute assent to said these Terms (an "Order"). These terms may only be modified by a written document signed by an authorized representative of APG and Buyer.
2. If no price is set forth on an Order, the Services will be billed at the prevailing market price. The terms of payment shall be net 30 days after the date of APG's invoice. APG reserves the right, among other remedies, either to terminate the applicable Order for Services or to suspend further deliveries upon failure of Buyer to make any payment pursuant to this Order or any other agreement between the parties hereto or their affiliates. Should an Order be terminated, Buyer shall pay APG for all costs and expenses incurred and commitments made in connection with the performance of the Order, plus a standard reasonable profit. If, in the judgment of APG, Buyer's financial responsibility becomes impaired, APG may refuse to deliver except for cash on delivery or, at APG's option, prepayment of the total price; and APG may demand immediate payment in full for all Services performed. A late charge of 1.5% per month (but not in excess of the lawful maximum) will be imposed on all past due balances, prorated on a daily basis for each day that payment is due. The prices quoted by APG will be applicable only to those Services which are scheduled for shipment to Buyer, by APG within 90 days from the date of an Order. The remaining portion of the Services will be subject to the prices in effect at the time of providing the Services, unless otherwise specified in this Order or in a writing signed by an authorized representative of APG. APG prices do not include any sales, use, excise, or other taxes. Any applicable sales, use, excise, or other tax for the Services shall be paid by Buyer. Buyer must provide a certificate of tax exemption acceptable to the taxing authority. When the Services, including any operations or processes performed by APG, are in the nature of "salvaging" parts or materials, such work will be performed on a "reasonable efforts" basis. Buyer shall pay in full the prices for the Services performed, and no liability shall attach to APG, to the fullest extent permitted by law, regardless of the results.
3. If Buyer is required to supply APG with articles for the Services, Buyer shall supply articles meeting the specifications referenced on the face of the applicable Order. APG shall not be responsible for any claims with respect to any articles furnished to APG which do not conform to such specifications, to the fullest extent permitted by law. All costs incurred by APG in removing defective coatings from any articles submitted to APG hereunder by any means other than the standard stripping procedures developed and used by APG shall be at Buyer's sole cost and expense, and in addition to the prices quoted herein. Any fixtures will remain the property of APG and will be available for use on subsequent orders.
4. Risk of loss of articles on which Services were performed shall pass to Buyer in accordance with FCA (Incoterms 2018) APG's plant, unless otherwise agreed in writing. All transportation charges on articles on which Services were performed shall be for the account of Buyer. Title to any new goods or parts included in the Services pass to Buyer upon APG's receipt of payment in full. Title to any articles provided for

Services to be performed on shall remain with Buyer but APG shall be permitted, at its sole discretion, to file any necessary liens on such articles to secure payment from Buyer.

5. THERE ARE NO EXPRESS WARRANTIES BY APG OTHER THAN THOSE SPECIFIED IN THIS SECTION 5. NO WARRANTIES BY APG (OTHER THAN WARRANTY OF TITLE) SHALL BE IMPLIED OR OTHERWISE CREATED INCLUDING BUT NOT LIMITED TO WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND WARRANTY OF NONINFRINGEMENT, EACH OF WHICH IS EXPRESSLY DISCLAIMED HEREIN. Without limiting the generality of the foregoing, to the fullest extent permitted by law, Buyer assumes all risk and liability for the results obtained by the use of any articles processed or sold hereunder in any manufacturing processes or in combination with any other substances or articles. Allied Power Group warrants all parts sold and/or repaired and/or Services for one (1) year or eight thousand (8,000) Equivalent Operating Hours ("EOH"). Notwithstanding the foregoing, in the case of coating defects, APG's liability shall be to Buyer only, and liability shall be limited to replacement, recoating, or reworking the articles where the material or Service is found to be defective, to the fullest extent permitted by law. It is understood and agreed that the reports, records, etc., made by APG as to the results of its Services shall be the good faith opinions only of APG and are not to be construed as warranties or guarantees, express or implied, of quality, classification, merchantability or fitness of purpose.
6. APG USES REASONABLE EFFORTS TO ENSURE THAT ALL SERVICE PERSONNEL ARE COMPETENT AND THAT EQUIPMENT IS IN GOOD CONDITION. APG PERSONNEL WILL ATTEMPT TO PERFORM THE SERVICES REQUESTED; HOWEVER, BECAUSE OF THE NATURE OF THE WORK TO BE COMPLETED AND UNPREDICTABLE CONDITIONS, SUCH RESULTS CANNOT AND ARE NOT GUARANTEED OR WARRANTED, BY APG, EXCEPT AS EXPRESSLY PROVIDED HEREIN. ANY ASSISTANCE IN EQUIPMENT INSTALLATION OR TECHNICAL OR ENGINEERING INFORMATION CONCERNING EQUIPMENT OR SERVICES PROVIDED BY APG WILL BE ADVISORY ONLY, AT BUYER'S SOLE COST AND ON AN "AS IS" BASIS. NO WARRANTY IS GIVEN FOR SUCH SERVICES AND APG WILL NOT BE LIABLE FOR ANY CLAIMS ARISING FROM ITS FURNISHING OR BUYER'S USE OF SUCH SERVICES, ASSISTANCE, OR INFORMATION, TO THE FULLEST EXTENT PERMITTED BY LAW.
7. Any changes to this Order must be made and agreed to in writing by APG and Buyer. If any such changes cause an increase or decrease in the cost of or the time required for the performance the Services, an equitable adjustment will be made in the Order price or delivery schedule, or both, and the Order will be modified in writing accordingly.
8. Buyer shall make a prompt examination of the Services (as to quantity of articles delivered and the quality of work) immediately upon receipt of the articles processed or sold hereunder. Failure of Buyer to give APG notice of any claims within 7 days after receipt of the articles shall be an unqualified acceptance of the Services performed and a waiver by Buyer of all claims with respect thereto, to the fullest extent permitted by law.
9. LIMITATION OF LIABILITY: TO THE FULLEST EXTENT PERMITTED BY LAW, APG'S AGGREGATE LIABILITY ARISING FROM OR RELATING TO AN ORDER IS LIMITED TO THE AMOUNT PAID BY PURCHASER FOR THE SERVICES, WHICHEVER IS LESS. TO THE MAXIMUM EXTENT ALLOWABLE UNDER APPLICABLE LAW, APG SHALL NOT BE LIABLE UNDER THIS ORDER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR PUNITIVE DAMAGES INCLUDING, WITHOUT LIMITATION, LOST REVENUES EVEN IF APG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
10. Buyer agrees to defend, indemnify and hold APG harmless, to the fullest extent permitted by law, from and against any loss, damage, claim, suit, cause of action, or liability whether made by Buyer or any third party whether to persons or property including any claim for consequential or environmental damage in any manner arising from or connected with the use installation or operation of the articles on which

Services were performed, or arising as the result of a failure or any articles inspected by APG, whether caused, occasioned, or contributed to by APG or by APG's negligence, of any type or kind.

11. To the fullest extent permitted by law, APG shall have no liability for its delay or failure to perform hereunder due to contingencies beyond its control, including but not limited to, acts of God, fires, floods, wars, sabotage, accidents, labor disputes or shortages, governmental laws, ordinances, rules and regulations, whether valid or invalid (including but not limited to, priorities, requisitions, allocations and price adjustment restrictions), inability to obtain materials, electrical power, equipment or transportation or any other similar or different contingency. If APG cannot, due to any of the aforesaid contingencies, supply Buyer's total demand for any services or articles ordered hereunder, APG may allocate its available production capacity of such services or articles among Buyer and APG's other customers (including its internal components) on any basis which it deems to be fair and reasonable, without any liability for any failure of performance that may result, to the fullest extent permitted by law. Completion of the Services or shipping dates are "best estimate" and based on prompt receipt of necessary parts, material, equipment and information. In the event of any such delay or any delay in payment, the shipping date shall be extended an equal amount. APG is entitled to request reasonable assurances that Buyer will pay for Services, including but not limited to requiring payments on account or in advance. Until assurances satisfactory to APG are received, APG is entitled to suspend any Service, cancel any Order, sue to recover the purchase price or any expenses incurred to the date of cancellation or exercise any other remedy available at law or in equity for breach of contract.
12. APG does not, by reason of the performance of services or sale of articles described herein, grant Buyer any right to use the articles processed or sold hereunder in the practice of any process or in combination with any other materials under any patent of APG or any third party covering such process or combination. Buyer assumes all responsibility for determining whether relevant patents exist covering the processing or use of any articles processed or sold hereunder. Buyer shall indemnify and shall hold harmless APG, to the fullest extent permitted by law, and their representatives, from all suits, claims, actions, losses, damages, and expenses (including reasonable attorney's fees) and to the fullest extent permitted by law, at its expense shall defend any suit against APG, in so far as it is based on any claim of infringement of any United States patent, trademark, or of any copyright, for any services performed by APG or for any articles incorporated into a potentially infringing combination or system by Buyer.
13. APG performs services on products and sells articles bearing the trademarks of their original manufacturer. Any referenced product names, logos, brands, and other trademarks are the property of their respective trademark holders. The respective trademark holders are not affiliated with APG, nor do they sponsor or endorse any services or processes performed by APG.
14. These Terms and any Order for Services shall be interpreted and enforced according to the laws of the state of Missouri. The parties exclusively submit any dispute relating or arising out of the Services to the jurisdiction of the courts sitting in Jackson County, Missouri. TO THE FULLEST EXTENT PERMITTED BY LAW, THE PARTIES EXPRESSLY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THESE TERMS, ANY INDEMNITY, OR ANY OF THE SERVICES TO BE PROVIDED HEREUNDER. Failure of either party to exercise any right under these Terms or any Order on one occasion shall not waive the right to exercise the same on another occasion. Any Order is not assignable, in whole or in part, without the prior written consent of APG.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have caused this Agreement to be executed on the date first written above.

CITY OF INDEPENDENCE

By: _____

Name: _____

Title: _____

ALLIED POWER GROUP, LLC.

By: Gary Whitehead

Name: Gary Whitehead

Title: Interim CEO / CFO

From: [Joseph Hegendeffe](#)
To: [Toby Grogan](#)
Cc: [Khristina Irvine](#); [Elaine Kaifes](#); [Lisa Bateman](#)
Subject: RE: J-2 Major Inspection/ rotor work Sole source
Date: Friday, October 31, 2025 8:15:03 AM
Attachments: [image002.png](#)
[image003.png](#)

I approve both of these sole source requests. Thanks



Joe Hegendeffe

Director

O - 816.325.7494

C - 816.267.3587

jhegendeffe@indepmo.org

21500 E Truman Rd.
Independence MO 64056

From: Toby Grogan <tgrogan@indepmo.org>
Sent: Thursday, October 30, 2025 8:49 AM
To: Joseph Hegendeffe <jhegendeffe@indepmo.org>
Cc: Khristina Irvine <kirvine@indepmo.org>; Elaine Kaifes <ekaifes@indepmo.org>; Lisa Bateman <lbateman@indepmo.org>
Subject: J-2 Major Inspection/ rotor work Sole source

Good Morning Joe, I have attached two sole source documents for your approval. Both are for the Major Inspection for J-2 funding we are putting in front of the council in two weeks.

Thank You

Toby Grogan
Maintenance Superintendent
1-816-564-4455
tgrogan@indepmo.org
21500 E Truman Road
Independence MO 64056



PROCUREMENT SOURCE JUSTIFICATION

For Sole Source or Emergency Purchases Above \$10,000

A sole source is defined as: Only one vendor that possesses the unique and singularly available capability to meet the requirement of the procurement	
An emergency purchase is defined as: A purchase necessary to alleviate a situation in which there is a threat to health, welfare, or safety, and/or where time does not allow time for normal procurement procedures.	
All purchases shall follow the City of Independence Procurement Policy.	
I REQUEST THAT THE REFERENCED PURCHASE BE DECLARED A SOLE SOURCE OR EMERGENCY PURCHASE.	
Proposed supplier name and address: Allied Power Group	Munis Vendor ID # Or attach Supplier's W-9 Form
Purchase Requisition #:	Estimated cost: \$ 401,513.09
If this is a sole source purchase, check all that apply: ☐ Licensed or patented – supplier has a license or patent that makes them the Limited provider. ☐ One-of-a-kind – there are no competitive alternatives available on the market. ☒ Limited Distributor – Supplier is the Limited distributor for the region or municipality ☒ Compatibility – must match existing brand or equipment for compatibility. ☐ Warranty/Replacement part – for a specific brand or factory authorized warranty services. ☐ Grant – Requirements for specific goods/services established in the grant language. Attach grant for support. ☐ Unique design – must meet physical design or quality standards. ☐ Public Utility Services – Necessary adjustment of utility facilities. ☒ Other – <u>TIME - able to complete repairs faster than OEM and allow us to get J-2 into the SPP pool</u>	
If this is an emergency purchase, check all that apply and give a brief description of the situation: ☐ Response to a threat to health, welfare or public safety ☐ Protection of preservation of public property ☐ Major project's timeline does not allow for normal procedures in order to be completed	
Description – _____ replace STG-1 buckets unstack restack and balance rotor	
STATEMENT OF NEED AND CERTIFICATION: My department's recommendation for this expenditure is based upon an objective review of the product/service required and appears to be in the best interest of the City of Independence. I know of no conflict of interest with this request. No gratuities, favors or compromising action have taken place. Neither has my personal familiarity with particular brands, types of equipment, materials or firms been a deciding influence on my request to source this purchase when there are other known suppliers to exist. By submitting this form to Munis, I hereby certify that this justification for procurement is accurate and complete to the best of my knowledge and belief.	
Department Head Authorization	
Name: Joe Hegendeffer	Department: Power & Light
Signature:	Title: Director of Power & Light
City Manager Authorization (Emergency Purchases Only)	
Signature:	Date:

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

Council action is requested to issue a purchase order to GE Vernova, in the amount of \$2,015,015.33, and authorizing change orders of up to ten percent (10%) of the authorized amount, for a major inspection of the J-2 substation combustion turbine for the Power & Light Department. **Item passes 7-0**

Recommendations:

Council approval is recommended.

Background:

Inspections of the combustion turbines are performed periodically to assess the condition of the unit to meet the load demand. Identification and repair of problem areas are essential to maintain unit availability and reduce ongoing maintenance. The purpose of the major inspection is to examine all the internal rotating and stationary components from the inlet of the turbine through the exhaust.

The last major inspection of the J-2 combustion turbine was in 2012. A borescopic inspection on the turbine rotor performed in 2024 recommended replacing the Stg-1 buckets that were found to have varying degrees of damage that could contribute to a failure. Failure would be highly detrimental to the turbine and costly to repair. The unit operates frequently due to demand by the Southwest Power Pool (SPP) integrated market.

The requested major inspection is required for continual safe and reliable operation of the unit. A major inspection will include onsite disassembly, inspection, use of consumable materials and reassembly of the gas turbine. The inspection will be conducted onsite by GE Vernova, the original equipment manufacturer and sole source provider.

Following approval, a budget transfer of funds of \$3,172,700 will be requested on a supplemental appropriation from existing capital improvement project (CIP) 202504 - Blue Valley Chimney Demolition, to a newly created CIP 202620 – J-2 Substation Inspection (Combustion Turbine) & Repair (Rotor).

Emergency Justification:**Fiscal Impact:**

Total fiscal impact of this purchase order is an amount up to \$2,216,517 to GE Vernova. This purchase order is in addition to a fiscal impact of \$467,500 to GE Allied Power group for a final project cost up to \$2,684,017. Funding for the newly created J-2 Substation Inspection (Combustion Turbine) & Repair (Rotor), project account number 0217021-5406-202620-C will

include a transfer from existing project account number 0217021-5406-202504-C, Blue Valley Chimney Demolition included in the fiscal year 2025-26 proposed budget, page 260, IPL Fund 021 on a future supplemental appropriation.

Council Action:

Department / Contact	Power and Light /
---------------------------------	-------------------

REVIEWERS

Khristina Irvine
Joseph Hegendeffer
Melissa Cabrera
Jeremy Cover
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. GE sole source J-2 MI
2. Director's Approval for Sole Source Form
3. 1695751 Rev.5 IPL Major Inspection & Offsite Repairs Proposal
4. 6136473 Rev 3 Frame 5 Stage 1 Buckets
5. Customer MI Consumable List 2025 Rev1
6. Management Analyst Frazier J2 Substation Inspection Memo

PROCUREMENT SOURCE JUSTIFICATION

For Sole Source or Emergency Purchases Above \$10,000

A sole source is defined as: Only one vendor that possesses the unique and singularly available capability to meet the requirement of the procurement	
An emergency purchase is defined as: A purchase necessary to alleviate a situation in which there is a threat to health, welfare, or safety, and/or where time does not allow time for normal procurement procedures.	
All purchases shall follow the City of Independence Procurement Policy.	
I REQUEST THAT THE REFERENCED PURCHASE BE DECLARED A SOLE SOURCE OR EMERGENCY PURCHASE.	
Proposed supplier name and address: GE Vernova 58 Charles st. cambridge Massachusetts 02141	Munis Vendor ID # 109500 Or attach Supplier's W-9 Form
Purchase Requisition #:	Estimated cost: \$ 2,015,015.33
If this is a sole source purchase, check all that apply: ☐ Licensed or patented – supplier has a license or patent that makes them the Limited provider. ☐ One-of-a-kind – there are no competitive alternatives available on the market. ☒ Limited Distributor – Supplier is the Limited distributor for the region or municipality ☒ Compatibility – must match existing brand or equipment for compatibility. ☒ Warranty/Replacement part – for a specific brand or factory authorized warranty services. ☐ Grant – Requirements for specific goods/services established in the grant language. Attach grant for support. ☒ Unique design – must meet physical design or quality standards. ☐ Public Utility Services – Necessary adjustment of utility facilities. ☐ Other – _____	
If this is an emergency purchase, check all that apply and give a brief description of the situation: ☐ Response to a threat to health, welfare or public safety ☐ Protection of preservation of public property ☐ Major project's timeline does not allow for normal procedures in order to be completed	
Description – _____ GE is The OEM of the equipment ands has historically done the bulk of IPL on site work.	
STATEMENT OF NEED AND CERTIFICATION: My department's recommendation for this expenditure is based upon an objective review of the product/service required and appears to be in the best interest of the City of Independence. I know of no conflict of interest with this request. No gratuities, favors or compromising action have taken place. Neither has my personal familiarity with particular brands, types of equipment, materials or firms been a deciding influence on my request to source this purchase when there are other known suppliers to exist. By submitting this form to Munis, I hereby certify that this justification for procurement is accurate and complete to the best of my knowledge and belief.	
Department Head Authorization	
Name: Joe Hegendeffer	Department: Power & Light
Signature:	Title: Director of Power & Light
City Manager Authorization (Emergency Purchases Only)	
Signature:	Date:

From: [Joseph Hegendeffe](#)
To: [Toby Grogan](#)
Cc: [Khristina Irvine](#); [Elaine Kaifes](#); [Lisa Bateman](#)
Subject: RE: J-2 Major Inspection/ rotor work Sole source
Date: Friday, October 31, 2025 8:15:03 AM
Attachments: [image002.png](#)
[image003.png](#)

I approve both of these sole source requests. Thanks



Joe Hegendeffe

Director

O - 816.325.7494

C - 816.267.3587

jhegendeffe@indepmo.org

21500 E Truman Rd.
Independence MO 64056

From: Toby Grogan <tgrogan@indepmo.org>
Sent: Thursday, October 30, 2025 8:49 AM
To: Joseph Hegendeffe <jhegendeffe@indepmo.org>
Cc: Khristina Irvine <kirvine@indepmo.org>; Elaine Kaifes <ekaifes@indepmo.org>; Lisa Bateman <lbateman@indepmo.org>
Subject: J-2 Major Inspection/ rotor work Sole source

Good Morning Joe, I have attached two sole source documents for your approval. Both are for the Major Inspection for J-2 funding we are putting in front of the council in two weeks.

Thank You

Toby Grogan
Maintenance Superintendent
1-816-564-4455
tgrogan@indepmo.org
21500 E Truman Road
Independence MO 64056



Major Inspection and Offsite Repair Services

CITY OF INDEPENDENCE

Site: CITY P&L - BLUE VALLEY & SUBS

Unit Serial: 179345

GE Vernova International LLC

Proposal Number: 1695751

Revision: 5

Proposal Date: November 17, 2025

Proposal Type: Time & Material / Firm Fixed

Executive Summary

GE Vernova International LLC ("GEVINT", "Seller", or "Contractor") is pleased to submit this proposal to CITY OF INDEPENDENCE ("Buyer", "Owner" or "Customer") for the purpose of performing Major Inspection and Offsite Repair Services on Buyer's Gas Turbine Serial Number (SN) 179345 currently installed at Site

GEVINT optimizes schedules based upon your preferred mode of operation, and our experience in implementing and executing a project of this magnitude. The core work activities will be performed working one (1) shift per day, twelve (12) hours per shift, seven (7) days per week. A detailed schedule will be developed prior to the outage start date. This work scope will be executed to optimum performance levels by utilizing our resources, and the support of Customer coordinators.

This proposal document, together with the price contained herein, is valid for 30 days from date of issuance. Upon expiration of this proposal document, a new proposal will be provided upon request and escalation should be assumed.

The Proposal may be modified or withdrawn by Seller prior to receipt of Buyer's acceptance. Seller reserves the right to accept or reject any purchase order resulting from this Proposal.

Thank you for the opportunity to provide these services.

If you have any questions, please do not hesitate to contact us.

Submitted by:	GE Vernova International LLC
Name:	Michelle Williams
Title:	Senior Sales Manager
Telephone:	+ 1 (314) 285-9062
Email:	michelle.williams3@gevernova.com

Table of Contents

Executive Summary	2
Proposal Statement	4
Section 1 - Technical Summary	5
1.1 Major Inspection Workscope	5
1.2 Exclusion of Services	8
1.3 Offsite Repair Services	8
Section 2 – Proposal Basis	9
2.1 Responsibilities Matrix	9
2.2 Assumptions and Clarifications	14
Section 3 – Project Schedule	16
Section 4 - Commercial Summary.....	17
4.1 Pricing.....	17
4.1.1 Field Services Pricing	17
4.1.2 Offsite Repair Services Pricing	17
4.2 Pricing Basis	17
4.3 Proposal Validity	18
4.4 Payment Terms.....	18
4.5 Payment Schedule	18
4.5.1 Field Services	18
4.5.2 Repair Services	18
4.6 Terms and Conditions	18
4.7 Precedence.....	18
4.8 Termination Schedule.....	18
4.9 COVID-19, Geopolitical Conflicts, and Responding Government Actions.....	19
4.10 Extra Work	19
4.11 Purchase Order Instructions.....	20
Section 5 – Rate Schedule	21
5.1 Field Services Rates	21
5.2 Craft Labor Rates.....	22
Section 6 – Offsite Repair Scope of Work	23
6.1 – Executive Summary	23
6.2 – Offsite Repair Scope of Work & Pricing	23
Section 7 – Terms & Conditions.....	26
Section 8 – Standalone Software License	48

Proposal Statement

This entire commercial and technical proposal and the correspondence and communications concerning this proposal collectively the "Proposal" developed by GEVINT and provided to Buyer are the property of GEVINT.

This quotation document is proprietary to GEVINT and is furnished in confidence solely for use in considering the merits of the quotation and for no other direct or indirect use. By accepting this document from GEVINT, the recipient agrees:

- To use this document, and the information it contains, exclusively for the above stated purpose and to avoid use of the information for performance of the proposed work by the recipient or disclosure of the information to, and use by, competitors of GEVINT on behalf of the recipient.
- To avoid publication or other unrestricted disclosure of this document or the information it contains.
- To make no copies of any part thereof without the prior written permission of GEVINT.
- To return this document when it is no longer needed for the purpose for which furnished, or upon request of GEVINT.

Section 1 - Technical Summary

1.1 Major Inspection Workscope

a) General Works

Mobilization

- Move on Site
- Materials on Site
- Tools on Site

b) GT Disassembly

- Turbine on Turning Gear
- Breaker Open
- Turbine Off Turning Gear

Remove External Electrical & Instrumentation (**Buyer**)

- Remove Instrumentation

Disassemble Enclosures / Ducts

- Remove Inlet Plenum & Duct Components
- Remove Roof & Enclosure Panels
- Remove Exhaust Duct Components
-

Disassemble Load Coupling

- Disassemble Accessory Coupling & Alignment Check
- Disassemble Load Gear Coupling & Alignment Check

Disassemble Piping & Combustion System Hardware

- Remove Turbine Compartment Piping
- Remove Fuel Nozzles & End Covers
- Remove Crossfire Tubes, Liners and Aft Cans
- Disassemble Casings & UH Turbine Components

Disassemble Casings & UH Turbine Components

- Install Casing Support Jacks
- Unbolt & Remove UH Inlet Casing
- Unbolt & Remove UH Compressor Casing
- Unbolt & Remove UH Turbine Casing
- Unbolt & Remove UH Exhaust Casing
- Remove Transition Pieces
- Measure 1st Stage Nozzle Concentricity
- Remove 1st Stage Nozzle (U/H)
- Remove Support Ring (U/H)



- Unbolt & Remove CDC
- Remove Inner Barrel U/H
- Opening Clearance Checks

Opening Clearance Checks

- Verify Opening Clearances

Disassemble Rotor & Bearings

- Remove Bearing 1 and Thrust Bearing
- Remove Bearing 2
- Bearing Clearances
- Remove Rotor
- Disassemble LH Turbine Section Components

c) GT Clean & Inspect - (UNIT # J2)

Clean & Inspect Casings

- Clean & Visually Inspect Inlet Casing
- Clean & Visually Inspect Compressor Casing
- Clean & Visually Inspect CDC
- Clean & Visually Inspect Exhaust Casing
- Clean & Visually Inspect Turbine Casing

Clean & Inspect Enclosures & Ducts

- Clean & Visually Inspect Inlet Plenum & Duct Components
- Clean & Visually Inspect Exhaust Duct Components
- Clean & Visually Inspect Roof & Enclosures Panel

Clean & Inspect Combustion System Hardware

- Clean & Visually Inspect Fuel Nozzles & End Covers
- Clean & Visually Inspect Crossfire Tubes, Liners, Aft Cans

Clean & Inspect Internal Turbine Section Components

- Clean & Visually Inspect Turbine Components

Clean & Inspect Internal Compressor Section Components

- Clean & Visually Inspect Compressor Components

Clean & Inspect Rotor & Bearings

- Clean & Visually Inspect Accessory Coupling
- Clean & Visually Inspect Load Coupling
- Clean & Visually Inspect Load Gear Coupling
- Clean & Visually Inspect Rotor & Bearings

Clean & Inspect Piping & Pigtailes

- Clean & Visually Inspect Turbine Compartment Piping

Clean & Inspect Electrical & Instrumentation (**Buyer**)

- Clean & Visually Inspect Instrumentation



d) GT Reassembly - (UNIT # J2)

Reassemble Rotor & Bearings

- Install Rotor
- Bearing Clearances
- Install Bearing 2
- Install Load Coupling
- Install Bearing 1 and Thrust Bearing

Reassemble UH Turbine Components & Casings

- Install & Bolt Compressor Casing
- Install & Bolt UH Inlet Casing
- Remove Casing Support Jacks
- Install Inner Barrel
- Install & Bolt CDC
- Install Support Ring U/H)
- Install 1st Stage Nozzle (U/H)
- Install UH 2nd Stage Nozzles
- Install Transition Pieces
- Install & Bolt UH Exhaust Casing
- Install & Bolt UH Turbine Casing

Reassemble Combustion System Hardware & Piping

- Install Crossfire Tubes, Liners and Aft Cans
- Install Fuel Nozzles & End Covers
- Install Turbine Compartment Piping

Closing Clearance Checks

- Verify Closing Clearances

Coupling Alignment / Assembly

- Assemble Accessory Coupling & Alignment Checks
- Assemble Load Coupling & Alignment Checks
- Assemble Load Gear Coupling & Alignment Checks

Reassemble Enclosures / Ducts

- Install Inlet Plenum & Duct Components
- Install Roof & Enclosure Panels
- Install Exhaust Duct Components

Gear Box Assembly Installation

- Install Buyer supplied gearbox
- Align gearbox
- Check alignment and move gearbox (2 shifts of alignments is included. Any additional alignment is Extra Work)
- Align accessories train components to gearbox

Install External Electrical & Instrumentation (**Buyer**)

- Install Instrumentation

1.2 Exclusion of Services

- Activities resulting from fact findings are excluded from the described scope, if not otherwise mentioned or specified in the scope description. Such activities must be agreed separately, as will time and costs.
- Any works and parts beyond the described scope such as:
 - Correction, adjustment and/or advisory assistance for the replacement of Seller components against third party components
 - Removal of broken studs and bolts and restoration of threads, if any
 - Correction of distortion and/or rework of joint faces, if any
- Any works and inspections on components not having been delivered by Seller
- Asbestos measurements and/or asbestos decontamination, if any
- Training (classroom and/or on-site)
- Modification of existing operation and maintenance manuals
- Seller will leave the site clean swept after the inspection. Further cleaning is with the client, if required.

1.3 Offsite Repair Services

- As described in Appendix A



Section 2 – Proposal Basis

This proposal is based on the assumptions and clarification and the distribution of responsibilities between Buyer and Seller.

2.1 Responsibilities Matrix

Environmental Health and Safety				
Item	Responsibility	Buyer	Seller	NA
1	Isolate, tag-out & grounding (LOCKOUT-TAGOUT) all relevant systems associated with work scope (chemical, electrical, mechanical, steam & environmental) + Electrician / LOTO Technician Work Permit Release For Steam: Support for phased LOTO (Releasing components such as systems become available for LOTO). (i.e. Actuators, valves, crossover unbolting, enclosure removal, hood bolts, & others)			
2	LOTO Walkdown			
3	Permitting Processes (LOTO/Safework/Confined Space/etc.)			
4	Mobilization permits (i.e. security)			
5	Permits, licenses, governmental of public utility charges & inspection fee			
6	Alcohol & Drug Test and T&M for personnel testing Per GEVINT policy			
7	EHS Specialist on Site			
8	Access to On-site First-Aid Facility / Nurse (if Applicable)			
9	Communication for Emergency Medical / Ambulance			
10	Fire protection / Response Equipment			
11	Portable Fire Extinguisher + certification			
12	Standard Personal Safety Equipment. Other safety requirement specific to site are not part of this scope of supply.			
13	Site-Specific Personal Protective Equipment (PPE)			
14	Testing & Monitoring of all hazardous materials including supply of testing contractor / devices per federal, state, local & site requirements. It is with the understanding that no hazardous material exist to perform work scope unless specifically noted otherwise in the proposal			
15	Disposal of all waste materials and disposal and abatement of such per federal, state, local & site requirement including but not limited to: - Hazardous materials & containers according to MSDS includes Lead Asbestos & Hex-Chromium. - Environmental waste sampling / Metal Scrap Bin.			



Environmental Health and Safety				
Item	Responsibility	Buyer	Seller	NA
	- Outage-used chemicals / sprays & used cleaning media. - Trash containers & disposal of all trash from containers			
16	Disposal of Non-Asbestos Stator Bars (Including dumpsters)			✓
17	Site-Specific safety training & orientation / induction of Seller labor force and / or Seller-Supplied Sub-Contractor(s)	✓		
18	General safety training & orientation / induction of Seller labor force and / or Seller-Supplied Sub-Contractor(s)		✓	
19	Confined space work monitoring + certified equipment, watcher & rescue personnel, if more than one person is necessary.	✓		
20	Provide any required additional fire watch personnel over one person, if more than one person is necessary.	✓		
21	Load test cranes (certificate of compliance). All overhead cranes to be inspected per OSHA 1910.179, with certificates available for Seller to review.	✓		

Tooling/Equipment				
Item	Responsibility	Buyer	Seller	NA
1	Standard maintenance tools needed to perform "Workscope" described here in.		✓	
2	Special tools and equipment originally supplied with the unit. Including but not limited to: Certified Lifting Beams, Mandrels, Try-bars for ST, Riverhawk (if applicable), ITH & or High Torque tools, temporary coupling bolts & alignment pins	✓		
3	Engine or electric driven welding machine, leads + Labor (Welder)	✓		
4	Welding gases (Oxygen/acetylene/etc)	✓		
5	Forklift with a boom		✓	
6	Forklift operator		✓	
7	Rotor Static Stands		✓	
8	Power Rollers			✓
9	Trailers for parts movement / storage on site + Driver			✓
10	Borescope (for Close-out Inspection as required)		✓	
11	GEN SCOPE ONLY: Dehumidifiers and / or heaters / Appropriate Climate Control for All Generator Components			✓
12	Live Outage Kit + Tooling			✓



Tooling/Equipment				
Item	Responsibility	Buyer	Seller	NA
13	All Rigging, Slings & Lifting Devices (chain falls, come-a-longs, jacks, hoist bags & boxes) provided by Seller Certified per government health & safety requirements		✓	
14	Spreader Bar for rotor lifting			✓
15	All required hardwood/softwood Cribbing for general support, storage, & laydown during outage and layup for long-term storage.	✓		
16	Material for protection of laydown surfaces, waterproofing (tarps, covers, shelters, etc.) and heaters	✓		
17	Air compressors, including compressed Air to required pressure, Instrument or Dry Air for general tooling (100 psig/185 cfm), Connections (manifolds, hoses, fittings), and Extension Cords		✓	
18	Induction Heating Services for GT / ST / Gen scope			✓
19	Round trip transportation and shipping skid/rotor stands for components being sent to Seller Service Center and will be invoiced at cost plus 25%			✓
20	Fuel required for forklift, welding machines, air compressors, light plants, generators, UTV's, etc.	✓		

Facilities & Site Setup				
Item	Responsibility	Buyer	Seller	NA
1	Normal plant services required for maintenance (light, heat, water, compressed air and electric power)	✓		
2	Sanitary facilities / Restrooms, Wash facilities	✓		
3	Ice & drinking water for Seller personnel		✓	
4	Furnished office / trailer for personnel (including change & lunch facilities for crew)	✓		
5	Internet Service		✓	
6	Parking space for Seller's work force	✓		
7	Supply a site truck or van for local transportation & job use	✓		
8	Supplementary lighting/ light plants (if needed)			✓
9	Provide Distributed Power to Work Areas (Power Packs) - Electrical Power - 120 VAC Single phase & 480 VAC three phase up to 400 amps. Generators if required. Connect & disconnect portable electrical equipment inclusive of Equipment that must be hardwired (Not plug in)	✓		
10	Pre-outage Receiving, off-loading & proper storage of all new & refurbished parts (including manpower) & mobilization to work area / stage parts near work area.	✓		



Facilities & Site Setup				
Item	Responsibility	Buyer	Seller	NA
11	During outage - Receiving, off-loading & proper storage of all new & refurbished parts (including manpower) & mobilization to work area / stage parts near work area.	✓	✓	
12	Inventory of outage received parts (Ensure all required parts & consumables are present before outage start.)	✓	✓	
13	Machine shop facilities, on-site & off-site machining (if applicable/needed)	✓		
14	Designated work & lay down area accessible by crane & fork truck for tools, equipment, & turbine parts	✓		
15	Painting - Touch up for damaged/welded areas	✓		

Outage Resources (Technical Direction, Supervisors-craft, Specialized craft resources, 3rd Party Vendors)				
Item	Responsibility	Buyer	Seller	NA
1	Specialized Craft for Mechanical works included in Section 2		✓	
2	Standard Craft for Mechanical works		✓	
3	Technical Field Advisor (TFA) Personnel		✓	
4	Casing Alignment Technician & Equipment			✓
5	Onsite Project Manager			✓
6	Welders with proper Qualification (WPS - Welding Procedure Specification WPS / WPQR -Welding Procedure Qualification Record)	✓		
7	Outage Schedule Ownership	✓	✓	
8	Coordination of Seller Service Shop work on-site & in-shop (if applicable)		✓	
9	Site visit/walk-down, Site Information available, Engineering Requests (PAC case entry, pictures, dimensional checks, etc.)		✓	
10	Laser Scan			✓
11	Civil works (enabling, piling, jet grouting, bentonite, re-bar surveys, etc.) Standard Civil works (embedded parts, trenches, etc.)			✓
12	Safe foundation structure to support working loads in all working areas on site including adequate drawings & documents. Laydown area, Skid installation foundation	✓		
13	Provide certified mobile crane, manlifts & operator(s) per federal / local regulations. Crane capable of supporting all load lifts required to perform the work.	✓		
14	Provide certified overhead / indoor crane per federal / local regulations.			✓



Outage Resources (Technical Direction, Supervisors-craft, Specialized craft resources, 3rd Party Vendors)				
Item	Responsibility	Buyer	Seller	NA
15	Overhead/Indoor crane operators			✓
16	Equipment & Labor / Electricians / Technicians to disassemble, reassemble & calibrate instrumentation / wiring & conduit necessary to support scope including GT / ST / Gen	✓		
17	Electrical tests & required maintenance on Auxiliaries' electrical equipment motors or power circuits, if required. (Spare parts / repair clarification shall be quoted separately)	✓		
18	Equipment & Labor to drain, clean tank & refill Lube oil system, hydraulic oil system, hydrogen seal oil system including the Oil supply & generator CCW system	✓		
19	Electrical Testing for core equipment (Generator rotor / stator) including electrical megger testing according to work scope	✓		
20	Electrical Testing equipment	✓		
21	Material & Labor related to the removal & installation of insulation required to access turbine & components	✓		
22	Non-Destructive Test Services (Visual Inspection, including ProScope)	✓		
23	Non-Destructive Test Services (Red/Fluorescent Dye penetrant)	✓		
24	Non-Destructive Test Services (Mag particle) *May require a rental generator			✓
25	Non-Destructive Test Services (Ultrasonic)	✓		
26	Non-Destructive Test Services (X-Ray Testing)			✓
27	Blast Cleaning	✓		
28	Parts cleaning equipment & fluids	✓		
29	Drilling and tapping of broken bolts ½" diameter or more	✓		
30	Equipment & Advisory Services to perform Oil flushing according to work scope	✓		
31	Oil Flushing labor support, including prep work			✓
32	Fluid Testing (Fuel/Oil/Cooling Water, etc.)	✓		
33	Scaffolds including the manpower to erect / disassemble & once per shift inspections. Includes parts shelving.	✓		
34	Shutdown / Startup Vibration Monitoring Equipment & Labor	✓		
35	Controls / commissioning / return to service Startup Support	✓		
36	Dedicated 3 rd Party / Contractor Provided FME Monitor	✓	✓	



Outage Resources (Technical Direction, Supervisors-craft, Specialized craft resources, 3rd Party Vendors)				
Item	Responsibility	Buyer	Seller	NA
37	FME equipment (barriers, covers, gates, etc.)		✓	
38	Heat Treatment Equipment & Labor (pre / post weld and / or stress relieving)			✓
39	Testing (if applicable) of fire protection system (ex. CO2 Fire Suppression System, etc.)	✓		
40	Grid Test Requirements & Support	✓		
41	Rodding of all heat exchangers including generator coolers, lube oil coolers, stator water cooling	✓		

Consumables & Purchased Materials				
Item	Responsibility	Buyer	Seller	NA
1	Shim packs required for alignment (GT / ST / Gen Stator and / or exciter)	✓		
2	Outage consumables (Gaskets, O- rings, seals, bolts, nuts, etc.)	✓		
3	Expendable materials (rags, hones, joint & bolt compounds, chemical & solvents -with MSDS where applicable, etc.)		✓	
4	Acetylene, Propane, Oxygen, Nitrogen, Argon, Hydrogen with proper storage equipment (Welding & Misc. Gases)	✓		
5	Plywood for Generator FME Exclusion Area	✓		
6	Temporary coupling bolts and alignment pins	✓		

2.2 Assumptions and Clarifications

1. For parts not specifically included in the Scope of Supply, sufficient spare and renewal parts will be on hand at the beginning of the outage as to prevent any delays resulting from repair or procurement time. Any delays to Seller resulting from waiting for parts that are to be procured by Buyer will be considered Extra Work.
2. Seller shall furnish with a complete list of inspection results, including details of conditions found, corrective actions that were taken and unusual conditions observed, along with a list of parts expended during the inspection to include those recommended for the next inspection.
3. SAFETY: An "on-site" safety checklist will be utilized by Seller as a minimum for conformance to safety while on Buyer's property. Additionally, Seller will conform to safety requirements for personal protective clothing and devices, such as safety glasses (side shields if required), hard hats, hand protection, (gloves if required).
4. If Seller encounters toxic substances, hazardous substances, or hazardous wastes (as such terms may be defined in any federal, state, or local statute or ordinance, or regulations



issued there under) at the site that require special handling and/or disposal, Buyer shall immediately take whatever precautions are required to legally eliminate such hazardous conditions and properly handle and dispose of such substances or wastes, so that the work under the may safely proceed. If any such toxic substances, hazardous substances, or hazardous wastes cause an increase in Seller's cost of, or time required for, performing any part of the work under this, an equitable adjustment shall be made in the price and schedule.

5. Any idle time or delays to the work scope schedule caused by repair work or any unforeseen occurrence not attributable to Seller's personnel shall be the responsibility of Buyer. Authorized extra work shall be documented separately.
6. Prices do not include time for safety or in-processing training of Seller personnel.
7. Any repair recommendations will not include Seller proprietary procedures.
8. No Training has been included in this proposal. Seller would be pleased to provide a quote for standard or customized training performed either at your site or at one of the Seller training facilities.
9. GEVINT has EMPLOYEE SUBSTANCE ABUSE TESTING PROGRAMS for both GEVINT employees, and for craft labor personnel. GEVINT has requirements for substance abuse testing as a condition of employment and for cause. Therefore, the cost of substance abuse testing at the job site is not included in the pricing. If Customer requires substance abuse testing of GEVINT personnel, the costs for testing will be added to GEVINT's Lump Sum Firm Price.
10. GEVINT has assumed there will be no "black days", and that utilities (power, air, etc.) will not be interrupted.
11. In the case where it is found that welding, cutting, or grinding of material containing Hexavalent Chromium to be either directly or indirectly involved in the work as reflected in this proposal and which warrants procedures necessary to adhere to occupational and safety guidelines as outlined by local, state, and/or federal guidelines, the customer retains responsibility to reimburse GEVINT for such work at cost plus 25% or subcontract the work to a third party at their discretion. Any additional exposure to direct or indirect costs to GEVINT scope attributable to addressing Hexavalent Chromium issues will be billed to the customer at time and material rates as reflected in this contract.
12. As part of outage field services, GEVINT and Customer will develop and implement a turbine component and equipment lay-down plan. Because the lay-down plan requires adequate load support from the Customer facility structures such as turbine deck floors, ground pads and slabs, etc., Customer is responsible for evaluating the lay-down plan to make sure Customer's facilities will support all loads associated with the plan.
13. If the customer provides gantry cranes for GEVINT use, OSHA requires a copy of the most recent crane inspection report be provided prior to using the crane

Section 3 – Project Schedule

For the purposes of this proposal, GEVINT is utilizing the Outage dates provided by Buyer.

Outage start date **TBD**

Outage end date: **TBD**

The main focus of the proposed on-site work relating to the scope of supply indicated in Section 1 shall be performed working the following schedule:

Hours per shift **12**

Shifts per day **1**

Days per week **7**

1. The shifts may be adjusted during the outage as the workload activities dictate
2. Crew size and composition will be set by Seller's discretion to best assure the outage schedules are met.
3. This proposal is based on the proposed work schedule. Deviation from this proposal resulting in work on holidays, unscheduled weekend or shift work will be charged on a time and material (T&M) basis per the rate schedule indicated in Section 5.
4. A final detailed work scope activity schedule will be agreed upon between Seller and Buyer after award and acceptance of contract.

Section 4 - Commercial Summary

4.1 Pricing

4.1.1 Field Services Pricing

Seller is pleased to provide the following pricing on a Time & Material (T&M) basis:

Item	Description	Estimated Price (USD)
1	J-2 Major Inspection Site Services on Serial No. 179345	\$1,085,639

4.1.2 Offsite Repair Services Pricing

Seller is pleased to provide the Offsite repairs pricing as described in Appendix A, on a Firm Fixed basis. Repair durations provided are estimates only and subject to Repair Shop slotting availability.

4.2 Pricing Basis

- Anticipated coverage for the field services work will be dependent on the availability of resources at the time the purchase order is received.
- Estimated Price(s) quoted herein is based on the scope of supply in Section 1 and the distribution of responsibilities in Section 2 and project schedule in Section 3.
- Estimated Price(s) already include the 10% discount
- Prices do not include applicable sales, excise, value added, use or similar taxes
- Offering is subject to prior sale
- In the event defects are discovered during the course of inspection and/or repair that require work outside of the stated scope of work, all additional parts and repairs will be in addition to the above quoted price(s). The repair services provided in this Proposal are based on standard Seller's repair practices. The repair prices are for labor only except where noted in the scope of work. Please be informed that additional required repairs may extend the delivery date. Buyer review and approval will be required prior to beginning the additional repairs/replacement.
- The Repair Services provided in this Proposal are based on standard Seller repair practices. The Prices are for labor only except where noted in the scope of work. Additional repair work, spare parts or major replacement parts will be considered extra work
- Prices are FCA Seller's Factory/Warehouse (Incoterms 2020).
- All transportation charges are not included in this proposal and will be the responsibility of Buyer. Should Buyer require Seller to provide shipment, it will be invoiced at cost plus 25%.

4.3 Proposal Validity

This proposal document, together with the price contained herein, is valid for 30 days from date of issuance. Upon expiration of this proposal document, a new proposal will be provided upon request and escalation should be assumed.

4.4 Payment Terms

Payment terms are due within thirty (30) days from the invoice date.

4.5 Payment Schedule

4.5.1 Field Services

Description	Invoice Amount
Invoices will be issued as services are performed	100%

4.5.2 Repair Services

Description	Amount (% of Contract Value)
On receipt at GEVINT Shop	30%
On completion of inspection	30%
On shipment to site	35%
On final shop report submittal	5%

4.6 Terms and Conditions

Unless otherwise stated, this Proposal shall be subject to the Products and/or Services terms and conditions in Section 7 and Standalone License term and conditions in Section 8.

4.7 Precedence

Seller will generally consider the following precedence for any quotation, Contract or set of Terms and Conditions documents in resolving any conflict, error, or discrepancy:

- a) Fully executed change orders or contract amendments
- b) Seller's quotation document
- c) Master terms and conditions, if applicable
- d) Buyer specification/bid document
- e) Buyer's purchase order

4.8 Termination Schedule

Should Buyer decide to cancel the order, they may do so only upon written notice and upon payment of the following cancellation charges on or before the dates on a pro-rata basis.

Description	Amount (% of Contract Value)
Order Acknowledgement	25%
Upon Mobilization	50%
Upon Demobilization	100%

4.9 COVID-19, Geopolitical Conflicts, and Responding Government Actions

The parties acknowledge that the ongoing COVID-19 pandemic, geopolitical conflicts, and government actions in response thereto are affecting and will continue to affect Seller's ability to deliver goods and services around the world, including, but not limited to, impacts arising from materials shortages, transportation shortages and delays, sanctions preventing receipt or delivery of materials, etc. (an "**ONGOING IMPACT**"). In the event that an ONGOING IMPACT affects Seller's ability to deliver on time or at the bid price, Seller shall be entitled to an equitable adjustment in schedule and price as appropriate, subject to Seller's obligation to work in good faith with Buyer to mitigate the impact on schedule and/or cost.

4.10 Extra Work

Out of scope work (extra work) is defined as any work not specifically called for in Seller's quotations and will be formally agreed to by the Buyer and Seller before it is performed.

In the event extra work is necessary during the performance of the work scope, the extra work can be performed on a lump sum firm price basis for which a quote will be provided as needed or on a time and material basis. Time and Material work will be performed at Seller rates current at the time the work is performed less 10% discount on the Field Services Outage Rates. Seller's current rate sheet, at the time of this quotation, is included in Section 5. In the event extra work requires the skills of a specialist, craftsman, or technician for whom extra work rates are not included in this quote, the extra work hourly rates will be provided as needed. In the event extra work is necessary during the performance of the work scope, the extra work can be performed on a lump sum firm price basis for which a quote will be provided as needed or on a time and material basis. Time and Material work will be performed at Seller rates current at the time the work is performed. In the event extra work requires the skills of a specialist, craftsman, or technician for whom extra work rates are not included in this quote, the extra work hourly rates will be provided as needed.

No extra work will be performed without the prior authorization of the designated Buyer representative. The Buyer will designate personnel responsible for authorizing extra work.

4.11 Purchase Order Instructions

Upon Buyer's decision to submit a purchase order, please reference Seller's Proposal No., in Buyer's purchase order and address the purchase order to:

GE Vernova International LLC

Attn: Michelle Williams

58 Charles Street

Cambridge, Massachusetts 02141

Email: michelle.williams3@gevernova.com

- a) Purchase order should conform to and reference this document.
- b) Deviations between the Buyer's purchase order and that proposed in this document, including:
 - i) scope of work,
 - ii) price, or
 - iii) schedule(s), or
 - iv) terms and conditions may cause delays or non-acceptance of purchase order.
- c) Please provide a physical address for invoice delivery



Section 5 – Rate Schedule

5.1 Field Services Rates

GE Vernova

Gas Power

Field Services Outage Rates

North America
United States

Effective: 19-JUN-2025
Through: 31-DEC-2025

Technical Field Advisors

	Curr. Hourly*
Field Engineer/Advisor	USD 475
Specialty Field Engineer/Advisor	USD 650
Onsite Project Manager	USD 710
Offsite Project Scheduler	USD 415
HRSO Field Engineer	USD 335

Power Engineering Requests (ER)

ER Pricing per Case	USD 5,655
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I. Rates include Standard Personal Protective Equipment (PPE). Standard PPE includes: steel toe capped boots; hard hat; safety glasses; ear defenders; standard coveralls & gloves. Any non-standard PPE issued will be billed at cost plus 30% administration fee.

II. Purchased labor and materials will be billed at cost plus 30% Administration fee.

III. Foregoing mentioned rates are exclusive of: special security arrangements, high cost living areas, cost of accommodation during local events creating shortages, client-required drug and health-related testing, quarantining, safety orientations, and security clearances.

Field Engineer/Advisor

Technical advice and counsel from mechanical, electrical & borescope field personnel based on engineering and operational practices as applicable to the equipment.

Specialty Field Engineer / Advisor

Specialized technical advice and counsel related to inspection, testing, vibration analysis, laser alignment, combustion optimization, emissions reduction, repair and startup of turbine / generator and its associated control/excitation systems. Examples: Generator Specialist, Control TFA, Excitation/LCI TFA, Vibration Specialist, DLN Tuning, Diagnostics and Consulting.

Onsite Project Manager

This service includes all outage manager responsibilities including planning, organizing, integrating and monitoring of resources such as labor, supervisors, tools and technical assistants.

Offsite Project Scheduler

Personnel utilized to support schedule-related activities.

Power Engineering Requests

The Gas Power Engineering Request ("ER") will provide technical support for customer questions. The customer will be charged for ER responses to one question on one topic (such as, historical records, fleet data, and unit specific data). For each follow-up question, responses and/or telephone call, GE will charge the customer at the rate listed above. GE will determine at its discretion whether any question warrants a funded engineering study. Any such engineering study will be quoted based on the customer's specifications.

* Standard Rate
** Travel & Living
*** Per Diem



Rate Terms

Normal	1.00X	Standard Rate
Overtime 1 (OT1)	1.50X	Standard Rate
Overtime 2 (OT2)	2.00X	Standard Rate
Peak	1.20X	Standard Rate
< 72 Hours Notice	2.00X	Standard Rate
Offshore jobs	1.50X	Standard Rate

A. The normal workday and normal workweek are defined as 8 consecutive hours and 5 consecutive normal workdays, respectively, excluding any holidays or weekends as per local regulations.

B. The OT1 rate above applies to billable hours on first weekend day and normal workday hours greater than 8 but less than 12 consecutive hours.

C. The OT2 rate above applies to billable hours on second weekend day, holidays and normal workday hours more than 12 consecutive hours.

D. Peak multiplier applies to billable hours at the applicable rate from March 1st to May 15th and October 1st to November 30th. When committed 60 days or earlier before start of peak period (date), the peak adder can be waived.

E. Travel time will be charged at the applicable hourly rate (i.e., standard rate times applicable multiplier(s) as set forth) on a round trip basis with point of departure.

F. Minimum billing of 8 hours daily for all services provided, including standby time. Minimum standby time is 8 hours daily at the standard rate (weekdays and weekends).

G. On completion of jobs, nightshift workers allowed 8 hours sleep / laying in time which is billable.

H. T&L** expenses will be billed for all days during the assignment including weekends, standby, and travel days by the GE representative providing the service.

I. T&L** expenses will be billed at USD 400 per person daily or consult with your local GE Gas Power representative for PD*** rate.

J. Services herein do not include supervision or management of purchaser's employees, agents or other contractors.

K. Consult with your local GE Gas Power representative to determine any applicable charges for tooling and/or test equipment or any taxes, fees or VAT that may be applicable in addition to the above rates.

L. Mobilization is 8 weeks after receipt of acceptable purchase order unless mutually agreed by customer and GE. Mobilizations within less than 72 hours are subject to Emergency Response Premium.

M. These published rates are conditioned upon an agreement under which GE's standard terms and conditions of sale apply (e.g., PSTC latest rev.).

5.2 Craft Labor Rates

Description	Straight Time	Overtime	Double Time	Per Diem
Superintendent	\$166.40	\$244.40	\$299.00	\$273
Millwright Subject Matter Expert	\$113.39	\$151.33	\$189.24	\$273
Millwright Certified Mechanic	\$112.62	\$150.15	\$187.69	\$273
Millwright Journeyman	\$109.42	\$145.42	\$181.38	\$127

- The normal workday and normal workweek are defined as 8 consecutive hours and 5 consecutive normal workdays, respectively, excluding any holidays or weekends.
- The overtime rate above applies to billable hours on first weekend day and normal workday hours greater than 8 but less than 12 consecutive hours.
- The double time rate above applies to billable hours on second weekend day, holidays, and normal workday hours more than 12 consecutive hours.
- Minimum billing of 8 hours daily for all services provided, including standby time. Minimum standby time is 8 hours daily at the standard rate (weekdays and weekends).
- Craft labor rates in this Section 5.2 already include the 10% discount
- Any additional purchased labor and materials not specifically mentioned above will be billed at cost plus 30%

Section 6 – Offsite Repair Scope of Work

6.1 – Executive Summary

Rotor bolting is not included in the inspection / repair price. Bolting prices will be provided separately.

A rotor stand is included in this price, this includes shipping of the empty rotor stand to and from the customer site.

Shipping of the Customer rotor will be billed at cost + 20%.

Estimated Cycle Times

- Inspection and Check Balance -- 4 weeks
- Full Unmarry and Unstack Inspection -- 8 weeks
- Compressor Rotor and Turbine Re-Stack -- 8 weeks
- Final Assembly and Balance - 4 weeks
- Patch Ring (qty 5) - 2 weeks (this work would happen in parallel to rotor repair)
- Review is ongoing to reduce the cycle time.

Delivery Term: Seller will deliver Parts EXW (Ex Works) as per INCOTERM 2020, after completion of Repairs.

During the last rotor inspection and repair in 2012, the 1st stage turbine wheel exhibited signs of wear and required a spray build up to prevent bucket rock. Spraying of the dovetail slots is considered a one-time repair. The 1st stage turbine wheel will require a detailed inspection to determine if it can continue to be used or if replacement is required.

6.2 – Offsite Repair Scope of Work & Pricing

Item	Description	Qty	Unit Price USD
1	Repairs - 5 Compressor Rotor		
	Inspection and Check Balance	1	86,883
1	Receive and unload rotor		
2	Incoming visual and dimensional inspect rotor		
3	Incoming balance check with bucket removal		
4	Blast Clean		
5	NDT Unit Rotor		
6	Compressor blade mapping		
7	Lathe runouts		
2	Repairs - 5 Turbine Rotor		
	Full Unstack Inspection	1	218,144
1	Unmarry turbine rotor from compressor rotor		
2	Compressor rotor unstack and inspect		



- 3 Unstretch and unstack rotor
- 4 Blast clean stubs and wheels
- 5 MPI stubs and wheels
- 6 Blend or map compressor blade defects
- 7 Check blade drops/wedge migration
- 8 Visual, dimensional, & runout inspect wheels and stubs
- 9 Visual and dimensional inspect air deflector and retaining ring
- 10 Final quality check & documents review
- 11 Turbine rotor unstack and inspect
- 12 Prep and unstack turbine rotor
- 13 Blast clean all stubs, wheels, and spacers
- 14 NDT all stubs, wheels, and spacers
- 15 Visual, Dimensional, and runout inspect stubs, wheels, and spacers
- 16 Final quality check & documents review

3 Repairs - 5 Unit Rotor

- | | | |
|--|---|---------|
| Compressor Rotor and Turbine Re-Stack | 1 | 326,211 |
| 1 Compressor Rotor Stack | | |
| 2 Balance individual wheels | | |
| 3 Prep wheels for stacking | | |
| 4 Stack compressor per computer chart | | |
| 5 Perform compressor rotor run outs | | |
| 6 Lathe work: Grind coupling faces flat, machine dummy journal | | |
| 7 Perform final balance | | |
| 8 Stake balance weights | | |
| 9 Complete review | | |
| 10 Turbine Rotor Stack | | |
| 11 Balance stubs, wheels, & spacers | | |
| 12 Prep for stack | | |
| 13 Stack and stretch rotor | | |
| 14 Balance Spool Rotor | | |
| 15 Check runouts in lathe | | |
| 16 Lathe Work | | |
| 17 Documents review | | |

4 Repairs - 5 Turbine Rotor

- | | | |
|--|---|--------|
| Final Assembly and Balance | 1 | 98,752 |
| 1 Prep and marry rotors | | |
| 2 Final runouts including final lathe work | | |
| 3 Install buckets and hardware, check dimensions | | |
| 4 Final balance | | |
| 5 Complete Engineering review and final inspection | | |
| 6 Prepare Unit rotor for return shipment | | |

5 Repairs - 5 Unit Rotor

- | | | |
|--------------------------|---|-------|
| Patch Ring | 1 | 8,268 |
| 1 Manufacture patch ring | | |
| 2 Machine prep rabbet | | |



GE VERNOVA

- 3 Local FPI surface
- 4 Install patch ring
- 5 Final machine patch ring
- 6 Local FPI patch ring
- 7 Check runouts

Section 7 – Terms & Conditions

The product and/or services set forth in this proposal are provided to IPL subject only to the Terms and Conditions below:

GEVINT NOTE: These provisions include GEVINT Modifications through the most recent contract 2013, 2009 - 11., and reflects the modifications shown below. No other General Provisions shall apply.

IPL CONTRACT GENERAL PROVISIONS

SEC. 20.13.001. GENERAL.

This Article governs general provisions for all contracts entered into between the IPL Power & Light Department (also referred to as Owner) and contractors for the construction of public works contracts bid by the IPL Power & Light Department, except those contracts or agreements excluded by the Purchasing Manual and Professional Services agreement.

SEC. 20.13.002. CONTRACT DOCUMENTS.

The Contract Documents, sometimes referred to as, "The Contract", include the Invitation to Bid, the Instructions to Bidders, the Contract Agreement, the Payment, Performance and/or Maintenance Bond, the Specifications, the Contract General Provisions, the Contract Special Provisions, addenda as may be issued, the Proposal (Bid Form) and the plans or contract drawings. All the Contract Documents are intended to be cooperative and to describe and provide for a complete work. A requirement occurring in one is as binding as though occurring in all. Should there be any lack of accord in the various documents, the Special Provisions prevail over the Specifications and the Specifications prevail over the plans. Addenda or modifications of any nature agreed to by both parties will take precedence over original provisions. If there is a conflict among Specifications, the City will determine which Specification best meets the intent of the design. Conflicts between Drawings or Specifications and applicable codes and standards will be referred to City for a decision thereon.

SEC. 20.13.003. GENERAL INTENT.

The general intent of the Contract Documents and provisions thereof is that the Contractor shall, for the compensation set forth, furnish all plant, equipment, tools, labor, materials, superintendence, in accordance with the Specification; shall begin promptly and proceed expeditiously and continuously without cessation or shutdown of work unless specifically approved in writing by the Owner; shall construct, complete and ready for its intended purposes, within accordance with the Contract Documents; that the prices proposed and bid by the Contractor and accepted by the Owner are agreed to be fair, full and complete compensation.

SEC. 20.13.004. CONTRACTOR'S RESPONSIBILITY.

A. It is expressly understood that the Contractor is in all respects an independent contractor for this work and is in no respect an agent, servant or employee of the Owner. The Contractor specifically represents in performing work covered by this agreement that, within the meaning of all federal and state unemployment compensation, insurance or other laws and all State Worker's Compensation Acts, the Contractor's employees and the employees of all subcontractors are not employees of the Owner, for any purpose whatsoever; also that the Contractor accepts exclusive liability for all contributions, taxes, interest and penalties necessarily paid by the Owner under unemployment compensation, insurance or other laws on account of all persons employed by the Contractor or any subcontractors hereunder, and the Contractor hereby agrees to reimburse the Owner for all contributions, taxes, interest, penalties, if any, necessarily

paid by the Owner under unemployment compensation, insurance or other laws covering employees of the Contractor or any subcontractors.

C. The Contractor shall require any subcontractors deemed a transient employer as defined by State law to show proof of having filed a financial assurance instrument with the State Director of Revenue and to show proof that the subcontractor holds a current valid certificate of insurance for worker's compensation coverage in Missouri prior to the subcontractor performing any work under the Contract. If required by the State Director of Revenue or the State Director of the Division of Worker's Compensation, the Contractor will withhold all or any part of payment to the subcontractor to satisfy State law.

D. The Contractor agrees to comply in all respects with the requirements of law relating to furnishing reports and statements, or as may be reasonably required by the Owner.

E. It shall be the responsibility of the Contractor to examine the site of the work to determine the amount of work to be done in connection with the construction herein specified, the quantities of material required, and the construction equipment and labor necessary for the performance of the contract. By submission of a proposal for this work, the Contractor represents that he or she has investigated the character of the work and conditions which may be encountered, and the quantities and types of related work not covered by unit prices, and agrees that the data furnished herein is merely informative and represents the best information available at the time of advertising for bids. The Contractor understands that such information or data is furnished to the Contractor without guarantee of its accuracy and that variations from the indicated amounts or types of work, other than that covered by contract unit prices, required to complete the contract will not entitle the Owner to any credits or the Contractor to any extra payment.

SEC. 20.13.005. APPLICABLE CODES AND STANDARDS.

A. Reference to standard specifications of any technical society, organization or association, or to codes of local or state authorities, shall mean the latest such standard, code, specification or tentative specification adopted and published at the date of taking of bids, unless specifically otherwise stated. Applicable codes and standards referred to in these specifications shall establish minimum requirements for equipment, materials and construction and shall be superseded by more stringent requirements of drawings and specifications when and where they occur.

B. All construction methods and tools shall meet all State of Missouri safety requirements.

SEC. 20.13.006. COMPLIANCE WITH LAWS, PERMITS, LICENSES AND TAXES.

A. The Contractor shall conform to and comply with all applicable laws, bylaws, regulations and ordinances with regard to all and every action and operation and shall require conformity and compliance of all subcontractors and employees. Fees for required City permits for work within the construction limits will be waived.

B. The City is exempt from sales tax. This includes purchases by contractors for City projects. The City will provide a certificate to contractors for their use in obtaining the sales tax exemption. Contractors are to prepare their bids for City projects without including sales tax.

C. Contractor shall be responsible for and pay directly, all corporate and individual taxes measured by net income or profit imposed by any governmental authority on Contractor, its employees or subcontractors due to the execution of any agreement or the performance of or payment for work hereunder ("Contractor Taxes"). Owner shall be responsible for and pay directly when due and payable all taxes, duties, fees, or other charges of any nature (including, but not limited to, ad valorem, consumption, excise, franchise,

import, license, property, sales, stamp, storage, transfer, turnover, use, or value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto), other than Contractor Taxes, imposed by any governmental authority on Contractor or its employees or subcontractors due to the execution of any agreement or the performance of or payment for work hereunder ("Owner Taxes"). All payments due and payable by Owner to Contractor hereunder shall be made in the full amount of the Contract price, free and clear of all deductions and withholding for Owner Taxes. If Owner deducts or withholds Owner Taxes, Owner shall pay additional amounts to Contractor to cause the amounts Contractor receives, net of deducted or withheld Owner Taxes, to equal the full Contract price. Owner shall provide to Contractor within one month accurate official receipts from the appropriate governmental authority for deducted or withheld taxes.

SEC. 20.13.007. PATENTS.

A. Subject to the terms of the Contract, Contractor shall indemnify the City against any damages, costs and expenses arising out of any suit, claim, or proceeding (a "Claim") alleging that Products or Services infringe a patent in effect in the U.S., an EU member state or country of delivery (provided there is a corresponding patent issued by the U.S. or an EU member state), or U.S. copyright or copyright registered in the country of delivery; provided that: (a) the City promptly notifies Contractor in writing of any such Claim; (b) the City makes no admission of liability and gives Contractor sole authority, at Contractor's expense, to direct and control all defense, settlement, and compromise negotiations; and (c) the City provides Contractor with full disclosure and assistance that may be reasonably required to defend any such Claim.

B. Contractor shall have no obligation or liability with respect to any Claim based upon: (a) any Products or Services that have been altered, modified, or revised; (b) the combination, operation, or use of any Products or Services with other products when such combination is part of any allegedly infringing process; (c) failure of the City to implement any update provided by Contractor that would have prevented the Claim; (d) unauthorized use of Products or Services, including, without limitation, a breach of the provisions of the Contract; or (e) Products or Services made or performed to the City's specifications.

C. Should any Product or Service, or any portion thereof, become the subject of a Claim, Contractor may at its option (a) procure for the City the right to continue using the Product or Service, or portion thereof, (b) modify or replace it in whole or in part to make it non-infringing, or (c) failing (a) or (b), take back Products or Services and refund any fees received by Contractor attributable to the infringing Product or Service.

D. This states Contractor's entire liability for indemnification for patent, trademark, copyright, and trade secret infringement for Products and Services.

E. Notwithstanding the foregoing, with respect to any Products or Services, or portions thereof, which are not manufactured/developed by Contractor, only the indemnity of the manufacturer/developer, if any, shall apply.

SEC. 20.13.008. SUPERVISION AND INSPECTION.

A. The work herein considered is to be constructed in accordance with the Contract Documents. Wherever the words "directed, permitted, approved, acceptable, satisfactory," or words or phrases of similar import occur in the Contract Documents, they shall be understood to be functions of the Engineer and to be exercised at the Engineer's discretion.

B. Methods of construction and procedure shall be of the Contractor's own selection, provided no requirement of the Contract Documents is violated and the work is completed within the time allowed.

Approval of the Engineer of any construction device or method, or absence of disapproval, shall not relieve the Contractor of full responsibility for any failure thereof and shall not connote and is not intended to connote that the Owner will direct the manner in which the work is to be performed under the contract.

C. All materials and every process of manufacture and construction shall be subject to inspection at all times and the Engineer or any representative shall have free access to all operations, provided that such inspection shall not delay the Contractor's work. The Contractor shall provide necessary facilities for the visual inspection of workmanship and testing of materials. Omission of inspection shall not relieve the Contractor of any obligation to produce work required by plans and specifications.

D. Rejected materials shall be removed promptly from the vicinity of the work and the Contractor shall promptly remove, reconstruct, replace and make good as may be directed, any defective work. Oversight or error of judgment of inspectors, or previous acceptance, shall not relieve the Contractor from the obligation to correct defects whenever discovered. If the Contractor does not make corrections of such defective work and remove rejected materials within a reasonable time, as fixed by written notice, the Owner may make removals and corrections.

E. The Contractor shall furnish to the Engineer any information concerning the nature or source of any material or equipment or part thereof, which the Contractor proposes to use. Tests may be conducted where, in the opinion of the Owner or Engineer, such are necessary. Where the Contractor desires to propose for use in the work any material or product as an alternative or equivalent to a material or product specified herein, the Contractor will be required to submit samples to a testing bureau designated by the Engineer, to determine the suitability of such materials and products.

SEC. 20.13.009. PERSONAL LIABILITIES.

In carrying out any of the provisions of a contract or in exercising any power or authority granted to them thereby, there shall be no personal liability upon any member, agent or representative of the Owner for failure to act on (i) the part of the Engineer or any agent of the Owner, (ii) payment for the work in whole or in part, (iii) extension of time or possession taken of the work. No act or failure to act for (i), (ii), (iii) above shall operate as a waiver of any right to damages therein provided for; nor shall waiver or breach of contract be held to be a waiver of any other or subsequent breach.

SEC. 20.13.010. SUBLETTING OR ASSIGNING CONTRACT.

A. Contractor may assign its rights and obligations under the Contract, in part or in whole, to any of its affiliates without Owner's consent, and may subcontract portions of the work, so long as Contractor remains responsible for it. Owner agrees to execute any documents that may be necessary to effect Contractor's assignment. The delegation or assignment by Owner of any or all of its duties or rights under the Contract without Contractor's prior written consent shall be void.

B. No subcontracts or transfer of contract shall in any case release the Contractor of his or her liability under the contract and bonds.

SEC. 20.13.011. COOPERATION WITH OTHERS.

The Contractor and subcontractors will be expected to cooperate with forces of the City, utility companies or other contractors who may be working in the area. The Contractor shall, as far as possible, arrange work schedules and dispose of materials so as not to interfere with the

operations of other contractors or others engaged upon the project or nearby. The Contractor shall also join his or her work to that of others in a proper manner, in accordance with the spirit and intent of the Contract Documents and perform his or her work in proper sequence in relation to that of other contracts.

SEC. 20.13.012. PLANS (CONTRACT DRAWINGS).

A. Certain plans prepared on behalf of the Owner, and elsewhere described and named to accompany and supplement these provisions, constitute a part of the Contract Documents. Such plans are agreed to be constructively attached to the Contract Documents, although convenience may preclude physical attachment.

B. The Owner shall have the right to modify details of these plans to provide final, or checked, plans in lieu of any preliminary or unchecked plans, as the work proceeds, all of which shall be considered as plans accompanying the Contract Documents. The Contractor shall not take advantage of any errors or discrepancies discovered in the plans, but shall report same, and the Engineer will make or approve the necessary corrections. If contractor incurs additional expenses while Owner is altering or modifying details of the plans while the Work is in progress, Owner shall be liable for incremental expenses and will be billed accordingly at the conclusion of Work outlined in SEC. 20.13.017B. **GENERAL PROVISIONS CONCERNING TIME.**

SEC. 20.13.013. NOTICE TO PROCEED.

A. Upon receipt of Contract Documents fully executed by the Owner, the Contractor shall immediately proceed with activities pertaining to the work, such as specified coordination submittals and required conferences. The Contractor shall not move onto the site until the Owner has issued a written Notice to Proceed.

B. The Notice to Proceed will be issued upon completion of (a) receipt of acceptable copies of insurance certificates, (b) acceptance of specified coordination submittals, i.e., Program of Construction, Schedule of Values, etc., and (c) the conclusion of initial coordinating conferences. The date of Notice to Proceed shall be that on which the Contractor may move onto the site, unless otherwise set forth in the said notice. The completion time of contract shall be the number of calendar days as stated in the Contract beginning with the date stated in the Notice to Proceed.

SEC. 20.13.014. PROGRAM OF CONSTRUCTION AND PROGRESS CONTROL.

A. Within ten days after signing the Contract Agreement, the Contractor shall furnish the Engineer a schedule and progress report form showing construction schedule on the form.

B. The Engineer will review the schedule submitted and promptly request any revisions or changes required so that the Contractor's work will not delay or interfere with other crews that might be working in the area, so far as may be known. The Engineer will furnish the Contractor three prints of the schedule without prior approval from the Engineer in writing.

C. Should it become evident at any time during the construction that operations will, or may, fall behind, the schedule of the approved program of construction, the Contractor shall promptly submit revised written schedules setting out changes in operations, methods, equipment, added amount of labor or of working shifts, night work, etc., by which lost time shall be made up and shall confer with the Engineer until an approved modification of the original program is secured. Should operations actually fall behind to an extent that the completion of the work within the fixed time would appear doubtful, the Owner may request the Contractor to add equipment and construction forces or to increase the working hours per week. No

payments on any estimates shall be made after such a request is made until an approved modification of the program has been provided by the Contractor. Execution of the work according to the accepted program of construction, or approved modifications thereof shall be an obligation of the Contractor at all times during the life of the contract.

SEC.20.13.016. CONSTRUCTION PROCEDURE.

A. The Engineer and the Contractor shall discuss and follow mutually agreed methods and procedures. Practices shall be as established in the industry and best modern methods in accordance with the contract requirements as set forth herein.

B. All workers, mechanics, tradesmen, artisan and other employees engaged on the work by the Contractor shall be trained and skilled in their various occupations. All plant, tools and equipment of every kind shall be suitable in character and ample in quantity and capacity to carry out and complete the work of the contract in the required times and according to approved program of construction. The Contractor shall supply all materials and work incidental to the construction included under the contract, notwithstanding minor omissions in the plans and specifications. Materials and workmanship of every kind shall conform to all the requirements of these specifications and wherever not explicitly described shall conform to best current practices.

C. The Contractor shall perform the contracted work in proper sequence relative to the work of other contractors and to the acts or operations of the Owner. No deviation from the plans or specifications will be permitted, unless authorized in writing by the Engineer.

SEC. 20.13.017. GENERAL PROVISIONS CONCERNING TIME.

A. The construction herein provided for is to be completed within certain times as set forth in the Contract Documents. Extensions of time for completion will be granted under the following conditions:

1. If the Owner should, in writing, direct deferment of the beginning of work beyond the formal date to begin work, or if the Owner should order the work closed down or temporarily discontinued, corresponding extensions of time would be granted with due consideration for changed working conditions incident to seasons and weather.
2. The Contractor is requested to bring to the attention of the Engineer, by letter, during the progress of the work, the occurrence of events which the Contractor considers may warrant extension of time under the conditions of the contract. If the contract is not completed within the time stipulated, the Contractor shall, at the conclusion of the work, present a written statement to the Engineer concerning all matters of time extensions.
3. The amount of all extensions of time, for whatever reason granted, shall be determined by the Engineer with due consideration of working seasons and working conditions. In general, only actual and not constructive or hypothetical days of delay will be considered. The Owner shall have authority to grant additional extensions of time as the Owner may deem advisable and justifiable.
4. **EXCUSABLE DELAYS:** Contractor shall not be liable nor in breach or default of its obligations under the Contract to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, terrorism, war (declared or undeclared), epidemics, material shortages, insurrection, acts



(or omissions) of the City or the City's suppliers or agents, any act (or omission) by any governmental authority, strikes, labor disputes, transportation shortages, or vendor non-performance. The delivery or performance date shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay.

5. If the Contractor fails to complete the work within the time fixed by the contract or extensions thereof, and if the Owner shall nevertheless permit the Contractor to continue and complete the same, such permission shall neither modify nor waive any liability of the Contractor for damages arising from non-compliance of the work within the said time, but all liabilities shall continue in full force against the Contractor.
6. Either the City or Contractor may terminate the Contract (or the portion affected) upon twenty (20) days advance notice if there is an excusable event lasting longer than one hundred and twenty (120) days or if it is not possible to avoid or mitigate such excusable event without unreasonable burden through an adjustment in schedule, price and other provisions of the Contract within such one hundred and twenty (120) days. In such case, City shall pay to Contractor amounts payable under Section SEC. 20.13.047. TERMINATION AND SUSPENSION, Subsection 3, excluding the cancellation charge for uncompleted Products and/or Services.

B. If Contractor is delayed by any acts (or omissions) of the City, or by the prerequisite work of the City's other contractors or suppliers, Contractor shall be entitled to an equitable price and performance adjustment.

C. With only the exceptions outlined herein, all work under any contract shall be completed and ready for operation within the time listed in the Proposal after the issuance of Notice to Proceed.

SEC. 20.13.018. LIQUIDATED DAMAGES.

LIQUIDATED DAMAGES NOT APPLICABLE TO THE SCOPE OF SUPPLY

SEC. 20.13.019. BOND

A. The Contractor shall provide a bond for faithful performance of the contract and for persons performing labor or furnishing materials in connection therewith, with sureties satisfactory to the Owner and in the form provided. This performance bond shall be in the full amount of the contract and shall have as surety thereon a company authorized to do business in the State of Missouri, qualified as acceptable surety for United States government deposits, and acceptable to the Owner.

SEC. 20.13.020. TAKING OVER WORK AND WITHHOLDING PAYMENTS.

A. If the Contractor shall become insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or if it should become evident to the Engineer that the Contractor is not making proper progress to insure completion within the specified time, or is prosecuting the work with insufficient, inadequate or unsuitable plant and equipment, or has failed to make good rejected work or materials, the Owner shall have the right, without violation of contract, after giving the Contractor seven days' notice in writing, to undertake itself either by administration or by letting contract(s) to other parties, the completion of the said work which is being thus neglected, or to supplement the Contractor's work and operations by supplying additional plant, equipment, materials or labor.

B. Should the Owner's work cost less than the Contractor would have been paid, the difference shall be paid to the Contractor. However, should it cost more, Contractor shall pay the City the difference between

that portion of the Contract Price allocable to the terminated scope and the actual amounts reasonably paid by Owner to another supplier for that scope as stated in SEC. 20.13.047. TERMINATION AND SUSPENSION. Under these circumstances and for these purposes, the Owner shall have the right to enter upon and take temporary possession of the plant or any part thereof.

C. The Owner shall not be obligated to take any such action and the failure of the Owner to act under this and similar clauses of the specifications shall not relieve the Contractor from any responsibilities, obligations or liabilities resulting from failure to complete the contract within the times prescribed.

SEC. 20.13.021. USE OF COMPLETED WORK.

The Owner may, prior to the completion of all the work performed by the Contractor, or acceptance thereof by the Owner, enter upon and use any portion of said work. Such taking possession and use shall be deemed as acceptance of the work so taken and used and the warranty period on such work shall commence.

SEC. 20.13.024. SALVAGE OF MATERIALS REMOVED.

The Contractor shall carefully remove all materials designated to be salvaged and reused in a manner to prevent damage. Materials shall be protected and stored on site until ready for reuse as approved by the Engineer.

SEC. 20.13.025. FACILITIES AT SITE.

A. The Contractor shall have at all times copies of the plans and specifications at the work site and shall require each foreman to have at the work site a copy of that part of the plans and specifications which pertain to the work when the construction is in progress, to confer with the Engineer or any representatives, and to receive such directions or approvals as the Engineer may desire to give.

B. Water for and in connection with the work, including testing of pipe, drinking, or for any other use as may be required for the proper completion of the work to be performed, shall be provided by the Owner.

C. The City to supply approved sanitary facilities for Contractor employees.

D. Care shall be exercised to protect all equipment and material during the storage period at work site, during and after installation, and prior to acceptance. Right-of-way for existing streets and highways shall not be used for storage areas. Cooperation with the Owner and other contractors or utilities to maintain the project site in a well-ordered condition shall be required. The Contractor shall coordinate delivery of materials and supplies with the program of construction so that an undue amount of storage space is not required on site.

E. Compensation for all facilities at the site shall be covered by the amounts paid for completed construction as provided under the bid items in the Proposal.

F. The Contractor's signs shall be placed in locations so as not to interfere with or obstruct the view of traffic or operations of construction; placement shall comply with directions of the Engineer. Signs shall be removed promptly upon completion of the project, or as the need for them is ended.

G. Upon completion of the work of construction, and before acceptance, all surplus material, temporary structures and debris shall be removed, and the premises left in a slightly condition. No separate payment shall be made for final cleaning up but shall be included in amounts paid for the completed work as bid.



SEC. 20.13.026. SAFETY PRACTICES AND ACCIDENT PREVENTION.

A. In the performance of the contract, the Contractor and subcontractors shall comply with and observe all of the requirements of the Federal Occupational Safety and Health Act (OSHA), and all rules and regulations published in connection therewith and the provisions of Section 292.675, RSMo, to the extent applicable. The Contractor shall provide equipment and medical facilities as are necessary to supply first aid to anyone who may be injured in connection with the project. Provisions must also be made for the immediate removal and hospitalization in case of emergency. Anyone acting in a supervisory capacity should have authority to order such emergency action.

B. Precaution shall be exercised at all times for the protection of persons and property. The safety provisions of applicable laws, building and construction codes and the like shall be observed. Machinery and equipment and other hazards shall be guarded in accordance with the safety provisions of the Manual of Accident Prevention in Construction, published by the Associated General Contractors of America, to the extent that such provisions are consistent with applicable law or regulation.

C. The Contractor shall provide, erect and maintain all necessary barricades, suitable and sufficient red or yellow lights, danger signals, warning and closure signs and shall provide watchers and take all necessary precautions for the protection of the work and the safety of the public.

SEC. 20.13.029. LIABILITIES, DAMAGES AND ACCIDENTS.

A. Contractor agrees to indemnify and hold harmless Owner from and against any loss or expense by reason of physical damage to the property of third parties or bodily injury, including death, of persons to the extent such damage or injury results directly from the negligence of Contractor or its subcontractors while engaged in the performance of this Agreement. To the extent authorized under Missouri's sovereign immunity laws, Owner shall likewise indemnify and hold harmless Contractor from and against any loss or expense by reason of physical damage to the property of third parties or bodily injury, including death, of persons to the extent such damage or injury results directly from the negligence of Owner or its other contractors. In the event such damage or injury is caused by the joint or concurrent negligence of Owner (or its contractors) and Contractor (or its subcontractors), the loss or expense shall be borne by each Party in proportion to its degree of negligence or the degree of negligence of its contractors/subcontractors. For purposes of Contractor's indemnity responsibility under this Article, no portion of the Covered Unit (s), Facility or the Site is considered third party property.

SEC.20.13. 030.INSURANCE REQUIREMENTS.

The Contractor shall not commence work under this contract until he or she has obtained all insurance required under this section and elsewhere in the Contract Documents, such as exceptional insurance requirements outlined in the Contract Special Provisions, and such insurance has been verified by the Owner. Any and all certificates of insurance must be approved and on file with the City Clerk before work commences under this contract. The following are the required insurance coverages:

A. Worker's Compensation Insurance.

The Contractor shall comply with the Worker's Compensation laws of the state, including the site of construction, and furnish to the Owner a certificate of evidence that he or she has complied with all such laws.

In the event that any class of employees engaged in hazardous work at the site of the project under this contract does not come under the protection of the Worker's Compensation Act of the state, including the site of construction, the Contractor shall provide and shall cause each subcontractor to provide

adequate insurance coverage for the protection of such employees. The Contractor shall be required to carry Employer's Liability Insurance.

B. Public Liability.

The Contractor shall have in force throughout the life of this contract insurance for both General Public Liability with Excess Coverage and Umbrella and Broadform property damage and Automotive Liability to at least the following limits:

Bodily Injury	- \$300,000.00 per person - \$2,000,000.00 per occurrence
Property Damage	- \$2,000,000.00 per occurrence

SEC. 20.13.032. CHANGE IN AMOUNTS OF WORK.

The Owner shall have the right to increase or diminish the quantity, to change the order, or to dispense with portions of the work at any time without impairing the contract and without changing the unit prices to be paid.

The Owner shall have the right to eliminate from the contract at the bid price minor items on which bids may appear to the Engineer unreasonably unbalanced and to provide for the construction by unclassified work, or otherwise. A minor item shall be one involving not more than approximately 2% of the total of the contract, or for which probable quantities cannot be estimated in advance.

In case of increase in amount of work, payment for such increase at the unit price bid for the work of the classes so increased shall be full compensation for the work done. When changes to work not covered in the Contract Documents and involving added cost occur, they will be performed only on a written change order signed by the Contractor and duly processed by the Owner. All costs and indirect costs, including overhead, bond and profit shall be submitted as a maximum cost figure on this change order. The Contractor shall not proceed with any work under a change order requiring additional materials or costs until written approval is given by the Engineer.

The Owner may at or prior to contract award appropriate up to ten percent more than the contract value to be reserved for change orders to the project. Administrative change orders may be processed for the contract up to appropriation amounts. Administrative change orders may be for unit price extensions, cost plus additions or negotiated prices, and are to be in written form approved by the City Manager and attested by the City Clerk. All other change orders require approval by the City Council.

SEC. 20.13.033. NEW ITEMS.

A. The Owner shall have the right to require the Contractor to perform work or supply materials essential to the completion of the work, of a class or type not provided for in the Contract Documents, or not included and covered under classifications for which price payments are provided in the contract. This work shall be added as a new line item.

B. When a new item is ordered, it shall be paid for as the Owner may elect, either by a lump sum or by unit prices mutually agreed upon by the Owner and the Contractor in writing.

C. The Contractor shall not begin any work for which new items are provided in the contract without written approval from the Engineer.

SEC. 20.13.034. NOTICE OF CLAIMS FOR EXTRA COMPENSATION.

Should any conditions arise which in the Contractor's opinion will require any claims or demands for extra or additional compensation above that fixed by the contract, or on which he or she contemplates bringing claims for such extra compensation, the Contractor shall promptly and before incurring any expenses, notify the Owner in writing of the conditions and circumstances and that such claims are anticipated. The Contractor agrees that any claims made without such advance notice, and not presented in such a way as to enable the Owner to observe conditions as they occur and to verify expenses as they occur and to determine with certainty the correctness of such claims and of the expenses involved, are waived and shall be null and void. The Contractor shall not proceed with any work requiring added compensation until written approval is given by the Owner.

SEC. 20.13.036. ACCEPTANCE OF WORK.

No part of the construction will be finally accepted until the entire contract shall have been completed. Upon final completion of the work, the Engineer will make final inspection and when it is found that the Contractor has completed the entire contract in accordance with the Contract Documents, the Owner will thereupon issue a formal order of acceptance.

SEC. 20.13.037. METHODS OF PAYMENT.

A. Lump Sum Payment: When so indicated in the Contract Special Provisions under the section entitled "Measurement and Payment," payment will be made for the entire contract in cash or by check by the IPL, Missouri, upon completion, final inspection, approval of as-built record plans and acceptance of the work.

B. Partial (Progress) Payments: Except as otherwise agreed to by Contractor in writing, and upon approved credit, the following payment terms apply:

B.1 The City shall pay Contractor all invoiced amounts in U.S. dollars, without right of set-off, within thirty (30) days from date of invoice. Contractor shall be entitled to payment of all charges associated with Contractor's performance of Services as the Services are performed. For each Product with a price of U.S.\$500,000 or more, partial payments of the contract price shall be made as invoiced starting upon order placement, such that 80% of the Contract price is received before scheduled shipment.

B.2 If at any time Contractor reasonably determines that the City's financial condition does not justify the continuation of Contractor's performance, Contractor may require full or partial payment in advance or shall be entitled to suspend or terminate the Contract.

As directed in writing by the Engineer, adjustments may be made in the estimates for quantities shown under each bid item at the unit prices named in the Proposal, so long as these adjustments do not result in an excess of the total contract amount. All other variations must be made as provided under Section 20.13.032, Change in Amounts of Work.

C. Force Account may be applied for additional work under the following conditions:

1. Force account work will be paid per Contractor's service rate schedule attached thereto.

D. Late Payment Clause: If the Owner fails to make a monthly pay estimate thirty (30) days after approval by the Engineer, in addition to other remedies available to the Contractor, then interest shall be added to each payment at the rate, described in Section 34.055.2, RSMo, commencing on first day after said payment is due and continuing until the payment is received by the Contractor.



SEC. 20.13.038. ACCEPTANCE AND FINAL PAYMENT.

Upon completion of all work in accordance with the contract, the Owner will accept the project as such by an approved Letter of Acceptance.

When the work has been so completed and certified by the Owner, an Application and Certificate for Payment (SF-1) will be executed within fifteen (15) days and submitted, which will provide payment to the Contractor for the entire sum due as set forth in the Contract Documents, including all amounts previously retained by the Owner. All prior partial estimates and payments shall be subject to correction by the Owner in this final estimate and payment.

Payments for the work will be made by check by the IPL, Missouri, as herein specified.

SEC. 20.13.039. LIMITATION OF LIABILITY

A. The total liability of Contractor for all claims arising out of or relating to the performance or breach of the Contract or use of any Products or Services or any order shall not exceed (a) the Contract price or (b) if this Contract is in the form of a frame or master agreement under which the City places an order with Contractor for the Products and Services to be purchased,

(i) the final price of the particular order under which the specific Products or Services giving rise to the claim are supplied or performed or (ii) ten thousand US dollars (US\$10,000) if the claim is not part of any particular order. Contractor's liability shall terminate upon the expiration of the applicable warranty period, provided that the City may enforce a claim that accrued prior to that date by commencing an action or filing an arbitration, as applicable under the dispute resolution clause, before the expiration of the applicable statute of limitations or repose, but not later than one year after the expiration of such warranty period.

B. Contractor shall not be liable for loss of profit or revenues, loss of product, loss of use of Products or Services or any associated equipment or systems, interruption of business, cost of replacement power, cost of capital, cost of cover, downtime costs, increased operating costs, claims of the City's customers for such damages, or for any special, consequential, incidental, indirect, punitive or exemplary damages or for any cost, loss or liability the City may suffer under any agreement by which it sells or transmits electricity to customers or third parties.

C. If the City is supplying Contractor's Products or Services to a third party, the City shall require the third party to agree to be bound by this Article. If the City does not obtain this agreement for Contractor's benefit, the City shall, to the extent authorized under Missouri's sovereign immunity laws, indemnify, defend and hold Contractor harmless from and against any and all claims made by the third party in excess of the limitations and exclusions of this Article.

D. Contractor shall not be liable for any advice or assistance that is not required under the Contract.

E. For the purposes of this Article, the term "Contractor" shall mean Contractor, its affiliates, subcontractors and suppliers of any tier, and their agents and employees, individually or collectively.

F. The limitations and exclusions in this Article shall apply regardless of whether a claim is based in contract, warranty, indemnity, tort/extracontractual liability (including negligence), strict liability or otherwise.

G. The City's and Contractor's rights, obligations and remedies arising out of or relating to the Products or Services are limited to those rights, obligations and remedies described in this Contract. This Article shall prevail over any conflicting or inconsistent terms in the Contract, except to the extent that such terms further restrict Contractor's liability.

SEC. 20.13.040. HEALTH AND SAFETY MATTERS.

A. The City shall take all necessary precautions, at all times, for the health and safety of Contractor personnel at the Site. These include, but are not limited to: providing to Contractor for review, and instructing Contractor's personnel regarding, the City's safety practices; proper and safe handling of, and protection of Contractor's personnel from exposure to, Hazardous Materials; energization and de-energization of all power systems (electrical, mechanical and hydraulic) using safe and effective lock-out/tag-out procedures; and conducting periodic safety meetings.

B. Contractor may, from time to time, conduct safety audits to ensure the existence of safe site and working conditions and make recommendations to the City concerning them. Whether or not Contractor conducts safety audits or makes recommendations, the City will remain responsible for providing a work environment that is safe and that complies with all applicable legal requirements. The City will make its local medical facilities and resources available to Contractor personnel who need medical attention, for the duration of their needs. Under no circumstance will Contractor personnel be required to work more than any maximum time periods allowed by applicable law.

C. If, in Contractor's reasonable opinion, the safe execution of the Contract at the Site is, or is apt to be, imperiled by security concerns, local conditions, war (declared or undeclared), armed conflict or threatened conflict, civil unrest, terrorist acts or threats, threat to safety or well-being of the Site or personnel or Contractor's persons or interests, the presence of or threat of exposure to Hazardous Materials, or unsafe working conditions, Contractor may, in addition to other rights or remedies available to it, evacuate some or all of its personnel from the Site, suspend performance of all or any part of the Contract, and/or transfer such performance and supervise it at a location solely determined by Contractor. The City shall assist in any evacuation. Any delay that results shall be considered excusable.

D. Before issuing its purchase order, the City shall advise Contractor in writing of all applicable Site-specific rules, regulations, safety codes, and laws that apply to Products and Services.

E. Operation of the City's equipment is the responsibility of the City. If the City requires or permits Contractor's personnel to operate the City's equipment at the Site, the City shall, to the extent authorized under Missouri's sovereign immunity laws, indemnify and save Contractor, its employees and agents, harmless from expense and liability (including reasonable attorneys' fees) incurred by or imposed upon Contractor, its employees and agents, based upon exposure to Hazardous Materials, injury to persons (including death) or damage to property resulting from operation of equipment at the Site by Contractor personnel. The City shall not require Contractor personnel to work on other projects or equipment during the term of the Contract.

SEC. 20.13.041. Site Access and Conditions; Hazardous Materials.

A. The City shall provide Contractor access to the Site and any other facilities free of charge, including the operating and development environment and information, as necessary for Contractor's performance of the Contract. Prior to Contractor starting any work at the Site, the City will (i) provide documentation that identifies any existing Hazardous Materials on or about the Site, and (ii) allow Contractor, at its option, access to the Site to perform or have performed a Site evaluation, including without limitation, a review of

applicable documents and visual examination of the Site. Whether or not Contractor conducts any evaluation, Contractor will have no responsibility or liability for existing Site conditions.

B. Contractor shall promptly, and, if feasible, before such conditions are disturbed, notify the City in writing of: (i) subsurface, latent physical or other conditions at the Site, including but not limited to the City's health and safety requirements, differing materially from those indicated in the Contract or otherwise disclosed by the City, and (ii) previously unknown physical conditions at the Site, including archeological remains, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. The City shall promptly investigate those conditions. If it is determined that any conditions do materially differ and cause an increase in Contractor's cost of, or the time required for, performance of any part of the work under the Contract, the parties shall make an equitable adjustment in price and schedule and modify the Contract in writing accordingly.

C. If, at the Site, Contractor encounters Hazardous Materials that require special handling or disposal, the City shall immediately take whatever precautions are required to eliminate legally the hazardous conditions so that the work under the Contract may safely proceed. Contractor shall not be obligated to commence or continue work until the City causes the hazardous conditions to be removed. If any such Hazardous Materials cause an increase in Contractor's cost of or time required for performance of any part of the work, the parties shall make an equitable adjustment to the price and schedule and modify the Contract in writing accordingly. The City agrees to properly store, transport and dispose of all Hazardous Materials introduced, produced or generated in the course of Contractor's work at the Site.

D. The City shall, to the extent authorized under Missouri's sovereign immunity laws, indemnify and hold Contractor harmless for any and all claims, damages, losses, causes of action, demands, judgments and expenses arising out of or relating to any Hazardous Materials which are or were (i) present on or about the Site prior to the commencement of Contractor's work, (ii) improperly handled or disposed of by the City or the City's employees, agents, contractors or subcontractors, or (iii) brought, generated, produced or released on the Site by parties other than Contractor.

SEC. 20.13.042. DELIVERY; TITLE TRANSFER; RISK OF LOSS; STORAGE

A. Contractor shall deliver Products to the City EXW Contractor's facility, place of manufacture or warehouse (Incoterms 2010). The City shall pay all delivery costs and charges or reimburse Contractor for shipping charges plus 25%. Except for those obligations that are consistent with Incoterms 2010 specifically stated above, Contractor shall not be liable in any claim asserted by the City with respect to delivery. Partial deliveries will be permitted. "Products" means all equipment, parts, materials, supplies, software, and other goods Contractor has agreed to supply to The City under the Contract, including Leased Equipment and Refurbished Parts.

B. Title to Products shall pass to the City when Products are made available for shipment from the manufacturer's factory or the storage facility utilized by Contractor. Title to Services shall pass to the City as performed.

C. Notwithstanding Section 20.13.042.1 above, in all events risk of loss shall transfer to the City upon title passage.

D. If any Products cannot be shipped to or received by the City when ready due to any cause not attributable to Contractor, Contractor will notify the City and then may ship Products to a storage facility, including a facility within the place of manufacture, or to an agreed freight forwarder. If Contractor places Products in storage or if Products are detained at any port, the following conditions shall apply: (i) title and



all risk of loss or damage shall immediately pass to the City if they had not already passed; (ii) any amounts otherwise payable to Contractor upon delivery or shipment shall be payable upon presentation of Contractor's invoices; (iii) all expenses and charges incurred by Contractor, such as for preparation for and placement into storage, handling, inspection, preservation, insurance, storage, demurrage, removal and any taxes shall be payable by the City upon submission of Contractor's invoices; and (iv) when conditions permit and upon payment of all amounts due hereunder, Contractor shall resume delivery of Products to the originally agreed point of delivery.

E. The City shall bear the sole risk of loss for the City's equipment during the term of the Contract, whether at the Site, the Contractor's facility or in transit from the Contractor's facility. If repair Services are to be performed on the City's equipment at Contractor's facility, the City shall be responsible for transporting the equipment to and from Contractor's facility. The City shall reimburse Contractor at Contractor's then current storage rate if the equipment remains at Contractor's facility beyond 10 days after notification that the Services have been completed.

SEC. 20.13.043. WARRANTY.

A. Contractor warrants to the City that (i) the Products shall be shipped free from defects in material, workmanship and title and (ii) the Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications. Unless Contractor expressly agrees otherwise in writing, any items not manufactured by Contractor (including incidental materials and consumables used in the Services) shall carry only the warranty that the original manufacturers provide, and Contractor gives no warranty on behalf of the manufacturers of such items. Furthermore, used Products other than Refurbished Parts shall be sold "as is."

B. Unless otherwise stated in the Contract, the warranty period for Products shall be one year from first use or 18 months from delivery, whichever occurs first, except that software are warranted for 90 days from delivery. If Services include installation or direction of installation of heavy duty gas and steam turbine parts, the warranty period for each such part shall be one year after completion of installation or four years from the date of delivery, whichever occurs first. Unless otherwise stated in the Contract, the warranty period for Services shall be one year from completion, except for baghouses, precipitators and other particulate collection equipment related Services, which shall be 30 days from completion, software related Services, which shall have a warranty period of 90 days from completion, and repair Services, which shall have warranty periods as follows: centrifuges and underground mine equipment – 30 days; pumps, compressors, instrumentation, communication, x-ray and control devices – 90 days; and other mechanical equipment – 180 days.

C. If Products or Services do not meet the above warranties, the City shall promptly notify Contractor in writing within the warranty period. Contractor shall thereupon (i) at Contractor's option, repair or replace the defective Products or (ii) re-perform the defective Services. If in Contractor's reasonable judgment the Product cannot be repaired or replaced or the Services cannot be re-performed, Contractor shall refund or credit monies paid by the City for that portion of Products or Services that do not meet the above warranties. Any repair, replacement or reperformance by Contractor hereunder shall not extend the applicable warranty period, but any Product replaced shall be subject to the warranties described in SEC. 20.13.043 A. and B. for that replacement Product. Except that the warranty period for any replaced Product shall be a period of 12 months from such replacement. In any event, the warranty period and Contractor's responsibilities set forth herein for such replaced Product shall end no later than 12 months after the expiration of the applicable original warranty period. The parties shall mutually agree on the specifications of any test to determine the presence of a defect.

D. The City shall bear the costs of access (including removal and replacement of systems, structures or other parts of the City's facility), de-installation, decontamination, re-installation and transportation of Products to Contractor and back to the City.

E. These warranties and remedies are conditioned upon (a) the proper storage, installation, operation, and maintenance of the Products and conformance with the proper operation instruction manuals provided by Contractor or its suppliers or subcontractors, (b) the City keeping proper records of operation and maintenance during the warranty period and providing Contractor access to those records, and (c) modification or repair of the Products or Services only as authorized by Contractor. Contractor does not warrant the Products or any repaired or replacement parts against normal wear and tear or damage caused by misuse, accident, or use against the advice of Contractor. Any modification or repair of any of the Products or Services not authorized by Contractor shall render the warranty null and void.

F. This Article provides the exclusive remedies for all claims based on failure of or defect in Products or Services, whether the failure or defect arises before or during the applicable warranty period and whether a claim, however described, is based on contract, warranty, indemnity, tort/extracontractual liability (including negligence), strict liability or otherwise. The warranties provided in this Article are exclusive and are in lieu of all other warranties and guarantees whether written, oral, implied or statutory. NO IMPLIED STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES.

SEC. 20.13.044. SOFTWARE, LEASED EQUIPMENT, REMOTE ENVIRONMENTAL SERVICES, REMOTE DIAGNOSTIC SERVICES, PCB SERVICES, EPC SERVICES

A. If Contractor provides any software to the City, the terms of this Contract shall apply including the Software License Addendum. If Contractor leases any of Contractor's equipment or provides related Services to the City, including placing Contractor's equipment at the City's site to provide remote Services, the terms of this Contract shall apply including the Lease Agreement Addendum. If Contractor provides any remote environmental Services to the City, the terms of this Contract shall apply including the Remote Environmental Services Addendum. If Contractor provides any remote diagnostic services to the City, the terms of this Contract shall apply including the Remote Diagnostic Services Addendum. If Contractor provides any PCB Services to the City, the terms of this Contract shall apply including the PCB Services Addendum. If Contractor provides any EPC Services to the City, the terms of this Contract shall apply including the EPC Services Addendum. If there is any conflict between these terms and the terms of any applicable addendum, the terms of the addendum shall prevail.

B. If Contractor performs Services related to Contractor's own proprietary software, the City agrees that Contractor owns all proprietary rights, including, but not limited to any patent, copyright, trade secret, trademark and other proprietary rights, in and to that software and any work derived from that software ("Derivative Work"). "Derivative Work" is (i) any work that is based upon one or more pre-existing work, such as a revision, enhancement, modification, translation, abridgement, condensation, expansion, extension or any other form in which such pre-existing work may be recast, transformed, or adapted, and that, if prepared without the authorization of the owner of the copyright to such pre-existing work, would constitute a copyright infringement and (ii) any compilation that incorporates such a pre-existing work. the City shall have only a "right to use" license to a Derivative Work for internal business purposes and shall not disclose, sell, lease, distribute, or otherwise transfer the Derivative Work to any third party except as may be permitted by these terms or as approved in writing by Contractor.

C. For the purposes of this Article, "Contractor" means Contractor, its affiliates, and their successors or assigns.



SEC. 20.13.045. DISPUTE RESOLUTION, GOVERNING LAW

A. Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be resolved in accordance with this paragraph and will be settled, if possible, by negotiation of the parties. If a dispute is not resolved by negotiations, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management of each party, to be held within twenty (20) business days after giving notice. If the dispute is not resolved within thirty (30) business days after the date of the meeting of higher management, or any later date to which the parties may agree, either party may submit to litigation through the court system as follows:

Any claim, legal action or proceeding (including without limitation claims for set-off or counterclaim) regarding the dispute shall be brought in the U.S. District Court for the Western District of Missouri, or in the event that court lacks jurisdiction to hear the claim, in the 16th Judicial Circuit for the City of Kansas City, Missouri, and the parties irrevocably consent to the exclusive jurisdiction of those courts for such claims. Each party submits to and accepts generally and unconditionally the jurisdiction of those courts with respect to its person and property, and irrevocably consents to the service of process in connection with any such action or proceeding by personal delivery to the party or by registered or certified mail, postage prepaid, to its address for notice under the Contract.

B. Notwithstanding the terms above, each party has the right at any time, at its option and where legally available, to commence an action or proceeding in a court of competent jurisdiction to apply for interim or conservatory measures, but not monetary damages.

C. The validity, performance and all matters relating to the interpretation and effect of the Contract and all further documents executed pursuant to it shall be construed and interpreted in accordance with the laws, excluding the rules on the conflict or choice of laws, of the State of Missouri, U.S.A.

SEC. 20.13.046. GENERAL CLAUSES

A. Products and Services sold by Contractor are not intended for use in connection with any nuclear facility or activity without the written consent of Contractor. The City warrants that it shall not use or permit others to use Products or Services for such purposes, unless Contractor agrees to the use in writing. If, in breach of this, any such use occurs, Contractor (and its parent, affiliates, suppliers and subcontractors) disclaims all liability for any nuclear or other damages, injury or contamination, and in addition to any other legal or equitable rights of Contractor, the City shall, to the extent authorized under Missouri's sovereign immunity laws, indemnify and hold Contractor (and its parent, affiliates, suppliers and subcontractors) harmless against any such liability. If Contractor agrees in writing to any such use, the parties shall agree upon special terms and conditions that provide Contractor protections against nuclear liability and which are acceptable to Contractor under the then current laws that apply.

B. If any provision of the Contract is found to be void or unenforceable, the remainder of the Contract shall not be affected. The parties will replace any such void or unenforceable provision with a new provision that achieves substantially the same practical or economic effect and is valid and enforceable.

C. The following Articles shall survive termination or cancellation of the Contract:
20.13.006, 20.13.037, 20.13.039, 20.13.041, 20.13.042, 20.13.043, 20.13.044, 20.13.045,
20.13.046.

D. The Contract represents the entire agreement between the parties. No modification, amendment, rescission or waiver shall be binding on either party unless agreed in writing by the parties' authorized representatives.



E. For direct and indirect U.S. government contracts only, all Products and Services provided by Contractor shall be considered "commercial products, commercial services or commercially available off-the-shelf items (COTS)" as defined in FAR Part 2, 2.101 and in accordance with FAR 52.244-6. If the reasonableness of the price cannot be established, if cost or pricing data is required for any other reason, or if the Products or Services cannot be considered "commercial products, commercial services or commercially available off-the-shelf (COTS) items," Contractor may cancel the Contract without liability.

F. Contractor certifies that it complies with the provisions of Section 34.600, RSMo, and is not currently engaged in a boycott of goods or services from the State of Israel; companies doing business in or with Israel; or persons or entities doing business in the State of Israel as those terms are defined in Section 34.600, RSMo. Contractor further certifies that it will comply with the provisions of Section 34.600, RSMo, for the duration of the contract.

F. This Contract may be executed in multiple counterparts that together shall constitute one agreement.

G. Except as provided in the Article entitled "Limitation of Liability," and in 20.13.039.1 above regarding nuclear use, this Contract is for the benefit of the parties and not for any third party.

SEC. 20.13.047. TERMINATION AND SUSPENSION.

1. Owner may terminate the Contract (or any portion thereof) for cause if Contractor: (i) substantially breaches a material obligation which does not otherwise have a specified contractual remedy, provided that: (a) Buyer shall first provide Contractor with detailed written notice of the breach and of Buyer's intention to terminate the Contract, and (b) Contractor shall have failed, within 30 days after receipt of the notice (or such extended period as is considered reasonable by the parties), to either (1) commence and diligently pursue cure of the breach, or (2) provide reasonable evidence that the breach has not occurred; or (ii) becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws. If Buyer terminates the Contract as provided in this Section: (a) Buyer shall pay to Contractor all portions of the Contract price allocable to work performed (for example, the price for Products completed or partially completed before the termination), Lease Fees incurred, and all Services performed at the Contractor's then-current standard time and material rates; and (b) Contractor shall pay Buyer the difference between that portion of the Contract Price allocable to the terminated scope and the actual amounts reasonably paid by Buyer to another supplier for that scope.

2. Contractor shall have the right to suspend or terminate the Contract (or any portion thereof) immediately for cause if: (i) Buyer becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; (ii) there is an excusable delay (as per Section 20.13.017.A.5 above) lasting longer than 120 days; (iii) any representation or warranty made by Buyer herein or in any document or certificate furnished by Buyer in connection herewith proves to be incorrect in any material respect; or (iv) Buyer materially fails to comply with any terms of the Contract, including but not limited to, failure to make any payment when due or to fulfill any payment conditions.

3. If the Contract (or any portion thereof) is terminated for any reason other than those set forth in Section 1 above, Buyer shall pay Contractor for all Products completed or partially completed, Lease Fees incurred, and Services performed before the effective date of termination, plus a cancellation charge equal to 15% of the Contract price allocable to the uncompleted Products, unfinished Lease Term and unperformed

Services. The following shall apply when determining the amount due from Buyer for Services performed before the date of termination: (i) for Services performed under time and material pricing, Buyer shall pay for all hours performed at Contractor's then-current standard time and material rates and (ii) for Services performed under a firm fixed price, Buyer shall pay (a) the applicable price for all milestones achieved and (b) for any milestone not yet achieved, all hours performed in connection with the unachieved milestone(s) at Contractor's then-current standard time and material rates.

4. Buyer shall pay any reasonable expenses incurred by Contractor in connection with a suspension or termination, including expenses for repossession, fee collection, demobilization/remobilization or costs of storage during suspension upon submission of Contractor's invoice(s). Performance of Contractor's obligations shall be extended for a period of time reasonably necessary to overcome the effects of any suspension.

Upon any such termination, the City shall pay Contractor as provided by Section 3 above.

GEVINT NOTE: The Special Provisions below shall apply to proposal 1018609. These provisions include GEVINT Modifications through the most recent contract 2013, and reflects the modifications shown below.

CONTRACT SPECIAL PROVISIONS

A. LOCATION:

Blue Valley Power Plant
21500 East Truman Road
Independence MO 64056

ANTICIPATED SCHEDULE: Anticipated start date of INSERT APPROPRIATE DATE. Completed date shall be per Seller's proposed schedule or per agreed schedule determined at kickoff meeting.

C. PRELIMINARY MATTERS

1. Execution of Agreement:

a. The City will furnish five (5) copies of the Bid Documents to the Contractor, who shall prepare the five (5) counterpart copies, each containing an exact copy of the Bid Form as submitted, Surety Bonds properly executed, and Certificate of Insurance.

b. Five (5) prepared counterpart copies shall be returned to the City for execution by the City, and one (1) executed copy shall be returned to the Contractor.

D. CONTRACTOR'S RESPONSIBILITIES AND RIGHTS

Nondiscrimination in Employment: RESERVED

On January 21, 2025, the President issued an Executive Order titled “Ending Illegal Discrimination and Restoring Merit-Based Opportunity” (the “2025 Executive Order”) that, among other things, revoked Executive Order 11246. So long as the 2025 Executive Order, as currently drafted, remains valid and in effect, the language in this section below shall not apply.

E. TERMINATION AND SUSPENSION.

(LIQUIDATED DAMAGES SHALL NOT APPLY FOR THIS MI PROPOSAL

F. SPECIAL INSTRUCTIONS TO CONTRACTOR

1. Identification of Correspondence, Drawings, Data and Materials:

- a. Identify all correspondence, drawings, data and materials, packing slips, and other items associated with Contract No., INSERT APPROPRIATE REFERENCE Blue Valley Power Plant, IPL Power & Light Department - Power Production Improvement Projects, Control Room HVAC System, followed by more specific terms defining the item or subject involved.

2. Representatives and Addresses:

- a. Address all correspondence to the City: IPL

Power & Light Department
P.O. Box 1019
21500 E. Truman Road
Independence, Missouri 64051
Attention: Mr. Randy Peters

3. Shipping:

If required by the Specification, arrange, pay for, and be responsible for shipping and handling of all materials and equipment furnished under the Contract to be redeemed by Owner to Bidder at cost plus 15% upon Work completion

4. Construction Utilities:

- a. All temporary utilities shall be in accordance with local law and regulations.

5. Uniform System of Accounts:

- a. The accounting system used by the City's Accounting Department is based on Federal Energy Regulatory Commission's "Uniform System of Accounts".
- b. Within ten (10) days from the date of delivery of a Notice of Award to Apparent Low Bidder, furnish an accounting of the Bid broken down into Units of Property specified by the City.
- c. The City will be available to instruct and assist in proper accounting procedure.
- d. Prorate overhead, profit, and items not directly chargeable to a specific plant account as directed by the City.



- e. Account for all Change Orders authorized under the Contract at the time of their approval.
- f. No separate payment will be made for cost accounting work performed in accordance with Paragraph 6.a. Include the cost in and distribute the cost among the various Units of Property.

G. WAGE RATES

1. General:

- a. This Contract shall be based upon payment by the Contractor and his subcontractors of wage rates not less than the prevailing hourly wage rate for each craft or classification of workmen engaged on the work as determined by the Industrial Commission of Missouri, on behalf of the Department of Labor and Industrial Relations.
- b. The Contractor shall comply with all requirements of the Prevailing Wage Law of Missouri, Revised Statutes of Missouri, Sections 290.210 through 290.340, including the latest amendments thereto (see Appendix).
- c. The Prevailing Wage Law does not prohibit payment of more than the prevailing rate of wages, nor does it limit the hours of work, which may be performed by any workman in any particular period.

2. Records:

The Contractor and each subcontractor shall keep an accurate record showing the names, occupations, and crafts of all workmen employed, together with the number of hours worked by each workman and the actual wage paid to each workman. At all reasonable hours, such wage records shall be open to inspection by the representative of the Industrial Commission of Missouri and the City.

3. Notices:

Throughout the life of this Contract, a copy of the wage determination and the rules promulgated by the Industrial Commission of Missouri shall be displayed in at least four (4) conspicuous places on the project under a heading of NOTICE with the heading in letters at least 1-inch high.

4. Affidavit of Compliance:

After completion of the work and before final payment can be made under this Contract, the Contractor and each subcontractor must file with the City an affidavit stating that he has fully complied with the provisions and requirements of the prevailing wage law of Missouri, Sections 290.210 to 290.340 RSMo.

5. Wage Determination:

During the life of this Contract, the prevailing hourly rate of wages of contracted Craft Labor is subject to change by the Department of Labor and Industrial Relations or by court decision, as provided by law. Any such change shall not be the basis of any claim by the Contractor against the

City, nor will deductions be made by the City against sums due the Contractor by reason of any such change.

H. CONTRACTOR PERSONNEL

1. The Contractor shall cause the construction work and services on the Project to receive constant supervision by a competent superintendent (hereinafter called the "Superintendent") who shall be present at all times during working hours where construction work and services are being carried out. Directions and instructions given to the Superintendent shall be binding upon the Contractor.

The City reserves the right to require the removal from the Project of any employees of the Contractor if, in the judgement of the City, such removal shall be necessary in order to protect the interest of the City. The City or the Engineer shall have the right to require the Contractor to increase the number of its employees, and to increase or change the amount or kind of materials, supplies, tools, and equipment if, at any time, the progress of the work and services shall be unsatisfactory to the City; but the failure of the City or Engineer to give any such directions shall not relieve the Contractor of its obligations to complete the work and services within the time and in the manner specified in this Proposal.

Section 8 – Standalone Software License

NOTICE: PLEASE READ THIS STANDALONE SOFTWARE LICENSE AGREEMENT ("LICENSE") CAREFULLY BEFORE INSTALLING OR USING THE SOFTWARE. LICENSING OF ANY SOFTWARE, DOCUMENTATION AND/OR THIRD-PARTY SOFTWARE IS EXPRESSLY CONDITIONED ON LICENSEE'S ASSENT TO THIS LICENSE. THIS IS A LEGAL AND BINDING AGREEMENT BETWEEN LICENSEE AND LICENSOR. BY INSTALLING OR USING THE SOFTWARE, LICENSEE AGREES TO ALL THE TERMS AND CONDITIONS OF THIS LICENSE. IF YOU DO NOT AGREE TO THE TERMS OF THIS LICENSE, DO NOT INSTALL AND/OR USE THE SOFTWARE. YOU MUST RETURN THE ENTIRETY OF THE SOFTWARE, DOCUMENTATION AND/OR THIRD-PARTY SOFTWARE TO LICENSOR, OR AUTHORIZED DISTRIBUTOR IF APPLICABLE, IN ORDER TO OBTAIN A REFUND.

1. Definitions.

"Derivative Works" includes: (a) any work based upon one or more pre-existing works, such as a revision, enhancement, modification, translation, abridgement, condensation, expansion, extension or any other form in which such pre-existing works may be published, recast, transformed, or adapted, and that, if prepared without the authorization of the owner of the copyright or other intellectual property right to such pre-existing works, would constitute an infringement of such copyright or other intellectual property right, and/or (b) any compilation that incorporates such pre-existing works. For Software, Documentation, and Third- Party Software (as defined below), Derivative Works also includes any and all corrections, bug fixes, and updates to the Software, Documentation, Third-Party Software, and Derivative Works, but does not include any Licensee or Licensee-funded third party developments, provided such developments only make "calls" of the Software, Third- Party Software or Derivative Works thereof or "object requests" that reference or cause execution of the base Software, Third-Party Software, and/or Derivative Works thereof.

"Documentation" means all material, including all printed material and on-line or electronic documentation (excluding training materials), referencing the Software and/or Third-Party Software provided under this License.

"License" means this Software License Addendum to Terms and Conditions together with any modifications or additional provisions specifically stated in Licensor's final quotation or specifically agreed upon by Licensor in writing.

"Licensee" means Buyer or Owner as that term is defined in the Terms and Conditions.

"Licensor" means Seller or Contractor as that term is defined in the Terms and Conditions.

"Site" means the Licensee premises for which Licensor is providing Software, Documentation and/or Third-Party Software.

"Software" means Licensor's proprietary computer software and software security devices owned and provided by Licensor under this License.

"Terms and Conditions" means Licensor's Products and/or Services Terms and Conditions to which this License is attached.

"Third-Party Software" means any proprietary computer software owned by a third party that Licensor may provide to Licensee under this License.

2. License Grant. 2.1 Subject to the terms of this License, Licensor hereby grants to Licensee a limited, personal non-transferrable and non-exclusive license to use Software (in object code) and Documentation, including upgraded, modified, or enhanced versions provided by Licensor, and to use Third-Party Software (in object code), all for Licensee's internal business purposes only.

2.2 Licensee has no right to (i) lease, rent, transfer, distribute, sublicense, timeshare, or allow third parties to access Software, Documentation, or Third-Party Software, nor assign any rights hereunder to a third party without Licensor's prior written agreement; (ii) prepare Derivative Works from, alter, modify, disassemble, decompile, reverse engineer, or otherwise attempt to reconstruct or discover the object or source code of the Software or Third-Party Software; (iii) pledge Software, Documentation or Third-Party Software either as a stand-alone product or embedded in any hardware, software, equipment, machines or the like, as collateral or otherwise, or encumber such Software, Documentation or Third-Party Software with any lien or security interest; or (iv) remove any product identification, copyright, trademark, or other notice from Software, Documentation or Third-Party Software. If Licensee believes that it is entitled to reverse engineer Software as a matter of local law (e.g., the Council Directive of May 14, 1991, of the Council of the European Communities, as amended), Licensee agrees that it shall first inform Licensor about such intent and request technical information from Licensor. Licensee shall use any technical information delivered by Licensor only for purposes of ensuring "interoperability" and compatibility and shall treat such technical information as Proprietary Information (defined below). Any reverse engineering of Software shall void any warranties or indemnification obligations of Licensor and shall automatically release Licensor from any obligation to provide support services under this License or any separate agreement.

2.3 Certain components of the Software Licensor provides to Licensee may contain Third-Party Software, including "open source" software. Use of Third-Party Software and its source code may be governed by separate copyright notices and license provisions, which may be found or identified in Documentation or on the media delivered with Software and which are incorporated by reference into this License. Licensor will have no warranty, support, maintenance, or other obligations or liability under this Addendum with respect to such Third-Party Software. Licensee shall not modify or combine Software and/or any Third-Party Software in any manner that could cause, or could be interpreted or asserted to cause, Software or any such combination or modifications thereto to become subject to the terms of any license applicable to software of third parties (including Third-Party Software). Licensee agrees that it is solely responsible for ensuring and confirming that any of its Software combinations

and/or modifications are not subject to the terms of any Third-Party Software licenses. All Third-Party Software provided hereunder is bundled with Products and licensed for use with Products only.

2.4 Unless otherwise agreed to by Licensor in writing or specified in an Exhibit attached hereto, Licensee may only install and use/run a single copy of Software and Third-Party Software on a single computer workstation for use by a single user.

2.5 Licensee may make one (1) copy of Software, Documentation, and Third-Party Software for backup purposes only. Licensee must reproduce and include all proprietary rights and copyright notices on any backup copies. Except as authorized under this License, no copies of Software, Documentation, or Third-Party Software may be made by Licensee or any third party; provided, however, Licensee may print on-line Software Documentation for its own internal use, provided the maximum number of copies printed may not exceed the number of users licensed hereunder (if the License is provided based on number of users).

3. Support Services; Upgrades. This License does not obligate Licensor to provide maintenance or support on any Software or Third-Party Software licensed hereunder. Support services are available under separate agreement. If Software is an upgrade of a previous version (provided such upgrade was obtained under a separate support services agreement with Licensor or a Licensor authorized distributor), Licensee may use the upgraded Software only in accordance with this License.

4. Verification. During the term of this License and for three years thereafter, Licensor may upon reasonable notice require that an independent audit of the use of Software and Third-Party Software be conducted during Licensee's normal business hours. Upon such notice, Licensee shall provide Licensor's independent auditor site access and the right to inspect relevant portions of Licensee's computer system on which Software and Third-Party Software resides. Licensee agrees to pay promptly: (a) all underpaid license fees and (b) if the underpayment is more than 5% of the license fees paid before audit, all audit costs, and expenses.

5. Term and Termination. 5.1 Software, Documentation, and Third-Party Software shall be considered accepted by Licensee upon receipt.

5.2 This License is effective until terminated. Licensor may terminate this License immediately if Licensee fails to comply with any of the terms and conditions herein. The license for any Software or Third-Party Software provided with leased equipment shall terminate concurrently with termination of the lease. Upon termination, Licensee shall (a) cease using Software, Documentation, and Third-Party Software and (b) certify to Licensor within 14 days of the termination that Licensee has destroyed or returned to Licensor Software, Documentation, and Third-Party Software, and all copies thereof.

6. Ownership. 6.1 All Software, Documentation, and Third-Party Software are licensed and not sold. Licensee agrees that Licensor and/or its suppliers own or have rights to all proprietary rights, including any patent, copyright, trade secret, trademark, and other proprietary rights, in and to Software, Documentation, and Third-Party Software, including any Derivative Works thereof regardless of the source of development, including cases where Licensee engages a third party to perform such development, and any corrections, bug fixes, and updates to such Software, Documentation, Third-Party Software, or Derivative Works.

6.2 To the extent that any Derivative Works of Licensor's proprietary Software or of Third-Party Software supplied by Licensor are developed, Licensee hereby (a) agrees that the intellectual property rights to such Derivative Works are automatically vested in Licensor (or its affiliates, in Licensor's sole discretion) or in the owner of Third-Party Software, as applicable, and may be used by Licensor (or the owner of any Third-Party Software Derivative Works) without limitation and without any obligation to Licensee on behalf of Licensor and/or such other relevant owner; (b) irrevocably transfers and assigns to Licensor (or its affiliates) or to the owner of Third-Party Software, as applicable, all intellectual property rights, moral rights, title, and interest throughout the world in and to any such Derivative Works, including all rights in and to any inventions and designs embodied in such Derivative Works or its associated technology and to those Derivative Works described in subparagraph 6.2(a) that are not automatically vested in Licensor (or its affiliates) or the owner of Third-Party Software, as applicable, for the entire duration of protection of such intellectual property rights; (c) agrees and forever waives any right to assert any claim contrary to (a) and (b) in this Article 6.2; and (d) agrees to take all steps necessary to fulfil the requirements as set forth in this Article 6.2 for any such Derivative Works whether developed by Licensee or by any third party under Licensee's direction. If, by operation of law, such rights are not automatically transferred and assigned as provided above, Licensee shall timely execute and deliver such instruments and take such other action as may be requested by Licensor to perfect and protect Licensor's (or Third-Party Software owner's) rights in any Derivative Works and to carry out, at no cost to GE, the assignments effected by this Article 6 to the maximum extent permitted by applicable law.

6.3 Notwithstanding the foregoing, Licensor grants Licensee a limited "right to use" license to any Derivative Works for Licensee's internal business purposes only subject to the same terms and conditions that apply to Software, Documentation, or Third-Party Software under Article 2 herein.

6.4 For the purposes of Article 6, the term "Licensor" shall mean Licensor, its affiliates, and their successors or assigns.

7. Warranties. 7.1 Licensor warrants, for Licensee's benefit alone, that under normal use, the media in which Software is embedded shall be free from defects in material and workmanship, for a period of ninety (90) days from the date of delivery of the original Software ("Warranty Period"). Licensor also warrants, for Licensee's benefit alone, that during the Warranty Period, Software will perform substantially in accordance with its Documentation.

7.2 If, during the Warranty Period, an Error occurs (where "Error" is defined as a problem caused by an incorrect operation of the unmodified computer code in Software or an incorrect statement or diagram in Documentation that produces incorrect results), Licensor will use commercially reasonable efforts to correct such Error, provided Licensee furnishes Licensor with the following: (a) written notice of the Error, including a description of the failure to perform in accordance with Documentation and a specific description of the operating conditions (including the specific software/hardware configuration) under which the Error



occurred, and (b) to the extent feasible, a representative sample of inputs for repeating and analyzing the Error. Licensor will correct the Error or if, after commercially reasonable efforts, Licensor is unable to correct the Error, Licensee's sole remedy shall be termination of this License and a refund of the license fees allocable to the specific non-conforming Software that have been paid by Licensee to Licensor hereunder.

7.3 Article 7 provides the exclusive remedies for all claims based upon any failure of, or error or defect in, Software and Documentation, whether the claim is based in contract, negligence, statute, or any tortious/extra-contractual liability theory, strict liability, or otherwise. The warranties provided in this Article 7 are exclusive and are in lieu of all other warranties, conditions, and guarantees whether written, oral, implied, or statutory. NO IMPLIED OR STATUTORY WARRANTY, OR WARRANTY OR CONDITION OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES. WITHOUT LIMITING THE FOREGOING, LICENSOR DOES NOT WARRANT THAT THE SOFTWARE OR DOCUMENTATION (OR LICENSEE'S USE THEREOF) WILL BE FREE FROM ALL ERRORS OR ITS USE WILL BE UNINTERRUPTED.

7.4 Any remedial steps taken by Licensor hereunder shall not extend or renew the applicable Warranty Period.

7.5 Licensor will not be responsible for any action, or inaction, which Licensee elects to take or not to take as a result of viewing any data, reports or other information provided by the Software, or for any analyses Licensee conducts using the Software.

8. Proprietary Information; Equitable Relief. 8.1 All information concerning or embedded in Software (including source code, object code and training materials), Documentation, and Third-Party Software is the property of Licensor (or its suppliers) and will constitute Licensor's (or its suppliers') proprietary information ("Proprietary Information") without any additional designation. Proprietary Information includes commercially valuable, substantial trade secrets, the design and development of which reflect the effort of skilled development experts and investment of considerable amounts of time and money.

8.2 Licensee acknowledges: (a) any use of Software, Documentation, or Third-Party Software in a manner inconsistent with this License or (b) any other misuse of Proprietary Information of Licensor (or its suppliers), will cause immediate irreparable harm to Licensor (or its suppliers) for which there is no adequate remedy at law. Licensee agrees that Licensor (or its suppliers) shall be entitled to immediate and permanent injunctive relief from a court of competent jurisdiction for any such misuse or threatened misuse by Licensee. The parties agree and stipulate that Licensor shall be entitled to such injunctive relief without posting of a bond or other security.

8.3 The confidentiality obligations set forth in the Terms and Conditions with respect to items of Confidential Information shall expire, with respect to Software and Documentation, five years after termination of this License.

8.4 Notwithstanding anything to the contrary, Licensee hereby grants to Licensor a non-terminable, non-exclusive, perpetual, royalty-free, worldwide right and license to access, collect, store and use all data and information concerning parts, power generation and balance of plant equipment and Site operation and performance (the "Data") so long as Licensor does not disclose to any party not a Licensor affiliate the identification of Licensee in connection with a particular item of Data. For purposes of clarity, such use may be for research and development purposes, in the aggregate, for statistical and other analysis for commercial use, or for other lawful purposes. Licensor's rights under this Section 8.4 include the right to interface directly to the Licensee's facility distributed control system and to utilize a dedicated network or internet connection or telephone line.

8.5. Upon request, Licensee agrees to provide Licensor with a signed copy of this License.



GE Vernova International LLC
58 Charles Street
Cambridge, Massachusetts,
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USA
Parker Harding
Phone: +1-800-4GE-FAST
(+1-800-443-3278)
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(+1-678-443-3278)
Email: parker.harding@ge.com

Quotation NO: 6136473

Version: FINAL REV 3

Issue Date: 15-SEP-25

Plant/SYS ID/ESN: 179345

Customer RFQ:

Bill To: CITY OF INDEPENDENCE
21500 E Truman Rd
INDEPENDENCE, MO- 64056-2674
United States

Ship To: CITY OF INDEPENDENCE
21500 E Truman Rd
INDEPENDENCE, MO- 64056-2674
United States

Currency	Delivery Terms	Payment Terms	Quote Exp Date
USD	Collect	Net Due in 30 Days	15-OCT-25
Subject to GE Vernova standard terms and conditions enclosed unless otherwise negotiated.			

Summary

Line Number	Part Number	Part Description	Note
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Cust Ref	Line Ref	Qty	UOM	Part # Description Cust Part #	Cust Request Date	Available to Ship Date	Must Order By Date Subject To Prior Sales	Avail Qty	Std Cyc (Bus Weeks)	Unit Price	Line Total
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SMO1173100
BLADE KIT,TB RTR-STG1
F51

1	1.0	1	EA		31-OCT-25	31-OCT-25	15-SEP-25 Ship From: USA	1	55	281,200.00	281,200.00
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Subtotal	281,200.00
Sales Tax	0.00
Total USD	281,200.00



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USA
Parker Harding
Phone: +1-800-4GE-FAST
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(+1-678-443-3278)
Email: parker.harding@ge.com

Quotation NO: 6136473

Version: FINAL REV 2

Issue Date: 15-SEP-25

Plant/SYS ID/ESN: 179345

Customer RFQ:

The Contract Price does not include the cost of any duties, tariffs, or other taxes and fees on imports implemented or imposed after the Proposal Date, in any jurisdiction ("Duties and Tariffs"). Seller reserves the right to adjust the Contract Price to reflect the cost of Duties and Tariffs incurred by Seller to procure, manufacture and/or deliver the [Equipment/Products/Parts and materials].



SPECIAL NOTES FOR QUOTATIONS:

- (i) QUANTITY AVAILABLE AND DATE AVAILABLE TO SHIP ARE BASED ON CURRENT INVENTORY AND FACTORY PRODUCTION SCHEDULES. THE DATE AVAILABLE TO SHIP DATA IS VALID AT THE TIME OF ACKNOWLEDGEMENT. PARTS AVAILABILITY IS SUBJECT TO PRIOR SALES.
- (ii) STANDARD CYCLE TIME, SHOWN IN BUSINESS WEEKS, IS AN ESTIMATE OF SHIPMENT TIME AFTER RECEIPT OF ORDER.
- (iii) ORDERS WILL BE PROCESSED IN THE ORDER OF RECEIPT. IF THE CUSTOMER REQUESTED DELIVERY DATE IS SOONER THAN THE END OF THE STANDARD DELIVERY CYCLE, THE GE VERNOVA EXPEDITED SERVICE OPTION MAY BE REQUESTED. THIS SERVICE WILL EXPEDITE PARTS REQUESTS FOR AN ADDITIONAL 20% FEE, PLUS ANY ADDITIONAL EXPEDITING AND HANDLING COSTS. THIS DOES NOT GUARANTEE THE REQUESTED DELIVERY DATE CAN BE MET.
- (iv) THE SHIP-FROM LOCATION IS SUBJECT TO CHANGE WITHOUT PRIOR NOTICE.

SPECIAL NOTES FOR ORDERS:

- (i) IF CONSOLIDATED SHIPMENT IS REQUIRED A CONSOLIDATION LOCATION WILL BE SELECTED AND PROVIDED TO THE CUSTOMER. IN THE CASE OF HAZMAT, OR OVERSIZE ITEMS WE MAY ALSO SHIP DIRECTLY FROM OUR VENDORS FACILITIES
- (ii) THE SHIP-FROM LOCATION IS SUBJECT TO CHANGE WITHOUT PRIOR NOTICE

Gas Power Products and/or Services Terms and Conditions

NOTICE: The sale of any Products and/or Services is expressly conditioned on Buyer's assent to these Terms and Conditions. Any acceptance of Seller's offer is expressly limited to acceptance of these Terms and Conditions and Seller expressly objects to any additional or different terms proposed by Buyer. No facility entry form shall modify these Terms and Conditions even if signed by Seller's representative. Any order to perform work and Seller's performance of work shall constitute Buyer's assent to these Terms and Conditions. Unless otherwise specified in the quotation, Seller's quotation expires 30 days from its date and may be modified or withdrawn by Seller before receipt of Buyer's conforming acceptance.

1. Definitions

"Buyer" means the entity to which Seller is providing Products and/or Services under the Contract.

"Contract" means either the contract agreement signed by both parties, or the purchase order signed by Buyer and accepted by Seller in writing, for the sale of Products and/or Services, together with these Terms and Conditions, Seller's final quotation, the agreed scope(s) of work, and Seller's order acknowledgement. In the event of any conflict, the Terms and Conditions shall take precedence over other documents included in the Contract.

"Contract Price" means the agreed price stated in the Contract for the sale of Products and/or Services, including adjustments (if any) in accordance with the Contract.

"Derivative Works" means: (a) any work based upon one or more pre-existing works, such as a revision, enhancement, modification, translation, abridgement, condensation, expansion, extension or any other form in which such pre-existing works may be published, recast, transformed, or adapted, and that if prepared without the authorization of the owner of the copyright or other intellectual property right to such pre-existing works, would constitute an infringement of such copyright or other intellectual property right, and/or (b) any compilation that incorporates such pre-existing works.

"Hazardous Materials" means any toxic or hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, radioactive material, petroleum or petroleum-derived products or by-products, or any other chemical, substance, material or emission, that is regulated, listed or controlled pursuant to any national, state, provincial, or local law, statute, ordinance, directive, regulation or other legal requirement of the United States ("U.S.") or the country of the Site.

"Insolvent/Bankrupt" means that a party is insolvent, makes an assignment for the benefit of its creditors, has an administrator, receiver, liquidator, or trustee appointed for it or any of its assets, or files or has filed against it a proceeding under any bankruptcy, insolvency dissolution or liquidation laws.

"Products" means the equipment, parts, materials, supplies, software, and other goods Seller has agreed to supply to Buyer under the Contract.

"Seller" means the entity providing Products or performing Services under the Contract.

"Services" means the services Seller has agreed to perform for Buyer under the Contract.

"Site" means the premises where Products are used or Services are performed, not including Seller's premises from which it performs Services.

"SOFR" Secured Overnight Financing Rate (SOFR) reference rates provide an indicative, forward-looking measurement of SOFR rates for USD, based on expectations implied from leading derivatives markets and published at <https://www.newyorkfed.org/markets/reference-rates/sofr>.

"Terms and Conditions" means these "Products and/or Services Terms and Conditions," including any relevant addenda pursuant to Article 18, together with any modifications or additional provisions specifically stated in Seller's final quotation or specifically agreed upon by Seller in writing.

"USD" means United States Dollars.

2. Payment

2.1 Buyer shall pay Seller for the Products and/or Services by paying all invoiced amounts by direct bank transfer in the currency specified by Seller in the Contract, without deduction, withholding or set-off for any

payment or claim, within thirty (30) days from the invoice date. If the Contract Price is less than two hundred fifty thousand USD (\$250,000), Seller shall issue invoices upon shipment of Products and as Services are performed. If the Contract Price is two hundred fifty thousand USD (\$250,000) or more, progress payments shall be invoiced starting with twenty-five percent (25%) of the Contract Price for Products and/or Services upon the earlier of Contract signature or issuance of Seller's order acknowledgement and continuing such that the Contract Price for remaining Services is invoiced as they are performed and ninety percent (90%) of the Contract Price for Products is received before the earliest scheduled Product shipment ("Progress Payments"). Buyer shall pay interest to Seller on all undisputed amounts (provided Buyer's dispute on any amount is made in good faith) not timely paid pursuant to the terms of the Contract, using a rate that is the lower of: a) maximum rate permitted by applicable law, and b) SOFR (Secured Overnight Financing Rate) rate as defined in this Contract, published on the 1st business date when an invoice becomes overdue, plus 10.0% p.a.), to be applied to that unpaid portion of the overdue invoice. Interest will be applied pro rata for each day payment is due. Seller will calculate the applicable interest, if any, and may include such interest in invoices issued from time to time. For example: On the past due date of an invoice, if the SOFR is 5.3% p.a., then the interest rate to apply on late payments shall be 15.3% p.a. and to be calculated for the total days the invoice has been past due. Seller will calculate the applicable interest, if any, and may include such interest in invoices issued from time to time. [For example: on the past due date of an invoice, if the SOFR is 5.3% p.a., then the interest rate to apply on late payments shall be 15.3% p.a. and shall be calculated for the total days the invoice has been past due.] If such reference rates are discontinued from getting published, similar rates in the market as published by the Central Bank of the relevant currencies will continue to be leveraged for the purposes of interest on late payment calculations. If the cost of materials and or labor to Seller performing its obligations under the Contract from the date of the proposed Contract Price until the date of delivery can be shown to have increased (when comparing applicable internationally recognized indices), then the Contract Price shall be adjusted to reflect such level of inflationary increase. The increase in the Contract Price will be calculated according to the direct impact of the indices and will be invoiced separately at the time of delivery.

2.2 As and if requested by Seller, Buyer shall at its expense establish and keep in force payment security in the form of an irrevocable, unconditional, sight letter of credit or bank guarantee allowing for pro-rata payments as Products are shipped and Services are performed, plus payment of cancellation and termination charges, and all other amounts due from Buyer under the Contract ("**Payment Security**"). The Payment Security shall be (a) in a form, and issued or confirmed by a bank acceptable to Seller, (b) payable at the counters of such acceptable bank or negotiating bank, (c) opened at least sixty (60) days prior to both the earliest scheduled shipment of Products and commencement of Services, and (d) remain in effect until the latest of ninety (90) days after the last scheduled Product shipment, completion of all Services and Seller's receipt of the final payment required under the Contract. Buyer shall, at its expense, increase the amount(s), extend the validity period(s), and make other appropriate modifications to any Payment Security within ten (10) days of Seller's notification that such adjustment is necessary in connection with Buyer's obligations under the Contract.

2.3 Seller is not required to commence or continue its performance unless and until any required Payment Security is received, operative and in effect and all applicable Progress Payments have been received. For each day of delay in receiving any Progress Payments or acceptable Payment Security, Seller shall be entitled to an equitable extension of time to durations or periods of time (if any) expressly

agreed to by the Parties in the written schedule for performance and/or completion of the Services or any parts thereof. If at any time Seller reasonably determines that Buyer's financial condition or payment history does not justify continuation of Seller's performance, Seller shall be entitled to require full or partial payment in advance or otherwise restructure payments, request additional forms of Payment Security, suspend its performance or terminate the Contract.

3. Taxes and Duties

Seller shall be responsible for all corporate taxes measured by net income due to performance of or payment for work under this Contract ("**Seller Taxes**"). Buyer shall be responsible for all taxes, tariffs, duties, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, tariffs, ad valorem or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on Buyer or Seller or its subcontractors) in relation to the Contract or the performance of or payment for work under the Contract other than Seller Taxes ("**Buyer Taxes**"). The Contract Price does not include the amount of any Buyer Taxes. If Buyer deducts or withholds Buyer Taxes, Buyer shall pay additional amounts so that Seller receives the full Contract Price without reduction for Buyer Taxes. Buyer shall provide to Seller, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes. The terms of this Section 3 shall take precedence over any other terms of the Contract (including, without limitation, the Incoterms).

4. Deliveries; Title Transfer; Risk of Loss; Storage

4.1 For shipments that do not involve export, including shipments from one European Union ("**EU**") country to another EU country, Seller shall deliver Products to Buyer FCA Seller's facility or warehouse (Incoterms 2020). For export shipments, Seller shall deliver Products to Buyer FCA Port of Export (Incoterms 2020). Buyer shall pay all delivery costs and charges or pay Seller's standard shipping charges plus up to twenty-five (25%) percent. Partial deliveries are permitted. Seller may deliver Products in advance of the delivery schedule. If Products delivered do not correspond in quantity, type, or price to those itemized in the shipping invoice or documentation, Buyer shall so notify Seller within ten (10) days after receipt.

4.2 For shipments within the same country, title to Products shall pass to Buyer upon delivery in accordance with Section 4.1. For shipments from the U.S. to another country, title shall pass to Buyer immediately after each item departs from the territorial land, seas and overlying airspace of the U.S., except where the delivery terms are FCA, FAS, and FOB (Incoterms 2020), then title shall pass to Buyer immediately when each item is handed over to Buyer's appointed carrier at Seller's premises or other named delivery place in the U.S. The 1982 United Nations Convention of the law of the Sea shall apply to determine the U.S. territorial seas. Title to goods shipped from China, India, or Mexico for delivery to a different country shall pass after such goods have crossed the territorial land, seas, exclusive economic zone, or overlying airspace of such respective source countries, as applicable.

For shipments from the United Kingdom (UK) or EU, title to Products shall pass to Buyer the earlier of (i) the port of export immediately upon clearance of Products for export or (ii) immediately after each item departs from the territorial land, seas, and overlying airspace of the sending country. For all other export shipments from a Seller facility or warehouse outside the U.S., title shall pass to Buyer upon delivery in accordance with Section 4.1. When Buyer arranges the export or intercommunity shipment, Buyer will provide Seller evidence of exportation or intercommunity shipment acceptable to the relevant tax and custom authorities. Where Seller is responsible for importing, or directly or indirectly reimburses Buyer for import costs, Buyer agrees to have import arranged through the agency of one of Seller's approved global customs brokers, whereby Seller will provide required support for

instructions. If Buyer arranges for any import of Parts, Buyer may not use any third party vendor for providing customs clearance services until Seller has approved such party prior to shipment of the Parts. Notwithstanding the foregoing, Seller grants only a non-exclusive license, and does not pass title, for any software provided by Seller under this Contract, and title to any leased equipment remains with Seller.

4.3 Risk of loss shall pass to Buyer upon delivery pursuant to Section 4.1, except that for export shipments from the U.S., risk of loss shall transfer to Buyer upon title passage.

4.4 If any Products to be delivered under this Contract or if any Buyer equipment repaired at Seller's facilities cannot be shipped to or received by Buyer when ready due to any cause attributable to Buyer or its other contractors, Seller may ship the Products and equipment to a storage facility, including storage at the place of manufacture or repair, or to an agreed freight forwarder. If Seller places Products or equipment into storage, the following apply: (i) title and risk of loss immediately pass to Buyer, if they have not already passed, and delivery shall be deemed to have occurred; (ii) any amounts otherwise payable to Seller upon delivery or shipment shall be due; (iii) all expenses and charges incurred by Seller related to the storage shall be payable by Buyer upon submission of Seller's invoices; and (iv) when conditions permit and upon payment of all amounts due, Seller shall make Products and repaired equipment available to Buyer for delivery.

4.5 If repair Services are to be performed on Buyer's equipment at Seller's facility, Buyer shall be responsible for, and shall retain risk of loss of, such equipment at all times, except that Seller shall be responsible for damage to the equipment while at Seller's facility to the extent such damage is caused by Seller's negligence.

4.6 Except as otherwise expressly agreed to by the Parties in writing, acceptance of Products shall be deemed to occur upon delivery; acceptance of Services shall be deemed to occur upon performance of the Services. Acceptance shall not be delayed by delays in provision of documentation or other non-conformances which do not prevent operation of Buyer's equipment, nor by requirements which the Contract contemplates may be carried out after acceptance.

5. Warranty

5.1 Seller warrants that Products shall be delivered free from defects in material, workmanship and title and that Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications incorporated into the Contract.

5.2 The warranty for Products shall expire one (1) year from first use or eighteen (18) months from delivery, whichever occurs first, except that software is warranted for ninety (90) days from delivery; and the warranty for Services shall expire one (1) year after performance of the Service, except that software-related Services are warranted for ninety (90) days from the performance of the Services (as applicable, the "**Warranty Period**").

5.3 If Products and/or Services do not meet the above warranties, Buyer shall promptly notify Seller in writing prior to expiration of the applicable Warranty Period. Seller shall (i) at its option, repair or replace defective Products and (ii) re-perform defective Services. If despite Seller's reasonable efforts, a non-conforming Product cannot be repaired or replaced, or non-conforming Services cannot be re-performed, Seller shall refund or credit monies paid by Buyer for such non-conforming Products and/or Services. Warranty repair, replacement or re-performance by Seller shall not extend or renew the applicable Warranty Period. Seller's warranty obligations exclude the repair or replacement of any damaged parts or Products other than the initially failing part which caused the damage. Buyer shall obtain Seller's agreement on the specifications of any tests it plans to conduct to determine whether a non-conformance exists.

5.4 Buyer shall bear the costs of access for Seller's remedial warranty efforts (including removal and replacement of systems, structures, or other parts of Buyer's facility), deinstallation, decontamination, reinstallation, and transportation of defective Products to Seller and back to Buyer.

5.5 The warranties and remedies are conditioned upon (a) proper storage, installation, use, operation, and maintenance of Products, (b) Buyer keeping accurate and complete records of operation and maintenance during the warranty period and providing Seller access to those records, and (c) modification or repair of Products and/or Services only as authorized by Seller in writing. Failure to meet any such conditions renders the warranty null and void. Seller is not responsible for normal wear and tear or damage including that due to environment or erosion, corrosion, or material deposits from fluids.

5.6 This Article 5 provides the exclusive remedies for all claims based upon the failure of or defect in Products or Services, whether the claim is based in contract, negligence, statute, or any tortious/extra-contractual liability theory, strict liability or otherwise. The foregoing warranties in this Article 5 are exclusive and are in lieu of all other warranties, conditions and guarantees whether written, oral, implied, or statutory. **NO IMPLIED OR STATUTORY WARRANTY, OR WARRANTY OR CONDITION OF MERCHANTABILITY, QUALITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES. FOR ALL SALES OF PRODUCTS AND SERVICES TO CANADIAN BUYERS, THE SALE OF GOODS ACT, AS ENACTED BY EACH PROVINCE OF CANADA, SHALL NOT APPLY.**

6. Confidentiality

6.1 Seller and Buyer (as to information disclosed, the "**Disclosing Party**") may each provide the other party (as to information received, the "**Receiving Party**") with Confidential Information in connection with this Contract. "Confidential Information" means information that is designated in writing as "confidential" or "proprietary" by Disclosing Party at the time of written disclosure. In addition, prices for Products and/or Services shall be considered Seller's Confidential Information.

6.2 Receiving Party agrees: (i) to use the Confidential Information only in connection with the Contract and use of Products and/or Services, (ii) to take reasonable measures to prevent disclosure of the Confidential Information to third parties (including a Sanctioned Party, as defined below), and (iii) not to disclose the Confidential Information to a competitor of Disclosing Party. Notwithstanding these restrictions, (a) Seller may disclose Confidential Information to its affiliates and subcontractors in connection with performance of the Contract, (b) a Receiving Party may disclose Confidential Information to its auditors, (c) Buyer may disclose Confidential Information to lenders as necessary for Buyer to secure or retain financing needed to perform its obligations under the Contract, and (d) a Receiving Party may disclose Confidential Information to any other third party with the prior written permission of Disclosing Party, and in each case, only so long as the Receiving Party obtains a non-disclosure commitment from any such subcontractors, auditors, lenders, or other permitted third party that prohibits disclosure of the Confidential Information and provided further that the Receiving Party remains responsible for any unauthorized use or disclosure of the Confidential Information. Receiving Party shall upon request return to Disclosing Party or destroy all copies of Confidential Information except to the extent that a specific provision of the Contract entitles Receiving Party to retain an item of Confidential Information. Seller may also retain one archive copy of Buyer's Confidential Information. "**Sanctioned Party**" means: a person or an entity (i) impacted by any government imposed economic sanction(s); or (ii) identified in the US Department of Treasury's SDN List, or the U.S. Department of Commerce's Entity List in Supplement No. 4 to Part 774 of the Export Administration Regulations, or any equivalent list maintained by a member state of the EU, or any other relevant national government; or (iii) based in, or legal

resident of, any country designated by the US as a "State Sponsor of Terrorism" under The Export Administration Act, The Arms Control Act, or The Foreign Assistance Act.

6.3 The obligations under this Article 6 shall not apply to any portion of the Confidential Information that: (i) is or becomes generally available to the public other than as a result of disclosure by Receiving Party, its representatives or its affiliates; (ii) is or becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party when the source is not, to the best of Receiving Party's knowledge, subject to a confidentiality obligation to Disclosing Party; (iii) is independently developed by Receiving Party, its representatives or affiliates, without reference to the Confidential Information; (iv) is required to be disclosed by law or valid legal process provided that the Receiving Party intending to make disclosure in response to such requirements or process shall promptly notify the Disclosing Party in advance of such disclosure and reasonably cooperate in attempts to maintain the confidentiality of the Confidential Information.

6.4 Each Disclosing Party warrants that it has the right to disclose the information that it discloses. Neither Buyer nor Seller shall make any public announcement about the Contract without prior written approval of the other party. As to any individual item of Confidential Information, the restrictions under this Article 6 shall expire five (5) years after the date of disclosure. Trade secrets that are contained in or comprise Confidential Information are to be protected for the life of the trade secret. Article 6 does not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

7. Intellectual Property

7.1 Seller shall defend and indemnify Buyer against any claim by a non-affiliated third party (a "**Claim**") alleging that Products and/or Services furnished under this Contract infringe a patent in effect in the U.S., an EU member state or the country of the Site (provided there is a corresponding patent issued by the U.S. or an EU member state), or any copyright or trademark registered in the country of the Site, provided that Buyer (a) promptly notifies Seller in writing of the Claim, (b) makes no admission of liability and does not take any position adverse to Seller, (c) gives Seller sole authority to control defense and settlement of the Claim, and (d) provides Seller with full disclosure and reasonable assistance as required to defend the Claim.

7.2 Section 7.1 shall not apply and Seller shall have no obligation or liability with respect to any Claim based upon (a) Products and/or Services that have been modified, or revised, (b) the combination of any Products and/or Services with other products and/or services when such combination is a basis of the alleged infringement, (c) failure of Buyer to implement any update provided by Seller that would have prevented the Claim, (d) unauthorized use of Products and/or Services, or (e) Products and/or Services made or performed to Buyer's specifications.

7.3 Should any Product and/or Service, or any portion thereof, become the subject of a Claim, Seller may at its option (a) procure for Buyer the right to continue using the Product and/or Service, or applicable portion thereof, (b) modify or replace it in whole or in part to make it non-infringing, or (c) failing (a) or (b), take back infringing Products and/or discontinue infringing Services and refund the price received by Seller attributable to the infringing Products and/or Services.

7.4 Article 7 states Seller's exclusive liability for intellectual property infringement by Products and/or Services.

7.5 Each party shall retain ownership of all Confidential Information and intellectual property it had prior to the Contract. Seller reserves all rights in and to software not expressly granted to Buyer. All new intellectual property conceived or created by Seller in the performance of this Contract, whether alone or with any contribution from Buyer, shall be owned exclusively by Seller. Buyer agrees to deliver assignment

documentation as necessary to achieve that result.

7.6 Buyer will not itself, and will not allow any party (including Buyer Affiliates) to: (i) reverse engineer Products or Services (including any Seller monitoring or data analysis by Seller), (ii) prepare Derivative Works from, alter, modify, disassemble, reverse engineer, reverse assemble, de-compile, or otherwise attempt to reconstruct, discover or derive the object or source code of any software licensed to Buyer by Seller under this Contract (including any third party software); (iii) permit or otherwise grant any third-party access to Products, Services or software for such purpose, even if such third party is performing any corrections, bug fixes and updates.

7.7 Products furnished by Seller under this Contract shall not be installed, used, or made available for use in any equipment other than the equipment specified in the Contract at Buyer's Site. Buyer warrants that such equipment, and the Site, is under its ownership and control, and agrees to inform Seller forthwith should this cease to be the case at any time before expiry of the Warranty Period.

8. Indemnity

EACH OF BUYER AND SELLER (AS AN "INDEMNIFYING PARTY") SHALL INDEMNIFY THE OTHER PARTY (AS AN "INDEMNIFIED PARTY") FROM AND AGAINST CLAIMS BROUGHT BY A THIRD PARTY, ON ACCOUNT OF PERSONAL INJURY OR DAMAGE TO THE THIRD PARTY'S TANGIBLE PROPERTY, TO THE EXTENT CAUSED BY THE NEGLIGENCE OF THE INDEMNIFYING PARTY IN CONNECTION WITH THIS CONTRACT. IN THE EVENT THE INJURY OR DAMAGE IS CAUSED BY JOINT OR CONCURRENT NEGLIGENCE OF BUYER AND SELLER, THE LOSS OR EXPENSE SHALL BE BORNE BY EACH PARTY IN PROPORTION TO ITS DEGREE OF NEGLIGENCE. FOR PURPOSES OF SELLER'S INDEMNITY OBLIGATION, NO PART OF THE PRODUCTS OR SITE IS CONSIDERED THIRD PARTY PROPERTY.

9. Insurance

During the term of the Contract, Seller shall maintain for its protection the following insurance coverage: (i) Worker's Compensation, Employer's Liability and other statutory insurance required by law with respect to work related injuries or disease of employees of Seller in such form(s) and amount(s) as required by applicable laws; (ii) Automobile Liability insurance with a combined single limit of \$2,500,000.00; and (iii) Commercial General Liability or Public Liability insurance for bodily injury and property damage with a combined single limit of \$2,500,000.00. If required in the Contract, Seller shall provide a certificate of insurance reflecting such coverage.

10. Schedule and Excusable Events

10.1 Any durations or periods of time quoted on the schedule or otherwise agreed for delivery of Products or completion of Services shall be regarded as estimated only. In addition, delivery times are dependent upon prompt receipt by Seller of all information and payment security necessary to proceed with the work without interruption. If Seller agrees in writing to guaranteed delivery and/or completion times and specific sums as liquidated damages for late delivery or completion, any such liability for damages shall only commence when the period of delay (i) exceeds the guaranteed date or time by fourteen (14) calendar days, and (ii) directly inhibits Buyer's scheduled electric power and other process generation, liquidated damages may be applied and be levied only from that fourteenth (14th) day onwards. Payment of liquidated damages shall be in full and final settlement of any and all liability of the Seller for delays under the Contract and shall be Seller's sole and exclusive liability and Buyer's sole and exclusive remedy for failing to achieve the delivery and/or completion guarantee. The Seller's maximum aggregate liability for liquidated damages for delay shall in no circumstances exceed five percent (5%) of the total amount of the Contract Price paid to the Seller.

10.2 Seller shall not be liable and shall not be considered in breach of

any obligations to supply manpower, deliver Products or to execute, deliver or complete the Services or any parts thereof within specified durations or periods or by a specified time if it is delayed or prevented, directly or indirectly, by any cause beyond its reasonable control, or by acts of God, fire, armed conflict, civil unrest, insurrection, acts or threats of war (declared on undeclared) or terrorism, kidnapping risk, epidemics, pandemics (including the resurgence of COVID and any variants), quarantines, delays in clearing customs, strikes or other labor disturbances, or acts or omissions of any governmental authority (including changes in applicable laws or regulations) or of the Buyer or Buyer's contractors or suppliers, or for any period of suspension under Section 11.3 (whether existing, foreseen or unforeseen). If any such cause or excusable event occurs, Seller's impacted schedule and dates or times stated in that schedule shall be adjusted accordingly as may be needed to overcome the effect of the event. Seller shall also be entitled to an equitable adjustment of the price to compensate for all increases in Seller's cost of the execution of the Services or delivery of Products due to such cause or excusable event, subject to Seller's obligations to work in good faith with Buyer to mitigate the impact of such event(s). If acts or omissions of the Buyer or its contractors or suppliers cause the delay, Seller shall also be entitled to an equitable price adjustment.

11. Termination and Suspension

11.1 Buyer may terminate the Contract (or the portion affected) for cause if Seller (i) becomes Insolvent/Bankrupt, or (ii) commits a material breach of the Contract which does not otherwise have a specified contractual remedy, provided that: (a) Buyer shall first provide Seller with detailed written notice of the breach and of Buyer's intention to terminate the Contract, and (b) Seller shall have failed, within 30 days after receipt of the notice, to commence and diligently pursue cure of the breach.

11.2 If Buyer terminates the Contract pursuant to Section 11.1, (i) Seller shall reimburse Buyer the difference between that portion of the Contract Price allocable to the terminated scope and the actual amounts reasonably incurred by Buyer to complete that scope, and (ii) Buyer shall pay to Seller (a) the portion of the Contract Price allocable to Products and/or Services completed, (b) lease fees incurred, and (c) amounts for Services performed before the effective date of termination. The amount due for Services shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in the Contract, at Seller's then-current standard time and material rates.

11.3 Seller may suspend or terminate the Contract (or any affected portion thereof) immediately for cause if Buyer (i) becomes Insolvent/Bankrupt, or (ii) materially breaches the Contract, including, but not limited to, failure or delay in Buyer providing Payment Security, making any payment when due, or fulfilling any payment conditions.

11.4 If the Contract (or any portion thereof) is terminated for any reason other than Seller's default under Section 11.1, Buyer shall pay Seller for all Products completed, lease fees incurred and Services performed before the effective date of termination, plus expenses reasonably incurred by Seller in connection with the termination. The amount due for Services shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in the Contract, at Seller's then-current standard time and material rates. All work in progress shall be paid for at Seller's standard time and material rates. In addition, Buyer shall pay Seller a cancellation charge equal to eighty (80%) of the Contract Price applicable to uncompleted made-to-order Products and/or Services and fifteen (15%) of the Contract Price applicable to all other uncompleted Products and/or Services.

11.5 Either Buyer or Seller may terminate the Contract (or the portion affected) upon twenty (20) days advance notice if there is an excusable event (as described in Article 10) lasting longer than one hundred and twenty (120) days or if it is not possible to avoid or mitigate such excusable event without unreasonable burden through an adjustment in schedule, price and other provisions of the Contract within such one hundred and twenty (120) days. In such case, Buyer shall pay to Seller amounts payable under Section 11.4, excluding the cancellation charge for uncompleted Products and/or Services.

11.6 Buyer shall pay all reasonable expenses incurred by Seller in connection with a suspension, including expenses for repossession, fee collection, demobilization/remobilization, and costs of storage during suspension. The schedule for Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of any suspension.

12. Compliance with Laws, Codes and Standards

12.1 Seller shall comply with laws applicable to the manufacture of Products and its performance of Services. Buyer shall comply with laws applicable to the application, operation, use and disposal of the Products and Services.

12.2 Seller's obligations are conditioned upon Buyer's compliance with all U.S., EU, UK, Switzerland (CH) and other applicable trade control laws and regulations (and any amendments thereof). Buyer shall not transship, re-export, divert or otherwise make or allow any disposition of Products or goods, Software, third-party software or other material or technical data, or the direct product thereof, supplied by Seller under this Agreement, to any country other than in and to the ultimate country of destination of Buyer's facility declared by Buyer and which is specified as the country of ultimate destination on Seller's invoice, except as may be permitted by such laws and regulations. Buyer's material violation of this Section 12.2, including the obligation not to re-export, is a material breach pursuant to Section 11.3.

12.3 Buyer hereby certifies that the equipment, materials, services, technical data, software or other information or assistance furnished by Seller under this Contract will not be used in the design, development, production, stockpiling, or use of chemical, biological, or nuclear weapons. Changes in applicable trade control laws and regulations shall be subject to Section 10.2.

12.4 Notwithstanding any other provision, Buyer shall timely obtain, effectuate and maintain in force any required permit, license, exemption, filing, registration and other authorization, including, but not limited to, building and environmental permits, import licenses, environmental impact assessments, and foreign exchange authorizations, required for the lawful performance of Services at the Site or fulfillment of Buyer's obligations, except that Seller shall obtain any license or registration necessary for Seller to generally conduct business and visas or work permits, if any, necessary for Seller's personnel. Buyer shall provide reasonable assistance to Seller in obtaining such visas and work permits.

13. Environmental, Health and Safety Matters

13.1 Buyer shall maintain safe working conditions at the Site, including, without limitation, implementing appropriate procedures regarding Hazardous Materials, confined space entry, and energization and de-energization of power systems (electrical, mechanical, and hydraulic) using safe and effective lock-out/tag-out ("LOTO") procedures including piping and instrumentation diagram/drawing (PI&D), single line diagram for indicated systems and physical LOTO or a mutually agreed upon alternative method.

13.2 Prior to Seller starting any work at Site, Buyer shall timely identify to Seller in writing all applicable Site-specific health, safety, security,

LOTO and environmental requirements and procedures. Without limiting Buyer's responsibilities under Article 13, Seller has the right but not the obligation to, from time to time, review and inspect applicable health, safety, security, LOTO and environmental documentation, procedures, and conditions at the Site and make recommendations to Buyer concerning the same.

13.3 If, in Seller's reasonable opinion, the health, safety, or security of personnel or the Site is, or is apt to be, imperiled by security risks, terrorist acts or threats, the presence of or threat of exposure to Hazardous Materials, or unsafe working conditions, Seller may, in addition to other rights or remedies available to it, evacuate some or all of its personnel from Site, suspend performance of all or any part of the Contract, and/or remotely perform or supervise work. Any such occurrence shall be considered an excusable event subject to Article 10. Buyer shall reasonably assist in any such evacuation.

13.4 Operation of Buyer's equipment, the Products (after transfer of title therein from Seller to Buyer), turbines, cranes, scaffolding, machines, stands, special tools, and any other items or plant ("Buyer's Equipment") Buyer makes available to Seller for execution of the Services is the responsibility of Buyer. If Buyer requires or permits Seller's personnel to operate Buyer's Equipment at the Site, (i) Buyer will indemnify and save Seller, its employees and agents, harmless from all claims, damages, losses, causes of action, demands, judgments, expenses and liabilities (including reasonable attorneys' fees) incurred by or imposed upon Seller, its employees and agents, based upon injury to persons (including death) or damage to property resulting from Seller personnel's operation of Buyer's Equipment at the Site and (ii) Seller shall have the right, but not the obligation, to review the applicable operation manuals and maintenance records of Buyer's Equipment that Seller is permitted to use. Seller review, however, shall not release Buyer from its obligation to maintain the Buyer's Equipment in accordance with manufacturers' instructions and recommendations.

13.5 Buyer will make its Site medical facilities and resources available to Seller personnel who need medical attention.

13.6 Seller has no responsibility or liability for the pre-existing condition of Buyer's equipment or the Site. Prior to Seller starting any work at Site, Buyer will provide documentation that identifies the presence and condition of any Hazardous Materials existing in or about Buyer's equipment or the Site that Seller may encounter while performing under this Contract. Buyer shall disclose to Seller industrial hygiene and environmental monitoring data regarding conditions that may affect Seller's work or personnel at the Site. Buyer shall keep Seller informed of changes in any such conditions.

13.7 Seller shall notify Buyer if Seller becomes aware of: (i) conditions at the Site differing materially from those disclosed by Buyer, or (ii) previously unknown physical conditions at Site differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. If any such conditions cause an increase in Seller's cost of, or the time required for, performance of any part of the work under the Contract, an equitable adjustment in price and schedule shall be made.

13.8 If Seller encounters Hazardous Materials in Buyer's equipment or at the Site that require special handling or disposal, Seller is not obligated to continue work affected by the hazardous conditions. In such an event, Buyer shall eliminate the hazardous conditions in accordance with applicable laws and regulations so that Seller's work under the Contract may safely proceed, and Seller shall be entitled to an equitable adjustment of the price and schedule to compensate for any increase in Seller's cost of, or time required for, performance of any part of the work. Buyer shall properly store, transport, and dispose of all Hazardous Materials introduced, produced, or generated in the course of Seller's work at the Site.

13.9 BUYER SHALL INDEMNIFY SELLER FOR ANY AND ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES ARISING OUT OF OR RELATING TO ANY HAZARDOUS MATERIALS WHICH ARE OR WERE (I) PRESENT IN OR ABOUT BUYER'S EQUIPMENT OR THE SITE PRIOR TO THE COMMENCEMENT OF SELLER'S WORK, (II) IMPROPERLY HANDLED OR DISPOSED OF BY BUYER OR BUYER'S EMPLOYEES, AGENTS, CONTRACTORS OR SUBCONTRACTORS, OR (III) BROUGHT, GENERATED, PRODUCED OR RELEASED ON SITE BY PARTIES OTHER THAN SELLER.

14. Changes

14.1 Each party may propose changes in the schedule or scope of Products and/or Services. Parties shall mutually agree on potential changes into the schedule or scope of a planned outage start date at least one hundred eighty (180) days before such start date to enable Seller's ability to fulfill the request. Seller is not obligated to proceed with any change until both parties agree upon such change in writing. The written change documentation will describe the changes in scope and schedule, and the resulting changes in price and other provisions, as agreed.

14.2 The scope, Contract Price, schedule, and other provisions will be equitably adjusted to reflect additional costs or obligations incurred by Seller resulting from a change, after Seller's proposal date, in (i) Buyer's Site-specific requirements or procedures, or (ii) industry specifications, codes, standards, or (iii) applicable laws, regulations, rules, executive branch and/or Presidential Orders or similar governmental orders with mandatory effect, Presidential Proclamations, or U.S. National Security Directives, or similar legal requirements, in any jurisdiction in effect or implemented after such Seller's proposal date. Unless otherwise agreed by the parties, pricing for additional work arising from such changes shall be at Seller's time and material rates.

14.3 It shall be acceptable and not considered a change if Seller delivers a Product that bears a different, superseding, or new part or version number compared to the part or version number listed in the Contract.

15. Limitations of Liability

15.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL LIABILITY OF SELLER FOR ALL CLAIMS ARISING FROM OR RELATED TO THE FORMATION, PERFORMANCE OR BREACH OF THIS CONTRACT, OR PROVISION OF ANY PRODUCTS AND/OR SERVICES, SHALL NOT EXCEED THE (I) CONTRACT PRICE, OR (II) IF BUYER PLACES MULTIPLE ORDER(S) UNDER THE CONTRACT, THE PRICE OF EACH PARTICULAR ORDER FOR ALL CLAIMS ARISING FROM OR RELATED TO THAT ORDER AND TEN THOUSAND USD (US \$10,000) FOR ALL CLAIMS NOT PART OF ANY PARTICULAR ORDER.

15.2 SELLER SHALL NOT BE LIABLE FOR LOSS OF PROFIT OR REVENUES, LOSS OF USE OF EQUIPMENT OR SYSTEMS, INTERRUPTION OF BUSINESS, COST OF REPLACEMENT POWER, COST OF CAPITAL, DOWNTIME COSTS, INCREASED OPERATING COSTS, ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES, OR CLAIMS OF BUYER'S CUSTOMERS FOR ANY OF THE FOREGOING TYPES OF DAMAGES, OR FOR ANY COST, LOSS OR LIABILITY BUYER MAY SUFFER UNDER ANY AGREEMENT BY WHICH IT SELLS OR TRANSMITS ELECTRICITY TO ITS CUSTOMER(S) OR THIRD PARTIES.

15.3 ALL SELLER LIABILITY SHALL END UPON EXPIRATION OF THE APPLICABLE WARRANTY PERIOD, PROVIDED THAT BUYER MAY CONTINUE TO ENFORCE A CLAIM FOR WHICH IT HAS GIVEN NOTICE PRIOR TO THAT DATE BY COMMENCING AN ACTION OR ARBITRATION, AS APPLICABLE UNDER THIS CONTRACT, BEFORE EXPIRATION OF ANY STATUTE OF LIMITATIONS OR OTHER LEGAL TIME LIMITATION BUT IN NO EVENT LATER THAN ONE YEAR AFTER EXPIRATION OF SUCH WARRANTY PERIOD.

15.4 SELLER SHALL NOT BE LIABLE FOR ADVICE OR ASSISTANCE THAT IS NOT REQUIRED FOR THE WORK SCOPE UNDER THIS CONTRACT.

15.5 EXCEPT TO THE EXTENT SELLER'S OBLIGATIONS TO REPAIR OR REPLACE DEFECTIVE PRODUCTS UNDER ARTICLE 5, BUYER HEREBY WAIVES ALL RIGHTS OF RECOVERY AGAINST SELLER FOR PHYSICAL LOSS OR DAMAGE TO THE PROPERTY OF BUYER.

15.6 BUYER WILL NOT SUPPLY PRODUCTS AND/OR SERVICES TO ANY THIRD PARTY, OR USE PRODUCTS AND/OR SERVICES OTHER THAN AT THE SITE OWNED BY BUYER. IF BUYER SUPPLIES SELLER'S PRODUCTS OR SERVICES TO A THIRD PARTY, OR IF THE BUYER IS NOT, OR CEASES TO BE, THE SOLE OWNER OF BUYER'S EQUIPMENT, THE FACILITY, AND/OR THE SITE, BUYER SHALL (I) INDEMNIFY AND DEFEND SELLER FROM AND AGAINST ANY AND ALL ACTUAL AND THREATENED CLAIMS BY, AND LIABILITY TO: (A), ANY SUCH THIRD PARTY AND ITS INSURERS TO WHOM PRODUCTS AND/OR SERVICES ARE SUPPLIED, AND (B) ANY SUCH OTHER OR ADDITIONAL OWNER(S) AND ITS OR THEIR INSURERS ARISING OUT OF LOSS OR DAMAGE TO BUYER'S EQUIPMENT, FACILITY, SITE IN CONNECTION WITH SELLER'S PROVISION OF PRODUCTS AND/OR SERVICES, AND THE USE OR OPERATION OF BUYER'S EQUIPMENT; AND (II) REQUIRE THAT THE THIRD PARTY AND ALL ADDITIONAL OR DIFFERENT OWNER(S) AGREE, FOR THE BENEFIT OF AND ENFORCEABLE BY SELLER, TO BE BOUND BY THE PROVISIONS OF ARTICLE 7 AND ALL THE LIMITATIONS AND WAIVERS INCLUDED IN THIS ARTICLE 15.

15.7 FOR PURPOSES OF THIS ARTICLE 15, THE TERM "SELLER" MEANS SELLER, ITS AFFILIATES, SUBCONTRACTORS AND SUPPLIERS OF ANY TIER, AND THEIR RESPECTIVE EMPLOYEES. THE LIMITATIONS, WAIVERS, AND INDEMNITIES IN THIS ARTICLE 15 SHALL APPLY REGARDLESS OF WHETHER A CLAIM IS BASED IN CONTRACT, NEGLIGENCE, STATUTE, INDEMNITY, TORTIOUS/EXTRA-CONTRACTUAL LIABILITY THEORY, STRICT LIABILITY OR OTHERWISE.

16. Governing Law and Dispute Resolution

16.1 This Contract shall be governed by and construed in accordance with the laws of (i) the State of New York if Buyer's place of business is in the U.S. or (ii) England and Wales, if the Buyer's place of business is outside the U.S., in either case without giving effect to any choice of law rules that would cause the application of laws of any other jurisdiction (the "Governing Law"). If the Contract includes the sale of Products and Buyer is outside Seller's country, the United Nations Convention on Contracts for the International Sale of Goods drawn up in Vienna on 11 April 1980 (Vienna Convention on the Sale of Goods) should be excluded.

16.2 All disputes and, to the maximum extent permitted by applicable law, all non-contractual obligations arising in any way whatsoever out of or in connection with this Contract arising in connection with this Contract, including any question regarding its existence or validity, shall be resolved in accordance with this Article 16. If a dispute is not resolved by negotiations, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management, to be held within twenty (20) business days after the giving of notice. If the dispute is not resolved within thirty (30) business days after the giving of notice, or such later date as may be mutually agreed, either party may commence arbitration or court proceedings, depending upon the location of the Buyer, in accordance with one of the following:

- (a) if the Buyer's pertinent place of business is in the U.S., legal action shall be commenced in federal court with jurisdiction applicable to, or state court located in, either New York, New York (and Buyer hereby consents to be subject to such New York federal and state

jurisdiction); or

- (b) if the Buyer's pertinent place of business is outside the U.S., the dispute shall be submitted to and finally resolved under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules (the "Rules"). The seat of arbitration shall be in London, England. The arbitration shall be conducted in English. The decision of the arbitrators shall be final and binding upon the parties.

16.3 Notwithstanding the foregoing, each party shall have the right at any time, at its option and where legally available, to commence an action or proceeding in a court of competent jurisdiction, subject to the terms of this Contract, to seek a restraining order, injunction, or similar order (but not monetary damages), or to seek interim or conservatory measures.

17. Inspection and Factory Tests

Seller will apply its normal quality control procedures in manufacturing Products. Seller shall attempt to accommodate requests by Buyer to witness Seller's factory tests of Products, subject to appropriate access restrictions, if such witnessing can be arranged without delaying the work.

18. Software, Leased Equipment, Monitoring & Diagnostics and Remote Tuning

If Seller provides any software to Buyer, the Software License Addendum shall apply. If Seller leases any of Seller's equipment or provides related Services to Buyer, including placing Seller's equipment at Buyer's site to provide remote Services, the parties shall enter into a mutually agreeable separate Lease Agreement. If Seller provides remote monitoring and diagnostic or remote tuning services to Buyer, the Seller's standard Monitoring & Diagnostics and Remote Tuning Addendum shall apply. If there is any conflict between these Products and/or Services Terms and Conditions" and the terms of any addendum incorporated pursuant to this Article 18, the terms of the addendum shall take precedence with respect to the applicable scope.

19. General Clauses

19.1 Products and Services sold by Seller are not intended, in whole or in part, for application (and will not be used) in connection with or nearby any nuclear facility or activity, and Buyer warrants that it shall not use or permit others to use Products and/or Services for any such purposes, without the advance written consent of Seller. IF, IN BREACH OF THE FOREGOING, ANY SUCH USE OCCURS, SELLER, ITS AFFILIATES, SUPPLIERS, AND SUBCONTRACTORS, SHALL HAVE NO LIABILITY FOR ANY NUCLEAR OR OTHER DAMAGE, INJURY OR CONTAMINATION, AND BUYER SHALL INDEMNIFY SELLER, ITS AFFILIATES, SUPPLIERS, AND SUBCONTRACTORS OF EVERY TYPE AND TIER AGAINST ANY SUCH LIABILITY, WHETHER ARISING AS A RESULT OF BREACH OF CONTRACT, WARRANTY, INDEMNITY, TORT/EXTRACONTRACTUAL LIABILITY (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

19.2 Seller may assign or novate its rights and obligations under the Contract, in whole or in part, to any of its affiliates or may assign any of its accounts receivable under this Contract to any party without Buyer's consent. Buyer agrees to execute any documents that may be necessary to complete Seller's assignment or novation. Seller may subcontract portions of the work, so long as Seller remains responsible for it. The delegation or assignment by Buyer of any or all of its rights or obligations under the Contract without Seller's prior written consent (which consent shall not be unreasonably withheld) shall be void.

19.3 Buyer shall notify Seller immediately upon any change in ownership of more than fifty percent (50%) of Buyer's voting rights or of any controlling interest in Buyer. If Buyer fails to do so or Seller objects to the change, Seller may (a) terminate the Contract, (b) require Buyer to provide adequate assurance of performance (including payment),

and/or (c) put in place special controls regarding Seller's Confidential Information.

19.4 If any Contract provision is found to be void or unenforceable, the remainder of the Contract shall not be affected. The parties will endeavor to replace any such void or unenforceable provision with a new provision that achieves substantially the same practical and economic effect and is valid and enforceable.

19.5 The following Articles shall survive termination or cancellation of the Contract: 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 15, 16, 18, 19 and 20.

19.6 The Contract represents the entire agreement between the parties. No oral or written representation or warranty not contained in this Contract shall be binding on either party. Buyer's and Seller's rights, remedies and obligations arising from or related to Products and/or Services sold under this Contract are limited to the rights, remedies and obligations stated in this Contract. No modification, amendment, rescission, or waiver shall be binding on either party unless agreed in writing.

19.7 Except as provided in Article 15 (Limitations of Liability) and 19.1 (no nuclear use), this Contract is only for the benefit of the parties and not for any third parties.

19.8 The article and section headings in the Contract are inserted for convenience only and shall not be used for interpretive purposes. References to "Article" or "Section" are references to Articles and Sections of these Terms and Conditions. The words "include" and "including" are not words of limitation and shall be deemed to be followed by the words "without limitation." Provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing.

19.9 This Contract may be signed in multiple counterparts that together shall constitute one agreement.

20. U.S. Government Contracts

20.1 This Article 20 applies only if the Contract is for the direct or indirect sale to any agency of the U.S. government and/or is funded in whole or in part by any agency of the U.S. government.

20.2 Buyer agrees that all Products and/or Services provided by Seller meet the definition of "commercial-off-the-shelf" ("COTS") or "commercial item" as those terms are defined in Federal Acquisition Regulation ("FAR") 2.101. To the extent the Buy American Act, Trade Agreements Act, or other domestic preference requirements are applicable to this Contract, the country of origin of Products is unknown unless otherwise specifically stated by Seller in this Contract. Buyer agrees any Services offered by Seller are exempt from the Service Contract Labor Standards (FAR 52.222-41). Buyer represents and agrees that this Contract is not funded in whole or in part by the U.S. Inflation Reduction Act funds unless otherwise specifically stated in the Contract. The version of any applicable FAR clause listed in this Article 20 shall be the one in effect on the effective date of this Contract.

20.3 If Buyer is an agency of the U.S. Government, then as permitted by FAR 12.302, Buyer agrees that all paragraphs of FAR 52.212-4 (except those listed in 12.302(b)) are replaced with these Terms and Conditions. Buyer further agrees the subparagraphs of FAR 52.212-5 apply only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the Contract Price.

20.4 If Buyer is procuring the Products and/or Services as a contractor, or subcontractor at any tier, on behalf of any agency of the U.S. Government, then Buyer agrees that FAR 52.212-5(e) or 52.244-6 (whichever is applicable) applies only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the Contract Price.

Catalog Name	Catalog Description	Part Number	Part Name	Suggested Qty	Unit Price	Line Price	Total Qty Available	Lead Time(Weeks)	Consumables Total: \$ 464,993.12
THERMOCOUPLE ARR,TURB WHL-1STG									
ADAPTER	TCPL ARR, STG-1, ADPTR, WSPC TUBE	114A8431P003	ADAPTER	2	\$ 685.41	\$ 1,370.82	0	19	
TUBE	TCPL ARR, STG-1, TUBE, WLSPC	158A5833P001	GUIDE,TUBE,1ST STG WHEEL	2	\$ 1,604.98	\$ 3,209.96	0	17	
TCPL	TCPL, ARR, STG-1, (DEV TT-WS1FO-2)	226A2509P001	THERMOCOUPLE	2	\$ 729.89	\$ 1,459.78	0	36	
CLAMP	CLAMP,TUBE	114A8430P002	CLIP,TUBE	2	\$ 889.19	\$ 1,778.38	0	12	
PLATE-LOCK	PLATE,LOCKING,NUT&BOLT	294A0150P004	PLATE,LOCKING,NUT&BOLT	6	\$ 17.34	\$ 104.04	0	13	
BOLT	BOLT,HEX HEAD	N14P29028	BOLT,HEX HEAD	4	\$ 1.32	\$ 5.28	0	26	
FUEL NOZZLE ASSY,OIL									
NOZZLE	FUEL NOZZLE, OIL	721C0531G003	FUEL NOZZLE,OIL,ASM	0					
CHAMBER ARR,COMBUSTION									
SLEEVE	CHAMBER ARR, FLOW SLEEVE	158A6506P002	SLEEVE COMBUSTION	0					
SLEEVE	CHAMBER ARR, FLOW SLEEVE	158A6506P003	SLEEVE - COMB CSG	0					
SLEEVE	CHAMBER ARR, FLOW SLEEVE	158A6506P001	SLEEVE COMB	0					
TUBE	CHAMBER ARR, CROSSFIRE TUBE	306A4456G001	XFIRE TUBE	10	\$ 582.72	\$ 5,827.20	10	13	
RETAINER	CHAMBER ARR, CROSSFIRE TUBE,RETNR	91980310P001	XFIRE RET	20	\$ 332.49	\$ 6,649.80	20	36	
GASKET	CHAMBER ARR, SPARK PLUG, GASKET	324A9109P107	GASKET (NON-ASBESTOS)	3	\$ 18.82	\$ 56.46	3	12	
STOP	CHAMBER ARR, FLOW SLEEVE, STOP/SHIM	158A6504P001	STOP	10	\$ 146.53	\$ 1,465.30	10	12	
GASKET	CHAMBER ARR, CASING, COVER, GASKET	318A9713P008	GASKET	10	\$ 38.94	\$ 389.40	10	23	
GASKET	CHAMBER ARR, CASING, AFT, GASKET	318A9713P016	GASKET	10	\$ 52.08	\$ 520.80	10	23	
GASKET	CHMBR ARR, COMB, SPIRAL-WOUND, CG 150 3.00	N5606P03001G11	GASKET, SPIRAL WOUND	10	\$ 8.76	\$ 87.60	10	26	
INSERT	CHAMBER ARR, WRPR,MTNG HNG,INSERT	N926P235	STAINLESS WIRE LOCK	12	\$ 5.17	\$ 62.04	12	11	
SCREW	CHMBR ARR, COMB, SCREW, 0.625-11UNC X 2.00 LONG	N14P33032	SCREW, CAP HEX HD	80	\$ 1.38	\$ 110.40	80	13	
SCREW	CHMBR ARR, COMB, CAP HX HD, 0.625-11UNC X 2.75 LON	N14P33044	CAP SCREW & FIN BOLT	70	\$ 1.86	\$ 130.20	70	13	
SCREW	CHMBR ARR, COMB, HEX HEAD,0.625-11UNC X 3.00 LONG	N14P33048	CAP SCREW & FIN BOLT	20	\$ 1.53	\$ 30.60	20	15	
SCREW	CHMBR ARR,COMB,BOLT,HEX HD,0.75-10 UNC X 1.75 LONG	N14P35028	SCREW, CAP HEX HD	28	\$ 1.67	\$ 46.76	28	13	
SCREW	CHMBR ARR, COMB, SCRW, 0.75-10 UNC X 3.00 LONG	N14P35048	SCREW, CAP HEX HD	10	\$ 2.67	\$ 26.70	10	13	
NUT	CHMBR ARR, COMB, NUT, 0.625-11	N258P33	HEX NUT	20	\$ 1.15	\$ 23.00	20	13	
NUT-LOCK	CHAMBER ARR,COMB,STL LOCKNUT 0.625-11	N265BP33	STL LOCKNUT	70	\$ 1.32	\$ 92.40	70	13	
LOCKNUT	CHAMBER ARR,COMB,0.750-10	N265BP35	STL LOCKNUT	10	\$ 1.33	\$ 13.30	10	13	
SEAL	CHAMBER ARR, SPARK PLUG,SEAL	158A5831P001	SEALER-SPARKPLUG	2	\$ 308.43	\$ 616.86	2	21	
PLATE-LOCK	CHAMBER ARR, FUEL NOZZ,BOLT LCK-PLT	294A0150P006	LOCKING PLATE, NUT & BOLT	40	\$ 4.22	\$ 168.80	40	27	
SIGHT	CHAMBER ARR, COVER,SIGHTPORT	287A1631G002	SITE PORT	5	\$ 1,355.00	\$ 6,775.00	5	23	
STOP	CHBR AR, LINER ANTI-WTHDRWAL STOP	184A7575P001	STOP	30	\$ 100.85	\$ 3,025.50	30	17	
TRANSITION PC ASSY,COMBUSTION									
PIECE-TRANSITION	TRANS PC ASM, COMB, ASSEMBLY	943E0237G003	5001 U/R TRANS PIECE	0					
SEAL	TRANS PC ASM, COMB, SEAL-OUTER	193B7870P001	SEAL TABTP	10	\$ 1,872.87	\$ 18,728.70	10	30	
SEAL	TRANS PC ASM, COMB, SEAL-OUTER	193B7905P001	SEAL TABTP	10	\$ 1,495.30	\$ 14,953.00	10	20	
SEAL	TRANS PC ASM, COMB, SEAL-OUTER	142B8439P002	SEAL TOPTP	10	\$ 308.74	\$ 3,087.40	10	13	
SEAL	TRANS PC ASM, COMB, SEAL-OUTER	203B4353P001	SEAL RETTP	10	\$ 192.81	\$ 1,928.10	10	13	
SEAL	TRANS PC ASM, COMB, SEAL-INNER	192B2722P002	BOTTOM SEAL, TRANS PIECE	10	\$ 1,942.55	\$ 19,425.50	10	23	
SEAL	TRANS PC ASM, COMB, SEAL-END	203B4352P001	SEAL ENDTP	20	\$ 848.84	\$ 16,976.80	20	14	
CAP&LINER ASSY,COMBUSTION									
LINER	CAP & LINER ASM	224B9793G018	CAP&LINER, COMBUSTION	0					
LINER	CAP & LINER - SPK PLG & CAMERA	224B9793G017	CAP&LINER, COMBUSTION	0					
LINER	CAP & LINER ASM, DUAL FLM DET	224B9793G019	CAP&LINER, COMBUSTION	0					
CASE&SHROUD ASSY,TURBINE									
PIN	CSE&SHRD, 1ST/2ND STG SHRD SEAL PIN	185A2606P002	PIN,SEAL	36	\$ 18.91	\$ 680.76	0	15	
PIN	CSE&SHRD,2ND STG SHRD SEAL PIN	185A2606P001	PIN,SEAL	30	\$ 56.73	\$ 1,701.90	0	16	
PIN	CSE&SHRD, 1ST STG SHRD PIN	158A5457P006	PIN,STRAIGHT,HEADLESS	36	\$ 4.34	\$ 156.24	36	38	
PIN	CSE&SHRD, 2ND STG SHRD PIN	158A5457P001	PIN,STRAIGHT,HEADLESS	30	\$ 3.43	\$ 102.90	30	38	
PLUG	CSE&SHRD, 2ND STG PIN PLUG	286A6290P002	PLUG,SQ HD	4	\$ 3.84	\$ 15.36	4	14	
PLUG	CSE&SHRD, 1ST/2ND STG BORSSCOPE PLUG	286A6290P007	PLUG,SQ,HD.	4	\$ 20.99	\$ 83.96	4	36	
PIN	CSE&SHRD, HOR JNT SUPPORT PIN	184A8071P001	PIN,SUPPORT	2	\$ 283.71	\$ 567.42	2	13	
PIN	CSE&SHRD, HOR JNT SUPPORT PIN, PIN	158A5457P027	PIN,STRAIGHT,HEADLESS	2	\$ 25.08	\$ 50.16	2	30	
NUT	CSE&SHRD, HOR JNT NUT-COVERED	114A8032P003	NUT,COVERED	14	\$ 74.73	\$ 1,046.22	14	25	
BOLT	CSE&SHRD, HOR JNT BOLT	286A6289P002	CAP,SCR. 25	2	\$ 8.99	\$ 17.98	0	11	
BOLT	CSE&SHRD, HOR JNT BOLT	N14P50128	BOLT,HEX HEAD	6	\$ 53.85	\$ 323.10	0	9	
STUD	CSE&SHRD, HOR JNT STUD	184A7843P001	STUD	2	\$ 165.76	\$ 331.52	2	29	
STUD-BB	CSE&SHRD, HOR JNT STUD-BODY BOUND	158A4647P002	STUD,BODY BOUND	3	\$ 49.76	\$ 149.28	3	29	
NUT	CSE&SHRD, HOR JNT HEX NUT	N204P50	NUT,HEXAGON	10	\$ 24.07	\$ 240.70	10	13	

INSERT	CSE&SHRD, HELICOIL INSERT	N926BP329	INSERT, HELI-COIL SCREW-LO	3	\$ 2.31	\$ 6.93	3	11
INSERT	CSE&SHRD, HELICOIL INSERT	N926BP00335	INSERT, HELI-COIL SCREW-LO	3	\$ 3.26	\$ 9.78	0	28
SEAL	CSE&SHRD, SEAL STRIP	184A7886P003	SEAL, HALF	2	\$ 4,452.79	\$ 8,905.58	2	21
SHROUD SET STG1	CSE&SHRD, 1ST STG SHROUD SET	329A3441G002	SHROUD, 1ST STA, SEGMENTS	0				
SHROUD SET STG2	CSE&SHRD, 2ND STG SHROUD SET	329A3485G006	SHROUD, 2ND SEGMENT	0				
TRANSITION PC ARR, COMBUSTION								
BULL HORN	TRNS PC ARR, FWD MNT SPPRT, BULL HORN	225A8425P001	SUPPORT COMB CHAMBER	20	\$ 715.67	\$ 14,313.40	20	30
PLATE-LOCK	TRNS PC ARR, FWD MNT SPPRT LOCK PLT	294A0150P006	LOCKING PLATE, NUT & BOLT	20	\$ 4.22	\$ 84.40	20	27
BOLT	TRNS PC ARR, AFT MNT SHOULDER BOLT, BODY BOUND	225A8257P002	TP BOLT	10	\$ 36.37	\$ 363.70	10	13
PLATE-LOCK	TRNS PC ARR, AFT MNT LOCK PLATE	193B7869P003	TP LK PLATE	10	\$ 136.45	\$ 1,364.50	10	13
SEAL	TRNS PC ARR, AFT MNT	158A3820P002	TP PACKING	1	\$ 597.22	\$ 597.22	1	17
SEAL	TRNS PC ARR, SEAL, END SEAL	256A1893P001	TP END SEAL	10	\$ 372.29	\$ 3,722.90	10	23
BOLT	TRNS PC ARR, SIDE SEAL BOLT	225A8256P001	TP BOLT/WASHER	10	\$ 59.64	\$ 596.40	10	30
NUT	TR PC KIT- HDWR, NUT, HEXAGON	N204P35	NUT, HEX	20	\$ 0.95	\$ 19.00	20	30
PIPING ARR, LUBO FEED&DR-BASE								
PLATE-LOCK	PP LO FD&DRN, LOCK PLATE	294A0150P005	PLATE, LOCKING, NUT&BOLT	10	\$ 3.80	\$ 38.00	10	13
PLATE-LOCK	PP LO FD&DRN, LOCK PLATE	294A0150P006	PLATE, LOCKING, NUT&BOLT	16	\$ 4.22	\$ 67.52	16	27
GASKET	PP LO FD&DRN, GASKET, PIPE FLANGE	302A4597P012	GASKET, PIPE FLANGE	2	\$ 6.44	\$ 12.88	2	10
GASKET	PP LO FD&DRN, GASKET, PIPE FLANGE	302A4597P013	GASKET, PIPE FLANGE	1	\$ 12.30	\$ 12.30	1	10
GASKET	PP LO FD&DRN, GASKET, PIPE FLANGE	302A4597P073	GASKET, PIPE FLANGE	1	\$ 5.66	\$ 5.66	0	12
GASKET	PP LO FD&DRN, GASKET, PIPE FLANGE	302A4597P109	GASKET, PIPE FLANGE	1	\$ 9.53	\$ 9.53	1	10
GASKET	PP LO FD&DRN, GASKET, PIPE FLANGE, FULL 125 6.00	324A9109P111	GASKET, PIPE FLANGE	1	\$ 40.22	\$ 40.22	1	10
SIGHT	PP LO F&D-BSE, PORT, SIGHT	286A6245P005	SIGHT PORT	4	\$ 341.67	\$ 1,366.68	0	16
SCREW	PP LO FD&DRN, HEX HEAD, 0.625-11UNC X 1.75 LONG	N14P33028	BOLT, HEX HEAD	4	\$ 1.15	\$ 4.60	4	13
SCREW	PP LO FD&DRN, HEX HEAD, 0.75-10 UNC X 2.00 LONG	N14P35032	BOLT, HEX HEAD	4	\$ 2.06	\$ 8.24	4	38
SCREW	PP LO FD&DRN, HEX HEAD, 0.75-10 UNC X 2.50" LONG	N14P35040	BOLT, HEX HEAD	4	\$ 1.95	\$ 7.80	4	13
SCREW	PP LO FD&DRN, HEX HEAD, 0.75-10 UNC X 3.25 LONG	N14P35052	BOLT, HEX HEAD	4	\$ 2.70	\$ 10.80	4	26
SCREW	PP LO FD&DRN, HEX HEAD, 0.75-10 UNC X 3.50 LONG	N14P35056	BOLT, HEX HEAD	4	\$ 2.94	\$ 11.76	4	26
SCREW	PP LO FD&DRN, HEX HEAD, 0.75-10 UNC X 3.75 LONG	N14P35060	BOLT, HEX HEAD	4	\$ 4.99	\$ 19.96	4	38
NUT	PP LO FD&DRN, NUT SELF-LOCKING	N265BP25	NUT, SELF-LOCKING	1	\$ 1.54	\$ 1.54	1	13
NUT	PP LO FD&DRN, NUT SELF-LOCKING	N258P29B	NUT, HEXAGON	1	\$ 49.56	\$ 49.56	0	9
NUT	PP LO FD&DRN, NUT SEOLF-LOCKING, 0.750-10	N265BP35	NUT, SELF-LOCKING	12	\$ 1.33	\$ 15.96	12	13
PIPING ARR, COOLING&SEALING AIR								
GASKET	PP C&SA, GASKET	302A4597P005	GASKET, PIPE FLANGE	5	\$ 1.67	\$ 8.35	5	10
GASKET	PP C&SA, GASKET	302A4597P006	GASKET, PIPE FLANGE	1	\$ 2.96	\$ 2.96	1	10
GASKET	PP C&SA, GASKET	302A4597P007	GASKET, PIPE FLANGE	5	\$ 6.94	\$ 34.70	5	10
GASKET	PP C&SA, GASKET, 150 4.00	302A4597P010	GASKET, PIPE FLANGE	18	\$ 3.92	\$ 70.56	18	10
GASKET	PP C&SA, GASKET	302A4597P011	GASKET, PIPE FLANGE	2	\$ 6.44	\$ 12.88	2	10
GASKET	PP ARR C&SA, GASKET, PIPE FLANGE	302A4597P109	GASKET, PIPE FLANGE	2	\$ 9.53	\$ 19.06	2	10
GASKET	PP ARR C&SA, GASKET, PIPE FLANGE	302A4597P003	GASKET, PIPE FLANGE	6	\$ 3.92	\$ 23.52	6	10
BOLT	PP ARR C&S A, BOLT, HEX HEAD	N14P29012	BOLT, HEX HEAD	5	\$ 2.40	\$ 12.00	5	26
BOLT	PP ARR C&SA, BOLT, HEX HEAD	N14P29036	BOLT, HEX HEAD	8	\$ 1.15	\$ 9.20	8	14
BOLT	PP ARR C&SA, BOLT, HEX HEAD	N14P29040	BOLT, HEX HEAD	6	\$ 1.43	\$ 8.58	6	26
BOLT	PP ARR C&SA, BOLT, 0.625-11UNC X 2.50 LONG	N14P33040	BOLT, HEX HEAD	2	\$ 1.36	\$ 2.72	2	13
SCREW	PP ARR C&SA, SCREW, HEX HD, 0.625-11UNC X 2.75 LONG	N14P33044	BOLT, HEX HEAD	70	\$ 1.86	\$ 130.20	70	13
SCREW	PP ARR C&SA, SCREW, 0.625-11UNC X 3.00 LONG	N14P33048	BOLT, HEX HEAD	64	\$ 1.53	\$ 97.92	64	15
SCREW	PP ARR C&SA, SCREW, 0.625-11UNC X 3.250 LONG	N14P33052	BOLT, HEX HEAD	4	\$ 2.37	\$ 9.48	4	13
SCREW	PP ARR C&SA, SCREW, HEX HD, 0.625-11UNC X 3.50 LONG	N14P33056	BOLT, HEX HEAD	8	\$ 2.00	\$ 16.00	8	13
SCREW	PP ARR C&SA, SCREW, 0.75-10 UNC X 2.50" LONG	N14P35040	BOLT, HEX HEAD	8	\$ 1.95	\$ 15.60	8	13
SCREW	PP ARR C&SA, SCREW, 0.250-20 UNC X 0.500 LONG	N22P21008	BOLT, HEX HEAD	15	\$ 1.10	\$ 16.50	15	13
SCREW	PP ARR C&SA, SCREW, CAP-SOCKET HEAD	N170P33032	SCREW, CAP-SOCKET HEAD	12	\$ 5.30	\$ 63.60	12	13
GASKET	PP ARR C&SA, GSKT, TRB SHL CLNG, CSG	318A9700P001	GASKET	6	\$ 88.28	\$ 529.68	6	26
NUT	PP ARR, CLNG&SLNG AIR, NUT	N258P25	NUT, HEXAGON	4	\$ 1.71	\$ 6.84	4	13
NUT	PP ARR, CLNG&SLNG AIR, NUT	N258P29	NUT, HEXAGON	14	\$ 1.15	\$ 16.10	14	15
NUT	PP ARR, CLNG&SLNG AIR, NUT	N258P33	NUT, HEXAGON	64	\$ 1.15	\$ 73.60	64	13
DETECTOR, FLAME								
DETECTOR	DTCTR, FLME (28FD), DETECTOR	362A1052P404	FLAME DETECTOR	2	\$ 11,236.97	\$ 22,473.94	2	8
BUSHING	DTCTR, FLME (28FD), ASSEMBLY, HIGH TEMP BUSHING	361A2558P014	HIGH TEMP GROMET	2	\$ 9.61	\$ 19.22	2	19
CABLE	DTCTR, FLME (28FD), PRIMARY CABLE	362A3342P002	CABLE, SIC FLAME DET2-WIRE	2	\$ 1,134.08	\$ 2,268.16	2	25
FITTING	DETECTOR FLAME FITTING, CABLE & CRD	361A2558P002	FITTING, CABLE AND CORD-T	2	\$ 24.53	\$ 49.06	2	16
TRANSFORMER, PWR STEP-UP, IGN								
TRNSFRMR	IGNITION SYS, TRANSFORMER(REF 95TR)	356A3680P001	TRANSFORMER, IGNITION	2	\$ 9,629.75	\$ 19,259.50	0	17
SPARK PLUG, SPRING POSITIONING								

SPARK PLUG-REF	SPRK PLG ASM	196D1985G004	SPARK PLUG-SPRING POSITIO	2	\$ 4,663.92	\$ 9,327.84	2	26
GASKET	SPRK PLG ASM, GASKET	184A8731P001	GASKET	4	\$ 24.63	\$ 98.52	4	28
PISTON	SPRK PLG ASM, PISTON	142B8494G003	PISTON	2	\$ 2,736.70	\$ 5,473.40	1	27
WASHER	SPRK PLG ASM, BEVLW WSHR, INNER	298A8216P001	WASHER,BEVELED	2	\$ 9.10	\$ 18.20	2	13
WASHER	SPRK PLG ASM, BEVLW WSHR, OUTER	298A8222P001	WASHER,BEVELED	2	\$ 11.30	\$ 22.60	2	17
NUT	SPRK PLG ASM, HEX NUT	N227P23	NUT,HEXAGON	4	\$ 1.54	\$ 6.16	4	13
WASHER	SPRK PLG ASM,SPRING LOCKWASHER	N406P42	WASHER,LOCK	8	\$ 1.20	\$ 9.60	8	6
ROTOR ASSY,COMPRESSOR&TURBINE								
PIN	TRBN RTR, 1ST STG, PIN-SHANK SEAL	114A6022P005	PIN	120	\$ 150.07	\$ 18,008.40	120	28
KEY	TRBN RTR, 1ST STG RETAINING KEY	233A0241P010	KEY,RETAINING	89	\$ 8.73	\$ 776.97	47	30
NUT	TRBN RTR, 1ST STG WHEEL NUT	798B0632P003	NUT,ROTOR	12	\$ 1,022.68	\$ 12,272.16	0	39
PIN	TRBN RTR, 2ND STG LOCKING PIN	233A0242P018	PIN,LOCKNG	1	\$ 682.75	\$ 682.75	0	15
PIN	TRBN RTR, 2ND STG LOCKING DOWEL PIN	114A8650P010	PIN,LOCKING	1	\$ 132.73	\$ 132.73	0	19
BUCKET KIT 1ST STG	TRBN RTR, 1ST STG BUCKET KIT	SMO1166213	BUCKET,STG 1	0				
BUCKET KIT 2ND STG	TRBN RTR, 2ND STG BUCKET KIT	REQUOTE_AS_ENGR_FLOW	BUCKET,2 STA	0				
NOZZLE ARR/ASSY,TURBINE - STG 1								
NOZZLE 1ST STG	NOZZLE 1ST STG, ASSEMBLY	149C3941G007	NOZZLE ARR,1ST STAGE	0			0	52
PIN	NOZZ 1ST-STG, RTNG PIN, ECCENTRIC	184A7869P002	PIN,ECCENTRIC	2	\$ 191.62	\$ 383.24	2	17
SEAL	NOZZ 1ST-STG, RTNG RING SEAL	114A8825P001	SEAL	10	\$ 307.65	\$ 3,076.50	10	13
PIN	NOZZ 1ST-STG, PIN, RTNG RING SEAL	114Y0761P001	PIN	20	\$ 26.90	\$ 538.00	0	9
DOWEL	NOZZ 1ST-STG, LOC DOWEL	184A7745P001	PIN,DOWEL	10	\$ 52.83	\$ 528.30	10	25
SEAL	NOZZ 1ST-STG, SEAL FOWARD OUTER	287A7819P005	SEAL,STRIP,TURB NOZ-STG 1	10	\$ 85.34	\$ 853.40	0	26
SEAL	NOZZ 1ST-STG, SEAL FOWARD INNER	287A7819P002	SEAL,STRIP,TURB NOZ-STG 1	10	\$ 100.82	\$ 1,008.20	0	36
BOLT	NOZZ 1ST-STG, ECCENT RET PIN - BOLT	N14P29036	BOLT,HEX HEAD	4	\$ 1.15	\$ 4.60	4	14
BOLT	NOZZ 1ST-STG, HOR HLD DWN CLMP BOLT	293A00913P014	BOLT,HEX HEAD	8	\$ 79.17	\$ 633.36	8	29
BOLT	NOZZ 1ST-STG, TRANS PC MTNG BOLT	225A8256P001	BOLT,SHOULDER	10	\$ 59.64	\$ 596.40	10	30
SEAL	NOZZ 1ST-STG, TRANS PC END SEAL	256A1893P001	SEAL END	10	\$ 372.29	\$ 3,722.90	10	23
SEAL	NOZZ 1ST-STG, SUPPORT RING SEAL	199C4397P001	SEAL,1ST STG NOZ	10	\$ 735.78	\$ 7,357.80	10	20
BOLT	NOZZ 1ST-STG, TRANS PC END SEAL BLT	225A8257P001	BOLT,SHOULDER	5	\$ 78.35	\$ 391.75	5	25
PLATE-LOCK	NZZLE, TB ST1, PLTE, LCKNG,NUT&BOLT	294A0151P006	PLATE,LOCKING,NUT&BOLT	4	\$ 4.18	\$ 16.72	4	13
NUT-LOCK	NZZLE, TB ST1, NUT, SELF-LOCKING	974A0953P009	NUT,SELF-LOCKING	2	\$ 21.85	\$ 43.70	2	29
NOZZLE ARR/ASSY,TURBINE - STG 2								
NOZZLE 2ND STG	NOZZLE 2ND STG, ASSEMBLY	112E1727G001	MOD,NOZ ARR-TURB STG 2	0			0	23
PIN	NOZZ 2ND STG, DIA RET PIN	184A8711P001	PIN,DOWEL	4	\$ 127.90	\$ 511.60	4	27
PIN	NOZZ 2ND STG, DIA, HOR JOINT PIN	158A8563P035	PIN,STRAIGHT,HEADLESS	2	\$ 51.43	\$ 102.86	2	32
SEAL	NOZZ 2ND STG, DIA SEAL TOOTH	184A8704P002	TOOTH INSERTED-STATIONARY	91	\$ 166.67	\$ 15,166.97	0	16
SCREW	NOZZ 2ND STG, SCRW, DIA,HOR JNT FWD	296A0786P227	SCREW,HEX SOC HD	1	\$ 50.84	\$ 50.84	0	20
INSERT	NOZZ 2ND STG, INSRT,DIA,HOR JNT FWD	N926AP244H2	INSERT,WIRE-LOCKING	1	\$ 30.87	\$ 30.87	1	15
SCREW	NOZZ 2ND STG, SCRW, DIA,HOR JNT AFT	296A0786P206	SCREW,HEX SOC HD	1	\$ 64.53	\$ 64.53	0	11
INSERT	NOZZ 2ND STG, INSRT,DIA,HOR JNT AFT	N926AP239H2	INSERT,WIRE-LOCKING	1	\$ 39.96	\$ 39.96	1	16
CONNECTOR	NOZZ 2ND STG, FLOW TUBE CONNECTOR	287A1399P021	CONNECTOR,THERMOCOUPLE	4	\$ 22.06	\$ 88.24	4	8
ADAPTER	NOZZ 2ND STG, TC ADPT IST STG AFT	255A4330P001	ADAPTER,TUBING	4	\$ 66.30	\$ 265.20	4	28
PIN	NOZZ 2ND STG, NOZ RET PIN	184A8107P001	PIN,RETAINING	4	\$ 643.66	\$ 2,574.64	0	27
TUBING	NOZZ 2ND STG, TC TUBING	279A1763G001	TUBING, THERMOCOUPLE	4	\$ 369.10	\$ 1,476.40	4	14
CLAMP	NOZZ 2ND STG, HOR CLAMP LWR	184A7793P001	CLAMP,HOLD DOWN	2	\$ 511.94	\$ 1,023.88	0	33
SCREW	NOZZ 2ND STG, HOR CLAMP SCRW LWR	296A0786P137	SCREW-SOC HD,HEX	2	\$ 321.53	\$ 643.06	0	27
SCREW	NOZZ 2ND STG, HOR CLAMP SCRW UPR	296A0786P194	SCREW,HEX SOC HD	4	\$ 95.97	\$ 383.88	4	15
PIN	NOZZ 2ND STG, ALGN PIN	184A7869P001	PIN,ECCENTRIC	2	\$ 538.60	\$ 1,077.20	0	35
BOLT	NOZZ 2ND STG, ALGN PIN LKBR BOLT	N14P29036	BOLT,HEX HEAD	4	\$ 1.15	\$ 4.60	4	14
PACKING	NOZZ 2ND STG, PACKING RING	918B0980G001	RING,PACK	1	\$ 27,101.59	\$ 27,101.59	0	19
TCPL	NOZZ 2ND STG, TCPL (TWS2FO)	315A9332P001	THERMOCOUPLE TYPE J	4	\$ 973.99	\$ 3,895.96	4	20
SCREW	NOZZ 2ND STG, PACKING RING SCREW	184A7119P004	SCREW,PACKING RING	16	\$ 116.98	\$ 1,871.68	0	12
KEY	NOZZ 2ND STG, PCK RNG RET KEY	158A5747P001	KEY,RETAINING	2	\$ 81.98	\$ 163.96	0	12
SCREW	NOZZ 2ND STG, PCK RNG RET KEY SCR	N46P29016	SCREW,MACHINE-FLAT HEAD	2	\$ 3.00	\$ 6.00	1	40
SEAL	NOZZ 2ND STG, NOZZ SPRNG SEAL SEG	142B8162G001	SEAL,2ND STAGE NOZZLE	2	\$ 2,120.86	\$ 4,241.72	0	17
SEAL	NOZZ 2ND STG, NOZZ SPRNG SEAL SEG	142B8162G002	SEAL,2ND STAGE NOZZLE	4	\$ 1,294.47	\$ 5,177.88	0	17
SHIM	NOZZ 2ND STG, PACKING RING SHIM	918B0998P001	SHIM,PACKING RING	1	\$ 1,956.49	\$ 1,956.49	0	13
SPRING	NOZZ 2ND STG, PACKING RING SPRING	974A0163P006	SPRING,PACKING RING	8	\$ 133.13	\$ 1,065.04	8	12
CLAMP	NOZZ 2ND STG, HOR CLAMP UPR	184A7791P001	CLAMP,HOLD DOWN	2	\$ 3,591.73	\$ 7,183.46	0	13
SCREW-SET	NOZZ STG-2, DIAPH AIR INJ SET-SCREW	184A8567P001	SETSCREW	2	\$ 59.30	\$ 118.60	0	17
TCPL	NOZZ 2ND STG, (DEV TT-WS1AO-1)	297A0582P084	THERMOCOUPLE	4	\$ 387.60	\$ 1,550.40	1	11
RING ASSY,SUPPORT - STG 1								
RING-ASM	SPPRTR RING, 1ST-STG ASSEMBLY	164C2947G001	RING ASM,SUPPORT-STG 1	0				

SHIM	SPRRT RNG, 1ST-STG, SHIM	184A8414P001	SHIM	2	\$ 1,850.30	\$ 3,700.60	2	26
BOLT	SPRRT RNG, 1ST-STG, RNG MNT BOLT	N14TP39064	BOLT,HEX HEAD	10	\$ 38.84	\$ 388.40	10	21
PLATE-LOCK	SPRRT RNG, 1ST-STG, SL CLMP LKPL	294A0151P005	PLATE,LOCKING,NUT&BOLT	10	\$ 10.10	\$ 101.00	10	17
BOLT	SPRRT RNG, 1ST-STG, SL BOLT	293A0902P008	BOLT,HEX HD	5	\$ 36.52	\$ 182.60	5	15
INSERT	SPRRT RNG, 1ST-STG, INSERT	N926CP339H2	INSERT,WIRE-LOCKING	7	\$ 32.17	\$ 225.19	7	17
SCREW	SPRRT RNG, 1ST-STG, SCRW-HOR JNT	296A0786P216	SCREW-HEX SOC HD	1	\$ 97.60	\$ 97.60	1	31
PIN	SPRRT RNG, 1ST-STG, PIN-HOR JNT OTR	158A5636P052	PIN,STRAIGHT,HEADLESS	2	\$ 29.36	\$ 58.72	2	29
TOOTH	SPRRT RNG, 1ST-STG, AFT SEAL TOOTH	225A9747P002	TOOTH,INSERTED-STATIONARY	36	\$ 124.81	\$ 4,493.16	12	12
TOOTH	SPRRT RNG, 1ST-STG, AFT SEAL TOOTH IN	184A8704P002	TOOTH INSERTED-STATIONARY	28	\$ 166.67	\$ 4,666.76	0	16
BOLTING&DOWELING ARR								
DOWEL	B&D AR, DWL, INLT/FWD,MID OR CMP CS	158A5457P048	PIN,STRAIGHT,HEADLESS	1	\$ 18.68	\$ 18.68	1	30
BOLT	B & D ARR, BLT, FWD/AFT CMP CASE	N14P35044	BOLT,HEX HEAD	2	\$ 2.56	\$ 5.12	2	13
SCREW	B & D ARR, SCW, TRB BASE/FNDTN	N14P50080	BOLT,HEX HEAD	3	\$ 85.48	\$ 256.44	3	13
SCREW	BLT & DWL ARR, SCREW, 1.00-8 UNC X 2.50 LONG	N14P39040	BOLT,HEX HEAD	10	\$ 5.31	\$ 53.10	10	26
BOLT	B&D ARR,BOLT,CPLNG GARD/MAG PKUP-SH	N14P33020	BOLT,HEX HEAD	1	\$ 1.30	\$ 1.30	1	13
WASHER	B&D ARR,WSHR,CPLNG GARD/MAG PKUP	N402P17	WASHER,PLAIN-NARROW	2	\$ 1.30	\$ 2.60	2	11
DOWEL	BLT&DWL, DOWEL, TRB SHELL/EXHST FRM	158A5457P063	PIN,STRAIGHT,HEADLESS	1	\$ 29.68	\$ 29.68	1	26
BOLT	B & D ARR, BLT,CPLNG GUARD/INL LONG	N14P33024	BOLT,HEX HEAD	2	\$ 1.23	\$ 2.46	2	13
PLENUM ASSY,EXHAUST								
GASKET	PLNM ASM EX, GSKT, EXP JNT SEG-FWD	211A8235G001	GASKET	1	\$ 468.82	\$ 468.82	0	18
EXPANSION-JT	PLNM ASM EX, EXP JNT FLX PL SEG-AFT	158A3534P003	SEGMENT,EXP JT	22	\$ 123.83	\$ 2,724.26	22	10
GASKET	PLNM ASM EX, GSKT, FLX PL SEG-AFT	184A7012P001	GASKET	1	\$ 595.39	\$ 595.39	1	16
EXPANSION-JT	PLN ASM EX, EXP JT, END SEG-FWD OTR	211A8210G001	EXPANSION JOINT SEG(EXH P	2	\$ 649.25	\$ 1,298.50	0	17
EXPANSION-JT	PLN ASM EX, EXP JT, END SEG-FWD OTR	211A8211P001	JOINT,EXPANSION	4	\$ 335.29	\$ 1,341.16	4	19
SCREW	PLNM ASM EX, SCREW, 0.50-13 UNC X 1.25 LONG	N14P29020	BOLT,HEX HEAD	28	\$ 1.42	\$ 39.76	28	13
Bearing 1								
	SEAL ASM,STATIONARY OIL-B	164C2807G003		1	\$ 1,481.66	\$ 1,481.66	0	25
	DEFLECTOR,#1 BRG,CAS&MAC	718C0398G005		1	\$ 26,139.83	\$ 26,139.83	0	25
	SEAL,OIL	156D2980G001		1	\$ 9,485.15	\$ 9,485.15	0	26
	PLATE,LOCKING,NUT&BOLT	294A0150P007		4	\$ 10.32	\$ 41.28	4	13
Bearing 2								
	PLATE,LOCKING,NUT&BOLT	294A0150P006		10	\$ 4.22	\$ 42.20	10	27
	PLATE,LOCKING,NUT&BOLT	294A0150P008		4	\$ 5.20	\$ 20.80	4	17
	DEFLECTOR,OIL,#2 BRG	145C4433G001		1	\$ 16,421.11	\$ 16,421.11	0	20
	SHIM #2 BRG	976A0240P001		1	\$ 570.40	\$ 570.40	1	14
	SHIM #2 BRG	976A0240P002		1	\$ 339.61	\$ 339.61	1	24
	SHIM #2 BRG	114A8182G001		2	\$ 406.69	\$ 813.38	2	11
Atomizing Air								
59	GASKET,PIPE FLANGE	302A4597P041		2	\$ 3.26	\$ 6.52	2	10
73	BOLT,HEX HEAD	N14P35056		20	\$ 2.94	\$ 58.80	20	26
81	NUT,HEXAGON	N204P35		10	\$ 0.95	\$ 9.50	10	30
56	GASKET,PIPE FLANGE	302A4597P011		1	\$ 6.44	\$ 6.44	1	10
71	BOLT,HEX HEAD	N14P35040		4	\$ 1.95	\$ 7.80	4	13
67	BOLT,HEX HEAD	N14P33040		20	\$ 1.36	\$ 27.20	20	13
57	GASKET,PIPE FLANGE	302A4597P036		10	\$ 4.18	\$ 41.80	10	10
58	GASKET,PIPE FLANGE	302A4597P069		10	\$ 1.19	\$ 11.90	10	12
68	BOLT,HEX HEAD	N14P33044		10	\$ 1.86	\$ 18.60	10	13
80	NUT,HEXAGON	N258P33		32	\$ 1.15	\$ 36.80	32	13
65	BOLT,HEX HEAD	N14P33024		3	\$ 1.23	\$ 3.69	3	13
FWD Compressor Case								
	BOLT,HEX HEAD	N14P35080		4	\$ 3.64	\$ 14.56	4	38
	NUT,HEXAGON	N204P35		8	\$ 0.95	\$ 7.60	8	30
	STUD,BODY BOUND	156A1591P005		4	\$ 40.08	\$ 160.32	4	29
AFT Compressor Case								
	BOLT,HEX HEAD	N14P35072		6	\$ 4.60	\$ 27.60	6	38
	NUT,HEXAGON	N204P35		10	\$ 0.95	\$ 9.50	10	30
	STUD,BODY BOUND	156A1591P005		4	\$ 40.08	\$ 160.32	4	29
Bolting and Doweling								
	BOLT,HEX HEAD	N14P35048		36	\$ 2.67	\$ 96.12	36	13
	BOLT,HEX HEAD	N14P35036		3	\$ 2.00	\$ 6.00	3	38
	BOLT,HEX HEAD	N14P35044		2	\$ 2.56	\$ 5.12	2	13
	BOLT,HEX HEAD	N14P39040		4	\$ 5.31	\$ 21.24	4	26
	BOLT,HEX HEAD	N14P29032		2	\$ 1.15	\$ 2.30	2	13

BOLT, HEX HEAD	N14P29040		1	\$ 1.43	\$ 1.43	1	26
BOLT, HEX HEAD	N14P35064		1	\$ 3.62	\$ 3.62	1	13
BOLT, HEX HEAD	N14P50056		2	\$ 23.42	\$ 46.84	2	13
BOLT, HEX HEAD	N14P39048		3	\$ 4.54	\$ 13.62	3	26
BOLT, HEX HEAD	N14P54144		1	\$ 111.12	\$ 111.12	1	15
BOLT, HEX HEAD	N14P50080		3	\$ 85.48	\$ 256.44	3	13
BOLT, HEX HEAD	N14P44080		20	\$ 17.51	\$ 350.20	0	25
BOLT, HEX HEAD	N14P33024		1	\$ 1.23	\$ 1.23	1	13
BOLT, HEX HEAD	N14P33020		1	\$ 1.30	\$ 1.30	1	13
PIN, STRAIGHT, HEADLESS	158A5457P063		1	\$ 29.68	\$ 29.68	1	26
PIN, STRAIGHT, HEADLESS	158A5457P045		2	\$ 8.29	\$ 16.58	2	30
PIN, STRAIGHT, HEADLESS	158A5457P048		1	\$ 18.68	\$ 18.68	1	30
PIN, STRAIGHT, HEADLESS	158A5457P021		1	\$ 12.49	\$ 12.49	1	29
PIN, STRAIGHT, HEADLESS	158A5457P060		1	\$ 14.27	\$ 14.27	1	25
PIN, STRAIGHT, HEADLESS	158A5457P024		1	\$ 45.37	\$ 45.37	0	11
Marriage Hardware							
BOLT ASM, COMP ROTOR	114A9823G001		1	TBD			
STUD ASM ROTOR TURBINE	142B8319G001		1	\$ 24,150.28	\$ 24,150.28	0	26
BOLT, ROTOR	184A8814G003		24	\$ 614.93	\$ 14,758.32	0	36
BOLT, ROTOR ASSY	184A8814G001		24	\$ 540.14	\$ 12,963.36	0	36



MEMORANDUM

DATE: November 18th, 2025

TO: Honorable Mayor & Members of the City Council

FROM: Andrew R. Frazier, Management Analyst

SUBJECT: Inspection for Independence Power & Light's J-2 Substation Combustion Turbine



I have reviewed the contract information to ensure compliance with the contracting process per Section 1.43.007(D) of the City Code: The Management Analyst shall audit all proposed City contracts anticipated to cost in excess of \$2,000,000.00 prior to the proposed contracts being submitted to the City Council.

The agenda includes a consent item authorizing the Interim City Manager to execute an agreement with General Electric (GE) Vernova for \$2,015,015.33. This agreement covers a major inspection of Independence Power & Light's J-2 substation combustion turbine. The inspection will involve onsite disassembly, detailed inspection, the use of consumable materials, and reassembly performed by GE Vernova. As GE Vernova is the original equipment manufacturer (OEM), the City's sole source procurement justification has been met, and no formal bidding was required.

It is important to note that since this is primarily an inspection, any emergent issues requiring repair will be addressed separately once identified.

GE Vernova is headquartered in Cambridge, Massachusetts. Since they are the original equipment manufacturers (OEM) they have historically performed most of Independence Power & Light's on-site work. GE Vernova has also conducted projects and inspections of comparable size and scope nationwide.

City staff have provided all relevant documentation supporting the sole source procurement justification, including verification of all actions taken. I find the agreement satisfactory, and all parties have fulfilled their obligations in accordance with the applicable requirements.

Please let me know if you have any questions regarding this matter.

Respectfully,



A handwritten signature in black ink, appearing to read "Andrew R. Frazier".

Andrew R. Frazier, MPA,
Management Analyst

- C. Lisa Reynolds, Interim City Manager
 Joe Hegendeffner, Director of Independence Power & Light
 Susanne Holland, City Clerk

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

Council action is requested to issue a purchase order to GE Vernova in the amount of \$114,421.75, and authorizing change orders of up to ten percent (10%) of the authorized amount, for SEL generator protection relay upgrades to both gas turbine generating units located at Sub-H for the Power & Light Department (IPL). **Approved**

Recommendations:

Council approval is recommended.

Background:

Relays are essential in the process of power generation. They provide protection and allow for controlling the system output utilizing lower voltage inputs. The current electromagnetic relays are of an antiquated design that does not allow for tracking and trending system issues. Consequently, the ability to utilize analytics to predict and avoid issues is unavailable. Significant diagnostic and repair time is currently spent on issues that could potentially be avoided.

SEL generator relays will be installed by GE Vernova Technicians. GE is the original equipment manufacturer (OEM) and has experience with the software and hardware to ensure seamless integration. SEL relays are currently being utilized throughout the rest of the system. This provides the relay technicians the familiarity and experience to be self-sufficient at programming and maintaining the proposed SEL relays.

Approval authorizes the Procurement Manager to issue change orders up to ten (10) percent of the original authorized amount, providing that appropriations are available.

Emergency Justification:**Fiscal Impact:**

The fiscal impact on the city is \$114,421.75. Funding for the SEL generator protection relay upgrades is included in the fiscal year 2025-26 proposed budget, page 260, project account number 0217021-5406-202607-C, Emergent Maintenance Production, IPL Fund 021.

Council Action:

REVIEWERS

Khristina Irvine
Joseph Hegendeffer
Melissa Cabrera
Jeremy Cover
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. GE sole source sub-H relays
2. Director's Approval Sole Source Form
3. Sept 2025 Relay replacement proposal OP25051476052_PAC_SER_01



PROCUREMENT SOURCE JUSTIFICATION

For Sole Source or Emergency Purchases Above \$10,000

A sole source is defined as: Only one vendor that possesses the unique and singularly available capability to meet the requirement of the procurement	
An emergency purchase is defined as: A purchase necessary to alleviate a situation in which there is a threat to health, welfare, or safety, and/or where time does not allow time for normal procurement procedures.	
All purchases shall follow the City of Independence Procurement Policy.	
I REQUEST THAT THE REFERENCED PURCHASE BE DECLARED A SOLE SOURCE OR EMERGENCY PURCHASE.	
Proposed supplier name and address: GE Grid solutions LLC 600 Galleria Parkway, Suite 1800 Atlanta, GA 30339	Munis Vendor ID # 109500 Or attach Supplier's W-9 Form
Purchase Requisition #:	Estimated cost: \$ 114,421.75
If this is a sole source purchase, check all that apply: ☐ Licensed or patented – supplier has a license or patent that makes them the Limited provider. ☐ One-of-a-kind – there are no competitive alternatives available on the market. ☐ Limited Distributor – Supplier is the Limited distributor for the region or municipality ☒ Compatibility – must match existing brand or equipment for compatibility. ☐ Warranty/Replacement part – for a specific brand or factory authorized warranty services. ☐ Grant – Requirements for specific goods/services established in the grant language. Attach grant for support. ☒ Unique design – must meet physical design or quality standards. ☐ Public Utility Services – Necessary adjustment of utility facilities. ☐ Other – _____	
If this is an emergency purchase, check all that apply and give a brief description of the situation: ☐ Response to a threat to health, welfare or public safety ☐ Protection of preservation of public property ☐ Major project's timeline does not allow for normal procedures in order to be completed Description – _____ _____	
STATEMENT OF NEED AND CERTIFICATION: My department's recommendation for this expenditure is based upon an objective review of the product/service required and appears to be in the best interest of the City of Independence. I know of no conflict of interest with this request. No gratuities, favors or compromising action have taken place. Neither has my personal familiarity with particular brands, types of equipment, materials or firms been a deciding influence on my request to source this purchase when there are other known suppliers to exist. By submitting this form to Munis, I hereby certify that this justification for procurement is accurate and complete to the best of my knowledge and belief.	
Department Head Authorization	
Name: Joe Hegendeffer	Department: Power & Light
Signature:	Title: Director of Power & Light
City Manager Authorization (Emergency Purchases Only)	
Signature:	Date:

From: [Joseph Hegendeffe](#)
To: [Lisa Bateman](#)
Cc: [Elaine Kaifes](#); [Toby Grogan](#); [Khristina Irvine](#)
Subject: RE: Approval Requested - Sole Source Justification Form for GE SEL Replacement Relays
Date: Friday, October 31, 2025 8:21:08 AM
Attachments: [image002.png](#)
[image003.png](#)

I approve this sole source. Thanks



Joe Hegendeffe

Director

O - 816.325.7494

C - 816.267.3587

jhegendeffe@indepmo.org

21500 E Truman Rd.
Independence MO 64056

From: Lisa Bateman <lbateman@indepmo.org>
Sent: Wednesday, October 29, 2025 3:52 PM
To: Joseph Hegendeffe <jhegendeffe@indepmo.org>
Cc: Elaine Kaifes <ekaifes@indepmo.org>; Toby Grogan <tgrogan@indepmo.org>; Khristina Irvine <kirvine@indepmo.org>
Subject: Approval Requested - Sole Source Justification Form for GE SEL Replacement Relays

Joe,

Please review and approve the Sole Source Form for GE to upgrade the SEL relays for Sub H. I have also attached the proposal. Please let us know if you have any questions, thanks!



Lisa Bateman

Utility Data Specialist

O – 816-325-7512

lbateman@indepmo.org

21500 E Truman Rd.

Independence, MO 64051

GE Grid Solutions Grid Automation



Providing mission critical protection, control, monitoring, services, and diagnostics of utility and industrial grids maximizing reliability, efficiency, security, and operational excellence.

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REVISION HISTORY

Revision Level	Date	Description
00	05/28/2025	Initial issue
01	09/25/2025	- Quote offered on Time & Material basis - Offer option#2 removed from offer - Following sections are updated: - Major equipment section - Price, terms & conditions section - Invoicing Milestones - Terms & conditions section - Buyer's responsibilities section - Clarifications section

BUYER'S INFORMATION:

Quote Requested by	Elaine Kaifes
Company	City of Independence
Address	Independence, Missouri, USA
Email	ekaifes@indepmo.org
Phone	
Site Contact	
Project Reference	City of Independence - Relay Upgrades - GA Services

Quotation Num.	OP25051476052_PAC_SER_01
Date	09/25/2025

PO Issuance Details:
GE Grid Solutions, LLC
600 Galleria Parkway, Suite 1800
Atlanta, GA 30339

Email remittance advice to Remit.Renewable.Energy@ge.com

Work Services Description

GE Grid Solutions LLC (GEV Grid Automation) is pleased to offer this proposal on a **Time and Material basis** for the following scope of supply. The following documents were utilized to develop this proposal:

1. City of Independence Parts kit Installation 5.jpeg
2. I3_Gen_Elementary diagram.pdf
3. network topology.pdf

Scope of Supply:
1. Services:

- a. GEV will provide the following **remote scope**:
 - Protection engineer(s) to create a relay setting calculation sheet and relay setting files for **two (2) new SEL 400G relays** using buyer's existing Electromagnetic relays' (described below) setting files for One (1) panel as per above mentioned picture - City of Independence Parts kit Installation 5.jpeg:
 - 32 – Directional Power (ICW)
 - 40 – Loss of Excitation (CEH)
 - 46 – Negative Sequence (INC)
 - 51GN – Overcurrent (IAC)
 - 51V – System Phase Fault (JCV)
 - 87G – Generator Differential (CFD)
 - A design engineer/drafter to update the existing drawings for buyer's above one (1) panel in AutoCAD and pdf format.
 - A Field Service Engineer (FSE) to engineer and manufacture one (1) adapter plate to install above two (2) new relays on buyer's above **one (1)** panel.
 - Prep work by an FSE to familiarize with electrical schematics & settings and prepare testing plans.
- b. GEV will provide FSEs to perform the following **on-site**:
 - Bench testing of above two (2) **SEL 400G relays** (see order code below).
 - Removal of buyer's above EM relays and identification of wires that will be used into the new relays and rewiring.
 - Install above One (1) adapter plate, install the above new relays, wiring, pre-testing of control circuitry and commissioning.
 - GEV's estimate is for Two (2) FSEs.
 - Onsite location: Independence, Missouri, USA.
- c. GEV has included the following in the estimate:
 - One (1) mobilization and demobilization per FSE.
 - Travel and living expenses.
 - Specialized test equipment utilization

Estimated effort:

Description	Total Estimated Effort	Unit Price (USD)	Ext. Selling Price (USD)
Project Management, Project Control (Remote)	24 Hours	\$225.00	\$5,400.00
Protection Engineer for Remote Work	40 Hours	\$230.00	\$9,200.00
Design Engineer/Drafter for Remote Work	20 Hours	\$225.00	\$4,500.00
FSE for Remote Work	32 Hours	\$230.00	\$7,360.00
FSEs for On-site Work	80 Hours	\$230.00	\$18,400.00
FSEs' Mobilization/Demobilization (Weekend Travel)	28 Hours	\$258.75	\$7,245.00
Travel & Living Expenses & Specialized Testing Equipment Utilization	1 Lot	\$7,950.00	\$7,950.00
TOTAL			\$60,055.00

2. Major Equipment Included:

Description	Quantity	Unit Price (USD)	Ext. Selling Price (USD)
SEL 400G Generator Protection Relay (0400G126X11B6XXH624XXXX)	2	\$26,721.84	\$53,443.68
Adapter Plate	1	\$923.08	\$923.08
TOTAL			\$54,366.75

3. Schedule:

A detailed schedule will be developed and mutually agreed upon within a week of project kickoff.

Price, Terms and Conditions

GEV will provide the described Time and Material (T&M) efforts, estimated to be **\$114,421.75 USD**, with actual hours and expenses invoiced accordingly.

- Price is valid for **30 days** from the date of this proposal.
- GE Grid Solutions LLC (GEV Grid Automation) is the entity providing Products and/or performing Services to **City of Independence** (the "Buyer") under the Contract.
- Payment Terms: **Net 30 days** from the date of invoice.
- Pricing does not include any applicable taxes, permits and licensing fees.
- The engineering services covered on this offer will be supplied with a warranty period of **90 days**.
- GEV Protection Relays and Gateways are covered with a warranty of 10 years. Other material's or equipment's warranty is according to supplier's or manufacturer's warranty.
- Lead Time for Major Equipment: **1 – 2 months**.
- Delivery Terms for Major Equipment: **FCA Markham, Ontario, Canada**.
- Proposal is offered on a **Time and Material basis**. The pricing is an estimate. Actual hours and expenses (cost + 15%) will be invoiced at the published rates valid at the time the work is performed per each type of service engineer at the time of the service.

Invoicing Milestones

- GEV will invoice as per the active commercial rates applicable at the time the services are performed — please refer to the latest valid rate sheet.
- Time and Material: Invoicing will be conducted on a monthly basis.
- Equipment will be invoiced upon shipment.

Terms and Conditions

Unless mutually agreed upon terms are in place or negotiated prior to execution, the sale of any service and products, and the integration thereof, ordered by the Buyer is expressly conditioned upon the terms and conditions contained in this quotation and Form ESY104: Terms and Conditions for Sale of Products and Services (<https://store.gegridsolutions.com/ESY104.pdf>). Any additional or different terms and conditions set forth in Buyer's

purchase order or other communications from the Buyer are expressly objected to and will not be binding upon GEV unless specifically agreed to in writing by an authorized GEV employee. No other terms and conditions contained within any other agreement and/or purchase order shall be enforceable. Oral agreements and/or commitments to perform services are not enforceable.

A. Additional Services

Should the Buyer desire to have GEV perform additional services beyond the scope of services described in this proposal, a change order request will be submitted for the additional associated costs. No additional services shall proceed without written authorization from the Buyer. Additional services will be performed per our published rates for Service, applicable at the time that work is performed, including work that extends through the weekend / holiday.

B. Buyer's Responsibilities

The Buyer's responsibilities shall include, but are not limited to, the following:

- Buyer to provide the following to GEV well in advance:
 - Existing setting files for the buyer's above existing electromagnetic (EM) relays
 - Model and manufacturer for each of the above existing EM relays' settings
 - CT and PT information
 - Existing schematics
 - Existing drawings in AutoCAD format.
- Issue switching orders, schedule outages, and de-energize the electrical apparatus, including Lock-Out Tag-Out (LOTO) of all systems associated with GEV's work scope involved in the project. LOTO procedures shall meet or exceed Contractor or GEV's requirements, whichever are more stringent.
- Prior to the start of the on-site work, Buyer shall familiarize GEV personnel with their safety practices, regulations in effect at jobsite, and any chemical and physical hazards, including process safety issues associated with the work environment. GEV shall be under no obligation to commence work unless safety practices are acceptable to GEV.
- Buyer will dispose of all wastes generated at the work site. Buyer will be responsible for environmental conditions and will keep the equipment free of contaminants that would be detrimental to the performance of the equipment.
- Buyer shall be responsible for the removal and replacement of any obstructions that may interfere with access to or removal of the existing equipment.
- Buyer will provide an experienced electrician or electrical supervisor familiar with the power distribution system to direct GEV personnel in identifying and isolating the proper electrical equipment.
- Buyer will provide, if required, EHS approved ladders, manlifts, and scaffolding to reach equipment/gear in the execution of the stated scope.
- Buyer will provide/operate/maintain services for drinking water, sanitary facilities, parking, trash containers, and lighting.
- Buyer shall provide one (1) copy of existing system schematics, drawings and other information regarding the equipment/site that is needed and be responsible for the accuracy of same and verbal information concerning existing conditions and wiring.
- All communication between, including meetings, all documents, notes on drawings, and submissions required under contract, shall be in the English language. Any language translation, of required, will be the responsibility of the Buyer.
- Buyer shall be responsible for the review of the installation to assure compliance with applicable codes. It is the intention of GEV to comply with the applicable codes, standards, laws, regulatory requirements, etc.; however, by law it is the responsibility of the Buyer for compliance of the total installation.

C. Clarifications

- GEV assumes that buyer's above existing EM relays in the above one (1) panel are all connected to trip the same breaker.
- The following are out of GEV's scope:
 - Any panel replacement
 - Any panel door replacement
 - Any auto-synchronizing relay replacement
 - Any relay coordination studies

- Networking to monitor the new relays
- GEV has considered 20 hours for updating the existing drawings. If new drawings are required to be created, that additional work will be charged extra and will be performed according to the GEV Grid Automation published rates in effect at the time the work is performed.
- Any additional work other than the above-described scope will require a change order mutually agreed upon in writing between the buyer and GEV and will be performed according to the GEV Grid Automation published rates in effect at the time the work is performed.
- If the work is delayed due to any unforeseen work delays beyond the control of GEV, including those as a result of malfunctions or deficiencies encountered with the equipment (unless caused by GEV), delays caused by third party inspectors or unsafe working conditions, that work will be billed at the GEV Grid Automation published rates in effect at the time of performance of that the work scope and will apply to all GEV project management, field engineers, and/or field engineering service technicians.
- Any items or services not specifically outlined herein are not included.
- All engineering design deliverables will consist of an initial release, one revision, and final release for construction. Each revision is based on single compiled customer comments/markups to be received by Grid Automation within two (2) weeks from the date of submission.
- Unless otherwise stated in the scope, all work will be performed on a straight time basis. All work is to be performed on a mutually agreeable schedule.
- All standard hour services are to be accomplished between 8:00am and 5:00pm from Monday to Friday. Services delivered outside of standard hours will be invoiced according to GEV Grid Automation commercial published rates in effect at the time the work is performed.
- Overtime and weekend work to be charged according to GEV Grid Automation published rates in effect at the time the work is performed.
- Any EHS requirement, certification, control, or special requirement expense for service engineers at site will be charged at cost + 15% administration fee.
- All labor hours invested for attending any EHS requirement, certification or special requirement for service engineers or technician will be charged according to Grid Automation published rates in effect at the time the work is performed.
- Time and expense of GEV employees' travel from their headquarters to work site and return, shall be considered as time worked.
- No offer of performance or service guarantee is included in this proposal.
- GEV assumes and is relying on the fact that any information furnished by Buyer is accurate and complete. To the extent that GEV obtains actual knowledge of any conditions with the equipment and/or the conditions at site are in addition to and/or different from those indicated in the Buyer's furnished documentation / information and/or there is a previously unknown physical condition that is found with the equipment and/or at the site, GEV shall notify the Buyer. If such condition(s) exist and this causes an increase in GA's cost of and/or the time required for the performance of any part of the work under a contract, an equitable adjustment may be made, including without limitation, to the price and/or schedule.
- Should any unforeseen work delays beyond the control of GEV occur, including those as a result of malfunctions or deficiencies encountered with the equipment (unless caused by GEV), that work will be billed at the published rates in effect at the time of performance of that the work scope and will apply to all GA project management, field engineers, and/or field engineering service technicians.
- GEV expressly objects to any requirements, methods or conditions contained in any Buyer request that are not specifically addressed in this document, and such requirements, methods, and conditions, if any, are outside the scope of this proposal.
- GEV requires a minimum four (4) weeks advance notice to ensure availability of resources.
- In the event of any change in any law of any country that is beyond the Seller's reasonable control and which had not been enacted at the time of the submission of the Offer, the Seller shall be entitled to request revision of the prices and, as applicable, of the other conditions of its Offer to take into account the consequences of the aforementioned change in law. In the case where the Buyer does not permit the Seller to revise and update its Offer, the Seller shall be entitled, subject to written notice to the Buyer, to withdraw its Offer without liability to the Buyer. Buyer is hereby informed that the consequences that any changes in law, including but not limited to, increased duties, tariffs or value added tax, or their future enactments may have on prices and availability of raw materials, manpower, components, transport and logistics, and any other components of the scope of the Offer shall be considered for the purpose of this provision.

GE Grid Solutions LLC (Grid Automation)

By:	Paramvir Singh
Title:	Commercial Manager
Email:	paramvir.singh@gevernova.com
Phone:	+1 (416) 209-1639

By:	Jeromy Pinkham
Title:	Senior Sales Manager
Email:	Butch.Pinkham@gevernova.com
Phone:	+1 (913) 210-9406

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

Council approval has been requested to direct the City Manager to enter into a purchase agreement with Precision Fire Apparatus for the purchase of a Precision/Spartan Custom 4-Door Heavy Duty Extruded Aluminum Top Mount Pumper for the sale price of \$873,100.00. **Approved**

Recommendations:

Council approval is recommended.

Background:

The Independence Fire Department proposes to use budgeted monies from the Fire Public Safety Sales Tax in the 2025-2026 Adopted Budget to purchase a replacement pumper. A proper evaluation of the Fire Department fleet will need to be conducted closer to the delivery date to determine which Pumper will be replaced. It is currently projected to replace an aging 2010 Reserve Pumper. Purchase is through a cooperative contract price with Precision Fire Apparatus. Estimated delivery of this apparatus is the third quarter of 2027.

Emergency Justification:**Fiscal Impact:**

The total fiscal impact on the city will be \$873,100.00. Funding for this item was adopted in the 2025-2026 budget, page 213, account number 0537053-5404.

Council Action:

Department / Contact	Fire Department /
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REVIEWERS

Jimmy Walker
Melissa Cabrera
Jeremy Cover
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. HGAC Pricing Sheet 2nd Top Mount Pumper

CONTRACT PRICING WORKSHEET For MOTOR VEHICLES Only		Contract No.:	FS12-23	Date Prepared:	11/5/2025
		This Worksheet is prepared by Contractor and given to End User. If a PO is issued, both documents <u>MUST</u> be faxed to H-GAC @ 713-993-4548. Therefore please type or print legibly.			
Buying Agency:	City of Independence Fire Department	Contractor:	Precision Industries, Inc.		
Contact Person:	Battalion Chief Tony Champagne	Prepared By:	Brad Johnston		
Phone:	816-325-7123	Phone:	573-346-8387		
Fax:		Fax:	573-346-7015		
Email:	achampagne@indepmo.org	Email:	bjohnston@precisionfireapparatus.com		
Product Code:	Spartan Pumper 2	Description:	Precision/Spartan Metro-Star 4 Door Pumper		
A. Product Item Base Unit Price Per Contractor's H-GAC Contract:					\$773,775.00
B. Published Options - Itemize below - Attach additional sheet(s) if necessary - Include Option Code in description if applicable. (Note: Published Options are options which were submitted and priced in Contractor's bid.)					
Description	Cost	Description	Cost		
MS-1521-002 - Cab Paint Exterior - Two tone	2,133.74	MS-5317-144 Front Scene - Spectra	4074.92		
MS-1640-002 - Cabin air filtration	1,964.99	PH-14-005 - Ladder Storage in the rear	5245.88		
MS-5402-029- (14) Side Warning Lts Whelen M6 \$713.59 ea	9,990.26	PH-22-001 - David Clark U3800 Intercom System	7164.47		
MS-8101-200 - Occupant Protection System	8,338.26	MS-5503-022 - Q2B Siren	3,952.75		
MS-3801-002 - Tire chains On-Spot	5,128.85	MS-3112-018 - Fuel Cooler	1217.51		
MS-2201-029 - Front bumper - Severe duty	4,626.73	MS-1608-006 - Cab Circulation Fan Front	610.82		
MS-2206-021 - Front bumper paint	1,929.79	MS-1310-041 - Engine mounting plate	3826.45		
		MS-5202-173 - Kussmaul	2084.05		
PH-16-9 - (2) Slidemaster Alum Tray -\$1,255.71 ea	2,511.42	MS-5306-118 - Side Scene Lights	7332.99		
MS-3501-045 - Air Ride Suspension	8,179.86	Subtotal From Additional Sheet(s):		\$43,891.86	
MS-4001-013 - Aux Lube System	6,144.47	Subtotal B:		130,350.07	
C. Unpublished Options - Itemize below / attach additional sheet(s) if necessary. (Note: Unpublished options are items which were not submitted and priced in Contractor's bid.)					
Description	Cost	Description	Cost		
Chassis Customization -Cummins 500 HP X12 Engine	46,974.93	Subtotal From Additional Sheet(s):			
		Subtotal C:		46,974.93	
Check: Total cost of Unpublished Options (C) cannot exceed 25% of the total of the Base Unit Price plus Published Options (A+B).			For this transaction the percentage is:		5%
D. Total Cost Before Any Applicable Trade-In / Other Allowances / Discounts (A+B+C)					\$951,100.00
Quantity Ordered:	1	X Subtotal of A + B + C:	\$951,100.00	=	Subtotal D: \$951,100.00
E. H-GAC Order Processing Charge (Amount Per Current Policy)					Subtotal E: \$2,000.00
F. Trade-Ins / Special Discounts / Other Allowances / Freight / Installation / Miscellaneous Charges					
Description	Cost	Description	Cost		
Preferred/Loyalty Discount	-\$80,000.00				
			Subtotal F:		(80,000.00)
Delivery Date:		3 rd Quarter 2027		G. Total Purchase Price (D+E+F): \$873,100.00	

Published Options - Additional Sheet

Description	Cost
PH-3-4 - Pony Suction (Qty 2)	3,298.36
PH-5-1,2,3,4,5&6 - Booster Reel with discharge, hose & nozzle	7,719.51
PH-6-18 - Pump heater	1,797.65
PH-7-19 - Mansavers (Qty 2)	1,312.00
PH-9-3 - Painted ROM doors	4,017.65
PH-9-25 - Superman Compartments (qty 4)	5,540.72
PH-10-3 - Treadplate hosebed cover	4,537.88
PH-10-10 - Lighted folding steps (qty 12)	4,307.28
MS-3005-004 - Midship pump jackshaft	1,559.15
PH-16-5 - Slide out toolboards (qty 3)	4,155.54
PH-18-23 - Arrowstick	2,208.94
MS-3205-014 - Brake System	3,437.18
	<u>43,891.86</u>

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

Council action is requested to authorize the City Manager to issue a purchase order to Crossland Heavy Construction for an amount not to exceed \$569,336, and to authorize change orders of up to ten percent (10%) of the authorized amount, for the design and construction of a new maintenance building at the Courtney Bend Water Treatment Plant (Project No. 401703). **Approved**

Recommendations:

Council approval is recommended.

Background:

Approval of this item will authorize City Staff to issue a purchase order to Crossland Heavy Construction for an amount not to exceed \$569,336 for the design and construction of a new 2,400 square foot maintenance building at the Courtney Bend Water Treatment Plant. (Project No. 401703)

This building will replace the existing original maintenance building which was constructed shortly after the start-up of the plant in 1956. Portions of the existing building have settled over time, allowing for water to infiltrate the building and pool on the floor. The settlement and presence of moisture have caused significant damage to both the structure and stored equipment.

Staff has obtained a pricing quote for the design and construction of a new maintenance building from Crossland Heavy Construction, utilizing a cooperative contract (No. 2023-026a) with Johnson County, Kansas.

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 first have been established pursuant to generally accepted governmental practices and the competitive bidding process.

A ten (10) percent contingency for future minor change orders and/or time extensions shall be authorized as part of this request.

This is a budgeted capital expense.

Emergency Justification:**Fiscal Impact:**

The fiscal impact to the City is \$626,269.60, including a contingency. Funding for the Production Maintenance Building Project (No. 401703) is included in the FY 2026 adopted budget, on page number 193, in account number 401703-C-0417041-5406.

Council Action:

Department / Contact	Municipal Services /
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REVIEWERS

Mike Jackson
Melissa Cabrera
Jeremy Cover
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. 2023-026a Contract (Crossland) - Fully Executed
2. Pricing Quote - Crossland - Maintenance Building - Project No. 401703

AGREEMENT

THIS AGREEMENT, made and entered into this 19th day of October, 2023, by and between the Board of County Commissioners of Johnson County, Kansas (hereinafter the "BOCC"), acting as the Governing Body of Johnson County Wastewater, hereinafter referred to as the "OWNER" and Crossland Heavy Contractors, Inc hereinafter referred to as the "CONTRACTOR".

WITNESSETH:

WHEREAS, the OWNER desires to retain the services of the CONTRACTOR for services generally described in Request for Proposal No. 2023-026 for Wastewater Facility Repairs and Improvements; and

WHEREAS, the CONTRACTOR desires to provide such services to the OWNER in accordance with the terms and conditions of this AGREEMENT.

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 – OWNER’S REPRESENTATIVE

The General Manager of Johnson County Wastewater (hereinafter "JCW") shall be the OWNER'S designated representative and is authorized to act on behalf of the OWNER with respect to all work tasks required of the PROJECT for which services are to be rendered by the CONTRACTOR. The General Manager will issue a PROJECT AUTHORIZATION and the Notice to Proceed to the CONTRACTOR for a specific scope of services for each authorized project (hereinafter the "AUTHORIZED PROJECT") to be completed under this AGREEMENT. The CONTRACTOR shall, upon receipt of a Notice to Proceed, furnish the services in relation to the scope of any AUTHORIZED PROJECT.

ARTICLE 2 - ENGINEER

Any Engineering Firm who designs projects to be constructed under this AGREEMENT, (hereinafter "ENGINEER"), and who acts as OWNER's representative, shall assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with the performance of the Work in accordance with the Contract Documents.

ARTICLE 3 – SCOPE OF SERVICES

The specific services the CONTRACTOR agrees to furnish are indicated in Attachment A "Scope of Services". Changes in the Scope of Services shall be subject to renegotiations and implemented through an Amendment to this AGREEMENT. The Wastewater Facility Repairs and Improvements Term and Supply Contract (Request for Proposal No. 2023-026 hereinafter referred to as "RFP No. 2023-026"), and all contractor AGREEMENTS resulting from the RFP, have a combined annual maximum dollar amount of PROJECT AUTHORIZATIONS that can be awarded, as established by the BOCC. The combined total amount of AUTHORIZED PROJECTS issued during the initial term of this AGREEMENT, or during any like renewal term thereof, shall not exceed **Six Million Five Hundred Thousand Dollars (\$6,500,000.00)**, without the prior approval of the BOCC. CONTRACTOR understands and acknowledges there is no guarantee minimum of quantity of services that would be purchased or required by OWNER from CONTRACTOR under this Agreement.

ARTICLE 4 – BASIS OF PAYMENT

As a consideration for providing the services enumerated in Article 3, the OWNER shall pay the CONTRACTOR in the following manner:

4.1 Compensation of a Cost Not-to-Exceed. For services, as enumerated in Article 3, the OWNER shall pay the CONTRACTOR based upon the CONTRACTOR'S cost with an agreed maximum. Payments as described hereinafter shall represent full compensation to the CONTRACTOR for payroll costs, direct expenses, current overhead, profit, and all other costs in connection with the performance of these services. Upon request, the CONTRACTOR shall provide documentation to the OWNER of all costs in connection with the performance of these services.

Total payment to the CONTRACTOR for the services, as enumerated in Article 3, shall not exceed a maximum cost, which shall be agreed to for each AUTHORIZED PROJECT. Each AUTHORIZED PROJECT maximum shall remain in effect unless changed by an ADDENDUM to the AUTHORIZED PROJECT. Personnel changes in CONTRACTOR'S staff or billing rates related to staff salary increases during the term of the AUTHORIZED PROJECT shall not be cause for an increase to the maximum cost.

The CONTRACTOR'S cost shall be calculated in accordance with the Measurement and Payment Section of the Contract Documents listed in Section 5.2.4. of RFP No. 2023-026. Attachment B to this AGREEMENT, "Schedule of Billing Rates and Percentage Markups", shall remain in effect for the duration of the initial term of this AGREEMENT, and for the duration of any AUTHORIZED PROJECT during the initial term.

4.2 Changes of Scope. In the event additional, related construction services are required through changes in the scope of an AUTHORIZED PROJECT, or other unusual or unforeseen circumstances are encountered, CONTRACTOR shall, upon written ADDENDUM by and between the parties to an AUTHORIZED PROJECT, perform the additional services.

4.3 Basis of Costs. Compensation is based on actual time and material (or other direct expense) costs, plus overhead and profit. However, at the discretion of the Owner, some costs such as sub-contract work not listed on Attachment B may be based on lump-sum bids.

ARTICLE 5 - PAYMENT FOR SERVICES

Payment to the CONTRACTOR, as prescribed in ARTICLE 4, shall be made as follows:

5.1 Payment for Services. Payment for services rendered shall be made to the CONTRACTOR at the end of each monthly billing cycle upon presentation of the CONTRACTOR'S Application for Payment. The format of Applications for Payment shall conform to the OWNER'S standards and CONTRACTOR shall attach documents substantiating actual costs incurred and included in the Applications for Payment. OWNER shall make prompt payments in response to CONTRACTOR'S Applications for Payment. Total payment to CONTRACTOR shall not exceed the AUTHORIZED PROJECT amount except by ADDENDUM to the AUTHORIZED PROJECT.

5.2 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.

5.2.1 Progress Payments. OWNER shall make progress payments on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER or OWNER'S AGENT. Upon ENGINEER's recommendation and OWNER's approval of CONTRACTOR's Application for Payment, OWNER will pay or cause to be paid an amount equal to the submitted actual expenses, plus overhead and profit and other expense markups allowed by the Contract Documents less a retained amount in accordance with the following schedule and subject to the applicable provisions of the Contract Documents.

5.2.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below:

1. Ninety five percent (95%) with five percent (5%) retained until the Work is substantially complete.
2. OWNER shall release retainage, if any, on any undisputed payment due within thirty (30) days after substantial completion; provided, however, if any subcontractor is still performing work on the Project under its subcontract, OWNER may withhold that portion of the retainage attributable to such subcontract until thirty (30) days after such work is completed."

5.2.2 Final Payment. Upon final completion and acceptance of the Work, OWNER shall pay the remaining amount owed as recommended by ENGINEER in accordance with the applicable provisions of the Contract Documents.

ARTICLE 6 – OBLIGATIONS OF THE CONTRACTOR

6.1 Construction Cost Proposals. CONTRACTOR shall prepare itemized cost proposals, utilizing contract pricing, for each AUTHORIZED PROJECT assigned to CONTRACTOR. The final cost proposal accepted by OWNER for each AUTHORIZED PROJECT shall be a maximum not-to-exceed price for the Project that can only be increased by an Addendum to the PROJECT AUTHORIZATION.

6.2 Project Completion Time. For the services described in Article 3, the CONTRACTOR shall make every reasonable effort to schedule manpower and work elements in a diligent manner so as to complete services within the agreed time schedule included for each AUTHORIZED PROJECT starting upon issuance of the Notice to Proceed. This time schedule applies only if any reviews, approvals, and information to be furnished and services to be performed by persons and agencies not under the control of the CONTRACTOR are furnished and/or completed in accordance with the schedule to be agreed upon between the OWNER and the CONTRACTOR.

ARTICLE 7 – OBLIGATIONS OF THE OWNER

7.1 Authorization of Work. The OWNER shall issue a PROJECT AUTHORIZATION for each construction project assigned to the CONTRACTOR. The PROJECT AUTHORIZATION shall reference this AGREEMENT, and shall include a description of the Work, the not-to-exceed maximum compensation for the PROJECT, and an agreed upon PROJECT COMPLETION TIME. The OWNER shall also notify the CONTRACTOR in writing to proceed with the construction services through issuance of a Notice to Proceed prior to the CONTRACTOR providing services listed under the PROJECT AUTHORIZATION.

7.2 Owner-Furnished Data. The OWNER shall provide to the CONTRACTOR a detailed set of plans and specifications for each project, unless it is agreed that informal drawings/sketches, specifications, and instructions are all that is required. OWNER shall also provide any technical data in the OWNER'S possession, including as-built drawings from previous projects, previous reports, maps, surveys, and any other information reasonably required by the CONTRACTOR to perform the construction services on the AUTHORIZED PROJECT. Such information shall include, but not be limited to, the OWNER'S requirements for the AUTHORIZED PROJECT, and any criteria or constraints. CONTRACTOR may rely upon the accuracy, timeliness, and completeness of the information provided by the OWNER in performing CONTRACTOR'S services to the OWNER.

7.3 Access to Facilities and Property. Unless otherwise agreed upon, the OWNER shall make its wastewater facilities and properties available and accessible for inspection and work by CONTRACTOR during regular business hours and shall arrange for access to make all provisions for the CONTRACTOR to enter upon public property as may be reasonably required for the CONTRACTOR to perform its services.

7.4 Timely Review. The OWNER shall examine all studies, reports, proposals, certifications, and other documents presented by CONTRACTOR, obtain advice of an attorney, insurance counselor, accountant, auditor, and other consultants as OWNER deems appropriate for such examination and, as necessary, render written decisions pertaining thereto in accordance with the schedule agreed upon between the OWNER and the CONTRACTOR so as not to delay the services of CONTRACTOR.

7.5 Prompt Notice. The OWNER shall give prompt written notice to CONTRACTOR whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of CONTRACTOR'S work, or any defect in the CONTRACTOR'S work.

ARTICLE 8 – GENERAL PROVISIONS

8.1 Acceptance of CONTRACTOR'S Services. Upon completion of the services required of the CONTRACTOR under this AGREEMENT, or of any phases of such services, the OWNER and/or ENGINEER will inspect the Work for conformance with the Contract Documents, including any plans and specifications and instructions issued with a PROJECT AUTHORIZATION. If OWNER or ENGINEER finds that such services do conform to the Contract Documents, the OWNER'S Representative shall accept such services and authorize payment therefore. If OWNER or ENGINEER finds that such services do not conform to the Contract Documents, the OWNER'S Representative shall immediately notify the CONTRACTOR, in writing, of all deficiencies and reasons for nonacceptance and shall permit the CONTRACTOR a reasonable time, not to exceed ninety (90) days, to complete or correct the services. If, after ninety (90) days, the services do not conform to the Contract Documents, and if the CONTRACTOR fails to demonstrate to the satisfaction of the OWNER that the delay is beyond the CONTRACTOR'S control, the CONTRACTOR will be deemed in default of this AGREEMENT.

8.2 No Assignment. CONTRACTOR shall not assign, transfer, convey, sublet, or otherwise dispose of either this Agreement nor any of its rights and obligations hereunder, without the prior written consent of OWNER, but in no event shall such consent relieve CONTRACTOR from its obligations under the terms of this Agreement.

8.3 Consumer Protection. The CONTRACTOR and the OWNER herein agree that the term "consumer" as construed in the Kansas Consumer Protection Act, K.S.A. 50-623 et seq. shall include the Board of County Commissioners of Johnson County, Kansas, acting as the Governing Body of Johnson County Wastewater.

8.4 Nondiscrimination. CONTRACTOR agrees to not discriminate on the basis of race, religion, color, sex, disability, national origin, ancestry, or other circumstance prohibited by federal, state or local law, rule or regulation in its operation, management and employment practices and with respect to availability and accessibility of products and services to the public. CONTRACTOR agrees to comply with all applicable laws of the State of Kansas and of the United States of America, regarding such non-discrimination and equality of opportunity.

8.5 Force Majeure. This AGREEMENT is subject to, and CONTRACTOR shall not be responsible or liable for, delay, directly or indirectly resulting from or contributed to by any foreign or domestic embargoes, seizures, acts of God, insurrections, war or the adoption or enactment of any law, ordinance, regulation, ruling or order directly or indirectly interfering with or rendering more burdensome the videotaping, production, or delivery hereunder. In the event that any performance hereunder is suspended or delayed by reason of any one or more of the occurrences aforesaid, any and all performance so suspended or delayed shall be made after such disabilities have ceased to exist.

8.6 Hold Harmless. The CONTRACTOR agrees to protect, defend, indemnify and hold the OWNER, its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of the error, omission or negligent act of the CONTRACTOR. Without limiting the generality of the foregoing, any and all such claims, etc., relating to personal injury or of any other tangible or intangible personal or property right, or actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The CONTRACTOR further agrees to investigate, handle, respond to, provide defense for and defend any such claims, etc., at his/her sole expense and agrees to bear all other costs and expenses related thereto, even if such claim is groundless, false or fraudulent.

8.7 Insurance. CONTRACTOR shall, while performing the services required under and for the duration of this Agreement, comply with the insurance requirements of Special Condition No. 9.1 of RFP No. 2023-026.

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

8.9 Standards of Performance. The CONTRACTOR shall perform all services under this AGREEMENT in accordance with generally acceptable industry standards of the wastewater facility construction industry for projects similar in scope, size and complexity to the AUTHORIZED PROJECT, and the laws of the State of Kansas.

8.10 Termination for Cause. Should CONTRACTOR be found in violation of any of the terms and conditions of this Agreement, it shall be deemed in breach of this Agreement. OWNER shall thereupon notify CONTRACTOR, in writing, of such violation, giving CONTRACTOR thirty (30) days to cure such breach. Should CONTRACTOR fail to cure such breach, OWNER shall then have the right to terminate this Agreement for cause by giving written notice to CONTRACTOR of such termination and specifying the effective date of such termination. In the event of termination for cause, CONTRACTOR shall be entitled to just and equitable compensation for services satisfactorily performed by CONTRACTOR through the date of termination specified by OWNER, less costs and damages incurred by OWNER as a result of CONTRACTOR's breach.

8.11 Termination for Lack of Funds. Should, for whatever reason, adequate funding not be made available to the OWNER to support or justify continuation of the level of services to be provided by the CONTRACTOR under this Agreement, the OWNER may terminate or reduce the amount of service to be provided by the CONTRACTORS under this Agreement. In such event, the OWNER shall notify the CONTRACTOR in writing at least fifteen (15) days in advance of such termination or reduction of services for lack of funds, in which case, the CONTRACTOR shall be reimbursed for all costs and expenses incurred prior to the date of such notice.

8.12 Termination for Convenience. OWNER reserves the right to terminate this Agreement, at any time, for the convenience of OWNER, without penalty or recourse, by giving CONTRACTOR written notice of such termination thirty (30) days prior to termination. CONTRACTOR shall be entitled to just and equitable compensation for services satisfactorily performed by CONTRACTOR through the date of termination specified by OWNER.

8.13 Termination for Lack of Payment. The CONTRACTOR reserve the right to terminate this Agreement for lack of payment by the OWNER for services performed by the CONTRACTOR under this Agreement and accepted by the OWNER.

8.14 Termination Compensation. In the event of termination, the CONTRACTOR shall be paid in full for all accepted services performed up to the termination date, unless such termination is for the convenience of the OWNER, then CONTRACTOR shall be paid in full for all accepted services performed up to the termination date, plus any reasonable termination expenses incurred by CONTRACTOR (including but not limited to cancellation or demobilization costs or fees as a result of such a termination).

If no termination is implemented, relationships and obligations created by this AGREEMENT shall terminate upon completion of all applicable requirements of this AGREEMENT.

8.15 Term of Contract. This Agreement is effective as of October 19, 2023 ("Effective Date"). The term of this Agreement shall be for a twelve (12) month period beginning on the Effective Date. The CONTRACTOR agrees that the OWNER has the option to renew this AGREEMENT for four (4) additional twelve (12) month periods on the same terms and conditions as set forth herein or as amended. Billing rates established from OWNER'S Request for Proposal No. 2023-026 shall remain in effect with renewals, unless both parties agree to new, negotiated rate increases or decreases.

8.16 No Waiver. The waiver by the OWNER or CONTRACTOR of any breach of any covenant in this AGREEMENT shall not be deemed to be a waiver of any subsequent breach of the same or any other covenant in this AGREEMENT, nor shall any custom or practice which may arise between the OWNER and CONTRACTOR in the administration of this AGREEMENT be construed to waive or lessen the right of the OWNER or CONTRACTOR to insist upon the performance by the OWNER or CONTRACTOR in strict accordance with this AGREEMENT.

8.17 Venue. In the event that the parties hereto are unable to resolve any controversy or claim arising out of, or relating to, this Agreement or the making, performance or interpretation of it without resort to the courts, the parties agree that exclusive jurisdiction and venue over such matter shall be in the District Court of Johnson County, Kansas.

8.18 Headings. The headings contained in this AGREEMENT are for reference purposes only and shall not affect the meaning or interpretation of this AGREEMENT.

8.19 Cooperative Procurement. CONTRACTOR agrees that pricing, terms, and conditions of this CONTRACT may be made available to any Municipality, County Public Utility, Hospital, Education Institution, or any other non-profit organization.

There shall be no obligation under the cooperative procurement agreement for any organization to utilize the RFP or contract unless they are specifically named in the Request for Proposal.

All sales to other jurisdictions will be made on purchase orders issued by that jurisdiction. All deliveries shall be F.O.B. Destination. All receiving, inspection, payments, and other contract administration will be the responsibility of the ordering jurisdiction.

ARTICLE 9 - CONTRACT DOCUMENTS

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

- 9.1 This Agreement (pages A-1 to A-7, inclusive);
- 9.2 OWNER'S Request for Proposal No. 2023-026 (hereinafter "RFP No. 2023-026") and RFP Addenda numbers 1 and 2 ;
- 9.3 CONTRACTOR'S written Response to RFP No. 2023-026, signed and duly submitted to the OWNER (hereinafter "CONTRACTOR'S Response");
- 9.4 OWNER-issued Notice of Award of term and supply contract;
- 9.5 OWNER-issued PROJECT AUTHORIZATIONS, complete with scope descriptions, plans and specifications, instructions, additional bonds and insurance, Additional Supplementary Conditions, Supplementary Division 01000 specifications, and/or other documents as required for each assigned project;
- 9.6 OWNER-issued Notice to Proceed with each PROJECT AUTHORIZATION;
- 9.7 General Conditions (pages 1 to 43, inclusive);
- 9.8 Supplementary Conditions (pages SC-1 to SC-11, inclusive);
- 9.9 Executed and filed Bonds;
- 9.10 Certificate of Insurance; and
- 9.11 Other documents, if any, listed below:

The documents listed in paragraphs 9.2 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.

ARTICLE 10 – ENTIRE AGREEMENT

This AGREEMENT represents the entire agreement between the OWNER and the CONTRACTOR with respect to the provision of services required of CONTRACTOR and OWNER under this Agreement, and supersedes all prior understandings or promises, whether oral or written, between the parties pertaining to or in connection with this Agreement.

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

CONTRACTOR

By 
Erick Lowe (Nov 10, 2023 09:06 CST)

Erick Lowe
Project Executive

JOHNSON COUNTY, KANSAS

By 
Robin Lynes (Nov 13, 2023 14:53 CST)

Robin Lynes
Purchasing Manager

APPROVED AS TO FORM:


Ryan Haga (Nov 13, 2023 15:16 CST)

Ryan Haga
Assistant County Counselor

ATTACHMENT A
to
Agreement for Construction Services
RFP No. 2023-026a
Scope of Services

The CONTRACTOR shall perform some or all of the services described below. The extent and complexity of each construction project will vary. However, these basic services listed below may be required. Each CONTRACTOR selected by the OWNER, together with approved subcontractors, shall be capable and qualified to perform the following:

1. **PROJECT DEVELOPMENT AND CONSTRUCTION ADMINISTRATION/MANAGEMENT**

- a. Assist OWNER and ENGINEER when requested with project development, including constructability assessments and cost-saving alternatives.
- b. Prepare detailed cost proposals for assigned construction projects and change order work.
- c. Plan, schedule, direct and supervise construction projects from Notice to Proceed to final completion.
- d. Coordinate work with JCW operation and maintenance staff in order to keep essential wastewater treatment processes in service and meet regulatory permit requirements.
- e. Conduct work in compliance with all federal, state, and local regulations. Obtain all required permits for the Work.
- f. Conduct work in a safe manner and in compliance with all federal, state, and local safety regulations. Consider and act upon safety concerns of JCW's Safety Manager and other JCW staff.
- g. Meet the Administrative Requirements of the Division 01000 General Construction Requirements

2. **GENERAL CONSTRUCTION REQUIREMENTS**

CONTRACTOR shall perform the services included in the Division 01000 General Construction Requirements for all assigned projects unless OWNER deems any requirements as unnecessary for a project. These requirements generally include:

- a. SITE REQUIREMENTS
- b. EQUIPMENT REQUIREMENTS
- c. SAFETY AND SECURITY REQUIREMENTS
- d. COMMUNICATION AND COORDINATION REQUIREMENTS
- e. GENERAL CONSTRUCTION REQUIREMENTS
- f. SUPPLEMENTARY DIVISION 01000 REQUIREMENTS

3. TYPES OF CONSTRUCTION

CONTRACTOR shall perform the following types of construction at OWNER'S wastewater facilities, as authorized:

- a. STRUCTURAL AND ARCHITECTURAL – repair, replacement, or expansion of structures including: concrete, steel/metal, carpentry, masonry, roofing, doors/windows, protective coatings, demolition, etc.
- b. MECHANICAL – repair, replacement, or expansion of plumbing, process piping, HVAC systems, and wastewater facility equipment including bar screens, conveyors, washer-compactors, sludge/scum collectors, pumps, gates/valves, flow meters, heat exchangers, blowers, compressors, boilers, generators, mixers, chemical feed systems, belt presses, centrifuges, odor control systems, aerators, etc.
- c. ELECTRICAL – repair, replacement, or expansion of high voltage and low voltage systems including transformers, switchgear, circuit breakers, starters, motors, AFDs/VFDs, soft-starts, controls (PLC and SCADA work by others), conduit/wiring/duct-banks, building/yard lighting, bridge cranes, etc.
- d. SITE/CIVIL – earthwork, trenching, pavement, flatwork, modification or replacement of landscaping, fencing, yard piping, etc.

Note: Work may include but may not be limited to bypass pumping, confined space work, handling of wastewater and wastewater residuals/solids, and chemicals used at JCW facilities.

(end of scope of services)

ATTACHMENT B

to

Agreement for Construction Services

RFP No. 2023-026a

Schedule of Billing Rates and Percentage Markups

Contractor: Crossland Heavy Contractors

Effective Dates: October 19, 2023 through October 18, 2024

Table 6-1 Labor Billing Rates

JOB CLASSIFICATION	BILLING RATE (\$/Hr) ¹		
	Regular	Overtime ²	Premium ³
Management, Supervision, Engineering:			
Project Manager/Project Engineer ⁴	\$99.00	\$148.50	\$198.00
Project Superintendent ⁴	\$99.00	\$148.50	\$198.00
Foreman	\$73.00	\$109.50	\$146.00
Documents Coordinator ⁶	\$35.00	\$52.50	\$70.00
Electrical Project Manager/Project Engineer ⁴	\$85.00	\$127.50	\$170.00
Electrical Project Superintendent ⁴	\$75.00	\$112.50	\$150.00
Electrical Foreman	\$75.00	\$112.50	\$150.00
Construction Trades:			
Carpenter	\$56.00	\$84.00	\$112.00
Apprentice ⁵	\$56.00	\$84.00	\$112.00
Concrete Mason/Finisher	\$50.00	\$75.00	\$100.00
Apprentice ⁵	\$50.00	\$75.00	\$100.00
Equipment Operator	\$56.00	\$84.00	\$112.00
Apprentice ⁵	\$56.00	\$84.00	\$112.00
Iron Worker	\$56.00	\$84.00	\$112.00
Apprentice ⁵	\$56.00	\$84.00	\$112.00
Laborer	\$50.00	\$75.00	\$100.00
Plumber/Pipefitter/Pipelayer	\$61.00	\$91.50	\$122.00
Apprentice ⁵	\$61.00	\$91.50	\$122.00
Truck Driver/Hauler/Teamster	\$50.00	\$75.00	\$100.00
Electrician	\$70.00	\$105.00	\$140.00
Apprentice ⁵	\$50.00	\$75.00	\$100.00

Additional Labor Rates (Optional) ⁷ :			

¹Refer to Measurement and Payment and General Contractor Labor – Billing Rates 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

⁴The Project Manager/Engineer oversees the project as a whole, supervises invoices and submittals, and helps finalize shop drawings and operations and maintenance manuals. The Superintendent is defined as the person assigned to run the day-to-day operations of the construction site, coordinate the delivery of materials, and oversee subcontractors. Refer to Section 5.2.4. – Measurement and Payment.

⁵Apprentice rates are optional, if not applicable please fill in “N/A”

⁶Documents Coordinator can be billed if tasks related to shop drawings, submittals, O&Ms, etc. are not handled by the Project Manager/Project Engineer. General administration shall be handled by the overhead and profit markup.

⁷Additional labor rates may be added if contractor desires. Failure to add additional labor rates will not affect the price component of the bid.

Contract Markups:

Table 6-2 – Overhead & Profit (Line D)¹

Subtotal 1: Less than \$100,000	11.0 %
Subtotal 1: \$100,001 - \$500,000	11.0 %
Subtotal 1: \$500,001+	11.0 %

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.

Table 6-3 – General Contractor Markup on Subcontractor Work (Line F)²

Line F:	6.0 %
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²Markup shall be multiplied by the sum of the costs of all subcontractors on the project (both Preferred Subcontractors and other subcontractors).

Table 6-4 – Bonds & Insurance (Line G)³

Subtotal 4: Less than \$100,000	1.5 %
Subtotal 4: \$100,001 - \$500,000	1.5 %
Subtotal 4: \$500,001+	1.5 %

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

Table 6-5 – Johnson County Purchasing Card Charges⁴

Decimal Percent Charge for Use of P-Card	N/A %
--	-------

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%.

Table 6-6 – Preferred Subcontractor Overhead and Profit Markup⁵

Percent Markup of Preferred Subcontractor on Preferred Subcontractor's Work	10.0 %
---	--------

⁵Markup shall be applied by the Preferred Subcontractor on their own labor, materials, and equipment before submission of invoices to General Contractor. General Contractor may then markup Preferred Subcontractor's invoice by the amount specified in Line F (Table 6-3).

Table 7-1 – Contractor’s Equipment Billing Rates

EQUIPMENT TYPE AND SIZE	BILLING RATE (\$) ¹					
	Hourly	Daily	Weekly		Monthly	
	Active	Active	Active	Standby	Active	Standby
Large Excavator (greater than 45,000 lbs)	\$140.00	\$1,120.00	\$3,600.00	\$2,700.00	\$11,000.00	\$7,300.00
Medium-Sized Excavator (20,000 lbs to 45,000 lbs)	\$120.00	\$960.00	\$2,900.00	\$2,200.00	\$9,000.00	\$6,200.00
Small Excavator (20,000 lbs or less)	\$95.00	\$820.00	\$1,900.00	\$1,500.00	\$6,000.00	\$3,300.00
Lull/Telehandler/Shooting Boom Forklift (8,000 lbs to 9,000 lbs)	\$65.00	\$520.00	\$1,750.00	\$1,400.00	\$4,000.00	\$3,100.00
Skid Steer (bobcat)	\$65.00	\$520.00	\$1,750.00	\$1,400.00	\$3,900.00	\$3,200.00
Dump Truck (Tandem Axle)	\$85.00	\$720.00	\$3,200.00	\$2,600.00	\$7,300.00	\$6,000.00
Crane (20 ton with 90 foot reach)	\$95.00	\$920.00	\$3,200.00	\$2,300.00	\$8,300.00	\$6,300.00
Additional Equipment (Optional) ²						

Notes:

¹ Refer to General Requirements, Section 5.2.4. – Measurement and Payment, for a list of all that is included in the Contractor Equipment Rates.

²Additional equipment and rates may be added if contractor desires. Failure to add additional equipment will not affect the price component of the bid.



Financial Management & Administration

REQUEST FOR PROPOSAL FOR ON-CALL WASTEWATER FACILITY REPAIR AND IMPROVEMENT SERVICES

RFP NUMBER: 2023-026

ISSUE DATE: 6/22/23

OPEN DATE & TIME: 7/28/2023 2:00 PM

Purchasing Administrator: Annette Weeden

Contact Information: annette.weeden@jocogov.org 913-715-0594

Table of Contents

1.	TENTATIVE TIMELINE	3
2.	INTRODUCTION	3
3.	PRE-PROPOSAL CONFERENCE	4
4.	QUESTIONS	4
5.	SCOPE OF SERVICES	4
5.1.	SCOPE OF WORK.....	4
5.2.	PROJECT PROCEDURES.....	5
5.3.	CONSTRUCTION REQUIREMENTS.....	12
6.	CONTRACT TERM & OPTION TO RENEW.....	12
7.	QUALIFICATIONS	12
7.1.	TECHNICAL QUALIFICATIONS.....	12
8.	EVALUATION PROCESS	13
9.	STANDARD TERMS AND CONDITIONS	15
9.1.	TERMINOLOGY/DEFINITIONS	15
9.2.	OPEN COMPETITION.....	16
9.3.	PREPARATION OF PROPOSAL	17
9.4.	SUBMISSION OF PROPOSAL.....	17
9.5.	PROPOSAL OPENING	17
9.6.	EVALUATION/AWARD	18
9.7.	CONTRACT/PURCHASE ORDER	18
9.8.	INVOICING AND PAYMENT	19
9.9.	DELIVERY	19
9.10.	INSPECTION AND ACCEPTANCE	19
9.11.	WARRANTY	19
9.12.	CONFLICT OF INTEREST.....	19
9.13.	CANCELLATION/TERMINATION OF CONTRACT	19
9.14.	COMMUNICATIONS AND NOTICES.....	20
9.15.	INVENTIONS, PATENTS, AND COPYRIGHTS	20
9.16.	NON-DISCRIMINATION IN EMPLOYMENT	20
9.17.	AMERICANS WITH DISABILITIES ACT	21
9.18.	GOVERNING LAW AND VENUE	21
9.19.	HOLD HARMLESS.....	21
9.20.	TITLES.....	21
9.21.	RIGHT TO EXAMINE AND AUDIT RECORDS	21
9.22.	HIPAA COMPLIANCE	21
9.23.	TAX CLEARANCE FOR TAXES OWED TO LOCAL GOVERNMENTS	21

9.24.	TIME LIMIT TO SUBMIT SUPPORTING DOCUMENTS.....	22
9.25.	MANNER OF PAYMENT.....	22
9.26.	SURCHARGES.....	22
9.27.	ADDITIONAL SERVICES.....	22
9.28.	NEGOTIATIONS.....	22
9.29.	TRAVEL EXPENSES.....	22
9.30.	PUBLICITY CLAUSE.....	22
9.31.	OWNERSHIP	22
9.32.	OBJECTIONS	22
9.33.	SUSTAINABLE EFFORTS.....	23
9.34.	SAM (System of Award Management)	23
9.35.	LICENSES AND PERMITS	23
9.36.	CODES AND REGULATIONS.....	23
9.37.	CONTRACT PRICING.....	23
9.38.	PERFORMANCE AND STATUTORY BONDS	23
9.39.	CERTIFICATION OF BONDING CAPACITY	23
9.40.	SAFETY DATA SHEET (SDS).....	23
10.	SPECIAL CONDITIONS.....	23
10.1.	INSURANCE	23
11.	COOPERATIVE PROCUREMENT WITH OTHER JURISDICTIONS	27
12.	INVOICE DISCOUNT TERMS	27
13.	INSTRUCTIONS FOR RESPONDING TO RFP	27
14.	RFP FORM DESCRIPTIONS & FORM TEMPLATES	28
14.1.	TABLE OF CONTENTS.....	28
14.2.	FORM 1 – GENERAL INFORMATION: PROJECT UNDERSTANDING AND APPROACH	28
14.3.	FORMS 2A AND 2B – PERSONNEL INFORMATION AND RESUMES	28
14.4.	FORMS 3A AND 3B – PROJECT EXPERIENCE AND REFERENCES	28
14.5.	FORM 4 – PRIME CONTRACTOR PROJECT DETAIL.....	28
14.6.	FORM 5 – CONTRACTOR-RESOURCES.....	28
14.7.	FORMS 6, 7, and 8 – COST PROPOSALS	28
14.8.	DOCUMENTED SAFETY PROGRAM.....	28
	TABLE OF CONTENTS	29
	FORM 1 – General Information: Project Understanding and Approach.....	30
	FORM 2A – Prime Contractor Personnel Information and Resumes	32
	FORM 2B – Preferred Electrical Sub-Contractor Information and Resumes	34
	FORM 3A – Prime Contractor Project Experience and References.....	36
	FORM 3B – Preferred Electrical Sub-Contractor Project Experience and References.....	39

FORM 4 – Prime Contractor Project Detail (Optional)	41
FORM 5 – Contractor-Owned Resources*	42
FORM 6 – Cost Proposal: Labor Billing Rates and Percentage Markups.....	44
FORM 7 – Cost Proposal: Contractor’s Equipment Billing Rates	48
FORM 8 – Cost Proposal: Scenarios.....	50

1. TENTATIVE TIMELINE

Issue RFP	6/22/2023
Non-Mandatory Pre-Proposal Meeting (Virtual)	7/10/2023
Question Deadline	7/19/2023
Open RFP	7/28/2023
Interviews - Week of	8/30/2023
Board Approval	10/19/2023
Project Begins	10/26/2023

2. INTRODUCTION

Johnson County is a local government organized on September 7, 1857 and located in the Kansas City metropolitan area of northeast Kansas. The County serves a diverse and expanding population through four county agencies and 26 county departments and offices. The County has more than 4,000 public servants serving in more than 52 offices located through-out the County and dedicated to helping Johnson County’s more than 600,000 residents remain part of a safe and vibrant community. Johnson County is governed by a seven-member, non-partisan, elected Board of County Commissioners (BOCC). The BOCC appoints a County Manager. Johnson County also has both an elected Sheriff and District Attorney.

In addition to the traditional governmental operations of public health and safety, codes regulations, and tax collection, Johnson County operates a major intermodal transportation system, two (2) airports, railroad and business park, 14 libraries, four (4) multi-service centers, a parks and recreation district, mental health and developmental support centers, a community corrections program, and a countywide wastewater system. More information on Johnson County can be found on our public website (www.jocogov.org), as this site provides information on the organization and a complete directory of services provided as well as the wide range of public resources available.

3. PRE-PROPOSAL CONFERENCE

A pre-proposal conference will be held virtually on July 10, 2023 at 2:00 p.m. Central Standard Time via Zoom. Participation in the pre-proposal meeting is non-mandatory for submitting a proposal. The Zoom meeting link is provided below:

Join Zoom Meeting

<https://zoom.us/j/92768572616>

Meeting ID: 927 6857 2616

4. QUESTIONS

To ensure open and fair competition for all potential respondents, ALL questions and contact concerning this RFP shall be directed to the Johnson County Purchasing Administrator: Annette.Weeden@jocogov.org 913-715-0594

We encourage you to submit questions up until the deadline date and time by selecting ‘Ask Question’ on the solicitation event at: <https://jocogov.ionwave.net>.

Respondent should make NO CONTACT, neither written nor verbal, with the Board of County Commissioners, Johnson County legal counsel, department personnel, consultants, or other county boards beginning with the issuance of this document through approval of award.

5. SCOPE OF SERVICES

Johnson County Wastewater (JCW) is seeking to enter into a term and supply contract with one or more wastewater facility construction firms located near Johnson County, Kansas to provide on-call, planned, and emergency construction work at wastewater pumping and treatment facilities. The types of construction work to be authorized under this contract are outlined under the Scope of Work section below. This contract will be used to conduct construction work when JCW determines it is more cost-effective than the normal design-bid-construction process, or when the work must be expedited. The method of payment will be based on actual time and material expenses, as described in section 5.2 Project Procedures.

This contract may be awarded to more than one contractor to ensure resources are available when they are needed, thereby providing prompt service to the county. Jobs to be assigned to the contractor will be identified by Operation’s and Engineering Management.

5.1. SCOPE OF WORK

Work to be performed under this term and supply contract consists of four (4) types of construction work that may be required at any of JCW’s 33 wastewater pumping stations and six (6) wastewater treatment plants. In general, the work consists of structural and architectural, mechanical, electrical, and site/civil repairs and improvements. The contractor shall furnish all labor, tools, equipment, supplies, materials, and appurtenances necessary to perform routine and emergency work authorized under this contract. Examples of work that may be required include, but are not limited to, the following:

1. Structural and Architectural – repair, replacement, or expansion of structures including: concrete, steel/metal, carpentry, masonry, roofing, doors/windows, protective coatings, demolition, etc.
2. Mechanical – repair, replacement, or expansion of plumbing, process piping, HVAC systems, and wastewater facility equipment including bar screens, conveyors, washer-compactors, sludge/scum collectors, pumps, gates/valves, flow meters, heat exchangers, blowers, compressors, boilers, generators, mixers, chemical feed systems, belt presses, centrifuges, odor control systems, aerators, etc.
3. Electrical – repair, replacement, or expansion of high voltage and low voltage systems including transformers, switchgear, circuit breakers, starters, motors, AFDs/VFDs, soft-starts, controls (PLC and SCADA work by others), motor control cabinets, lighting and power panels, conduit/wiring/duct-banks, building/yard lighting, bridge cranes, etc.

4. Site/Civil – earthwork, trenching, pavement, flatwork, modification or replacement of landscaping, fencing, yard piping, etc.

Note: Work may include but may not be limited to bypass pumping, confined space work, handling of wastewater and wastewater residuals/solids, and chemicals used at JCW facilities.

A list of examples of potential projects will be provided at the non-mandatory pre-proposal conference.

5.2. PROJECT PROCEDURES

1. Project Initiation: The following are procedures for initiating unplanned and planned projects:
 - a. Unplanned Projects - JCW, at its sole discretion, will select a Contractor from those selected from this RFP and approach them with the project. Contractors are required to respond with a company representative to the repair site within two (2) hours upon notification by JCW staff. Contractor will be given time to assess the scope of work and the appropriate equipment and personnel to complete the work. Contractor is required to begin mobilization after completing the initial site visit. Because this work may involve the repair of buried infrastructure, the scope of each job may not be entirely known until work commences.
 - b. Planned Projects:
 - i. Project Development - JCW will identify projects that meet the stated purpose of this contract and develop a scope of work. One of JCW's contract consulting engineers may be utilized to assist with the scope of work and to develop detailed plans and specifications.
 - ii. Contractor Proposal – JCW, at its sole discretion, will select a Contractor from those selected from this RFP and approach them with the project. The Contractor will review the details of the project (which may include plans and specifications) and will submit an itemized cost estimate for review by JCW and the engineer, if applicable. Estimates shall utilize contract pricing and shall be as firm and accurate as is possible without undue effort by the contractor. JCW, the engineer, and Contractor shall discuss the proposal and make any necessary modifications until the proposal is acceptable to all parties.
2. Project Award: The following represent procedures for routine projects. For emergency work, these steps will be streamlined to expedite the work.
 - a. Authorization of Work – JCW will issue a written Project Authorization, see **Attachment B.2**, to the contractor (signed by both parties), which confirms acceptance of the contractor's proposal and establishes the scope of work and special contract terms and conditions by adopting the plans and specifications into the Agreement (i.e., term and supply contract). The Project Authorization will be issued with an official Notice to Proceed date.
 - b. Purchase Order – The Contractor is issued a Purchase Order. The Purchase Order amount is considered a ceiling cost that cannot be exceeded without a change order that has been approved by the JCW General Manager. If, during a project, it becomes apparent that the ceiling cost might need to be increased; the Contractor will immediately inform JCW and submit a detailed cost estimate for the expected increase.
3. Clarifications/Disclaimers:
 - a. JCW is not obligated to use this term and supply contract for any work. The contract will be used at the sole discretion of JCW.
 - b. If more than one contractor is awarded this term and supply contract, JCW has sole discretion in selecting which contractor is awarded each project. For some projects, JCW

may interview several term and supply contractors prior to selecting one to submit a cost proposal.

- c. Although it is not the intent of this term and supply contract that bids be solicited for a project, this does not preclude JCW from obtaining a cost estimate from more than one (1) term and supply contractor.
- d. Contractors are not guaranteed the award of any project under this term and supply contract. There is no minimum number of projects or dollar amount of projects to be awarded.
- e. This term and supply contract has an annual not to exceed dollar amount that is authorized, as established by the Board of County Commissioners, at the time of contract authorization. The Board of County Commissioners must authorize expenditures against term and supply contracts, which have not been previously authorized as part of a project, when the total of the single purchase exceeds \$100,000.

4. Measurement and Payment

a. General –

- i. Contractor shall be paid on a “time and materials not to exceed” basis with the general intent of being paid for actual costs plus a markup for overhead and profit.
 - ii. Contractor must make a conscientious effort to minimize all costs to JCW and should obtain multiple quotes from vendors and/or multiple firm bids from subcontractors for materials or services.
 - iii. Contractor must obtain multiple quotes from vendors and/or multiple firm bids from subcontractors for any materials or services specifically requested by JCW. Quotes/Bids requested by JCW must be sealed and opened in the presence of Contractor and a JCW representative, when requested by JCW. Contractor must track all work in a manner that provides details necessary to produce invoices that demonstrate conformity with contract, and justifiable and reproducible pricing.
 - iv. Receipts shall be attached to all invoices for proof of payment. Invoices, and supporting documentation, must be in a format approved by JCW. Any approved costs not specifically addressed in the contract pricing must be negotiated and paid in accordance with the stated intent.
 - v. The criteria from this paragraph shall also apply to the Preferred Subcontractor.
 - vi. All markups must be calculated by multiplying the cost of the markup item by the decimal percentage markup + 1 (e.g., 1.15 for a 15% markup).
- b. Payment Structure – This term and supply contract is based on time and materials costs, with adjustable percentage markups for the size and complexity of the project. The following table shows how markups shall be applied to costs incurred on the project. Refer to **Form 6** for a numerical example. The following sections detail each line item.

Table 5-1 – Term and Supply Contract Markup Method

Line	Cost Item or Calculation (using Form 6 for Markups)
A	Equipment & Materials Incorporated into the Work
B	General Contractor Labor
C	Construction Equipment Used to Perform the Work
Subtotal 1	A + B + C
D	Overhead and Profit (i.e., OHP Decimal Markup x Subtotal 1)
Subtotal 2	Subtotal 1 + D
E	Subcontractor Costs
F	Contractor Markup on Subcontractor (i.e., Contractor Decimal Markup x E)
Subtotal 3	E + F
Subtotal 4	Subtotal 2 + Subtotal 3
G	Bonds and Insurance (i.e., B&I Decimal Markup x Subtotal 4)
H	At-Cost Items (e.g., Permit Fees)
Total Cost	Subtotal 4 + G + H

- c. Line A – Equipment and Materials Incorporated into the Work – The following categories of expenses shall be included in Line A expenses:
- i. Equipment and Materials Incorporated into the Work – Contractor shall be paid for the cost of new equipment and materials purchased for, and incorporated into, the project. Construction materials do not include expendable supplies, which are included in the Labor Billing Rates – See Paragraph 5.2.4.d.ii. Purchase receipts are required for all cost reimbursements. JCW has the option to take possession of surplus materials that are purchased for the work, or to not pay for surplus materials.
 - ii. Equipment Startup and Training – Equipment suppliers shall include startup and training for JCW employees in their cost proposals, unless specified otherwise. The startup and training scope and cost is to be approved by JCW prior to contractor placing an order.
 - iii. Asset Onboarding – Equipment suppliers shall include completion of Electronic Summary Sheets (ESS) for the purposes of Asset Onboarding in their costs proposals, unless specified otherwise.
 - iv. Other – Direct expenses incurred by the contractor that are specific to the project, but not addressed under the Measurement and Payment section (section 5.2.4), shall be paid according to actual cost.

- v. Note: An overhead and profit markup will be applied to Line A expenses (See Line D).
- d. Line B – General Contractor Labor:
 - i. General Contractor Labor shall be paid in accordance with the Billing Rates entered on the Labor Price Sheet (**Form 6** – Table 6-1) for employees of the Contractor’s firm including field personnel as well as specific office personnel with dedicated functions on the project such as project manager or project superintendent. General office staff such as executives, accountants, purchasing agents, general administrative staff, etc., shall not be included. The contractor shall track the dates and times worked by each employee on a time sheet and submit to JCW with each pay request. All work shall be performed at regular hourly rates, not overtime rates, unless approved in advance by JCW. The contractor shall not use a crew larger than is required to perform the work. Billing Rate for any labor that does not fall under one of the job classifications on the Labor Price Sheet (**Form 6**) shall be negotiated. JCW reserves the right to add other labor classifications as required.
 - ii. Billing Rates for each job classification shall include the following:
 - 1. Employee salary and benefits.
 - 2. Travel time for employee (employee paid only for hours worked at jobsite or for travel related to the performance of the work (e.g.: picking up materials). Hours traveling to or from the jobsite will not be reimbursed).
 - 3. Travel expenses, including use of company vehicles (e.g., pickup trucks, passenger cars, etc.).
 - 4. Safety gear and clothing.
 - 5. Personal electronic devices (cell phones, computers, cameras, etc.).
 - 6. Hand tools and minor equipment (includes small powered hand tools/equipment).
 - 7. Expendable supplies and miscellaneous items (e.g., fuel, cleaning supplies, lubricants/sprays, wiring & plumbing supplies, nuts and bolts, etc.).
 - iii. The prices quoted by the successful bidder shall remain firm during the initial contract period. Prices for contract renewal periods shall be negotiated and mutually agreed upon.
 - iv. An overhead and profit markup will be applied to Line B expenses (see Line D).
- e. Line C - Construction Equipment and Materials (Used to Perform the Work):
 - i. Construction equipment is defined as wheeled vehicles, track vehicles, and powered (electric, pneumatic, hydraulic) construction equipment such as portable pumps, portable generators, concrete mixers, etc. It does not include hand tools or small powered hand tools, nor pickup trucks and passenger vehicles (unless the vehicle is actively engaged in a work activity specific to the project), which are included in Labor Billing Rates. Construction equipment may be contractor-owned or rented equipment.
 - ii. Construction equipment usage shall be paid in accordance with the Billing Rates on the Equipment Price Sheet (**Form 7**). **Form 7** includes common construction equipment, and additional equipment may be added as the contractor desires when filling out the forms (although the additional equipment will not impact the cost component of this RFP). Any equipment not listed on the Equipment Price Sheet that is owned by the contractor will be paid in accordance with a standard

equipment cost reference such as RS Means Building Construction Cost Data, bare cost only indexed to Kansas City, Kansas (reference to be mutually agreed on prior to beginning work).

- iii. The rates for contractor-owned equipment will be based on the actual duration of when the equipment is needed on-site and will be the lesser of either the weekly rate or the sum of the daily rates, or the lesser of either the monthly rate or the sum of the weekly rates. Standby rates shall apply in lieu of full usage rates when equipment must remain on-site but is idle. Standby time shall be limited to two (2) weeks unless otherwise agreed.
 - iv. Equipment required for the work that the contractor does not own and is not included in **Form 7** will be paid based on rental receipts. Contractor shall endeavor to minimize rental costs by shopping for the best rental price and by minimizing the hours the equipment is tied-up on the jobsite. JCW shall be billed only for the days and hours the equipment was required for the project and maintained in working condition, in a similar manner as for contractor-owned equipment.
 - v. Construction Trailer – For projects that require a construction office trailer, the contractor will be reimbursed for the cost of the trailer rental only, and not for any additional furnishings. For contractor-owned trailers, the contractor will be paid according to RS Means as defined above or Blue Book pricing. JCW will provide water and electrical service without charge.
 - vi. Materials used for Construction of the Work – These materials are mostly reusable, such as scaffolding, shoring materials, concrete forms, safety fencing, dumpsters, portable restrooms, etc. Rented construction materials shall be reimbursed when submitted with itemized receipts. The use of contractor-owned construction materials shall be paid in accordance with a standard equipment cost reference such as RS Means as defined above (reference to be mutually agreed on prior to beginning work).
 - vii. Expendable supplies and miscellaneous items associated with running or maintaining construction equipment or materials shall be included in the billing rates and shall not be an additional expense.
 - viii. Contractor shall track the dates and times the equipment was used on a time sheet and submit to JCW with each pay request.
 - ix. An overhead and profit markup will be applied to Line C expenses (See Line D).
- f. Line D - Overhead and Profit:
- i. An Overhead and Profit Markup will be paid as a percentage markup of Subtotal 1 (see Table 5-1). Overhead and Profit percentage markups are to be entered in **Form 6** (Table 6-2). Because actual costs will not be known until the conclusion of the project, the contractor's estimate will be used as the basis for selecting the percentage markup from the table in **Form 6**.
 - ii. The Overhead and Profit shall account for company administration, executive staff, and overhead (office personnel not included under Paragraph 5.2.4.d.ii. and expenses including printing and office equipment costs) as well as the contractor's participation in project development (constructability reviews) and preparation of the contractor's cost proposal.
- g. Lines E and F - Subcontractors (Prime Contractor's Preferred Subcontractor and Other Subcontractors): There are two (2) classifications of subcontractors on this contract:

- i. Prime Contractor's Preferred Subcontractor – This is the electrical subcontractor that is a member of the Project Team. The preferred subcontractor will have pre-negotiated labor rates as entered in **Form 6** and shall work on a not-to-exceed time and material basis. Preferred subcontractor invoices shall be itemized, conform to the contract rates, and include the preferred subcontractor's materials and equipment. Purchase receipts are required for all cost reimbursements. The preferred subcontractor's labor, materials, and equipment incorporated into the work and used to perform the work can be marked up for overhead and profit based on a rate entered into **Form 6** (Table 6-6). Small expendable supplies, such as those as identified in Section 5.2-Paragraph 4.d.ii.7., shall not be expensed separately and should be included in the Labor Billing Rates. The preferred subcontractor invoice may be then marked up by the General Contractor (per Line F, see **Form 6** - Table 6-3).
 - ii. Other Subcontractors – For subcontracted work, excluding prime contractor's preferred subcontractor work, the contractor should obtain multiple quotes from subcontractors for materials or services. Subcontractor quotes shall include all labor, materials, and equipment necessary for the subcontractor to perform the work. Subcontractor shall be paid based on the lump sum, not to exceed quote they established with the Contractor and accepted by JCW. The Contractor may be required to summarize the scope and supply of the subcontractor's lump sum invoice for transparency and accountability if requested by the Owner. Receipts from the Subcontractor do not need to be provided with the invoice but shall be issued upon request from JCW.
Alternatively, the Owner may elect to require pricing of subcontractor work based on hourly rates (i.e., time and material with an overhead and profit markup). Sealed quotes/bids will be opened in the same manner as for lump-sum work, when requested by JCW. For time and material subcontract work, the same methodology for payment outlined in Section 5, Paragraphs B.3.c., d., e., and f. shall be followed. The Contractor is allowed an additional markup on subcontractor work per Line F (see **Form 6**, Table 6-3).
- h. Line G - Bonds and Insurance:
- i. Contractor shall obtain all bonds and insurance required for each project. The Bonds and Insurance Markup will be paid as a percentage markup of Subtotal 4 (see Table 5-1). The Bonds and Insurance percentage markup is to be entered in **Form 6** (Table 6-4). Because actual costs will not be known until the conclusion of the project, the contractor's estimate will be used as the basis for selecting the percentage markup from the table in **Form 6**. The bonds and insurance include:
 1. A Performance Bond
 2. A Statutory Bond
 3. Insurance Requirements as noted in Section 10.1 – Insurance.
 - ii. See Part (i) of this section for reimbursement for Bonds or Insurance not mentioned above.
- i. Line H - Miscellaneous Costs (No Markup Allowed):
- i. Permits –See Section 9.35 – Licenses and Permits of the Standard Terms and Conditions.
 - ii. Disposal and Salvage – Disposal costs, such as landfill fees and tipping fees, shall be paid according to actual cost. JCW shall have first right of refusal for salvage

equipment and materials. Contractor salvage revenue shall belong to the contractor. Contractor shall submit documentation from disposal transactions for reimbursement.

- iii. Travel Expenses – See 9.29 – Travel Expenses of the Standard Terms and Conditions.
 - iv. Insurance requirements requested by the Owner and not found in Section 10.1 – Insurance.
 - v. Bonding requirements (e.g., Maintenance Bond, etc.), excluding the Performance and Statutory Bonds from Line G.
- j. Non-Reimbursable Costs:
- i. Mobilization/Demobilization – No separate payment for mobilization/demobilization shall be made. The contractor will be paid on a time and materials basis for mobilization and demobilization based on stated labor and equipment rates. These labor rates will contain the markup from Line D. Basic Site Maintenance – Removal of small trash and litter from construction related activities on-site shall be included in the Labor Rates.
 - ii. Errors in or Redoing Work – Materials, labor, construction equipment, subcontractor costs, and overhead and profit shall not be paid for if these costs are a result of errors in or unreasonable redoing in the work, arising through the contractor, subcontractor, or vendor's failure to comply with the contract documents. The contractor is responsible for working with vendors on errors, omissions, or redoing materials or equipment supplied. Time and materials spent by the Contractor resolving issues with subcontractor or vendor's work shall be tracked separately and may be negotiated with the Owner. The Contractor shall notify the owner as soon as an error associated with their work, their subcontractors work, or vendor supplied equipment or material is identified.
5. Changes in the Work
- a. Any work that deviates from the adopted plans and specifications, and that results in an increase or decrease in the construction cost.
 - b. Initiation - Work change proposals may be initiated by JCW, Engineer, or Contractor.
 - c. Evaluation - Engineer (or JCW if no Engineer is involved) will lead the effort to evaluate potential work changes. Contractor shall assist in developing and evaluating options and provide detailed cost estimates.
 - d. Approval - Engineer will obtain JCW approval of all work changes, then prepare a Work Change form to issue to the contractor. The Work Change form will have an estimated cost and time to perform the work. Contractor shall accept direction for work changes only from the Engineer (or JCW if no Engineer is involved).
 - e. Payment – Contractor will be paid for work changes on a time and material basis, as specified under the Measurement and Payment section (section 5.2.4.) and in accordance with the signed contract and associated contract documents. No separate tracking of the costs for work changes is required.
 - f. Addendums – An Addendum (i.e., change order) to the construction Project Authorization is required whenever an increase in the Project Authorization amount is needed to cover the cost of approved work changes. The additional work should be related to the original scope of work. Addendums must be signed/approved by the JCW General Manager.
 - g. Purchase Order Revision - JCW will process a Purchase Order increase for the Contractor with each Addendum, if necessary.

- h. New Authorizations - New Project Authorizations are required for work changes that are not related to the original scope of work. All Project Authorizations must be signed/approved by the JCW General Manager. Each Project Authorization will have its own Contractor Purchase Order and Contractor shall provide separate invoices for each Project Authorization.

5.3. CONSTRUCTION REQUIREMENTS

1. Standard General Conditions
 - a. **Attachment A** contains the Engineers Joint Contract Documents Committee (EJCDC) Standard General Conditions of the Construction Contract and Johnson County's Supplementary Conditions that shall apply to all projects authorized under this term and supply contract. Additional Supplementary Conditions are included as an example and may be modified on a project-by-project basis and included with each Authorization.
 - b. **Attachment B** includes Sample Contracting forms that will be used for the term and supply contract.

2. General Construction Requirements (Division 01000 Specifications)

Attachment C contains the specifications for general construction requirements that shall apply to all projects authorized under this term and supply contract. These may be modified on a project-by-project basis.

3. Technical Construction Requirements

Contractor will be provided technical plans and specifications for each project, as appropriate. When such plans and specifications are included in a Project Authorization, they are considered to be incorporated into this term and supply contract.

6. CONTRACT TERM & OPTION TO RENEW

The contract(s) resulting from this RFP shall be effective for the approximate twelve (12) month period from the date of the notice of award. Although a minimum is not guaranteed, the annual maximum dollar value is estimated to be \$5,000,000 total for all contracts resulting from award of the RFP. The County reserves the sole right to renew said contract for four (4) additional twelve (12) month periods at the same specifications and terms and conditions of any contract that may be derived from this request for proposal if mutually agreed upon by both parties.

7. QUALIFICATIONS

7.1. TECHNICAL QUALIFICATIONS

1. While many types of work may be required, as outlined in the Scope of Work, JCW is requesting project teams consisting of the following disciplines:
 - a. Site/Civil Work (e.g., flatwork on concrete and asphalt, earthwork, yard piping, etc.)
 - b. Structural/Architectural (e.g., concrete work, masonry, etc.)
 - c. Mechanical Work (e.g., pipefitting, equipment demolition, and installation, etc.)
 - d. Electrical Work (through a preferred subcontractor)

The intent of this RFP is to contract with a General (Prime) Contractor who will generally self-perform a majority of the Civil, Structural/Architectural, and Mechanical Work. It is also the intent of this RFP for the Prime Contractor to include a Preferred Subcontractor who will perform the electrical work. In this RFP, the Prime Contractor and Preferred Electrical Subcontractor are referred to as the "Project Team". The Preferred Subcontractor shall submit rates and markups the same just as the Prime Contractor. It is not expected nor required that the Prime Contractor and Preferred Subcontractor be contractually bound, such as through a joint venture. Other subcontractor work

may be required on a project-by-project basis. These other subcontractors may, but are not required to, be named in this RFP.

The Project Team shall provide labor billing rates for the four disciplines above for the job classifications listed in **Form 6**. Labor rates for work requiring additional disciplines, such as HVAC or instrumentation, will not be required but may be subcontracted be handled separately, as discussed in the Section 5 – Scope of Services, Paragraph B. Project Procedures. No additional points will be given a Project Team for including additional disciplines or subcontractors beyond the job classifications listed in **Form 6**.

2. All work performed under this contract shall be performed by technically qualified and skilled craftsmen, directly employed or subcontracted, and supervised by the contractor. Firms shall provide information concerning the experience of principal workers with their proposal.
3. The Project Team must have the capability to perform the types of work outlined in the above Scope of Work, using subcontractors as necessary. To demonstrate this capability, respondents to the RFP should meet the following minimum experience qualifications:
 - a. Prime Contractor should have minimum five (5) years' experience in wastewater facility repair and replacement construction as a Prime Contractor. Experience should include major construction at existing pumping stations and treatment facilities, with improvements to both liquid and solids handling processes and related systems/equipment.
 - b. Prime Contractor's Project Manager(s) and Superintendent(s) to be assigned to JCW projects should each have a minimum ten (10) years' experience in wastewater facility construction, including a minimum five (5) years in these respective positions.
 - c. Prime Contractor should have successfully completed at least five (5) wastewater facility projects within the past five (5) years. Total construction value for all projects should be at least \$2.5 million. Water Treatment and Pumping Projects, including repair and rehabilitation at existing facilities, may also be considered, but priority will be given to wastewater facility projects.
 - d. Prime Contractor should be located within about a two (2) hour drive of Johnson County, Kansas, or approximately 150 miles.
 - e. Preferred Subcontractor (Electrical) – should have a minimum of five (5) years' experience in wastewater facility repair and replacement construction. Experience should include major construction at existing pumping stations and treatment facilities, with improvements to both liquid and solids handling processes and related systems/equipment.
 - i. The Contractor shall be available to provide service seven (7) days a week, twenty-four (24) hours a day, as needed.
 - ii. All work shall be performed by skilled worker supervised by the Contractor. Contractor will provide information concerning the experience of principal workers.
 - iii. The Contractor shall have sufficient resources necessary to perform the Work of the Specifications and/or requests. To confirm payment for equipment, Contractor may be required to submit specific makes, models, and classifications of equipment used for the work.

8. EVALUATION PROCESS

The proposals will be evaluated by an Evaluation Committee usually composed of County personnel and/or other governmental agencies. Members of the Evaluation Committee will independently review and rate each proposal based on the listed criteria.

The County's RFP process is usually a two-step process. The first step consists of an Evaluation Committee scoring all responsive proposals. This scoring is determined by allocating points totaling 100, which are assigned to evaluation criteria similar to the sample scoring and categories below.

Numerical scores will be tabulated and ranked by the Purchasing Administrator. The finalists will be determined by the rank and will be "short listed" for the interview/cost proposal phase of the RFP. In some circumstances, interviews may be waived with mutual consent of the Purchasing Administrator and the Evaluation Committee. In the case interviews are waived, cost proposals will be requested from all who responded to the solicitation.

Finalist firm interviews shall be independently evaluated by each Evaluation Committee member based on points totaling 100. Points are assigned to criteria similar to the sample scoring and categories below.

The **Form 6 - Cost Proposal** will only be required of finalists and due at the time of the interview. The cost proposal shall not be opened until all of the technical/qualification evaluation of the interview is complete. The Purchasing Administrator will award maximum points to the lowest fee/cost proposal and add to appropriate firms' total.

Following the interviews, the Evaluation Committee will select and/or recommend one (1) or more firm(s) to provide the County the services required in this RFP. The staff will then endeavor to negotiate a contract with the successful firm. In the event that a mutually agreeable contract cannot be negotiated with said firm, the staff will then enter into contract negotiations with the next highest rated firm, and so on until a mutually agreeable contract can be negotiated. Final contract authorization will be made by the County.

SAMPLE SCORING GUIDELINES							
	35 Point Question	30 Point Question	25 Point Question	20 Point Question	15 Point Question	10 Point Question	5 Point Question
Outstanding	29-35	25-30	21-25	17-20	13-15	9-10	5
Exceeds Acceptable	22-28	19-24	16-20	13-16	10-12	7-8	4
Acceptable	15-21	13-18	11-15	9-12	6-9	5-6	2-3
Marginal	0-14	0-12	0-10	0-8	0-5	0-4	0-1

PROPOSAL

Maximum Points

1. Prime Contractor's Qualification and Project Experience:

25

Consider previous project experience and references listed in the proposal. The Prime Contractor of the Project Team demonstrates experience in wastewater treatment and pumping projects. Experience should include pumping projects, liquids treatment projects, and solids treatment projects. Experience should include managing multi-disciplinary teams, including subcontractors, to achieve quality projects that have a record of being completed on time and on budget. Experiences with all members of the proposed Project Team should be emphasized. Refer to Section 6 – Qualifications and **Forms 1, 3A, and 4**.

Is the Prime Contractor of the Project Team experienced in providing services similar to that requested in the RFP?

2. Prime Contractor's Personnel Qualifications and Experience:

30

Consider resumes of key staff, project managers, and superintendents, to determine the level of experience working on wastewater treatment plant and pumping projects. Review years of experience as well as relevant project experience. Qualifications and experience shall be evaluated for all project team members. Refer to Section 6 – Qualifications and **Form 2A**.

Consider comparable experience and background of the specific personnel that shall be assigned to the County's project(s) as outlined in the proposal. Also consider the specific involvement of those persons in projects noted in the proposal.

3. Preferred Subcontractor's Personnel Qualifications and Project Experience:

15

Consider previous project experience and references listed in the proposal. The preferred subcontractor on the Project Team demonstrates experience in wastewater treatment and pumping projects. Experience should include quality projects that have a record of being completed on time and on budget. Experiences with all members of the proposed project team should be emphasized. Refer to **Forms 2B and 3B**.

Consider the preferred subcontractors' experience, and specific personnel assigned to the County's projects as outlined in the proposal. Have the preferred subcontractors teamed with the prime contractor previously?

4. Project Understanding and Approach:

15

Evaluate the Project Team's project approach and understanding of the Scope of Services required in the RFP as evidenced by their proposal. Project Team indicates a clear understanding of the project and approach. Project Team has a previous history of term and supply or design/build type projects. Refer to **Form 1**.

5. Available and Applicable Resources: 10

Project Team has access to the equipment necessary to perform work in a timely manner, especially in the case of an emergency repair. The Project Team demonstrates other resources which may make the team uniquely qualified for work on wastewater facilities. Note: The Contractor is not required to own equipment. Refer to **Form 5**.

Evaluate the extent of applicable resources available to the firm to complete the County's project(s).

6. Overall Responsiveness to the RFP: 5

The information provided is complete, organized, and in accordance with the instructions in the RFP.

Consider whether all requested information was furnished by the firm in the format required by the RFP.

INTERVIEW

Maximum Points

1. Project Experience: 25

Project Team appears to have appropriate experience and history of satisfactory project outcome for similar type projects. Project Team is able to meet schedules and budgets. Project Team appears to be committed to safety and has documented protocols. References related to these issues may be contacted prior to interviews.

Based on the interview, evaluate the Project Team's experience with similar projects. Based upon the interview and any contact with previous clients of Project Team determine capability and demonstrated ability to meet schedules and deadlines. Project Team appears to have a commitment to safety.

2. Project Understanding and Approach: 20

Project Team presents a clear understanding of the term and supply contract and has a feasible approach. Project Team presented sufficient information in an organized and professional manner. Able to address questions posed during the interview in a thoughtful and satisfactory manner.

Does the proposed project approach expressed in the interview appear to be realistic and feasible? Has the Project Team demonstrated that they have a good understanding of term and supply contracts?

3. Personnel and Other Resources: 20

Based on the interview and resumes of key staff, Project Team demonstrates having a team of project managers, superintendents, and other supporting personnel that are experienced in wastewater treatment facility and pump station construction projects.

Based on the interview consider the involvement and experience of key personnel that will be assigned to the proposed project(s). Evaluate their response to questions, knowledge demonstrated, and involvement in discussion.

4. Staff Utilization: 10

Based on the interview and any contact with previous clients of firm, determine the capability and demonstrated ability to meet schedules and deadlines.

5. Cost Proposal (Forms 6, 7, and 8) 25

(Will only be required of finalists and is due at the time of the interview)

9. STANDARD TERMS AND CONDITIONS

9.1. TERMINOLOGY/DEFINITIONS

Whenever the following words and expressions appear in this solicitation document or any amendment hereto, the definition or meaning described below shall apply.

Agency and/or Department mean(s) the statutory unit of County government in Johnson County, Kansas for which the equipment, supplies, and/or services are being purchased by the Financial Management and Administration, Purchasing Division.

Amendment/Addendum means a written, official modification to a solicitation document or to a contract.

Attachment applies to all forms which are included with a solicitation document to incorporate any informational data or requirements related to the performance requirement.

RFP Opening Date and Time and similar expressions mean the exact deadline required by the solicitation document for the electronic submission of the Request for Proposal by the Financial Management and Administration, Purchasing Division.

Respondent mean(s) the person, firm, or organization that responds to a solicitation document by submitting a proposal with price to provide the equipment, supplies, and/or services as required in the solicitation document.

Board of County Commissioners or BOCC means the governing body of Johnson County, Kansas.

Purchasing Administrator means the procurement staff member of the Financial Management and Administration, Purchasing Division. The **Contact Person** as referenced herein is usually the Purchasing Administrator.

Contract means a legal and binding agreement between two or more competent parties for the purchase of equipment, supplies, and/or services.

Contractor means a person, firm, or organization who is a successful respondent as a result of a proposal and who enters into a contract.

County means Johnson County, Kansas.

Exhibit applies to forms which are included with a proposal for the respondent to complete and return with the electronic submission prior to the specified opening date and time.

Request for Proposal (RFP) means the solicitation document issued by the Financial Management and Administration, Purchasing Division, to potential respondents for the purchase of equipment, supplies, and/or services as described in the document. This definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.

May means that a certain feature, component, or action is permissible, but not required.

Must means that a certain feature, component, or action is a mandatory condition. Failure to provide or comply will result in a proposal being considered non-responsive and not evaluated any further.

Shall has the same meaning as the word **must** and is an obligation to the condition.

Should means that a certain feature, component and/or action is desirable and not mandatory.

9.2. OPEN COMPETITION

It shall be the respondent's responsibility to ask questions, request changes or clarification, or otherwise advise the Financial Management and Administration, Purchasing Division, in writing, if any language, specifications, or requirements of a proposal appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the proposal to a single source. Any and all communication from respondents regarding specifications, requirement, competitive RFP process, etc., must be directed to the Purchasing Administrator from the Financial Management and Administration, Purchasing Division, as indicated on the first page of the proposal. Such communication should be received at least seven (7) calendar days prior to the official RFP opening date.

Every attempt shall be made to ensure that the respondent receives an adequate and prompt response. However, in order to maintain a fair and equitable RFP process, all respondents will be advised, via the issuance of an amendment to the proposal, of any relevant or pertinent information related to the procurement. Therefore, respondents are advised that unless specified elsewhere in the proposal, any questions received by the Financial Management and Administration, Purchasing Division, less than seven (7) calendar days prior to the proposal opening date may not be answered.

Respondents are cautioned that the only official position of the County is that position which is stated in writing and issued by the Financial Management and Administration, Purchasing Division, in the proposal or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement from the County.

The Financial Management and Administration, Purchasing Division, monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among respondents, price-fixing by respondents, or any other anti-competitive conduct by respondents which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Kansas Attorney General's Office for appropriate action.

The Financial Management and Administration, Purchasing Division, reserves the right to officially modify or cancel a solicitation after issuance. Such a modification shall be identified by an amendment/addendum.

9.3. PREPARATION OF PROPOSAL

Respondents must examine the entire proposal carefully. Failure to do so shall be at respondent's risk.

Unless otherwise specifically stated in the RFP, all specifications and requirements constitute minimum requirements. All proposals must meet or exceed the stated specifications/requirements.

Unless otherwise specifically stated in the RFP, any manufacturer's names, trade names, brand names, information and/or catalog number listed in a specification and/or requirement are for informational purposes only to indicate level of quality required and are not intended to limit competition. The respondent may offer any brand which meets or exceeds the specification for any item, but must state the manufacturer's name and model number for any such brands in the RFP. In addition, the respondent shall explain, in detail: (1) the reasons why the proposed equivalent meets or exceeds the specifications and/or requirements; and (2) why the proposed equivalent should not be considered an exception thereto. Proposals which do not comply with the requirements and specifications are subject to rejection.

Proposals lacking any written indication of intent to respond with an alternate brand or to take an exception shall be received and considered to be in complete compliance with the specifications and requirements as listed in the RFP.

All equipment and supplies offered in a proposal must be new and of current production and available for marketing by the manufacturer unless the RFP clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.

Firm fixed prices shall include all packing, handling and shipping charges FOB destination, freight allowed unless otherwise specified in the RFP.

The firm fixed prices shall remain valid for 90 days from RFP opening, unless otherwise indicated. If the proposal is accepted, prices shall be firm for the specified contract period.

9.4. SUBMISSION OF PROPOSAL

A proposal must be submitted electronically at <https://jocogov.ionwave.net> by a respondent and must: (1) be signed electronically by a duly authorized representative of the respondent's organization; and (2) contain all information required by the RFP. If there is difficulty submitting a proposal electronically, contact the Purchasing Administrator for assistance. Arrangements may be made to receive sealed paper proposals by solicitation close by the Department of Financial Management and Administration, Purchasing Division, Johnson County Administration Building, 111 South Cherry Street, Suite 2400, Olathe, Kansas 66061-3486. You must register as a supplier at <https://jocogov.ionwave.net> at least two (2) business days prior to the proposal opening to ensure a successful registration. No other method of submitting proposals will be accepted.

A response may be modified or withdrawn prior to the official opening date and time specified. No respondent may submit more than one response.

9.5. PROPOSAL OPENING

Virtual proposal openings are held via Zoom Meeting publicly on the opening date and at the opening time specified on the RFP document at the link provided below. Respondents may notify the Purchasing Administrator

no less than two (2) business days before the bid opening if they wish to attend the bid opening in person for accommodation.

Join Zoom Meeting

<https://zoom.us/j/98460530750>

Meeting ID: 984 6053 0750

It is the respondent's responsibility to ensure that the proposal is submitted electronically by the official opening date and time at <https://jocogov.ionwave.net>. Late submissions will not be considered regardless of the degree of lateness, or the reason related thereto, including causes beyond the control of the respondent.

Unofficial results of all proposals that have been submitted will be available electronically at <https://jocogov.ionwave.net> within 24 hours of the RFP opening.

9.6. EVALUATION/AWARD

Any pricing information submitted by a respondent pursuant to the requirements of the RFP but not reflected on the pricing page shall be subject to evaluation if deemed by the Financial Management and Administration, Purchasing Division, to be in the best interests of the County.

Unless otherwise stated in the RFP, cash discounts for prompt payment of invoices shall not be considered in the evaluation of prices. However, such discounts are encouraged to motivate prompt payment.

Awards shall be made to the respondent whose RFP (1) complies with all mandatory specifications and requirements of the proposal and (2) is the best RFP, considering price, responsiveness and responsibility of the respondent, and all other evaluation criteria specified in the RFP.

When evaluating a proposal, the County reserves the right to consider relevant information and fact, whether gained from a proposal, from a respondent, from respondent's references, or from any other source.

Any award of a contract shall be made by written notification from the Financial Management and Administration, Purchasing Division.

All submitted proposals and associated documentation shall be subject to the provisions of the Kansas Open Records Act (K.S.A. 45-215 et seq.). The Kansas Open Records Act does permit limited materials to be protected from disclosure. Generally, protected exceptions are financial information submitted as qualification statements and materials privileged under the rules of evidence. These documents should be properly labeled proprietary or confidential. The technical and cost/pricing response documents should not be labeled proprietary, confidential, or in any other manner to restrict dissemination.

The Financial Management and Administration, Purchasing Division, reserves the right to request written clarification of any portion of the respondent's response in order to verify the intent of the respondent. The respondent is cautioned, however, that respondent's response shall be subject to acceptance without further clarification.

The Financial Management and Administration, Purchasing Division, reserves the right to award by item, groups of items, or on all or none basis; and reserves the right to reject any or all proposals in part, or in its entirety, to waive any minor technicality or irregularities of proposals received.

In the event of a discrepancy between the unit price and the extension, the unit price shall prevail.

Respondents who protest the conditions, specifications or scope of services, or other requirements contained in this solicitation are encouraged to review the County's Administrative Purchasing Policies and Procedures located at the County's website at [Johnson County Administrative Policy & Procedures](#).

9.7. CONTRACT/PURCHASE ORDER

By submitting a proposal, the respondent agrees to furnish any and all equipment, supplies and/or services specified in the RFP, pursuant to all requirements and specifications contained herein.

A binding contract shall include: (1) The RFP and any amendment thereto; (2) the respondent's proposal submitted in response to the RFP; and (3) the County's acceptance of the respondent's proposal, in writing.

The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment.

9.8. INVOICING AND PAYMENT

The Contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the County.

Payment for all equipment, supplies, and services shall be made in arrears. Johnson County shall not make any advance deposits, unless provided for in the contract.

The County assumes no obligation for equipment and supplies shipped in excess of the quantity ordered. Any unauthorized quantity is subject to the County's rejection and shall be returned at the Contractor's expense.

The County and its agencies are exempt from state and local sales and use taxes by KSA 79-3606. Situs of all transactions under the order(s) that shall be derived from the RFP shall be deemed to have been accomplished within the State of Kansas.

9.9. DELIVERY

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

Prior to delivery of equipment, each unit must be completely serviced and lubricated in accordance with factory service specifications. Successful respondent is responsible to furnish any equipment needed for unloading of equipment at the F.O.B. destination point.

9.10. INSPECTION AND ACCEPTANCE

No equipment, supplies, and/or services received by an agency of the County pursuant to a contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.

All equipment, supplies, and/or services which do not comply with the specifications or requirements, or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective, or which do not conform to any warranty of the Contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.

The County reserves the right to return any such rejected shipment at the Contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.

The County's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies available to the County.

9.11. WARRANTY

The Contractor expressly warrants that all equipment, supplies, and/or services in accordance with generally accepted industry standards, practices and principles applicable to the work and shall: (1) conform to each and every specification, drawing, sample or other description which was furnished or adopted by the Financial Management and Administration, Purchasing Division; (2) be fit and sufficient for the purpose expressed in the RFP; (3) be of good materials and workmanship; and (4) be free from defect. The Contractor shall replace a defective product at its own cost.

9.12. CONFLICT OF INTEREST

The Contractor hereby covenants that at the time of the submission of the proposal the Contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The Contractor further agrees that during the term of this contract neither the Contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

9.13. CANCELLATION/TERMINATION OF CONTRACT

In the event of material breach of the contractual obligations by the Contractor, the County, may cancel the contract. At its sole discretion, the County, may give the Contractor an opportunity to cure the breach or to explain

how the breach will be cured. Unless otherwise provided for in the contract, the actual cure must be completed within no more than 10 working days from notification a written plan detailing how the Contractor intends to cure the breach.

If the Contractor fails to cure the breach or if circumstances demand immediate action, the Financial Management and Administration, Purchasing Division will issue a notice of cancellations terminating the contract immediately.

If the County cancels the contract for breach, the County reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the County deems appropriate and back charge the Contractor for any additional costs incurred thereby.

The County reserves the right to terminate the contract at any time for the convenience of the County, without penalty or recourse, by giving the Contractor a written notice of such termination at least 30 calendar days prior to termination. The Contractor shall be entitled to receive just and equitable compensation for the work completed pursuant to the contract prices prior to the effective date of termination.

The contract is subject to the provisions of the Kansas Cash Basis Law, K.S.A. 10-1101 et seq., and amendments thereto, (the "Act"). By virtue of this Act, the County is obligated only to pay periodic payments as contemplated by the contract as may lawfully be made from funds budgeted and appropriated for that purpose during the County's current budget year (i.e., January 1 to December 31) or from funds made available from any lawfully operated revenue producing source. Should the County fail to budget, appropriate or otherwise make available funds for payments due under the contract in any budget year, the contract shall be deemed terminated on the last day of the then current budget year for which appropriations were received, without penalty or expense to the County of any kind whatsoever."

9.14. COMMUNICATIONS AND NOTICES

Any notice or other communication to the Contractor shall be made in writing via email, delivered personally, or by United States mail, postage prepaid, to the address listed in the Contractor's proposal.

9.15. INVENTIONS, PATENTS, AND COPYRIGHTS

The Contractor shall defend, protect, and hold harmless the County, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the Contractor's performance or products produced under the terms of the contract.

9.16. NON-DISCRIMINATION IN EMPLOYMENT

In accordance with K.S.A. 44-1030, the Contractor agrees that:

The Contractor shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under the present contract because of race, color, sex, religion or creed, age, disability, pregnancy, ancestry or national origin, military status or membership or service in the military;

In all solicitations or advertisements for employees, the Contractor shall include the phrase "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");

If the Contractor fails to comply with the manner in which it reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the County;

If the Contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, the Contractor shall be deemed to have breached the present contract and it may be cancelled, terminated or suspended, in whole or in part, by the County; and

The Contractor shall include the provisions of subsections immediately above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

The provisions of this Section shall not apply to the Contractor if the Contractor employs fewer than four employees during the term of the present contract or the present contract cumulatively totals \$5,000 or less during the fiscal year of the County.

9.17. AMERICANS WITH DISABILITIES ACT

In connection with the furnishing of equipment, supplies, and/or services under the contract, the Contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

9.18. GOVERNING LAW AND VENUE

All contractual agreements shall be subject to, governed by, and construed according to the laws of the State of Kansas, and the District Court of Johnson County, Kansas shall have jurisdiction over any controversy or claim arising out of, or relating to, the contractual agreements or their performance or interpretation.

9.19. HOLD HARMLESS

The Contractor agrees to protect, defend, indemnify and hold the BOCC, its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of the error, omission, recklessness, negligent act or willful misconduct of the Contractor (collectively hereinafter “claims”). Without limiting the generality of the foregoing, any and all such claims, relating to personal injury or of any other tangible or intangible personal or administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The Contractor further agrees to investigate, handle, respond to, provide defense for and defend any such claims at Contractor’s sole expense and agrees to bear all other costs and expenses related thereto, even if such claim is groundless, false or fraudulent.

9.20. TITLES

Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.

9.21. RIGHT TO EXAMINE AND AUDIT RECORDS

The Contractor agrees that the County, or any of its authorized representatives, shall have access to and the right to examine and audit any and all books, documents, papers and records of the Contractor hereunder, or any change order or contract modification thereto, or with compliance with any clauses thereunder. Such records shall include hard copy as well as computer readable data. The Contractor shall require all of its payees including but not limited to, subcontractors, insurance agents or material suppliers to comply with the provisions of this clause by including the requirements hereof in a written agreement between the Contractor and payee. Further, the Contractor agrees to cooperate fully and will cause all related parties and will require all of its payees to cooperate fully in furnishing or making available to the County any and all such books, documents, papers, and records.

9.22. HIPAA COMPLIANCE

The Contractor agrees to comply with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the privacy and security regulations promulgated under Title II, Subtitle F, §§ 261-264 of HIPAA, the administrative regulations issued by the Department of Health and Human Services (“DHHS”) as found in 45 C.F.R. Parts 160 through 164 (the “HIPAA or DHHS regulations”), and the Health Information Technology for Economic and Clinical Health Act, Public Law 11-005 (the “HITECH Act”), as such laws and regulations may be amended from time to time, and enter into a Business Associate Contract with the County, as may be required, so as to provide necessary reasonable assurances to the County that the Contractor as an Business Associate will comply with the portions of those laws and regulations made applicable to business associates by HIPAA and the HITECH Act.

9.23. TAX CLEARANCE FOR TAXES OWED TO LOCAL GOVERNMENTS

The local governments of Johnson County, KS, City of Kansas City, MO, Jackson County, MO, and the Unified Government of Wyandotte County, KS (collectively the “Local Governments”), have agreed to cooperate with each other to ensure that tax funded contracts are performed by Contractors in compliance with the Tax Laws of the Local Governments. Contractor agrees that the Contractor shall be in compliance with the respective Tax Laws of the Local Governments throughout the term of this contract and any contract renewals and that proof of Contractor’s compliance with the Tax Laws of the Local Governments shall be a condition of award. Upon award of contract and all subsequent renewals with Johnson County in the amount of \$100,000.00 or more, Contractor

must obtain a Tax Clearance Certification. The Tax Clearance Certification must be signed by an authorized official from all four (4) of the “Local Governments” and submitted to the Johnson County Purchasing Department prior to a notice of award (or) contract renewal. The Tax Clearance Certification shall be valid for a period of one year from the date of issuance and shall not be dated more than sixty (60) days prior to any notice of intent to contract by the County.

9.24. TIME LIMIT TO SUBMIT SUPPORTING DOCUMENTS

Within ten (10) calendar days after notification to enter into contract, the successful respondent must furnish the specified insurance and bonds required, if any. If any successful respondent fails to furnish said documents within ten (10) calendar days, the award to that respondent may be withdrawn and awarded to the next acceptable proposal.

9.25. MANNER OF PAYMENT

The Contractor agrees to accept payment from the County in the form of a procurement (credit) card and/or conventional check and/or electronically, at the County’s option, without imposing any additional fees, costs or conditions with respect to the manner and/or receipt of such payment.

9.26. SURCHARGES

Surcharges (fuel or otherwise) are not allowed under any agreement as a result of this RFP. Any such surcharges are to be included in the contract pricing.

9.27. ADDITIONAL SERVICES

The County reserves the right to add additional services to the contract with the mutual consent of the contracting parties within the contract period.

9.28. NEGOTIATIONS

The County reserves the right to negotiate any and all elements of a contract resulting from this RFP.

9.29. TRAVEL EXPENSES

The County will reimburse reasonable and necessary travel and related expenses to the successful Contractor based on the following conditions: travel expenses for airline expenses for business class based on actual cost. Lodging, mileage, and food will be based on the GSA per diem rates for the Kansas City Metro region. All such expenses will be up to but not in excess of the per diem rate for this area based on actual receipts. The applicable GSA per diem information can be located at <http://www.gsa.gov/portal>. Additional expenses such as ground transportation to and from the airport and vehicle rental may also be approved. All travel expenses are subject to the County's prior approval and must have receipts to verify expenses.

Local travel expenses are not reimbursable under the contract as they shall be included in the Labor Billing Rates. The contractor’s office locations are considered local. Out-of- town travel should not normally be required but will be reimbursed when approved in advance by JCW. No markup shall be allowed on travel expenses.

9.30. PUBLICITY CLAUSE

Respondent must obtain prior written approval from the County for use of information relating to the County or the contract in advertisements, brochures, promotional materials or media, press releases or other informational avenues.

9.31. OWNERSHIP

Any work product or deliverable report or data provided to the County as a result of work performed while under contract shall be considered property of the County and may be used in any fashion the County deems appropriate.

9.32. OBJECTIONS

Any objections or concerns to the RFP language, terms and conditions, scope or other elements of the RFP must be included with the respondent’s response. Failure to note such concerns will indicate respondent’s acceptance of the same.

9.33. SUSTAINABLE EFFORTS

The County desires to procure goods and services that are sustainable and maximize value to the County at both a cost and environmental level. Please describe your firm's environmental stance and what steps your firm has taken to support the goal of environmental stewardship.

9.34. SAM (System of Award Management)

Federal Grant shall be verified through SAM for supplier suspension or debarment:

<https://www.sam.gov/portal/public>

9.35. LICENSES AND PERMITS

The Contractor shall obtain all necessary permits for the project and pay any permit fees, unless JCW elects to pay the fees directly. Contractor shall be reimbursed for the actual cost of the permit fees only (i.e. no labor or administrative costs to obtain permits). Contractor shall provide JCW with a copy of all permits obtained for the project and a copy of receipts for permit fee reimbursement.

Contractor shall be responsible for obtaining all licenses and certifications required to perform the work required by the project and to pay the cost of the licenses. No reimbursement shall be made for licensing/certification costs.

Contractor shall be licensed to do business in the State of Kansas and Johnson County.

9.36. CODES AND REGULATIONS

All work within the scope of this RFP shall be completed by the successful respondent to all applicable current prevailing codes and regulations.

9.37. CONTRACT PRICING

The prices quoted by the successful respondent shall remain firm during the initial contract period. Prices for contract renewal periods shall be negotiated and mutually agreed upon.

9.38. PERFORMANCE AND STATUTORY BONDS

The successful respondent may be required to furnish a Performance Bond and/or Statutory Bond equal to 100% of the contract. Such bond shall be executed by a surety company authorized to do business in the State of Kansas and requires the appointment of a Kansas Resident Agent.

9.39. CERTIFICATION OF BONDING CAPACITY

A notarized certification from the Contractor addressed to the Board of County Commissioners is required with the Contractor's Proposal stating that the Contractor has bonding capacity of 20% of the annual maximum contract amount, or \$1,000,000 to dedicate to this contract.

9.40. SAFETY DATA SHEET (SDS)

It is mandatory for a manufacturer, supplier, or distributor to supply a SDS as required by 29 CFR 1910.1200 with the first shipment of hazardous material. Also, at any time the content of a SDS is revised, the vendor is required to provide new information relevant to the specific material.

10. SPECIAL CONDITIONS

10.1. INSURANCE

Contractor shall carry and maintain in force for the duration of the Contract insurance coverage, underwritten by insurer(s) lawfully authorized to write insurance in the State of Kansas, of the minimum types and limits as set forth below:

10.1.1. Commercial General Liability:

1. \$2,000,000 Combined Single Limit, for bodily injury, personal injury, and property damage liability per occurrence
2. \$4,000,000 annual aggregate

Coverage must include Premises and Operations; Contractual Liability; Products and Completed Operations Liability and Independent Contractor's Protection.

10.1.2. Workers' Compensation and Employer's Liability:

1. Statutory Workers' Compensation including an all states endorsement
2. Employer's Liability (E.L. and Disease):
 - a. Bodily Injury by Accident \$1,000,000 Each Accident:
 - b. Bodily Injury by Disease \$1,000,000 Policy Limit
 - c. Bodily Injury by Disease \$1,000,000 Each Employee

10.1.3. Automobile Liability:

1. Must follow the most current ISO form CA 00 01, or an equivalent form with coverage at least as broad as the ISO form, and shall contain, or be endorsed to contain, Additional Insured coverage for County.
2. Minimum required limits:
 - a. \$1,000,000 Combined Single Limit per accident covering all owned, hired, and non-owned autos
3. If Contractor is transporting any type of hazardous materials under the Contract, then endorsements CA 99 48 or equivalent and MSC-90 (if the Contractor is a regulated motor carrier) are required.
4. A copy of the following endorsement(s) must be attached to the certificate of insurance, if applicable and/or necessary:
 - a. Additional Insured; and
 - b. CA 99 48 or equivalent and MSC-90 (if required due to transport of hazardous materials as noted above)

Appendix A:

Pollution/Environmental Liability:

1. Must provide coverage for liabilities arising out of the transport, dissemination, use, and/or release of pollutants.
2. Minimum required limits:
 - a. \$1,000,000 per claim;
 - b. \$2,000,000 aggregate.

10.1.4. Pollution Liability:

This insurance shall protect CONTRACTOR, and OWNER, ENGINEER's Consultants, and ENGINEER as additional insureds, against claims arising out of pollution and excluded from the commercial general liability and comprehensive automotive liability policies. This insurance shall be coordinated with the commercial general liability policy and provide bodily injury and property damage coverage similar to and to the limits specified for the commercial general liability policy. Coverage shall include contractual liability.

The liability limits shall not be less than:

Bodily injury and property damage	\$1,000,000 Per Occurrence
	\$2,000,000 Policy Aggregate

10.1.5. Umbrella Liability:

\$3,000,000 per occurrence and aggregate

Following form of the Commercial General Liability policy.

10.1.6 Property Coverage; Installation Floater or Builders' Risk Insurance Coverage:

1. Contractor shall purchase and maintain an inland marine installation floater policy or a broad-form builders' risk insurance policy that is not limited to a particular site, which covers the following against any and all physical loss or damage from any cause of loss (i.e., on an all-perils basis):
 - a. Buildings and other structures in the course of renovation, construction, erection, or fabrication;

- b. Materials, fixtures, equipment and/or other similar property being used in the renovation of construction, whether in storage, in transit and/or at the Project site as well as prior to installation, during installation and during testing, until final acceptance by the Owner;
 - c. Scaffolding, cribbing, fencing, forms and temporary trailers, while located on the site, in storage or in transit.
2. This coverage shall apply to all parties to the project who may have an insurable interest, including Owner, Contractor, Subcontractors and Sub-subcontractors and be at least in the amount of the actual cash value of the property being installed.

The Board of County Commissioners of Johnson County, KS, its officers, Commissions, Agencies and employees, ("BOCC") shall be named as Additional Insured under the Commercial General Liability policy on a primary non-contributory basis. The Additional Insured requirement does not create a partnership or joint venture between the BOCC and Contractor under this Contract.

Prior to contract execution, the successful respondent shall furnish Certificate(s) of Insurance verifying the required insurance is in full force and effect in accordance with this Contract. Within five (5) business days of expiration of any insurance coverage, Contractor shall provide renewal Certificate(s) of Insurance as required by this Contract. The Certificate Holder shall be as follows:

Board of County Commissioners
Johnson County, Kansas
c/o Risk Manager, FMA
111 South Cherry Street, Suite 2400
Olathe, Kansas 66061-3486

The full description of the work to be performed, project number, and the required Additional Insured language shall be referenced on the Certificate(s) of Insurance in the Description of Operations section. Prior to any reduction in coverage, cancellation, or non-renewal the Contractor or its Agent shall provide certificate Holder not less than thirty (30) days advance written notice of such change in Contractor's insurance coverage. It is Contractor's sole responsibility to provide this notice to Certificate Holder. Failure to provide notice shall not relieve Contractor of its obligations under this Contract.

It is further agreed that any insurance and self-insurance maintained by the Board of County Commissioners, Johnson County, Kansas its officers, Commissions, Agents and employees shall apply in excess of and not contributory with any insurance and self-insurance maintained by Contractor.

In the event Contractor procures insurance coverage that is not written on an "occurrence basis" Contractor shall at all times, including without limitation, after the expiration or termination of this Contract for any reason, maintain insurance coverage for any liability directly or indirectly resulting from acts or omissions of Contractor occurring in whole or in part during the term of this Contract (hereinafter "Continuing Coverage"). Contractor may maintain such Continuing Coverage through the procurement of subsequent policies that provide for a retroactive date of coverage equal to the retroactive date of the insurance policy in effect as of the effective date of this Contract, the procurement of an extended reporting endorsement (commonly known as "tail coverage") applicable to the insurance coverage maintained by Contractor during the term of this Contract, or such other method acceptable to County. The Contractor shall maintain the full limit of coverage as stated above for the Statute of Repose.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	PHONE (A/C, No, Ext):	FAX (A/C, No):
SAMPLE	E-MAIL ADDRESS:		
	INSURER(S) AFFORDING COVERAGE	NAIC #	
INSURED	INSURER A:		
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADOL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
☒	GENERAL LIABILITY	☒		SAMPLE			EACH OCCURRENCE
	☒ COMMERCIAL GENERAL LIABILITY						\$
	☐ CLAIMS-MADE ☒ OCCUR						\$ PER
	☒ CONTRACTUAL						\$ CONTRACT
	☒ PROD / COMPLETED OPER.						\$
	GENL AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE
	☒ POLICY ☐ PRO-JECT ☐ LOC						\$
☒	AUTOMOBILE LIABILITY			SAMPLE			COMBINED SINGLE LIMIT (Ea accident)
	☒ ANY AUTO						\$ PER
	☒ ALL OWNED AUTOS						\$ CONTRACT
	☒ HIRED AUTOS						\$
	☐ SCHEDULED AUTOS						\$
	☒ UMBRELLA LIAB ☒ OCCUR						EACH OCCURRENCE
	☐ EXCESS LIAB ☐ CLAIMS-MADE						\$ PER
	☐ DED ☐ RETENTION \$						AGGREGATE
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						\$ CONTRACT
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/EMPLOYEE EXCLUDED? (Mandatory in NH)	Y/N		INCLUDE ALL STATES ENDT			E.L. EACH ACCIDENT
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A					\$
	- PROFESSIONAL LIABILITY						E.L. DISEASE - EA EMPLOYEE
							E.L. DISEASE - POLICY LIMIT

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

INCLUDE: 1) RFP No. and Project description, 2) Board of County Commissioners, Johnson County, Kansas, its Officers, Commissions, Agencies, and Employees are Named Additional Insured under General Liability as evidenced by Endorsement CG2010, GC2033, Or Manuscript equivalent.

CERTIFICATE HOLDER

CANCELLATION

Board of County Commissioners, Johnson County, KS c/o Risk Manager 111 S. Cherry Street, Suite 2400 Olathe, KS 66061-3441	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE
	XX

ACORD 25 (2010/05)

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11. COOPERATIVE PROCUREMENT WITH OTHER JURISDICTIONS

If Johnson County, Kansas awarded you the proposed contract, would you sell under the prices and terms of this Contract to any Municipality, County Public Utility, Hospital, Educational Institution, or any other non-profit organization? (All deliveries shall be F.O.B. Destination and there shall be no obligations on the part of any member of said Council to utilize this Contract). This section will not affect award.

YES _____

NO _____

- Sales will be made in accordance with the prices, terms, and conditions of the Request for Proposal and any subsequent contract.
- There shall, however, be no obligation under the cooperative procurement agreement for any organization to utilize the RFP or contract unless they are specifically named in the Request for Proposal.
- All sales to other jurisdictions will be made on purchase orders issued by that jurisdiction. All receiving, inspection, payments and other contract administration will be the responsibility of the ordering jurisdiction.
- The principal contracting officer (PCO) is responsible to handle the solicitation and award the contract. The PCO has authority to modify the contract and handle disputes regarding the substance of the contract. The PCO is the Purchasing Administrator, Johnson County, Kansas.
- Each jurisdiction that is a party to the joint RFP has authority to act as Administrative Contracting Officer with responsibility to issue purchase orders, inspect and receive goods, make payments and handle disputes involving shipment to the jurisdiction.

12. INVOICE DISCOUNT TERMS

Is a discount offered for prompt payment of invoices? YES ___ NO ___

- a. Vendor Terms: _____
- b. % Discount: _____
- c. Net _____ Days

13. INSTRUCTIONS FOR RESPONDING TO RFP

A proposal must be submitted electronically at <https://jocogov.ionwave.net> by a respondent and must: (1) be signed electronically by a duly authorized representative of the respondent's organization; and (2) contain all information required by the RFP. The Table of Contents and Forms 1 through 5 are required. Note that for this RFP, Cost Proposal Forms (Forms 6, 7, and 8) will only be required of finalists and is due at the time of the interview.

You must register as a supplier at <https://jocogov.ionwave.net> at least two (2) business days prior to the proposal opening to ensure a successful registration. No other method of submitting proposals will be accepted. If there is difficulty submitting a proposal electronically, contact the Purchasing Administrator for assistance.

It is your responsibility to follow the instructions and guidelines and provide appropriate response attachments where requested. Forms are provided as templates and should be used as you prefer. The intent of the sample forms is to provide your firm an understanding of the information requested by the County to appropriately evaluate your proposal. Should you choose to modify the forms and fail to provide the information requested, that may impact your evaluation scores.

14. RFP FORM DESCRIPTIONS & FORM TEMPLATES

Completed forms should be signed by the Chief Executive Officer of the firm, or by the principal (from Form 1) responsible for the conduct of the work in the event the RFP is awarded to the organization submitting these forms. ALL INFORMATION CONTAINED IN THE FORMS SHOULD BE CURRENT AND FACTUAL.

14.1. TABLE OF CONTENTS

The following table sets forth the specific items to be addressed in your proposal. Respondents must return this or a similar page with their proposal and with corresponding page numbers indicated on the information submitted within their proposal.

14.2. FORM 1 – GENERAL INFORMATION: PROJECT UNDERSTANDING AND APPROACH

List the principal who will serve as the point of contact. Such an individual must be empowered to speak for the firm on policy and contractual matters and should be familiar with the policies and procedures of the agency to which this form is directed.

14.3. FORMS 2A AND 2B – PERSONNEL INFORMATION AND RESUMES

FORM 2A shall be filled out by the Prime Contractor of the Project Team with resumes of key personnel. Project Team Preferred Subcontractor should fill out FORM 2B with resumes of key personnel. Care should be taken to limit resumes to only those personnel and specialists who will have major project responsibilities.

14.4. FORMS 3A AND 3B – PROJECT EXPERIENCE AND REFERENCES

Form 3A shall consist of up to twelve (12) projects which demonstrate the firm's competence to perform work similar to that likely to be required on JCW projects. More recent projects are preferred. Prime consideration will be given to projects that illustrate respondent's capability for performing work similar to that being sought. Form 3B shall be filled out by the Preferred Subcontractor. Up to five (5) projects are requested, with similar information to Form 3A.

14.5. FORM 4 – PRIME CONTRACTOR PROJECT DETAIL

Form 4 is optional, but shall be filled out by the Prime Contractor of the Project Team. Select up to five (5) of the twelve (12) projects from Form 3A for elaboration. Projects in which the proposed Project Team worked together are of particular interest. Through narrative discussion, show reasons why the firm submitting this RFP believes it is especially qualified to perform the types of projects that will be awarded. Information provided should include, but not be limited to, such data as: specialized equipment available for this work, any awards or recognition received by the firm or individuals for similar work, special approaches or concepts developed by the firm relevant to this RFP, etc. Respondents may say anything they wish in support of their qualifications.

14.6. FORM 5 – CONTRACTOR-RESOURCES

Form 5 shall be filled out for any equipment owned by or readily available for immediate mobilization by the Project Team within the surrounding area that may be used on this contract. In addition, list any other company-owned resources that may make the Project Team uniquely qualified for term and supply contract work.

14.7. FORMS 6, 7, and 8 – COST PROPOSALS

Will only be required of finalists and is due at the time of the interview. **DO NOT SUBMIT FORMS 6, 7, AND 8 WITH PROPOSAL.**

14.8. DOCUMENTED SAFETY PROGRAM

Project Team may be asked to submit their documented safety program. This would require a documented program from both the Prime Contractor and Preferred Electrical Subcontractor. Documentation must include the confined space entry program. Note that safety and safety plans are the sole responsibility of the contractors, and any review by JCW is to ensure the plans exist and are documented.

TABLE OF CONTENTS

	<u>Response</u> <u>Page Number</u>
COVER SHEET OF THE RFP	
A. LETTER OF TRANSMITTAL: Submit on firm's letterhead; limit to two (2) single-sided pages. 1. Include additional relevant information not requested elsewhere in the RFP. 2. The signature of the letter shall be that of a person authorized to represent and bind the firm	
B. TABLE OF CONTENTS: Submit this page and include the appropriate page numbers.	
C. FORM 1: GENERAL INFORMATION/PROJECT UNDERSTANDING AND APPROACH	
D. FORM 2A: PRIME CONTRACTOR PERSONNEL INFORMATION AND RESUMES: Form 2A provided (Form 2A may be reproduced and attached in sequence if more space is required). Include/limit number of resumes to key personnel.	
E. FORM 2B: PREFERRED ELECTRICAL SUB-CONTACTOR INFORMATION AND RESUMES: Form 2B provided (Form 2B may be reproduced and attached in sequence if more space is required). Limit number of resumes to key personnel.	
F. FORM 3A: PRIME CONTRACTOR PROJECT EXPERIENCE AND REFERENCES: Form 3A provided. Provide the requested information for up to 12 projects.	
G. FORM 3B: PREFERRED ELECTRICAL SUB-CONTRACTOR PROJECT EXPERIENCE AND REFERENCES: Form 3B provided. Provide the requested information for up to 5 projects.	
H. FORM 4: PRIME CONTRACTOR PROJECT DETAIL (OPTIONAL): Form 4 provided. List up to five (5) projects from Form 3A (Form 4 may be reproduced and attached in sequence if more space is required).	
I. FORM 5: CONTRACTOR-RESOURCES: Form 5 provided. List equipment owned or readily available by the contractor and include any other resources that should be considered.	
J. CERTIFIED STATEMENT OF BONDING CAPACITY: See Requirements in Section 9.39.	
K. FORMS 6, 7, AND 8 ARE NOT TO BE SUBMITTED WITH INITIAL PROPOSAL: SHORT LIST FIRM SUBMISSIONS: Sealed Forms 6, 7, or 8 (UPON REQUEST).	Upon Request
L. DOCUMENTED SAFETY PROGRAM: Include Confined Space Program (UPON REQUEST)	Upon Request

FORM 1 – General Information: Project Understanding and Approach

1. Project Team Prime Contractor Name & Address:	1b. Licensed to do business in the State of Kansas? _____ yes no _____
	1c. Licensed to do business in Johnson County, KS? _____ yes no _____
1a. Firm's Principal Contact for this contract (Name, Title, Address, Phone No., and email address):	1d. Firm has been in business for _____ years.
	1e. Firm has been prime contractor for wastewater facility construction projects for _____ years.
2. Do you have prior experience with term and supply construction contracts, and with contracts paid on a time and material cost basis? If so, please explain. If not, do you have any experience with alternative delivery projects, such as design-build projects?	
3. Describe your understanding of this RFP. What is the purpose of this project from a JCW perspective? What would be your project approach to meeting JCW's needs?	
4. Comment on your firm's record of completing projects on-time and on-budget.	
5. How would your firm ensure quality work on JCW projects?	

FORM 2A – Prime Contractor Personnel Information and Resumes

1. List your firm's officers and key employees who will be involved on JCW projects, along with their job title/classification (or attach an organization chart).

2. How many people are employed by your firm (by categories such as Executive, Administrative, Number of crews and their specialties, etc.)?

3. Does the Project Manager(s), who will be assigned to lead JCW projects, have at least 10 years' experience in wastewater facility construction, and at least 5 years as a Project Manager? Yes ____ No ____

Briefly explain:

Does the Superintendent(s), who will be assigned to JCW projects, have at least 10 years' experience in wastewater facility construction, and at least 5 years as a Superintendent? Yes ____ No ____

Briefly explain:

4. Please attach resumes for key personnel of the Project Team's Prime Contractor who will be working on JCW projects (examples: company officers, project managers, and construction superintendents). Resumes can be created by filling out the form on the following page, or existing resumes can be used in a different format, providing they contain the information requested on the form.

5. Brief resume of key persons who shall be assigned to the county's project.
a. Name and Title:
b. Proposed Role on this Contract (e.g. Construction Superintendent)
c. Name of firm with which associated:
d. Years experience: With the firm_____With other firms _____
e. Education or Trade: Degree(s)/Year/School/Specialization
f. Active Registration: Year First Registered/Discipline
g. Project Experience on Wastewater Projects listed in Form 3A: List all projects and role on those projects from Form 3A that apply (may simply use project number from Form 3A - for example: Project 1 – Project Manager for Clarifier Mechanism Replacement). <u>Project:</u> <u>Role:</u>
h. Project Experience on Wastewater Projects not in Form 3A: Describe any experience on wastewater projects not included in Form 3A. This may include experience with other firms.

FORM 2B – Preferred Electrical Sub - Contractor Information and Resumes

(Provide Form 2B for each Project Team Preferred Subcontractor (if more than one))

1. Project Team Preferred Subcontractor Name and Address:
2. Type of Work Subcontractor Specializes in (attach company brochure, if available):
3. Licensed to do business in the State of Kansas: Yes____No ____
4. Licensed to do business in Johnson County, KS: Yes____No ____
5. Firm has been in business for____years.
6. Does your firm have a minimum of five (5) years' experience working at wastewater facilities? Yes__No If yes, please explain:
7. Attach a list of projects your firm has completed during the past five years using Form 3B (list up to five projects).
8. List your firm's officers and key employees who will be involved on JCW projects, along with their job title/classification (or attach an organization chart).
9. Please attach resumes for key personnel of the Preferred Subcontractor who will be working on JCW projects (examples: company officers, project managers, and construction superintendents). Resumes can be created by filling out the form on the following page, or existing resumes can be used in a different format, providing they contain the information requested on the form.

(Provide Form 2B for each Project Team Preferred Subcontractor)

10. Brief resume of key persons who shall be assigned to the county's project.		
a. Name and Title:		
b. Proposed Role on this Contract (e.g. Construction Superintendent):		
c. Name of firm with which associated:		
d. Years' experience: With the firm _____ With other firms _____		
e. Education or Trade: Degree(s)/Year/School/Specialization		
f. Active Registration: Year First Registered/Discipline		
g. Project Experience on Wastewater Projects listed in Form 3B: List all projects and role on those projects from Form 3B that apply (may simply use project number from Form 3B - for example: Project 1 – Project Manager for Clarifier Mechanism Replacement). <table><tr><td><u>Project:</u></td><td><u>Role:</u></td></tr></table>	<u>Project:</u>	<u>Role:</u>
<u>Project:</u>	<u>Role:</u>	
h. Project Experience on Wastewater Projects not in Form 3B: Describe any experience on wastewater projects not included in Form 3B. This may include experience with other firms.		

FORM 3A – Prime Contractor Project Experience and References

No. ¹	NTP Date	Duration (months)	Customer Name and Location	Project Title and Facility	Prime or Sub-Contractor?	Project Cost ²	Design Engineer
			Contact Person (incl. title, phone and/or email)	Brief Description of Project (if you were a sub-contractor, describe your firm's scope of work)			
EX	7/1/2013	3	County Wastewater; Somewhere County, KS	Influent Pump Station Improvements at the County Line WWTP	Prime	\$300,000	Wastewater Engineering
			Contact: John McWastewater, Project Engr. / 555-555-5555 / McWastewater@countywastewater.org	Removed existing 4x4 sluice gates, added stop log provisions to four channels, replaced lower level lighting, replaced gas monitoring system. Bypass-pumping of flow (9 mgd avg) during construction.			
1							
2							
3							
4							
5							

No. ¹	NTP Date	Duration (months)	Customer Name and Location	Project Title and Facility	Prime or Sub-Contractor?	Project Cost ²	Design Engineer
			Contact Person (incl. title, phone and/or email)	Brief Description of Project (if you were a sub-contractor, describe your firm's scope of work)			
6							
7							
8							
9							
10							

No. ¹	NTP Date	Duration (months)	Customer Name and Location	Project Title and Facility	Prime or Sub- Contractor?	Project Cost ²	Design Engineer
			Contact Person (incl. title, phone and/or email)	Brief Description of Project (if you were a sub-contractor, describe your firm's scope of work)			
11							
12							

Notes:

1 - Provide information on up to 12 projects; "EX" is provided as an example to follow.

2 - If you were a subcontractor on the project, list the value/cost for your firm's work only

Completed By: _____

Title: _____

Date: _____

FORM 3B – Preferred Electrical Sub - Contractor Project Experience and References

Prime-Contractor Name:

Preferred Subcontractor Name:

No. ¹	NTP Date	Duration (months)	Customer Name, Location, and Contact Information	Project Title, Facility, and Brief Project Description	Project Cost ² (\$)	Design Engineer
			Prime Contractor Name, Address, and Contact Information	Your Firm's (Preferred Subcontractor's) Scope of Work		
EX	7/1/2013	3	County Wastewater; Somewhere County, KS Contact: John McWastewater, Project Engr. / 555-555-5555 / McWastewater@countywastewater.org	Influent Pump Station Improvements at the County Line WWTP; Rehabilitation of pump station including pumps and piping; included building upgrades.	\$50,000	Wastewater Engineering
			Doe's Excavation; 4444 Main, Olathe, KS; John Doe, Project Manager; (913) 444-4444; Jdoe@does.com	Removed existing lighting that was damaged by flooding. Installed new explosion-proof lighting. Also, removed and replaced gas monitoring system, which included continuous air sampling from four locations in the lower levels of the pump station.		
1						
2						
3						

No. ¹	NTP Date	Duration (months)	Customer Name, Location, and Contact Information	Project Title, Facility, and Brief Project Description	Project Cost ² (\$)	Design Engineer
			Prime Contractor Name, Address, and Contact Information	Your Firm's (Preferred Subcontractor's) Scope of Work		
4						
5						

Notes:

1 - Provide information on up to five projects; "EX" is provided as an example to follow.

2 - List value/cost for your firm's work only

Completed By: _____

Title: _____

Date: _____

FORM 4 – Prime Contractor Project Detail (Optional)

Instructions: This form is optional, but it is intended to allow firms to provide more detailed information than could be provided on Form 3A. Firms may wish to describe the type of work, challenges (e.g. emergency work), solutions, efforts, customer satisfaction, etc. on some projects. Select up to five (5) projects reported on Form 3A, and then complete a separate Form 4 for each project.	
Firm:	
Project Title and Facility:	
Customer Name and Location:	
Project Notice To Proceed Date:	
Project Detail:	
The foregoing is a statement of facts. Signature _____ Telephone Number: _____ Typed Name and Title: _____	Date:

FORM 5 – Contractor - Owned Resources*

Firm Name:

QTY	EQUIPMENT TYPE	SIZE	AGE (Yr)	CONDITION		
				Good	Fair	Poor
Wheeled Vehicles						
Track Vehicles						
Construction Equipment						
OTHER RESOURCES (Briefly describe any other company-owned resources (e.g., metal fabrication shop):						

* Contractor may use existing form if one is available.

DO NOT SUBMIT FORMS 6, 7, or 8 WITH YOUR RESPONSE TO THIS REQUEST FOR PROPOSAL
FORMS 6, 7, and 8

BILLING RATES AND COST PROPOSAL

Short-listed Project Teams will complete FORMS 6 and 7 by entering standard billing rates for the given personnel classifications and equipment type, and percentage markups. Use the requirements of the RFP to prepare your rates, specifically Section 5.2.4. – Scope of Services, Measurement and Payment. The entered values shall be used in FORM 8 to determine a Total Project Cost, which will be used in the cost component of the proposal evaluations. The billing rates and markups entered into Forms 6 and 7 will become part of the contract for the selected firm(s) and will remain in effect for the duration of the initial 12-month contract period. Adjustments to the billing rates may be negotiated for subsequent renewal periods.

Forms 6, 7, and 8, may not be modified. Additional labor and equipment may be added to Forms 6 and 7, respectively, in the designated areas.

Unbalanced or irregular pricing, if deemed such by JCW, may be grounds to not accept the bid amount. Unbalanced or irregular pricing is the submittal of unit rates that are significantly greater or less than the industry standard in an attempt to take advantage of the bid price evaluation. In this case, the sample projects in Form 8 serve as the bid evaluation.

FORM 6 – Cost Proposal: Labor Billing Rates and Percentage Markups (Page 1 of 4)

DO NOT SUBMIT THIS FORM WITH PROPOSAL. ONLY SHORT-LISTED FIRMS WILL BE REQUIRED TO PROVIDE THIS FORM.

Prime Contractor and Preferred Subcontractor: _____

Table 6-1 – Labor Billing Rates

JOB CLASSIFICATION	BILLING RATE (\$/Hr) ¹		
	Regular	Overtime ²	Premium ³
Management, Supervision, Engineering:			
Project Manager/Project Engineer ⁴			
Project Superintendent ⁴			
Foreman			
Documents Coordinator ⁶			
Electrical Project Manager/Project Engineer ⁴			
Electrical Project Superintendent ⁴			
Electrical Foreman			
Construction Trades:			
Carpenter			
Apprentice ⁵			
Concrete Mason/Finisher			
Apprentice ⁵			
Equipment Operator			
Apprentice ⁵			
Iron Worker			
Apprentice ⁵			
Laborer			
Plumber/Pipefitter/Pipelayer			
Apprentice ⁵			
Truck Driver/Hauler/Teamster			
Electrician			
Apprentice ⁵			

FORM 6 – Cost Proposal: Labor Billing Rates and Percentage Markups (Page 2 of 4)

Additional Labor Rates (Optional) ⁷ :			

¹Refer to Measurement and Payment and General Contractor Labor – Billing Rates 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

⁴The Project Manager/Engineer oversees the project as a whole, supervises invoices and submittals, and helps finalize shop drawings and operations and maintenance manuals. The Superintendent is defined as the person assigned to run the day-to-day operations of the construction site, coordinate the delivery of materials, and oversee subcontractors. Refer to Section 5.2.4. – Measurement and Payment.

⁵Apprentice rates are optional, if not applicable please fill in “N/A”

⁶Documents Coordinator can be billed if tasks related to shop drawings, submittals, O&Ms, etc. are not handled by the Project Manager/Project Engineer. General administration shall be handled by the overhead and profit markup.

⁷Additional labor rates may be added if contractor desires. Failure to add additional labor rates will not affect the price component of the bid.

FORM 6 – Cost Proposal: Labor Billing Rates and Percentage Markups (Page 3 of 4)

Prime Contractor and Preferred Subcontractor: _____

This Contract requires the Prime Contractor to fill in four (4) categories of percentage markups based on all or a portion of the contract amount, Tables 6-2 through 6-5. The Preferred Subcontractor must fill in Table 6-6. Refer to the example project included on the next page for additional clarification on how the markups will be applied.

Contract Markups:

Table 6-2 – Overhead & Profit (Line D)¹

Subtotal 1: Less than \$100,000	%
Subtotal 1: \$100,001 - \$500,000	%
Subtotal 1: \$500,001+	%

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.

Table 6-3 – General Contractor Markup on Subcontractor Work (Line F)²

Line F:	%
---------	---

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

Table 6-4 – Bonds & Insurance (Line G)³

Subtotal 4: Less than \$100,000	%
Subtotal 4: \$100,001 - \$500,000	%
Subtotal 4: \$500,001+	%

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

Table 6-5 – Johnson County Purchasing Card Charges⁴

Decimal Percent Charge for Use of P-Card	%
--	---

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%.

Table 6-6 – Preferred Subcontractor Overhead and Profit Markup⁵

Percent Markup of Preferred Subcontractor on Preferred Subcontractor's Work	%
---	---

⁵Markup shall be applied by the Preferred Subcontractor on their own labor, materials, and equipment before submission of invoices to General Contractor. General Contractor may then markup Preferred Subcontractor's invoice by the amount specified in Line F (Table 6-3).

FORM 6 – Cost Proposal: Labor Billing Rates and Percentage Markups (Page 4 of 4)

Example Project		Example Markups
Line A: Equipment & Materials Incorporated into the Work:	\$100,000	
Line B: General Contractor Labor:	\$50,000	
Line C: Construction Equipment Used to Perform the Work:	\$10,000	
Subtotal 1:	\$160,000	
Subtotal 1:	\$160,000	
Line D: Overhead and Profit:	\$17,600	11%
Subtotal 2:	\$177,600	
Line E: Sum of Subcontractors' Costs (See Note 1):	\$25,000	
Line F: Contractor Markup on Subcontractors (See Note 1):	\$1,250	5%
Subtotal 3:	\$26,250	
Subtotal 4:	\$203,850	
Line G: Bonds and Insurance:	\$2,039	1%
Line H: At Cost Items (ex: Permit Fees)	\$1,500	
Total (Subtotal 4 + Line G + Line H):	\$207,389	

Notes:

- 1) Sum of Subcontractor's costs includes both Preferred Subcontractor's costs and additional subcontractor's costs. Preferred Subcontractors can mark up their own work based on the percentage markup provided in Table 6-6. The General Contractor can then mark up all of the Subcontractor's work based on the percentage markup provided in Table 6-3.

SUBMITTED: _____

Signature Date

Title - Authorized Representative of

Firm Name

Address

City and State

Telephone No.

FORM 7 – Cost Proposal: Contractor’s Equipment Billing Rates (Page 1 of 2)

DO NOT SUBMIT THIS FORM WITH PROPOSAL. ONLY SHORT-LISTED FIRMS WILL BE REQUIRED TO PROVIDE THIS FORM.

Firm: _____

Table 7-1 – **Contractor’s Equipment Billing Rates**

EQUIPMENT TYPE AND SIZE	BILLING RATE (\$) ¹					
	Hourly	Daily	Weekly		Monthly	
	Active	Active	Active	Standby	Active	Standby
Large Excavator (greater than 45,000 lbs)						
Medium-Sized Excavator (20,000 lbs to 45,000 lbs)						
Small Excavator (20,000 lbs or less)						
Lull/Telehandler/Shooting Boom Forklift (8,000 lbs to 9,000 lbs)						
Skid Steer (bobcat)						
Dump Truck (Tandem Axle)						
Crane (20 ton with 90 foot reach)						
Additional Equipment (Optional) ²						

Notes:

¹ Refer to General Requirements, Section 5.2.4. – Measurement and Payment, for a list of all that is included in the Contractor Equipment Rates.

²Additional equipment and rates may be added if contractor desires. Failure to add additional equipment will not affect the price component of the bid.

FORM 7 – Cost Proposal: Contractor’s Equipment Billing Rates (Page 2 of 2)

SUBMITTED: _____

Signature

Date

Title - Authorized Representative of

Firm Name

Address

City and State

Telephone No.

FORM 8 – Cost Proposal: Scenarios (Page 1 of 10)

DO NOT SUBMIT THIS FORM WITH PROPOSAL. ONLY SHORT-LISTED FIRMS WILL BE REQUIRED TO PROVIDE THIS FORM.

Project A – WWTF Pump Replacement

Project A consists of the replacement of two pumps and two variable frequency drives at one of the existing wastewater treatment facilities. Work will consist of replacing two pumps (including submittals and operations and maintenance manuals), six valves, piping, concrete pads, and electrical work. The cost of materials for this project is \$350,000 to the Prime Contractor. This work will require two days of a crane rental to lower the pumps into place. The Preferred Subcontractor incurred \$80,000 in costs in materials incorporated into the work and equipment. Subcontractor bids were received for Instrumentation at a total cost of \$15,000. The labor and equipment hours are included in the table below. Fill out the remainder of the tables below using the billing rates and markups from Forms 6 and 7.

Table 8-1.1 - Prime Contractor Labor Cost (Project A)			
Labor Classification	Hours Worked (Column A)	Hourly Rate (Column B)	A*B
		(\$/Hour)¹	(\$)
Project Manager/Project Engineer	80		
Project Superintendent	120		
Foreman	240		
Documents Coordinator	80		
Carpenter	40		
Concrete Mason	40		
Concrete Mason Apprentice ²	40		
Equipment Operator	80		
Iron Worker	40		
Iron Worker Apprentice ²	40		
Laborer	160		
Plumber/Pipefitter/Pipelayer	160		
Plumber/Pipefitter/Pipelayer Apprentice ²	160		
Truck Driver/Hauler/Teamster	80		
Prime Contractor Labor Total:			
Notes			
¹ Use Regular Hourly Rates from Form 6			
² If firm does not use apprentices, use regular rate for labor class			

FORM 8 – Cost Proposal: Scenarios (Page 2 of 10)

Table 8.1.2 – Prime Contractor Equipment Cost (Project A)					
Equipment	Rate Type (Column A)			Rate (Column B)¹	A*B
	Unit	Timeframe²	Active/ Standby	(\$/Rate Type)	(\$)
Large Excavator (45,000+ lbs)	N/A	N/A	N/A	-	\$0
Medium Excavator (20,000 lbs to 45,000 lbs)	N/A	N/A	N/A	-	\$0
Small Excavator (20,000 lbs or less)	N/A	N/A	N/A	-	\$0
Small Excavator (20,000 lbs or less)	N/A	N/A	N/A	-	\$0
Lull/Telehandler (8,000 lbs to 9,000 lbs)	N/A	N/A	N/A	-	\$0
Skid Steer (bobcat)	2	Weeks	Active		
Dump Truck (Tandem Axle)	2	Weeks	Active		
Crane (20 ton with 90 foot reach)	2	Days	Active		
Construction Equipment Total:					
Notes ¹ Use Equipment Rates from Form 7 ² For the purposes of filling in the worksheet, use timeframes given (i.e., use 4 weeks of the weekly rate, not 1 month).					

Table 8.1.3 – Subcontractor Costs (Project A)			
Labor Classification – Preferred Subcontractor	Hours Worked (Column A)	Hourly Rate (Column B)	A*B
		(\$/Hour) ¹	(\$)
Electrical Project Manager/Project Engineer ¹	40		
Electrical Project Superintendent ¹	40		
Electrical Foreman ¹	80		
Electrician ¹	100		
Electrical Apprentice ^{1,2}	100		
Labor Total:			
Materials and Equipment– Preferred Subcontractor	Cost	Quantity	
Materials Incorporated Into the Work & Equipment	\$80,000	1	\$80,000
Materials Total:			\$80,000
Markup – Preferred Subcontractor			
		Labor + Materials Total:	
		Preferred Subcontractor % Markup (From Table 6-6)	%
		Preferred Subcontractor Markup	
		Preferred Subcontractor Total:	
Other Subcontractor Totals:			\$15,000
Total Subcontractor Cost:			
Notes			
¹ Use Regular Hourly Rates from Form 6			
² If firm does not use apprentices, use regular rate for labor class			

FORM 8 – Cost Proposal: Scenarios (Page 3 of 10)

Table 8.1.4 - Project A Cost with Markups	
Line A: Cost of Materials	\$350,000
Line B: Labor Total (from Table 8.1.1)	
Line C: Construction Equipment Total (from Table 8.1.2)	
Subtotal 1 = (A+B+C):	
Subtotal 1:	
Overhead and Profit % Markup (From Table 6-2)	%
Line D: Overhead and Profit Markup (\$):	
Subtotal 2 = (Subtotal 1 + D):	
Line E: Total Subcontractor Cost (From Table 8.1.3):	
Subcontractor % Markup (From Table 6-3)	%
Line F: Subcontractor Markup (\$):	
Subtotal 3 = (E+F):	
Subtotal 4 = (Subtotal 2 + Subtotal 3):	
Bonds and Insurance % Markup (From Table 6-4)	%
Line G: Bonds and Insurance Markup (\$):	
Line H: Direct Costs:	\$0
Project A Total = (Subtotal 4 + G + H):	

FORM 8 – Cost Proposal: Scenarios (Page 4 of 10)

Project B – Odor Control System Repair

Project B consists of the repair to an existing odor control system that settled unevenly over time. The project consists of hiring a subcontractor to cleanout the vessel and refill it later for \$20,000. The prime contractor will be responsible for the removal of the vessel and safe storage, removal of the concrete pad and subgrade, installation of proper subgrade along with a new concrete pad with a deeper foundation wall, and reinstallation of the existing vessel. The contractor incurred \$50,000 of costs of materials. The building that is served by the odor control unit also needs a new makeup air unit (MAU) installed by an HVAC subcontractor for \$65,000. A plumber is required for natural gas piping and hookups for a subcontractor cost of \$20,000. The Preferred Subcontractor will need to pull new conduit and wires for the odor control system and for the MAU and will have a material cost of \$15,000. Fill out the remainder of the tables below using the billing rates and markups from Forms 6 and 7.

Table 8.2.1 - Prime Contractor Labor Cost (Project B)			
Labor Classification	Hours Worked (Column A)	Hourly Rate (Column B)	A*B
		(\$/Hour)¹	(\$)
Project Manager/Project Engineer	80		
Project Superintendent	160		
Foreman	120		
Documents Coordinator	80		
Carpenter	40		
Carpenter Apprentice ²	40		
Concrete Mason	40		
Equipment Operator	120		
Iron Worker	40		
Laborer	480		
Plumber/Pipefitter/Pipelayer	120		
Truck Driver/Hauler/Teamster	80		
Prime Contractor Labor Total:			
Notes ¹ Use Regular Hourly Rates from Form 6 ² If firm does not use apprentices, use regular rate for labor class			

FORM 8 – Cost Proposal: Scenarios (Page 5 of 10)

Equipment	Rate Type (Column A)			Rate (Column B) ¹	A*B
	Unit	Timeframe ²	Active/ Standby	(\$/Rate Type)	(\$)
Large Excavator (45,000+ lbs)	3	Days	Active		
Medium Excavator (20,000 lbs to 45,000 lbs)	2	Weeks	Active		
Medium Excavator (20,000 lbs to 45,000 lbs)	2	Months	Standby		
Small Excavator (20,000 lbs or less)	N/A	N/A	N/A	-	\$0
Lull/Telehandler (8,000 lbs to 9,000 lbs)	N/A	N/A	N/A	-	\$0
Skid Steer (bobcat)	2	Months	Active		
Dump Truck (Tandem Axle)	4	Days	Active		
Crane (20 ton with 90 foot reach)	4	Days	Active		
Construction Equipment Total:					
Notes					
¹ Use Equipment Rates from Form 7					
² For the purposes of filling in the worksheet, use timeframes given (i.e., use 4 weeks of the weekly rate, not 1 month).					

Labor Classification – Preferred Subcontractor	Hours Worked (Column A)	Hourly Rate (Column B)	A*B		
		(\$/Hour) ¹	(\$)		
Electrical Project Manager/Project Engineer ¹	20				
Electrical Project Superintendent ¹	30				
Electrical Foreman ¹	60				
Electrician ¹	60				
Electrical Apprentice ^{1,2}	60				
Labor Total:					
Materials and Equipment– Preferred Subcontractor	Cost	Quantity			
Materials Incorporated Into the Work & Equipment	\$15,000	1	\$15,000		
Materials Total:			\$15,000		
Markup – Preferred Subcontractor	Labor + Materials Total:				
	Preferred Subcontractor % Markup (From Table 6-6)		%		
	Preferred Subcontractor Markup				
	Preferred Subcontractor Total:				
Other Subcontractor Totals:			\$105,000		
Total Subcontractor Cost:					
Notes					
¹ Use Regular Hourly Rates from Form 6					
² If firm does not use apprentices, use regular rate for labor class					

FORM 8 – Cost Proposal: Scenarios (Page 6 of 10)

Table 8.2.4 – Project B Cost with Markups	
Line A: Cost of Materials	\$50,000
Line B: Labor Total (from Table 8.2.1)	
Line C: Construction Equipment Total (from Table 8.2.2)	
Subtotal 1 = (A+B+C):	
Subtotal 1:	
Overhead and Profit % Markup (From Table 6-2)	%
Line D: Overhead and Profit Markup (\$):	
Subtotal 2 = (Subtotal 1 + D):	
Line E: Total Subcontractor Cost (From Table 8.2.3):	
Subcontractor % Markup (From Table 6-3)	%
Line F: Subcontractor Markup (\$):	
Subtotal 3 = (E+F):	
Subtotal 4 = (Subtotal 2 + Subtotal 3):	
Bonds and Insurance % Markup (From Table 6-4)	%
Line G: Bonds and Insurance Markup (\$):	
Line H: Direct Costs:	\$0
Project B Total = (Subtotal 4 + G + H):	

FORM 8 – Cost Proposal: Scenarios (Page 7 of 10)

Project C – Electrical Building Rehabilitation

Project C consists of the replacement of electrical equipment in a wastewater process room. The project includes minor Prime Contractor work and the management of an HVAC subcontractor. The cost of the Prime Contractor's materials was \$10,000. The Preferred Subcontractor had \$100,000 in materials and equipment costs. HVAC Subcontractor bids were received for \$40,000. The labor and equipment hours are included in Tables 1, 2, and 3. Fill out the remainder of the tables below using the billing rates and markups from Forms 6 and 7.

Table 8.3.1 - Prime Contractor Labor Cost (Project C)			
Labor Classification	Hours Worked (Column A)	Hourly Rate (Column B)	A*B
		(\$/Hour)¹	(\$)
Project Manager/Project Engineer	40		
Project Superintendent	120		
Foreman	0	-	\$0
Documents Coordinator	40		
Carpenter	0	-	\$0
Concrete Mason	0	-	\$0
Equipment Operator	0	-	\$0
Iron Worker	0	-	\$0
Laborer	0	-	\$0
Plumber/Pipefitter/Pipelayer	0	-	\$0
Truck Driver/Hauler/Teamster	0	-	\$0
Prime Contractor Labor Total:			
Notes ¹ Use Regular Hourly Rates from Form 6 ² If firm does not use apprentices, use regular rate for labor class			

FORM 8 – Cost Proposal: Scenarios (Page 8 of 10)

Table 8.3.2 – Prime Contractor Equipment Cost (Project C)					
Equipment	Rate Type (Column A)			Rate (Column B)¹	A*B
	Unit	Timeframe²	Active/Standby	(\$/Rate Type)	(\$)
Large Excavator (45,000+ lbs)	N/A	N/A	-	-	\$0
Medium Excavator (20,000 lbs to 45,000 lbs)	N/A	N/A	-	-	\$0
Small Excavator (20,000 lbs or less)	N/A	N/A	-	-	\$0
Small Excavator (20,000 lbs or less)	N/A	N/A	-	-	\$0
Lull/Telehandler (8,000 lbs to 9,000 lbs)	N/A	N/A	-	-	\$0
Skid Steer (bobcat)	N/A	N/A	-	-	\$0
Dump Truck (Tandem Axle)	N/A	N/A	-	-	\$0
Crane (20 ton with 90 foot reach)	N/A	N/A	-	-	\$0
Construction Equipment Total:					\$0
Notes					
¹ Use Equipment Rates from Form 7					
² For the purposes of filling in the worksheet, use timeframes given (i.e., use 4 weeks of the weekly rate, not 1 month).					

Table 8.3.3 – Subcontractor Costs (Project C)			
Labor Classification – Preferred Subcontractor	Hours Worked (Column A)	Hourly Rate (Column B)	A*B
		(\$/Hour) ¹	(\$)
Electrical Project Manager/Project Engineer ¹	120		
Electrical Project Superintendent ¹	160		
Electrical Foreman ¹	280		
Electrician ¹	300		
Electrical Apprentice ^{1,2}	300		
Labor Total:			
Materials and Equipment– Preferred Subcontractor	Cost	Quantity	
Materials Incorporated into the Work & Equipment	\$100,000	1	\$100,000
Materials Total:			\$100,000
Markup – Preferred Subcontractor			
		Labor + Materials Total:	
		Preferred Subcontractor % Markup (From Table 6-6)	%
		Preferred Subcontractor Markup	
		Preferred Subcontractor Total:	
Other Subcontractor Totals:			\$40,000
Total Subcontractor Cost:			
Notes			
¹ Use Regular Hourly Rates from Form 6			
² If firm does not use apprentices, use regular rate for labor class			

FORM 8 – Cost Proposal: Scenarios (Page 9 of 10)

Table 8.3.4 - Project C Cost with Markups	
Line A: Cost of Materials	\$10,000
Line B: Labor Total (from Table 8.3.1)	
Line C: Construction Equipment Total (from Table 8.3.2)	\$0
Subtotal 1 = (A+B+C):	
Subtotal 1:	
Overhead and Profit % Markup (From Table 6-2)	
Line D: Overhead and Profit Markup (\$):	
Subtotal 2 = (Subtotal 1 + D):	
Line E: Total Subcontractor Cost (From Table 8.3.3):	
Subcontractor % Markup (From Table 6-3)	
Line F: Subcontractor Markup (\$):	
Subtotal 3 = (E+F):	
Subtotal 4 = (Subtotal 2 + Subtotal 3):	
Bonds and Insurance % Markup (From Table 6-4)	
Line G: Bonds and Insurance Markup (\$):	
Line H: Direct Costs:	\$0
Project C Total = (Subtotal 4 + G + H):	

FORM 8 – Cost Proposal: Scenarios (Page 10 of 10)

DO NO SUBMIT THIS FORM WITH PROPOSAL. ONLY SHORT-LISTED FIRMS WILL BE REQUIRED TO PROVIDE THIS FORM.

Project A Total (Table 8.1.4): \$ _____

Project B Total (Table 8.2.4): \$ _____

Project C Total (Table 8.3.4): \$ _____

Total Project Cost (A+B+C)¹ \$ _____

Notes:

¹This is the value that will be used in the cost component of the proposal evaluations for this RFP.

SUBMITTED

Signature

Title

Authorized Representative of:

Firm Name

Address

City and State

Telephone No.

Date

July 11, 2023

ADDENDUM NO. 1
RFP No. 2023-026
On-Call Wastewater Facility Repair & Improvement Services

This addendum addresses the following:

1. CHANGES

None.

2. ADDITIONS

a) Attachments

- i. Non-Mandatory Pre-Proposal Attendance list
- ii. Pre-Proposal Conference presentation slides.
In the case of a discrepancy between the slides and the RFP, the RFP shall govern unless altered by an addendum.
- iii. Questions and Answers during Pre-Proposal Conference

3. CLARIFICATIONS

None.

There are no further changes to RFP No. 2023-026 at this time. Additional questions can be submitted through IonWave prior to the Question Deadline or directed to: Annette.Weeden@jocogov.org

ATTENDANCE

RFP No. 2023-026

On-Call Wastewater Facility Repair & Improvement Services

Conference: Non-Mandatory

Date and Time: July 10, 2023 at 2 PM

Name	Firm Representing
Annette Weeden	Johnson County Government, FMA – Purchasing Division
Justin Brack	Johnson County Government, JCW
Patrick Denning	Johnson County Government, JCW
Joey Perell	Garney
Ryan Mills	MEGAKC
Kevin McCleary	Crossland Heavy
Lisa Welch	
Doug Plumer	Fluid Equipment
Joe Van Kirk	Letts Van Kirk
Tina Fuller	TC Fuller Construction
Kris Johnson	She Digs It, LLC



RFP 2023-026

On-Call Wastewater Facility Repair & Improvement Services

Preproposal Conference
July 10, 2023
2 PM



1



Welcome! & Introductions

- **Welcome and thank you for attending!**
- Annette Weeden, Purchasing Administrator
 - All correspondence shall be directed to Purchasing
 - Questions submitted before the documented deadline, July 19th, 2023. Answers to questions will be posted in IonWave.
- Justin Brack, Johnson County Wastewater (JCW)
- Patrick Denning, JCW



AW

2

RFP Process - Overview

- **Purpose of Request for Proposal (RFP) method**

- The RFP process is used for the qualitative selection process.
- Cost is just one of the many evaluation criteria.
- Low bid is not the method of award.



AW

3

RFP Process - Evaluation

- **Described in Section 8 of RFP**

- **Two-step process**

1. Proposal: Contractors submit their proposal and bonding capacity information
2. Interview: Short-listed contracting firms are invited to interview and submit cost proposals (Forms 6 – 8).



AW

4

Purpose of the Contract

- Contractors under contract will perform work on a time and materials basis.
 - Work may include:
 - Structural and Architectural
 - Mechanical
 - Site/Civil
 - Electrical
- See Section 5.1. Scope of Work for details



AW

5

Purpose of the Contract (continued)

- Most work to be performed will have plans and specifications.
- In general, the contract will be used for jobs less than \$1 million.
 - Larger jobs will go through a separate bidding process.
- Emergency and/or time sensitive work may be conducted under this contract.



AW

6

Contract Benefit

• For Contractors

- Lowered risk of losing money on a project
- Flexibility in scheduling work (especially on smaller projects)
- Target completion dates without LDs

• For Johnson County Wastewater

- Productive and efficient project delivery option
- Cost savings over design/bid/build when used properly
- On-call contractors for urgent construction needs



AW

7

Types of Potential Projects

- Small Projects – (\$10k to \$100k) – may provide a drawing or sketch, not detailed plans and specs, may have some inspection
- Medium Sized Projects (\$100k to \$500k) – project-specific plans and specifications and partial to full time inspection
- Larger Projects (\$500k to \$1M) – project-specific plans and specifications with full time inspection



JB

8

Potential Projects

- Replacement of two dry weather pumps and associated valves at Belinder Pump Station (Mechanical, Electrical)
- Installation of Fixed Gas Detection at multiple pump stations throughout JCW System (Mechanical, Electrical)
- Replacement of chemical tanks in the JCW System (up to 6,600-gallon tanks) (Structural, Mechanical, Electrical)
- Demolition of Tooley Creek Pump Station Influent Building (Structural, Civil)
- Rehabilitation of dry pit "can" lift stations in the collection system (Mechanical, Electrical)
- Rehabilitation of Belt Filter Press, Grit Cyclone, Conveyors at Middle Basin WWTF (Mechanical, Electrical, Structural)



9

Keys to Success

- Experienced wastewater contractors
- Teamwork on projects
- Efficient construction practices
- Reasonable billing rates (impacts award of projects and use of the Term & Supply contract over bidding all projects individually)
- Invoice documentation
- Success creates success



10

Potential Challenges

- Invoicing – must be complete, descriptive, and organized
- Open communication about the contract
 - Contract may require adjustment after conclusion of first year to result in a win-win for both the County and the contractor
- Scheduling – must be defined and dedicated staff with smaller projects



AW

11

Project Team

- Johnson County Wastewater is seeking to enter into a Term and Supply contract with one or more facility construction firms.
- Intent is to contract with General (Prime) Contractors which will self-perform the majority of the Civil/Site, Structural and Architectural, and Mechanical work.
- Intent is for each Prime Contractor to submit with a Preferred Subcontractor to do electrical work.
 - Preferred subcontractor will be evaluated as part of the RFP process and will provide rates and labor/materials markups but would not be contractually bound to Prime Contractor.
- **The Primes and Preferred Subs are referred to as the “Project Team.”**
- Other subcontractor work may be required on a project-by-project basis and proposed subcontractors may be named in the RFP.



AW

12

Project Team Qualifications

- RFP Contract will be awarded based on Qualifications, which includes a cost component in phase 2
- **Qualifications include:**
 - Prime Contractor's experience
 - Personnel's and Projects
 - Previous work, especially wastewater projects, completed by Project Team (either as separate entities or jointly)
 - Project understanding and approach
 - Availability of applicable resources (equipment)
 - Approach to this contract



AW

13

Summary of Forms for RFP

- Section 9.39. Certification of Bonding Capacity
 - Must be notarized and addressed to Board of County Commissioners. See Section in RFP for more details. **There is not a template form provided for this requirement – Contractors submit their own.**
- Section 14 – RFP Form Descriptions and Templates
 1. Table of Contents
 2. Form 1 – General Info: Project Understanding & Approach
 3. Form 2 – Key Personnel Resumes
 - A. Prime Contractor
 - B. Preferred Subcontractor
 4. Form 3 – Project Experience and References
 - A. Prime Contractor
 - Up to twelve (12) projects
 - B. Preferred Subcontractor
 - Up to five (5) projects
- Form 4 – Prime Contractor Project Detail (Optional)
- Form 5 – Contractor Resources
- **Reminder: Forms 6, 7, and 8 Cost Proposals shall not be submitted with your proposals.**



AW

14

Evaluation: Proposal Phase

<u>PROPOSAL</u>	<u>Maximum Points</u>
1. Prime Contractor's Qualification and Project Experience: Consider previous project experience and references listed in the proposal. The Prime Contractor of the Project Team demonstrates experience in wastewater treatment and pumping projects. Experience should include pumping projects, liquids treatment projects, and solids treatment projects. Experience should include managing multi-disciplinary teams, including subcontractors, to achieve quality projects that have a record of being completed on time and on budget. Experiences with all members of the proposed Project Team should be emphasized. Refer to Section 6 – Qualifications and Forms 1, 3A, and 4. Is the Prime Contractor of the Project Team experienced in providing services similar to that requested in the RFP?	25
2. Prime Contractor's Personnel Qualifications and Experience: Consider resumes of key staff, project managers, and superintendents, to determine the level of experience working on wastewater treatment plant and pumping projects. Review years of experience as well as relevant project experience. Qualifications and experience shall be evaluated for all project team members. Refer to Section 6 – Qualifications and Form 2A. Consider comparable experience and background of the <u>specific</u> personnel that shall be assigned to the County's project(s) as outlined in the proposal. Also consider the <u>specific</u> involvement of those persons in projects noted in the proposal.	30
3. Preferred Subcontractor's Personnel Qualifications and Project Experience: Consider previous project experience and references listed in the proposal. The preferred subcontractor on the Project Team demonstrates experience in wastewater treatment and pumping projects. Experience should include quality projects that have a record of being completed on time and on budget. Experiences with all members of the proposed project team should be emphasized. Refer to Forms 2B and 3B. Consider the preferred subcontractors' experience, and specific personnel assigned to the County's projects as outlined in the proposal. Have the preferred subcontractors teamed with the prime contractor previously?	15
4. Project Understanding and Approach: Evaluate the Project Team's project approach and understanding of the Scope of Services required in the RFP as evidenced by their proposal. Project Team indicates a clear understanding of the project and approach. Project Team has a previous history of term and supply or design/build type projects. Refer to Form 1.	15
5. Available and Applicable Resources: Project Team has access to the equipment necessary to perform work in a timely manner, especially in the case of an emergency repair. The Project Team demonstrates other resources which may make the team uniquely qualified for work on wastewater facilities. Note: The Contractor is not required to own equipment. Refer to Form 5. Evaluate the extent of applicable resources available to the firm to complete the County's project(s).	10
6. Overall Responsiveness to the RFP: The information provided is complete, organized, and in accordance with the instructions in the RFP. Consider whether all requested information was furnished by the firm in the format required by the RFP.	5



AW

15

Evaluation: Interview Phase

<u>INTERVIEW</u>	<u>Maximum Points</u>
1. Project Experience: Project Team appears to have appropriate experience and history of satisfactory project outcome for similar type projects. Project Team is able to meet schedules and budgets. Project Team appears to be committed to safety and has documented protocols. References related to these issues may be contacted prior to interviews. Based on the interview, evaluate the Project Team's experience with similar projects. Based upon the interview and any contact with previous clients of Project Team determine capability and demonstrated ability to meet schedules and deadlines. Project Team appears to have a commitment to safety.	25
2. Project Understanding and Approach: Project Team presents a clear understanding of the term and supply contract and has a feasible approach. Project Team presented sufficient information in an organized and professional manner. Able to address questions posed during the interview in a thoughtful and satisfactory manner. Does the proposed project approach expressed in the interview appear to be realistic and feasible? Has the Project Team demonstrated that they have a good understanding of term and supply contracts?	20
3. Personnel and Other Resources: Based on the interview and resumes of key staff, Project Team demonstrates having a team of project managers, superintendents, and other supporting personnel that are experienced in wastewater treatment facility and pump station construction projects. Based on the interview consider the involvement and experience of key personnel that will be assigned to the proposed project(s). Evaluate their response to questions, knowledge demonstrated, and involvement in discussion.	20
4. Staff Utilization: Based on the interview and any contact with previous clients of firm, determine the capability and demonstrated ability to meet schedules and deadlines.	10
5. Cost Proposal (Forms 6, 7, and 8) (Will only be required of finalists and is due at the time of the interview)	25



AW

16

Award of the Contract

- Selection committee recommends contractor(s) for award of the contract
- Recommendation is presented before the Board of County Commissioners for their review and consideration for authorization
- If awarded, required documents including certificates of insurance will be collected and then agreements will be signed



AW

17

Project Procedures

- JCW selects a Contractor from those selected via the RFP process for a project.
- Negotiate a not-to-exceed price with Contractor
- JCW will issue an authorization and a purchase order for the not-to-exceed price
 - Authorization will establish project scope and any project specific terms and conditions
 - Authorization will adopt plans and specifications (when applicable) into the Agreement



JB

18

Measurement and Payment

- Contractor will bill JCW for time and materials per the Measurement and Payment section of the RFP
 - Goal is to pay for actual time worked and actual materials used plus reasonable overhead and profit markups.
 - Most labor costs will be per Billing Rates provided on Form 6
 - Subcontractor work (other than electrical) and major materials/equipment will likely be bid, depending on the amount of work/equipment required. Bids may be for subcontractor billing rates or lump sum.



JB

19

Measurement and Payment

- Section 5.2.4. Measurement and Payment

Line	Cost Item or Calculation (using Form 6 for Markups)
A	Equipment & Materials Incorporated into the Work
B	General Contractor Labor
C	Construction Equipment Used to Perform the Work
Subtotal 1	A + B + C
D	Overhead and Profit (i.e., OHP Decimal Markup x Subtotal 1)
Subtotal 2	Subtotal 1 + D
E	Subcontractor Costs
F	Contractor Markup on Subcontractor (i.e., Contractor Decimal Markup x E)
Subtotal 3	E + F
Subtotal 4	Subtotal 2 + Subtotal 3
G	Bonds and Insurance (i.e., B&I Decimal Markup x Subtotal 4)
H	At-Cost Items (e.g., Permit Fees)
Total Cost	Subtotal 4 + G + H



JB

20

Form 6

- Section 14.7. and as a fillable form in Attachments tab
- Labor

JOB CLASSIFICATION	BILLING RATE (\$/Hr) ¹		
	Regular	Overtime ²	Premium ³
Management, Supervision, Engineering:			
Project Manager/Project Engineer ⁴			
Project Superintendent ⁴			
Foreman			
Documents Coordinator ⁵			
Electrical Project Manager/Project Engineer ⁴			
Electrical Project Superintendent ⁴			
Electrical Foreman			
Construction Trades:			
Carpenter			
Apprentice ²			
Concrete Mason/Finisher			
Apprentice ²			
Equipment Operator			
Apprentice ²			
Iron Worker			
Apprentice ²			
Laborer			
Plumber/Pipefitter/Pipelayer			
Apprentice ²			
Truck Driver/Hauler/Teamster			
Electrician			
Apprentice ²			

JOHNSON COUNTY
KANSAS

JB

21

Form 6 (continued)

- Markups

Table 6-2 – Overhead & Profit (Line D)¹

Subtotal 1: Less than \$100,000	%
Subtotal 1: \$100,001 - \$500,000	%
Subtotal 1: \$500,001+	%

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.

Table 6-3 – General Contractor Markup on Subcontractor Work (Line F)²

Line F:	%
---------	---

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

Table 6-4 – Bonds & Insurance (Line G)³

Subtotal 4: Less than \$100,000	%
Subtotal 4: \$100,001 - \$500,000	%
Subtotal 4: \$500,001+	%

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

Table 6-5 – Johnson County Purchasing Card Charges⁴

Decimal Percent Charge for Use of P-Card	%
--	---

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%.

Table 6-6 – Preferred Subcontractor Overhead and Profit Markup⁵

Percent Markup of Preferred Subcontractor on Preferred Subcontractor's Work	%
---	---

⁵Markup shall be applied by the Preferred Subcontractor on their own labor, materials, and equipment before submission of invoices to General Contractor. General Contractor may then markup Preferred Subcontractor's invoice by the amount specified in Line F (Table 6-3).

JOHNSON COUNTY
KANSAS

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22

Form 8

• Scenarios

- This form contains three (3) unique scenarios or sample projects
- Scenarios include assumed hours needed to complete projects. Contractor fills in their hour rates and markups for each of the projects.
- Rates and markups should be identical to those provided in Forms 6 and 7.
- Each of the three (3) scenarios will be summed together and the total of all of the scenarios will be used as the comparative rate which all firms will be compared.



JB

25

Important Dates & Documents

- Please take a moment to provide your name and your company's name in the chat feature of this Zoom call.
- A list of important deadlines can be found in Section 1. This schedule is tentative; should any changes occur, please see subsequent Addendum documents.
 - Questions are detailed in Section 4 and both questions & answers can be viewed in IonWave. The deadline to submit is 5 PM on deadline date.
 - Responding to RFP is detailed in section 13. Responses must be submitted by 2 PM.



Non-Mandatory Pre-Proposal Meeting (Virtual)	7/10/2023
Question Deadline	7/19/2023
Open RFP	7/28/2023
Interviews - Week of	8/30/2023
Board Approval	10/19/2023
Project Begins	10/26/2023



AW

26

Important Dates & Documents (continued)

- Our goal is to notify shortlisted contractors by Thursday, August 17th
- Interviews are tentatively scheduled during Week of August 30th



Open RFP	7/28/2023
Interviews - Week of	8/30/2023
Board Approval	10/19/2023
Project Begins	10/26/2023

- Contractors invited to interviews must submit their Forms 6, 7, and 8 in sealed envelopes at the time of the interview.
- Safety Program Documentation may be requested of shortlisted firms



AW

27

Important Dates & Documents (continued)

- Our goal is to notify Contractors whom we intend to award with notice by September 11th
 - Insurance Certificate and CORE4 Tax Clearance Documents will be requested at this time
- Award of RFP and contract authorization by BOCC is tentatively scheduled for October 19th
- Project start date is tentatively scheduled for October 26th




Open RFP	7/28/2023
Interviews - Week of	8/30/2023
Board Approval	10/19/2023
Project Begins	10/26/2023



AW

28

Important Dates & Documents (continued)

- For any **Notice to Proceed** to be issued, Purchasing must receive the Certificate of Insurance (to meet the standards set by this RFP), the CORE4 Tax Clearance documentation, and the contract must be fully executed.



AW

29

Required in Responses

Reminder: Verify your access to IonWave at least two (2) days prior to the RFP Opening deadline (July 28th at 2 PM).

- Your response (proposal) to the RFP
 - Notarized Statement of Bonding Capacity
 - Section J in Table of Contents
- Review of and response to all RFP Attributes
 - This will include acknowledgements of any addendums we issue
- If shortlisted and invited to interviews:
 - Sealed Forms 6, 7, and 8
 - Documented Safety Program (upon request)



AW

30

Thank you!

- We appreciate your participation in this meeting today and your interest in working with the County!
- Questions may be directed to Annette Weeden, Purchasing Administrator via IonWave or via email at Annette.Weeden@jocogov.org.
- Please register in IonWave, check your supplier account and update as needed, and verify accessibility at least two days prior to deadline.



AW

Pre-Proposal Conference Questions

Q: Are I&C sub-contractors considered preferred subcontractors?

A: No. Electrical subs are the Preferred Subcontractors for the purpose of this RFP.

July 19, 2023

ADDENDUM NO. 2
RFP No. 2023-026
On-Call Wastewater Facility Repair & Improvement Services

This addendum addresses the following:

1. CHANGES:

- a) The Questions Deadline shall be extended to Thursday, July 20th, 2023 until 5 PM.
- b) Page 3, SECTION 1. TENTATIVE TIMELINE shall be amended to the following:

Issue RFP	6/22/2023
Non-Mandatory Pre-Proposal Meeting (Virtual)	7/10/2023
Question Deadline	7/20/2023
Open RFP	7/28/2023
Interviews- Week of	8/30/2023
Board Approval	10/19/2023
Project Begins	10/26/2023

2. ADDITIONS

None.

3. CLARIFICATIONS

None.

There are no further changes to RFP No. 2023-026 at this time. Additional questions can be submitted through IonWave prior to the Question Deadline or directed to:

Annette.Weeden@jocogov.org



2023-026 Addendum 2

Crossland Heavy Contractors, Inc

Supplier Response

Event Information

Number: 2023-026 Addendum 2
Title: On-Call Wastewater Facility Repair & Improvement Services
Type: Request for Proposal
Issue Date: 6/22/2023
Deadline: 7/28/2023 02:00 PM (CT)
Notes: This is a Request for Proposal for On-Call Wastewater Facility Repair & Improvement Services. Please review all the documents under the Attachments tab and upload the correct documents under the Response Attachments tab.

A pre-proposal conference will be held virtually on July 10, 2023 at 2:00 p.m. Central Standard Time via Zoom. Participation in the pre-proposal meeting is non-mandatory for submitting a proposal. The Zoom meeting link is provided in the RFP Document and in the Activities tab.

All bids must be submitted through Johnson County's electronic bidding system, lonwave.

Contact Information

Contact: Annette Weeden
Address: Financial Management & Administration
111 S. Cherry St
Suite 2400
Olathe, KS 66061
Phone: 1 (913) 7150594

Email: annette.weeden@jocogov.org

Crossland Heavy Contractors, Inc Information

Address: 501 S East Ave
PO BOX 350
Columbus, KS 66725
Phone: (620) 429-1410
Fax: (620) 429-1410
Web Address: www.heavycontractors.com

By submitting your response, you certify that you are authorized to represent and bind your company.

Erick Lowe
Signature

elowe@heavycontractors.com
Email

Submitted at 7/28/2023 10:12:57 AM (CT)

Requested Attachments

RFP Response Submittal

JCW On Call Services - CHC
Submission 230728.pdf

See Section 13 in the Request for Proposal for instructions on information to include in your submittal. Please upload a single file PDF with all requested information (100MB limit). See Attachment 2023-026 RFP Document – Form Templates for fillable Word format documents. If additional files need to be uploaded, you can do this in the "other response attachment" area.

Bid Attributes

1 Proposal Terms & Conditions

Respondent has read and fully accepts all terms & conditions as presented. If you object, please upload any exceptions you take under the response attachment tab, under "other".

☒ Acknowledged

2 Binding Agent

Please indicate the agent who has authority to bind your company to a contract.

Erick Lowe

3 Cooperative Procurement With Other Jurisdictions

If Johnson County, Kansas awarded you the proposed contract, would you sell under the prices and terms of the contract to any Municipal, County Public Utility, Hospital, Educational Institution or any other non-profit organization? All deliveries shall be FOB Destination and there shall be no obligations on the part of any member of said Council to utilize this contract). This section will not affect award.

Yes

4 Insurance

If awarded a contract, the successful firm is required to provide a certificate of insurance with stated amounts in the solicitation and contract agreement. Please acknowledge you understand and will meet this requirement.

☒ Acknowledged

5 Debarment Notice

Please certify your company has not been debarred, suspended or otherwise ineligible for participation in Federal Assistance programs under Executive Order 12549, "Debarment and Suspension", as described in the Federal Register and Rules and Regulations. Johnson County verifies this information through the use of the GSA System for Award Management prior to award of contract.

☒ Acknowledged

6 Litigation

Has your company been a party to any pending or concluded litigation that could effect the outcome of a contract with Johnson County?

No

7 Bankruptcy

Has your company ever declared bankruptcy?

No

8 Purchasing Card

Will you accept a County issued procurement credit card (VISA)? If so, please provide the associated fees and conditions if any.

No, but will accept ACH.

9 Online Transactions

Does your firm or agency allow for online purchasing at the prices stated in your bid?

Yes

10 Invoice Discount Terms

Is a discount offered for prompt payment of invoices? If a discount is offered, please provide detailed information on terms, discount and days.

NA

11 Core 4 Tax Clearance

I acknowledge the Core 4 Tax Clearance form RD-C3 and multi-jurisdictional forms will be completed and approved prior to award of contract is to exceed \$100,000.

☒ Acknowledge

12 Authorization of Work Orders

All work performed under this contract must be authorized by the Operations or Support Services Division of Johnson County Wastewater staff. A list of authorized personnel shall be supplied to the successful bidder(s).

☒ Acknowledge

13 Contract Renewal

The County reserves the sole right to renew said contract for XXX additional twelve month period(s) at the same price, specifications, terms and conditions of the original contract that may be derived from this bid request.

☒ Contract Renewal

1
4

Federal Funding Requirement

County Departments and Agencies may be using Federal Grant Funds for procurement of goods and services. Additional reporting requirements for procurements using these funds are outlined in Appendix A. If you are selected to receive a contract, are you willing to provide the additional reporting items described in Appendix A. The answer to the question will not be a determining factor in the evaluation of the solicitation.

Yes

1
5

Addendum No. 1

I have read and understand Addendum No. 1

☒ Acknowledged

1
6

Addendum No. 2

I have read and understand Addendum No. 2

☒ Acknowledged



Crossland Heavy Contractors
On-Call Wastewater Facility Repair & Improvement Services
Proposal Enclosed
July 28, 2023

JCW

ON-CALL WASTEWATER FACILITY REPAIR & *Improvement Services*



CROSSLAND
HEAVY CONTRACTORS

CROSSLAND

HEAVY CONTRACTORS

Board of County Commissioners
Johnson County, Kansas
c/o Risk Manager, FMA
111 South Cherry Street, Suite 2400
Olathe, Kansas 66061-3486

RE: RFP No. 2023-026 On-Call Wastewater Facility Repair & Improvement Services

Having a general contractor on your team that you can rely on to be there whenever and wherever you need them is so important to keeping your community safe and healthy. You need an experienced partner who is comfortable with self-performing all types of repairs as well as submitting T&M billing. Versatility, efficiency, and quality will be essential attributes of the contractor that you choose with a solid foundation of trust & reliability to ensure your confidence in the work that is taking place. Our Team has worked with JCW on many projects in the past, has worked with other local owners in an on-call services scenario, and is ready and able to be your partner through this contract and many future contracts.

Crossland's values are Trust, Responsibility, Integrity, and Passion, and we seek to exude those values in our work every day. Each owner we've worked with will tell you the same—we work with openness and honesty with a client-first mentality to build trust. We work for your bottom line, and we work for our communities. Without you, we wouldn't have a healthy environment to call home, our children wouldn't have clean, safe places to play, and we wouldn't have the infrastructure to support the neighborhoods where we spend quality time with our closest friends and family.

We take responsibility for the regulations and permits that our clients face. We believe it is our job to help keep our partners in compliance, and we have a proven success record of working with Owners, Engineers, and Regulators to make that happen. We also have a proven record of supporting our owners through maintenance contracts and emergency repairs. We want to be the stability you need to continue to serve our communities day after day despite unexpected repairs and equipment replacements.

We always strive to do the right thing for the work at hand and for our owners, even when no one is watching. When we see a place where costs can be saved, we'll be the first to tell you. When we see a potential issue arise, we'll immediately let you know, and then we'll call a meeting with our Team to come up with a solution. It is always our position to do the right thing, to keep everything out in the open—no surprises—and to speak the truth no matter the consequences.

We work with a passion for what we do and for how our work impacts our communities. We're a small town, homegrown Kansas company, and we want to help you maintain your community's infrastructure for the future of our beloved Sunflower State.

CROSSLAND

HEAVY CONTRACTORS

We've selected a very experienced team for this project with Matt Rippe as Senior Project Manager and Courtney Smith as the Superintendent, but our entire Kansas City Team is on board to jump in wherever they're needed to ensure all work progresses efficiently. Crossland Heavy is fully committed to the upkeep and longevity of JCW's facilities.

We have served the Kansas City area for nearly 10 years and have supported many owners through projects of all sizes and delivery methods. Through our open communication & honesty, quality work, and safe working methods, we are often the contractor of choice when an issue arises at one of our owners' facilities. We have proven to many owners that we are here for them for each of their projects - large and small - and we hope to continue to prove that to JCW as well.

We understand the market, we understand the needs of your facilities, and we are the Team you can trust to meet your facilities' needs throughout this contract. Our Team's commitment, experience, and values will ensure that your project runs smoothly and achieves success. We understand your schedule concerns, and we promise to work with transparency and partnership throughout the entire project. Our client-first approach means we are here for you, and we will do whatever it takes to help you succeed.

Wishing you all the best on your project,



Erick Lowe
Kansas City Division Manager, Signatory, Crossland Heavy Contractors
3252 Roanoke Road, Kansas City, MO 64111
913.449.3267
elowe@heavycontractors.com

CONTENTS

Form 1

05 Form 1

Form 2

08 Form 2A

09 Organizational Chart

10 Team Member Resumes

13 Form 2B

15 Subcontractor Team Member Resumes

Form 3

16 Form 3A

17 Form 3B

Form 4

18 Project Profile Sheets - Prime

Form 5

23 Contractor-Owned Resources

Bonding Letter

24 Bonding Letter

FORM 1 – General Information: Project Understanding and Approach

1. Project Team Prime Contractor Name & Address: Crossland Heavy Contractors 3252 Roanoke Road Kansas City, MO 64111	1b. Licensed to do business in the State of Kansas? <u> X </u> yes no <u> </u> 1c. Licensed to do business in Johnson County, KS? <u> X </u> yes no <u> </u>
1a. Firm's Principal Contact for this contract (Name, Title, Address, Phone No., and email address): Erick Lowe, KC Division Manager 3252 Roanoke Road, Kansas City, MO 64111 elowe@heavycontractors.com, 913-449-3267	1d. Firm has been in business for <u> 30 </u> years. 1e. Firm has been prime contractor for wastewater facility construction projects for <u> 30 </u> years.
2. Do you have prior experience with term and supply construction contracts, and with contracts paid on a time and material cost basis? If so, please explain. If not, do you have any experience with alternative delivery projects, such as design-build projects? Yes, Crossland Heavy Contractors has experience with both Term & Supply construction contracts and with contracts paid on a time & materials cost basis. We also have experience with collaborative delivery methods including Construction Management at-Risk and Design-Build. We have worked with many owners in the Kansas City area such as JCW, Olathe, and the UG in multiple capacities and have the resources and experience necessary for this contract with JCW.	
3. Describe your understanding of this RFP. What is the purpose of this project from a JCW perspective? What would be your project approach to meeting JCW's needs? We understand that JCW needs a Construction Manager they can rely on to manage the maintenance and emergency repairs of their facilities in a way that is efficient with the longevity of the facilities in mind. We will utilize our self-performing crews, equipment fleet, and construction community relationships to provide the fastest, most cost-effective solutions for JCW.	
4. Comment on your firm's record of completing projects on-time and on-budget. CHC performs many projects of various delivery methods in the KC area. We prioritize ending our projects on time and on budget, and we have a history of doing so for our owners. We understand the importance of speed for repair work, and prioritize efficiency in our maintenance contracts.	
5. How would your firm ensure quality work on JCW projects? Our Superintendents prioritize safety for everyone on the jobsite. They set the standard of quality and hold everyone on the jobsite to their standards. They devote a lot of time to layout and preparation of the work area to ensure that the work will be done correctly. They exercise oversight of self-performing crews' and subcontractors' work to ensure all quality standards are met.	

6. How would your firm ensure JCW's costs are minimized on projects? Since we self-perform this type of work often, we are familiar with how to perform the work and how much the work should cost. Our crews will exercise efficiency, we will utilize our own equipment where possible, and we will work with the construction community to find the best priced materials for the work.					
7. List up to three examples of change orders your firm has initiated to improve the outcome for the Owner. City of Olathe - Changing a cast in-place building to precast concrete - Saved the Owner \$260k 1) JCW Electrical Improvements Project – at the Belinder Pump Station, we suggested relocating the new transformers to avoid conflict with the surrounding homeowners. 2) Kaw WTP Elect. & Mech Improvements – the existing clarifier bridges were to be reused, however they were heavily corroded and present safety concerns. We suggested replacing the bridges altogether to remove this safety hazard.					
8. What type of work would be considered your firm's niche or specialty? What does your firm do that might be considered above the competition? Our firm specializes in self-performing Water and Wastewater work. We are known for saving our owners' money while producing high quality work in the communities we call home.					
9. List some noteworthy accomplishments by your firm (no more than one page, attach to this form if more space is needed). See following page for our list					
10. Has your firm ever failed to complete a project? If so, please explain. No.					
11. Comment on your firm's safety record and commitment to safety. Provide your firm's Experience Modification Rate (EMR) and/or other metrics demonstrating your firm's commitment to safety. CHC makes safety our #1 priority in everything that we do, and we have the safety records to prove it. EMR: 2023: 0.69 2022: 0.79 2021: 0.77					
12. List the Preferred Electrical Subcontractor that is part of the Project Team <table border="0"> <tr> <td>Name & Address:</td> <td>Worked with Prime Before (Y or N)?</td> </tr> <tr> <td>Davin Electric, Inc. 2131 NE Grantville Road Topeka, KS 66608</td> <td>Yes, we have performed many water and wastewater projects with Davin Electric, Inc.</td> </tr> </table>		Name & Address:	Worked with Prime Before (Y or N)?	Davin Electric, Inc. 2131 NE Grantville Road Topeka, KS 66608	Yes, we have performed many water and wastewater projects with Davin Electric, Inc.
Name & Address:	Worked with Prime Before (Y or N)?				
Davin Electric, Inc. 2131 NE Grantville Road Topeka, KS 66608	Yes, we have performed many water and wastewater projects with Davin Electric, Inc.				

► Noteworthy Accomplishments

- #1:** Crossland Heavy has ranked in the top 100 Environmental Firms by ENR year after year since 2018.



- #2:** We have a nationally recognized safety program by ABC that continues to receive high honors year after year.



- #3:** We earned the Great Place to Work Certification in 2022, and we fully intend to keep earning this certification, making the changes we need to adapt to keep our employees loving what they do and how they do it day after day.



- #4:** For the past two years we have been ranked in the Top General Contractors list by the Kansas City Business Journal.



- #5:** Our projects are consistently awarded for excellence in construction and engineering through ACEC and ABC.



FORM 2A – Prime Contractor Personnel Information and Resumes

1. List your firm's officers and key employees who will be involved on JCW projects, along with their job title/classification (or attach an organization chart).

Organizational Chart Attached

2. How many people are employed by your firm (by categories such as Executive, Administrative, Number of crews and their specialties, etc.)?

Total Employees: 464

Upper Management - 8

Administrative - 23

Project Management - 22

Field Supervision - 107

Field Staff - 304

Our 107 Field Supervision employees range from Project Superintendents to Craft Superintendents. Each plays a role in managing our 304 Field Staff employees, who are each members of our many concrete flatwork, concrete walls, pipe, and general labor crews.

3. Does the Project Manager(s), who will be assigned to lead JCW projects, have at least 10 years' experience in wastewater facility construction, and at least 5 years as a Project Manager? Yes ☒ No ☐

Briefly explain: **Matt Rippe has 10 years of experience as a project manager in water and wastewater.**

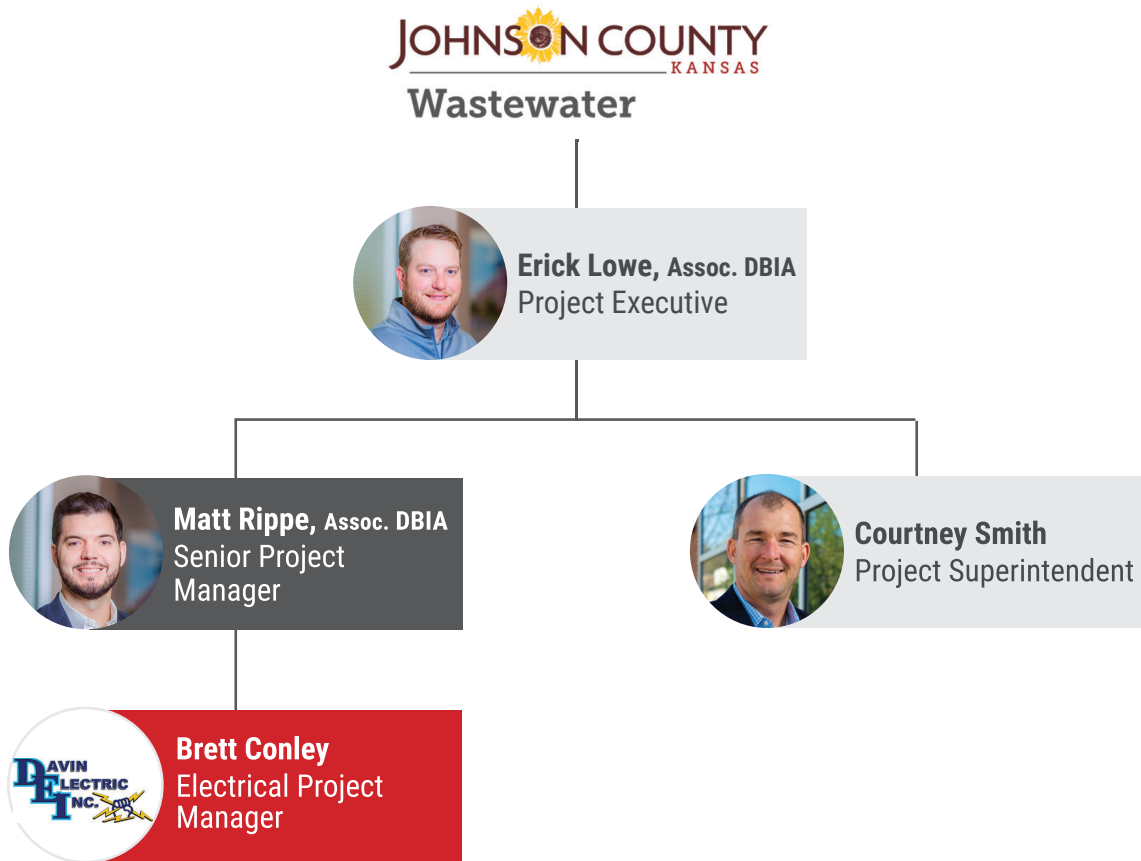
Does the Superintendent(s), who will be assigned to JCW projects, have at least 10 years' experience in wastewater facility construction, and at least 5 years as a Superintendent? Yes ☒ No ☐

Briefly explain: **Courtney Smith has 20 years of experience as a Superintendent in water and wastewater. He has devoted his entire career to water and wastewater construction.**

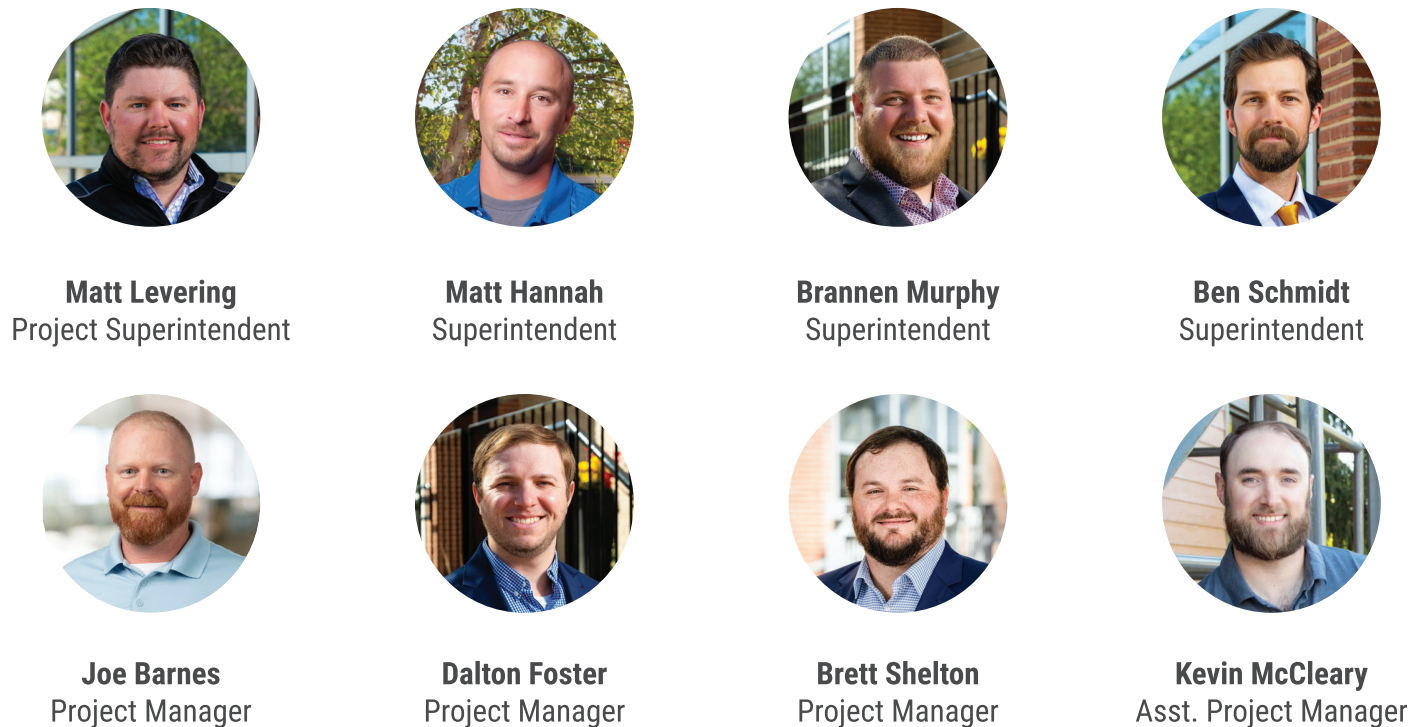
4. Please attach resumes for key personnel of the Project Team's Prime Contractor who will be working on JCW projects (examples: company officers, project managers, and construction superintendents). Resumes can be created by filling out the form on the following page, or existing resumes can be used in a different format, providing they contain the information requested on the form.

Resumes are attached

► Organizational Chart - Individuals



Additional Available Project Staff





ERICK LOWE, ASSOC. DBIA

Project Executive

CONTACT



elowe@heavycontractors.com



913.449.3267

YEARS WITH CROSSLAND HEAVY

11 Years

EDUCATION

B.S. Construction Management
Pittsburg State University

CERTIFICATIONS

OSHA 30 Hour
Smith Driving Certified
Leadership Training
Rebar Cages - Safe Lifting and Handling
FMI Project Management Training

Your Advocate throughout your Project

As Manager of the Kansas City Division, Erick leads a team of construction professionals who specialize in water & wastewater projects. He is incredibly passionate about how our projects make an impact on our local communities. He understands the challenges we will likely face together and proactively plans to mitigate them. He will advocate for you to make sure we deliver safe, reliable, high quality solutions that will serve you for years to come. Erick actively maintains relationships with each of Crossland Heavy's valued partners and seeks out ways in which we can serve them better. Erick is an extremely active and involved Division Manager and offers guidance and direction throughout the life of each of his Division's projects. Erick oversees each project's budget and schedule, ensuring that CHC is doing everything possible to meet or exceed our Owners' expectations. He offers input and guidance as necessary to help each project reach a timely and cost-efficient completion. A known problem solver, Erick maintains a keen focus on making our partners successful.

Highlight Projects

- Olathe WTP No. 2 CMAR Expansion, \$17.2M
City of Olathe, KS, completed 2021
Assisted the Pre-Construction Team in developing over \$2.8M in value engineering items to bring the project in under budget while still maintaining full scope
- Vertical Wells Ph 1 Improvements CMAR, \$8M
City of Olathe, KS, completed 2022
Assisted with Pre-Construction planning & Construction while maintaining timely equipment procurement despite delays
- PWWSD No. 25 WTP, \$9.2M
Douglas County, KS, completed 2021
Controlled costs on a greenfield plant while maintaining all other Project Manager responsibilities including overall planning and administrative management

Additional Experience

Project Executive:

- Louisburg WWTP Impr., Louisburg, KS, \$11.1M
- Nall Ave Pump Station & Rsvr, Leawood, KS, \$9.1M
- Turkey Creek Pump Station Impr., Mission, KS, \$5.1M

Project Manager:

- Oread & Kasold Bstr Pump Stns, Lawrence, KS, \$4.3M
- Wolcott WTP Generator Facility, Kansas City, KS, \$9M
- Hedge Lane PS & Reservoir, Olathe, KS, \$21.2M



MATT RIPPE, ASSOC. DBIA

Senior Project Manager

CONTACT



mrippe@heavycontractors.com



816.835.2016

YEARS OF EXPERIENCE

10 Years

YEARS WITH CROSSLAND HEAVY

5 Years

EDUCATION

Bachelor of Science
Business Management
Northwest Missouri State

CERTIFICATIONS

OSHA 10 Hour
CPR/First Aid Certified
AED Certified

INDUSTRY + CIVIC INVOLVEMENT

Habitat for Humanity
DBIA
ABC Heart of America Chapter
Engineers Club of Kansas City

Maintaining constant communication from start to finish

As Project Manager, Matt will be your main point of contact to coordinate each improvement project. He will be responsible for the overall planning and administrative management of your project. Matt will be responsible for developing all T&M budgets and coordinating work with our Superintendent Courtney Smith, ensuring the project progresses as scheduled and mitigating risks before they arise. Experienced with Value Engineering, Matt will also provide input when he sees a place where your money can be saved or where time can be saved from the schedule. Matt will manage all cost accounting and contract administration activities, keeping cost control a high priority.

Matt is an excellent communicator and will be in constant contact with the JCW and CHC Teams throughout the project, ensuring all expectations and deadlines are met and that everyone is apprised of the project's standing as it progresses.

Highlight Projects

- Louisburg WWTP Improvements, \$11.1M
Louisburg, KS, completed 2021
Navigated two major construction hurdles requiring collaboration between CHC, Owner, & Engineer
- South Lift Station Storage Tank, \$1.93M
City of Gardner, KS, completed 2019
Responsible for the overall planning and administrative management; completed the project safely, on time, and on budget
- WTP Improvements Ph II, \$14.1M
Junction City, KS, est. completion date Dec. 2023
Assisted Owner & Engineer in a Design-Build scenario following a massive flood at the WTP while continuing all other Project Manager responsibilities

Additional Experience

Project Manager:

- West Plant Basin Rehab, Topeka, KS, \$10.5M
- Kaw WTP Electrical. & Mech. Impr., Lawrence, KS, \$5.1M
- JCW Electrical System. Impr., Overland Park, KS, \$5.14M
- Ashland WTF Chem Feed System, NE, \$1.92M
- DL Smith Basin Impr., Overland Park, KS, \$1.1M
- Plant Barry Ash Conversion, Bucks, AL, \$225M*
- Oregon Clean Energy Center, Oregon, OH, \$800M*

**project completed with previous employer*



COURTNEY SMITH

Project Superintendent

CONTACT



csmith@heavycontractors.com



479.430.8196

YEARS OF EXPERIENCE

20 Years

YEARS WITH CROSSLAND HEAVY

15 Years

EDUCATION

Bachelor of Science
Construction Management
University of Northern Iowa

CERTIFICATIONS

Signaling Trained
Smith Driving Certification
DOT Physical
ACI-CRSI ADH Anchor
Certified Renovator
CDL License
Confined Space
HAZCOM-GHS Training
Crosby Rigging Certification
Trenching Excavation Training

Driving the schedule for an on-time completion

Courtney will be responsible for ensuring your project's quality, driving the schedule, controlling costs, and keeping everyone safe. He oversees all field personnel and communicates with the project management team, subcontractors, and suppliers daily so your project maintains optimum efficiency. He will develop and implement detailed production schedules and hold safety and pre-task planning meetings with site personnel every week. He attends all project meetings and keeps the entire Project Team well-informed of progress and any potential issues that may arise.

Courtney has managed self-performing teams and subcontractors on treatment plant projects for over 20 years and understands how each scope of work needs to be constructed. He has experience at your facilities and understands the needs of your community as well as your facilities.

Highlight Projects

- Broken Arrow WTP, \$57.8M
Broken Arrow, OK, completed 2014
Responsible for leading a team that self-performed 65% of the contract value delivering a project that is now able to process 24 million gallons daily; the scope included 12,000 cubic yards of concrete and over 10 miles of pipe
- Hedge Lane Pump Station & Reserve, \$21.3M
City of Olathe, KS, completed 2016
Responsible for leading field personnel & communicating with the PM team, subcontractors, and suppliers to deliver a project with less than 0.5% of change orders
- Louisburg WWTP Improvements, \$11.1M
City of Louisburg, KS, completed 2021
Overcame unforeseen conditions & supply chain issues related to the pandemic while leading a team of field personnel to provide the City with everything they needed to deliver cleaner effluent water to the environment

Additional Experience

Project Superintendent:

- Clinton Rural Water Pump Station, Lawrence, KS, \$1.5M
- Botanical Gardens Waterline & S. Sewer, Tulsa, OK, \$2.6M
- Nelson WWTP Chemical Disinfection Imp., Mission, KS, \$1.1M
- South Lift Station Storage Tank, Gardner, KS, \$1.93M
- Belt Press Replacement at Kill Creek, Gardner, KS, \$492k

FORM 2B – Preferred Electrical Sub - Contractor Information and Resumes

(Provide Form 2B for each Project Team Preferred Subcontractor (if more than one))

1. Project Team Preferred Subcontractor Name and Address: Davin Electric, Inc. 2131 NE Grantville Road Topeka, KS 66608
2. Type of Work Subcontractor Specializes in (attach company brochure, if available): Electrical work in industrial, water, and wastewater projects.
3. Licensed to do business in the State of Kansas: Yes ☒ No ☐
4. Licensed to do business in Johnson County, KS: Yes ☒ No ☐
5. Firm has been in business for <u>25</u> years.
6. Does your firm have a minimum of five (5) years' experience working at wastewater facilities? Yes ☒ No ☐ If yes, please explain: Davin Electric, Inc. has been performing electrical work at wastewater facilities for 25 years.
7. Attach a list of projects your firm has completed during the past five years using Form 3B (list up to five projects).
8. List your firm's officers and key employees who will be involved on JCW projects, along with their job title/classification (or attach an organization chart). Brett Conley, Vice President & Project Manager
9. Please attach resumes for key personnel of the Preferred Subcontractor who will be working on JCW projects (examples: company officers, project managers, and construction superintendents). Resumes can be created by filling out the form on the following page, or existing resumes can be used in a different format, providing they contain the information requested on the form.

► Organizational Chart - Firms

CROSSLAND
HEAVY CONTRACTORS



WHAT DAVIN BRINGS TO THE TEAM:

- Our trusted Electrical Subcontractor that we've partnered with on over 30 water and wastewater projects
- A Team who's familiar with the CMAR delivery method
- One of the most experienced water and wastewater electrical contractors in the KC area
- The following Pre-Construction services:
 - Kick-Off Meeting
 - Initial Cost Estimate
 - Value Engineering Meetings
 - Intermediate Cost Estimates
 - Final Cost Estimate
 - Assistance in preparing electrical work bid packages

SAFETY

EXPERIENCE	2022 - 1.02
MODIFICATION	2021 - 0.91
RATE (EMR)	2020 - 0.90





Brett began at Davin as an apprentice electrician in 1998, and he has since worked his way up the ladder to his current position as President of the Company.

BRETT CONLEY

President

CONTACT



bconley@davinelectric.com



785.234.2350

EXPERIENCE

25 Years

LICENSES

Master Electrician: Kansas, Oklahoma

PROJECT EXPERIENCE WITH CHC *(abbreviated list)*

- Olathe WTP No. 2 CMAR Improvements, Olathe, KS
- Vertical Wells CMAR Improvements, Olathe, KS
- Hansen WTP Ozone Facility Improvements, Mission, KS
- DL Smith Middle Basin WWTP, Overland Park, KS
- Topeka WTP West Basin Rehab, Topeka, KS
- #6 Raw Water Intake & PS Retrofit, Rantoul, KS
- Northland II Pump Station Improvements, Topeka, KS
- SWCW WWTP Improvements, Springfield, MO
- JCW Electrical Systems Improvements, Overland Park, KS
- DL Smith FOG Mixing Improvements, Overland Park, KS
- Blue River Main WWTP Misc. Impr., Overland Park, KS



No.	NTP Date	Duration	Customer Name & Location	Project Title and Facility	Prime or Sub?	Project Cost	Design Engineer
1	May 2018	12 Months	City of Olathe, Kansas Lorrie Hill, Water Production Operations Manager (913) 558-5861 lahill@olatheks.org	Olathe WTP No. 2 CMAR Improvements Constructed a Lime Feed Building & Alternative Disinfection Building, modified the existing softening and coagulation basins and clearwell	Prime	\$17,306,587	Black & Veatch, HDR
2	March 2018	22 Months	JCW, Mission Kansas Justin Brack Project Engineer (913) 715-8500 Justin.Brack@jcw.org	Turkey Creek Pump Station Improvements Rehabilitated 3 buildings and a clarifier while keeping the facility operational	Prime	\$5,133,073	HDR
3	July 2019	20 Months	City of Louisburg, Kansas John Shellhorn Lamp Rynearson Jon.Shellhorn@LampRynearson.com	Wastewater Treatment & Collections Improvements Constructed a new headworks building, concrete aeration basin, and UV, chemical feed, and control buildings. Converted existing ditch aeration basins to equalization basins, constructed new offsite pump station	Prime	\$11,059,388	Lamp Rynearson
4	January 2020	16 Months	WaterOne Leawood, Kansas Robert Beason Project Manager (913) 895-5885 rbeason@waterone.org	Nall Avenue Pump Station & Reservoir Rehabilitated an existing pump station and constructing a new 6 million-gallon reservoir.	Prime	\$9,101,621	Burns & McDonnell
5	April 2021	28 Months	JCW, Mission, Kansas Jeena John Project Engineer (913) 715-8524 Jeena.John@jcw.org	DLSMB FOG Mixing Improvements Replaced piping and pumps to revamp the FOG Mixing system at DLSMB	Prime	\$550,000	CDM Smith
6	March 2018	22 Months	JCW Mission Kansas Andrew Wendel, Project Engineer, (913) 715-8540, andrew.wendel@jcw.org	JCW Electrical Systems Improvements Electrical modifications at 3 sites to provide increased reliability and improve safety for specified electrical equipment while maintaining critical operations at the sites	Prime	\$5,360,964	Black & Veatch
7	2018-2023	5 year contract	City of Olathe, Kansas Multiple	Olathe T&M Maintenance Projects	Prime	\$1,331,500	Multiple
8	2018-2023	5 year contract	JCW, Mission, Kansas Multiple	JCW T&M Improvements Projects	Prime	\$2,894,939	Multiple

Completed By: Erick Lowe
Title: Division Manager
Date: 7/25/2023

No.	NTP Date	Duration	Customer Name & Location and Prime Contractor	Project Title, Facility, & Scope of Work	Project Cost	Design Engineer
1	April 30, 2020	12 Months	City of Olathe, Kansas Prime: Crossland Heavy Contractors Nicole Woods, Project Manager (913) 971-9119 ncwoods@olatheks.org	Olathe Vertical Wells Ph. 1 CMAR Improvements Power and communication to new wellfield and rehab of existing collector well	\$1,508,933	Burns & McDonnell
2	March 2018	22 Months	JCW Prime: Crossland Heavy Contractors Mission Kansas Andrew Wendel, Project Engineer, (913) 715-8540, andrew.wendel@jcw.org	JCW Electrical Systems Improvements New electrical infrastructure at 3 different plants	\$3,380,540	Black & Veatch
3	January 2022	15 Months	City of Lawrence, Kansas Prime: Crossland Heavy Contractors Leah Morris, Treatment Division Manager, (785) 832-7843, lemmorris@lawrenceks.org	Kaw WTP Electrical and Mechanical Improvements Contract 2 Power and communications to new lime feed equipment and rehab of existing basins	\$398,120	Black & Veatch
4	August 2020	14 Months	Leavenworth Water Board, Prime: Crossland Heavy Contractors Leavenworth, Kansas Joel Mahnken, Board Director, jmahnken@lvnwater.org	South Wellfield Public Water Supply Well No. 13 Replaced electrical equipment and installed a new generator	\$336,625	Black & Veatch

Completed By: Brett Conley

Title: President

Date: 7/25/2023



OLATHE WTP NO. 2 CMAR IMPROVEMENTS



PROJECT LOCATION

Olathe, KS

ENGINEER

Black & Veatch, HDR



CLIENT

City of Olathe, Lorrie Hill

1385 S Robinson Dr.

Olathe, KS 66061

913.971.9077

TEAM

M. Levering - Project Super.

B. Shelton - Project Mgr.

E. Lowe - Project Exec.



FINAL CONTRACT AMOUNT

\$17,306,587

DELIVERY METHOD

CMAR

\$2.8 Million in new improvements incorporated from cost savings developed during Value Analysis

The Olathe, KS, Water Treatment Plant #2 was initially built in 1964, and much of the equipment was aged beyond repair. The facility also lacked adequate space for routine maintenance tasks. Our team proactively worked with the City's engineering firms to accelerate Pre-Construction to a short, five-month timeline. During the Design and Construction Phases, CHC provided various pricing options and recommended paths that would save time and money for the owner while keeping the plant's future needs in mind. Throughout the project, CHC led a collaborative effort among all parties to overcome all obstacles that arose, such as the plant's minimal allowed downtime, unknown existing pipe locations, and nonfunctional existing shutoff valves. The City was able to save money through value engineering and add \$2.8M in project scope that was initially only on their wish list.



INNOVATION

During the project, we encountered a critical pipe connection that couldn't be completed safely due to large-diameter valves leaking. After testing, we worked with Black & Veatch to design & execute an innovative pressure-pipe bypass pumping system to complete the connection. We monitored the pumping operation around the clock to ensure it didn't negatively impact the plant operations.





TURKEY CREEK PUMP STATION IMPROVEMENTS



PROJECT LOCATION

Mission, KS



CLIENT

Johnson County Wastewater
Justin Brack
913.715.8500



FINAL CONTRACT AMOUNT

\$5,133,073

ENGINEER

HDR
Brandon Coleman
816.360.2700

TEAM

D. Foster - Project Mgr.
J. Latimer - Project Super.
E. Lowe - Project Exec.

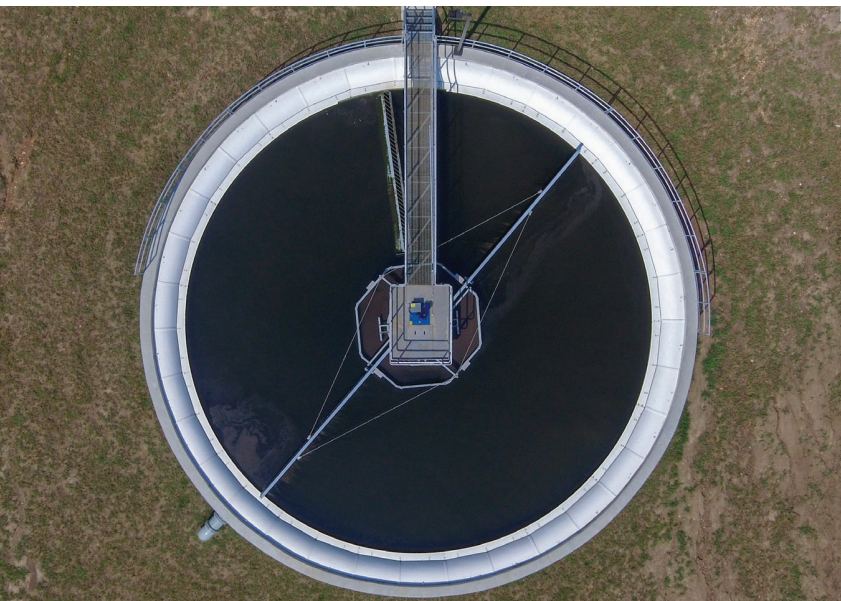
DELIVERY METHOD

Design-Bid-Build

Extending the longevity of the pump station with essential improvements

This project consisted of renovations to four major areas. At the Dry Weather Pump Station we replaced the building's roof, two mechanical bar screens and washer compactors, influent channel slide gates, and valves on the pump discharge lines. We also improved the safety of the facility by constructing a cast-in-place stair structure for access to the below-grade structure, replacing all handrail, and installing a structural walkway for better access to piping and valves. At the Dry Weather Electrical Building we replaced the dry weather pump VFDs, the HVAC system, and the roofing. At the Wet Weather Pump Station we replaced the submersible pumps, installed new piping, manual bar screen, sodium hypochlorite storage tank and feed pump skid, and constructed a new electrical room and a new roof. At the Peak Excess Flow Treatment Facility (PEFTF), we replaced all the PEFTF equipment and performed other various structural and instrumentation/electrical modifications and upgrades. All of these essential improvements will benefit the pump station for years to come.





**LOUISBURG WASTEWATER TREATMENT
& COLLECTION IMPROVEMENTS**

 PROJECT LOCATION Louisburg, KS	ENGINEER Lamp Rynearson Laura Gray 816.361.0440
 CLIENT City of Louisburg 913.837.5371	TEAM M. Rippe - Project Mgr. C. Smith - Super. E. Lowe - Project Exec.
 FINAL CONTRACT AMOUNT \$11,059,388	DELIVERY METHOD Design-Bid-Build

From greenfield to 2 MGD wastewater treatment plant

The City of Louisburg awarded Crossland Heavy Contractors this \$11.1 Million greenfield wastewater treatment plant project to transform their ditch aeration system into a state-of-the-art wastewater treatment plant. The new plant now contains a headworks building, concrete aeration basin, UV building, chemical feed building, and a control building. We converted the old ditch aeration basins into equalization basins, and we constructed a new offsite pump station, which is now ready to serve the community. Persevering through several adverse circumstances including unforeseen conditions and the supply chain issues of pandemic, CHC was able to provide the City with everything they needed to serve their community better and deliver cleaner effluent water to the environment.





NALL AVENUE PUMPING STATION AND RESERVOIR PHASE II

 PROJECT LOCATION Leawood, KS	ENGINEER Burns & McDonnell Bill Nash 816.822.3858
 CLIENT WaterOne Robert Beason 913.895.1800	TEAM E. Lowe - Project Exec. C. Smith - Superintendent C. Wolken - Project Super.
 FINAL CONTRACT AMOUNT \$9,101,621	DELIVERY METHOD Design-Bid-Build

Overcoming a tight schedule and even tighter site dimensions

The Nall Avenue Project's scope of work contained two major scope items: rehabilitation of an existing pump station and construction of a new 6 million-gallon reservoir. CHC overcame the challenge of tight site dimensions by consulting the construction community to find a site nearby with space for our excavated materials. We trucked the excavated materials to this site and then brought them back for backfill after the reservoir was completed. In order to ensure the limited work area was accessible by the necessary heavy equipment, the CHC team developed a plan to construct the basin in thirds. This strategy is slower than typical tank construction, so CHC expedited the schedule by subcontracting crews to supplement our own and coordinating simultaneous work tasks. This approach enabled us to meet the schedule while still maintaining the integrity of our work and the accessibility of the working area.



RECENT T&M PROJECTS

- OLATHE SODIUM HYPOCHLORITE TANK REPLACEMENT

\$350k | City of Olathe | 2023

Replaced (2) Sodium Hypo tanks and all associated piping, coat containment area

Project Manager: Kevin McCleary, Superintendent: Brannen Murphy
- OLATHE WTP1 DEMOLITION

\$743k | City of Olathe | 2022

Demolition of existing plant, grading and seeding open areas

Project Manager: Brett Shelton, Superintendent: Matt Levering
- BLACK BOB PIPE ABANDONMENT

\$5.5k | City of Olathe | 2022

Removed compromised section of pipe and installed a blind flange to prevent a failure

Project Manager: Kevin McCleary, Superintendent: Brannen Murphy
- DLSMB INDENSE PILOT

\$51k | JCW | 2023

Installed pump and piping to operate the inDense Pilot system, troubleshot electrical issues to ensure that the system would not be overloaded

Project Manager: Kevin McCleary, Superintendent: Tyler Korte
- DLSMB FOG MIXING IMPROVEMENTS

\$777k | JCW | 2023

Replaced piping and pumps to revamp the FOG Mixing system at DLSMB; procured additional valves to get systems up and running despite material delays and shipping issues

Project Manager: Kevin McCleary, Superintendent: Tyler Korte
- TOOLEY CREEK FLOWMETER

\$38k | JCW | 2023

Replaced flowmeter and piping; connected new electrical feed

Project Manager: Kevin McCleary
- BELINDER HYPO TANK REPLACEMENT

\$47k | JCW | 2023

Replaced sodium hypochlorite tank and associated piping; installed new faux garage doors

Project Manager: Kevin McCleary
- DSLMB ELECTRICAL IMPROVEMENTS

\$86k | JCW | 2022

Added new generator, switch gear building, & duct bank; upgraded electrical equipment at multiple plants; Caught potential issue with transformer placement that was going to be on property against their wishes

Project Manager: Matt Rippe, Superintendent: Matt Levering
- HAROLD STREET BRIDGE REPLACEMENT

\$183k | City of Olathe | 2023

Replace pedestrian bridge at Harold Street WTF

Project Manager: Kevin McCleary, Superintendent: Brannen Murphy
- OLATHE WTP2 OH DOOR & MISC. IMPROVEMENTS

\$50k | City of Olathe | 2023

Replace the OH Door at the Olathe WTP2 on their chemical room
- Completed By:

Erick Lowe
- Title:

Division Manager
- Date:

7/25/2023
- Page

233 of 1221

Category	Year	Qty.	Make	Model	Description
Backhoe	2015	2	Caterpillar	420F AE4T	BACKHOE, CAT 420F (5 BCKTS, FORKS)
Backhoe	2013	3	Caterpillar	420F IT	BACKHOE, CAT 420F IT
Crane	2007	1	Terex	HC165	CRANE, TEREX HC165
Crane	2009	1	Kobelco	CK1600II	CRANE, KOBELCO 160TN
Crane	2011	1	Terex	HC80	CRANE, TEREX HC80
Crane	2019	1	Liebherr	LR1300SX	CRANE, LIEBHERR 330 TN CRAWLER
Crane	2021	1	Grove	GHC140	CRANE, GROVE 140 TN HYD. CRAWLER
Crane	2023	1	Liebherr	LR1160.1	LIEBHERR 200 TN CRAWLER
Dozer	2022	2	Caterpillar	D3 ARO	DOZER, CAT D3 ARO RIPPERS GPS
Dozer	2016	2	Caterpillar	D5K	DOZER, CAT D5K W/ RIPPERS
Excavator	2005	1	Caterpillar	345C	EXCAVATOR, CAT 345C HT
Excavator	2012, 2018	5	Caterpillar	308E	EXCAVATOR, CAT 308E (C,TC,SB)
Excavator	2012	1	Caterpillar	321 DL	EXCAVATOR, CAT 321 DL(C,TC) AUX-20 JIC M
Excavator	2012	1	Caterpillar	349EL	EXCAVATOR, CAT 349EL (C,TC)
Excavator	2012	1	Caterpillar	312 EL	EXCAVATOR, CAT 312 EL (C) RT
Excavator	2013	1	Caterpillar	321	EXCAVATOR, CAT 321 (C,TC)
Excavator	2013	1	John Deere	245GLC	EXCAVATOR, JD 245 GLC (C) NO AUX
Excavator	2013	1	Caterpillar	320EL TC	EXCAVATOR, CAT 320 EL (C,TC) -20 JIC M
Excavator	2014	1	John Deere	210G	EXCAVATOR, JD 210G (C,TC)
Excavator	2017	1	Caterpillar	316F HT	EXCAVATOR, CAT 316F (C,TC) AUX -16 JIC
Excavator	2017	1	John Deere	350G	EXCAVATOR, JD 350G (C,TC) AUX -20 male
Excavator	2017	1	Caterpillar	305E	EXCAVATOR, CAT 305E (C,TC,4W)
Excavator	2017	1	Caterpillar	30550	EXCAVATOR, CAT 305.5E(C,TC,4W,4 BUCKETS)
Excavator	2018	2	Caterpillar	30500	EXCAVATOR, CAT 305E (C,TC,2W,4 BUCKETS)
Excavator	2020	1	Caterpillar	315FL TC	EXCAVATOR, CAT 315F (C,TC) AUX -16 JIC
Excavator	2021	4	Caterpillar	315F	EXCAVATOR, CAT 315F (RT,TC)
Excavator	2021	2	Caterpillar	305-07A	EXCAVATOR, CAT 305 (QC,HT)
Excavator	2021	2	Caterpillar	308-07A CR	EXCAVATOR, CAT 308 (QC,HT,CD,ST)
Excavator	2021	3	Caterpillar	325	EXCAVATOR, CAT 325 (TC) AUX -20 JIC MALE
Excavator	2022	1	Caterpillar	336-07 GC	EXCAVATOR, CAT 336 GC (QC) AUX -20 JIC M
Excavator	2022	1	Caterpillar	335-0710X	EXCAVATOR, CAT 335 (C,TC) AUX-20 JIC M
Grader	2012	1	John Deere	770GP	GRADER, JD 770GP
Loader	2004	1	Komatsu	WA250L-5	LOADER, WHEEL KOMATSU WA250L-5
Loader	2006	1	Caterpillar	963	LOADER, TRACK CAT 963
Loader	2007	1	Komatsu	320-5L	LOADER, WHEEL KOMATSU 320-5L
Loader	2014	3	Caterpillar	930K	LOADER, WHEEL CAT 930K
Loader	2015	1	John Deere	544K	LOADER, WHEEL JD 544K
Loader	2015	3	John Deere	204K	LOADER, WHEEL JD 204K (BKT AND FORKS)
Loader	2020	2	John Deere	204L	LOADER, WHEEL JD 204L (BKT AND FORKS)
Roller	2008	1	Volvo	SD70D	VOLVO SD70D 66" SOIL ROLLER
Roller	2011, 2012	3	Caterpillar	CS44	ROLLER, CAR CS44 SD
Skidsteer	2016-2018	6	Caterpillar	289D	CAT 289D SKIDSTEER, TRACKED
Skidsteer	2015, 2018	2	Caterpillar	279D	CAT 279D SKIDSTEER, TRACKED
Skidsteer	2021, 2023	8	Caterpillar	289D3	CAT 289D3 SKIDSTEER, TRACKED
Skidsteer	2018	6	Caterpillar	249D	CAT 289D SKIDSTEER, TRACKED
Skidsteer	2022, 2023	7	Caterpillar	289D3 C1H2	CAT 289D3 SKIDSTEER, TRACKED



PROTECTING ASSETS.
MAKING A DIFFERENCE.

July 18, 2023

Board of County Commissioners, Johnson County, Kansas
c/o Risk Manager, FMA
111 South Cherry Street, Suite 2400
Olathe, KS 66061-3486

Re: Crossland Heavy Contractors, Inc.

Project: RFP 2023-026 – On-Call Wastewater Facility Repairs and Improvement Services

To Whom it May Concern,

Our agency manages the surety bond program for Crossland Heavy Contractors, Inc. and we have been asked to write this letter to you on their behalf. Our team has known and worked with Crossland for more than 30 years and give them our highest recommendation. Crossland has earned an outstanding reputation as a company and individuals of high integrity with an exceptional knowledge of the construction industry. The Crossland team consistently delivers quality, client focused projects in a timely and cost-effective manner; they truly are a company who values relationships and doing the job right. It is for these reasons and so many more that I am pleased to write this letter on their behalf.

Surety bonds for Crossland are underwritten by Zurich American Insurance Company and Federal Insurance Company. Bonds are typically written by Fidelity and Deposit Company of Maryland (a company of Zurich American Insurance Company) and Federal Insurance Company. Zurich American Insurance Company and Fidelity and Deposit Company of Maryland maintain "A+ (Superior)", "XV (\$2 Billion or greater)" ratings by the A.M. Best Company and a combined U.S. Treasury listing exceeding \$692,000,000. Federal Insurance Company is a member of the Chubb Group of Companies, which carries an A.M. Best Rating of "A++ (Superior)", "XV (\$2 Billion or greater)"; Federal enjoys a Treasury Limit exceeding \$409,000,000, when including the full Chubb family of companies this Treasury listing exceeds \$1 Billion.

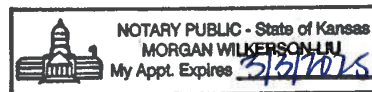
Zurich American Insurance Company and Federal Insurance Company would positively consider approval of surety bonds for Crossland on individual contracts of \$500 Million and an aggregate cost-to-complete backlog of \$3 Billion, this program includes bonded and un-bonded work. These numbers are guidelines and not limits of surety support; Crossland's sureties would positively consider larger projects or program on a project-by-project basis.

Crossland's surety partners are favorable to executing surety bonds upon acceptable review of all contract terms, bond forms and financing for any project as well as other pertinent underwriting information that may be deemed necessary. The arrangement for performance and payment bonds is a matter between Crossland and their sureties; neither the sureties, IMA, Inc., Crossland or any affiliates assume any liability to you or any parties if for any reason bonds are not written.

I am proud to recommend Crossland Heavy Contractors, Inc. to you. If you should have any questions, or require additional information, please do not hesitate to email or call as shown below.

Sincerely,

Camille O. Parman
Surety Account Manager
913-982-3650 / Camille.parman@imacorp.com



STATE OF KANSAS)
COUNTY OF JOHNSON)

Signed and attested before me on the 18th day of July, 2023 by Camille O. Parman.

(Signature of Notary)

March 3, 2025
(Appointment Expiration)

► Forms 6, 7, & 8

Forms 6, 7, and 8 will be available upon request.

Safety Program

Our Safety Program will be available upon request.

CROSSLAND
HEAVY CONTRACTORS



JOHNSON COUNTY
KANSAS
Wastewater

DATE: October 19, 2023

TO: Erick Lowe
Crossland Heavy Contractors, Inc

FROM: Annette Weeden
Purchasing Administrator

SUBJECT: Notice of Award for RFP 2023-026 On-Call Wastewater Facility Repair & Improvement Services

This notice is to inform you that Crossland Heavy Contractors, Inc has been awarded a contract for RFP 2023-026 On-Call Wastewater Facility Repair & Improvement Services. This contract has been awarded to multiple firms as a Term & Supply agreement, with an aggregate amount not to exceed \$ 6,500,000.00 by the Johnson County Board of County Commissioners as authorized on October 19th, 2023.

The finalized contract will be sent via email and AdobeSign soon. Please review and approve the agreement once received; should any questions and/or concerns arise, please contact me at (913) 715-0594.

cc: Bid No. 20YY-XXX File
<DEPARTMENT>

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General



Contractors of America

Construction Specifications Institute



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National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314

American Consulting Engineers Council
1015 15th Street N.W., Washington, DC 20005

American Society of Civil Engineers
345 East 47th Street, New York, NY 10017

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 - DEFINITIONS AND TERMINOLOGY	6
1.01 <i>Defined Terms</i>	6
1.02 <i>Terminology</i>	8
ARTICLE 2 - PRELIMINARY MATTERS.....	9
2.01 <i>Delivery of Bonds</i>	9
2.02 <i>Copies of Documents</i>	9
2.03 <i>Commencement of Contract Times; Notice to Proceed</i>	9
2.04 <i>Starting the Work</i>	9
2.05 <i>Before Starting Construction</i>	9
2.06 <i>Preconstruction Conference</i>	10
2.07 <i>Initial Acceptance of Schedules</i>	10
ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE	10
3.01 <i>Intent</i>	10
3.02 <i>Reference Standards</i>	10
3.03 <i>Reporting and Resolving Discrepancies</i>	11
3.04 <i>Amending and Supplementing Contract Documents</i>	11
3.05 <i>Reuse of Documents</i>	11
ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS	11
4.01 <i>Availability of Lands</i>	11
4.02 <i>Subsurface and Physical Conditions</i>	12
4.03 <i>Differing Subsurface or Physical Conditions</i>	12
4.04 <i>Underground Facilities</i>	13
4.05 <i>Reference Points</i>	14
4.06 <i>Hazardous Environmental Condition at Site</i>	14
ARTICLE 5 - BONDS AND INSURANCE.....	15
5.01 <i>Performance, Payment, and Other Bonds</i>	15
5.02 <i>Licensed Sureties and Insurers</i>	15
5.03 <i>Certificates of Insurance</i>	15
5.04 <i>CONTRACTOR's Liability Insurance</i>	15
5.05 <i>OWNER's Liability Insurance</i>	16
5.06 <i>Property Insurance</i>	16
5.07 <i>Waiver of Rights</i>	17
5.08 <i>Receipt and Application of Insurance Proceeds</i>	18
5.09 <i>Acceptance of Bonds and Insurance; Option to Replace</i>	18
5.10 <i>Partial Utilization, Acknowledgment of Property Insurer</i>	18
ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES.....	19
6.01 <i>Supervision and Superintendence</i>	19
6.02 <i>Labor; Working Hours</i>	19
6.03 <i>Services, Materials, and Equipment</i>	19
6.04 <i>Progress Schedule</i>	19
6.05 <i>Substitutes and "Or-Equals"</i>	19
6.06 <i>Concerning Subcontractors, Suppliers, and Others</i>	21
6.07 <i>Patent Fees and Royalties</i>	22
6.08 <i>Permits</i>	22

6.09	<i>Laws and Regulations</i>	22
6.10	<i>Taxes</i>	22
6.11	<i>Use of Site and Other Areas</i>	22
6.12	<i>Record Documents</i>	23
6.13	<i>Safety and Protection</i>	23
6.14	<i>Safety Representative</i>	23
6.15	<i>Hazard Communication Programs</i>	24
6.16	<i>Emergencies</i>	24
6.17	<i>Shop Drawings and Samples</i>	24
6.18	<i>Continuing the Work</i>	25
6.19	<i>CONTRACTOR's General Warranty and Guarantee</i>	25
6.20	<i>Indemnification</i>	25
ARTICLE 7 - OTHER WORK		26
7.01	<i>Related Work at Site</i>	26
7.02	<i>Coordination</i>	27
ARTICLE 8 - OWNER'S RESPONSIBILITIES		27
8.01	<i>Communications to Contractor</i>	27
8.02	<i>Replacement of ENGINEER</i>	27
8.03	<i>Furnish Data</i>	27
8.04	<i>Pay Promptly When Due</i>	27
8.05	<i>Lands and Easements; Reports and Tests</i>	27
8.06	<i>Insurance</i>	27
8.07	<i>Change Orders</i>	27
8.08	<i>Inspections, Tests, and Approvals</i>	27
8.09	<i>Limitations on OWNER's Responsibilities</i>	27
8.10	<i>Undisclosed Hazardous Environmental Condition</i>	27
8.11	<i>Evidence of Financial Arrangements</i>	27
ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION		28
9.01	<i>OWNER'S Representative</i>	28
9.02	<i>Visits to Site</i>	28
9.03	<i>Project Representative</i>	28
9.04	<i>Clarifications and Interpretations</i>	28
9.05	<i>Authorized Variations in Work</i>	28
9.06	<i>Rejecting Defective Work</i>	28
9.07	<i>Shop Drawings, Change Orders and Payments</i>	28
9.08	<i>Determinations for Unit Price Work</i>	29
9.09	<i>Decisions on Requirements of Contract Documents and Acceptability of Work</i>	29
9.10	<i>Limitations on ENGINEER's Authority and Responsibilities</i>	29
ARTICLE 10 - CHANGES IN THE WORK; CLAIMS		29
10.01	<i>Authorized Changes in the Work</i>	29
10.02	<i>Unauthorized Changes in the Work</i>	30
10.03	<i>Execution of Change Orders</i>	30
10.04	<i>Notification to Surety</i>	30
10.05	<i>Claims and Disputes</i>	30
ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK		31
11.01	<i>Cost of the Work</i>	31
11.02	<i>Cash Allowances</i>	32
11.03	<i>Unit Price Work</i>	33

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES	33
12.01 <i>Change of Contract Price</i>	33
12.02 <i>Change of Contract Times</i>	34
12.03 <i>Delays Beyond CONTRACTOR's Control</i>	34
12.04 <i>Delays Within CONTRACTOR's Control</i>	34
12.05 <i>Delays Beyond OWNER's and CONTRACTOR's Control</i>	34
12.06 <i>Delay Damages</i>	34
ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK.....	35
13.01 <i>Notice of Defects</i>	35
13.02 <i>Access to Work</i>	35
13.03 <i>Tests and Inspections</i>	35
13.04 <i>Uncovering Work</i>	35
13.05 <i>OWNER May Stop the Work</i>	36
13.06 <i>Correction or Removal of Defective Work</i>	36
13.07 <i>Correction Period</i>	36
13.08 <i>Acceptance of Defective Work</i>	36
13.09 <i>OWNER May Correct Defective Work</i>	36
ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION	37
14.01 <i>Schedule of Values</i>	37
14.02 <i>Progress Payments</i>	37
14.03 <i>CONTRACTOR's Warranty of Title</i>	39
14.04 <i>Substantial Completion</i>	39
14.05 <i>Partial Utilization</i>	39
14.06 <i>Final Inspection</i>	40
14.07 <i>Final Payment</i>	40
14.08 <i>Final Completion Delayed</i>	41
14.09 <i>Waiver of Claims</i>	41
ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION.....	41
15.01 <i>OWNER May Suspend Work</i>	41
15.02 <i>OWNER May Terminate for Cause</i>	41
15.03 <i>OWNER May Terminate For Convenience</i>	42
15.04 <i>CONTRACTOR May Stop Work or Terminate</i>	42
ARTICLE 16 - DISPUTE RESOLUTION	42
16.01 <i>Methods and Procedures</i>	42
ARTICLE 17 - MISCELLANEOUS.....	42
17.01 <i>Giving Notice</i>	42
17.02 <i>Computation of Times</i>	42
17.03 <i>Cumulative Remedies</i>	43
17.04 <i>Survival of Obligations</i>	43
17.05 <i>Controlling Law</i>	43

GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between OWNER and CONTRACTOR covering the Work.

3. *Application for Payment*--The form acceptable to ENGINEER which is to be used by CONTRACTOR during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

9. *Change Order*--A document recommended by ENGINEER which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by OWNER or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the OWNER and CONTRACTOR concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

13. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

15. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.

16. *Cost of the Work*--See paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which

graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *ENGINEER*--The individual or entity named as such in the Agreement.

20. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

21. *Field Order*--A written order issued by ENGINEER which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

22. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

23. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

24. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

25. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon

timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

29. *Notice to Proceed*--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

30. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

31. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyls.

33. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

35. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

36. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

37. *Resident Project Representative*--The authorized representative of ENGINEER who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for

CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

40. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

42. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.

43. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

44. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

45. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

47. *Unit Price Work*--Work to be paid for on the basis of unit prices.

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor,

services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

49. *Work Change Directive*--A written statement to CONTRACTOR issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of ENGINEER as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. Day

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

C. *Defective*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. *Furnish, Install, Perform, Provide*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CONTRACTOR, “provide” is implied.

E. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 *Delivery of Bonds*

A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 *Copies of Documents*

A. OWNER shall furnish to CONTRACTOR up to ten copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

A. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 *Before Starting Construction*

A. *CONTRACTOR’s Review of Contract Documents:* Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within ten days after the Effective Date of the Agreement (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to ENGINEER for its timely review:

1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and

3. a preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

C. *Evidence of Insurance:* Before any Work at the Site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with Article 5.

2.06 Preconstruction Conference

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 Initial Acceptance of Schedules

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to ENGINEER.

1. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the progress schedule, for

sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor.

2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.

3. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to OWNER.

C. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in Article 9.

3.02 Reference Standards

A. *Standards, Specifications, Codes, Laws, and Regulations*

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies*

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

B. *Resolving Discrepancies*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the

provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 *Amending and Supplementing Contract Documents*

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) ENGINEER's approval of a Shop Drawing or Sample; or (iii) ENGINEER's written interpretation or clarification.

3.05 *Reuse of Documents*

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaption by ENGINEER. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 *Availability of Lands*

A. OWNER shall furnish the Site. OWNER shall notify CONTRACTOR of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CONTRACTOR must comply in performing the Work. OWNER will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If CONTRACTOR and OWNER are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both,

as a result of any delay in OWNER's furnishing the Site, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

B. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Contract Documents; and
2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER, or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any

such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *ENGINEER's Review:* After receipt of written notice as required by paragraph 4.03.A, ENGINEER will promptly review the pertinent condition, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto, and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.

C. *Possible Price and Times Adjustments*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. such condition must meet any one or more of the categories described in paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.

2. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

c. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.

3. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in paragraph 10.05. However, OWNER, ENGINEER, and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.04 Underground Facilities

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities, including OWNER, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including OWNER, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

2. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price of Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR

are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, OWNER or CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

4.05 *Reference Points*

A. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 *Hazardous Environmental Condition at Site*

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the ENGINEER in the preparation of the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any

such other data, interpretations, opinions or information.

C. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CONTRACTOR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefor as provided in paragraph 10.05.

F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.E shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.F shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents.

CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

A. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain.

5.04 *CONTRACTOR's Liability Insurance*

A. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance of the Work and

CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or

required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.05 OWNER's Liability Insurance

A. In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.04, OWNER, at OWNER's option, may purchase and maintain at OWNER's expense OWNER's own liability insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

5.06 Property Insurance

A. Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER;

5. allow for partial utilization of the Work by OWNER;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR, and ENGINEER with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

D. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by CONTRACTOR, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraph 5.06, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work at the Site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

5.07 Waiver of Rights

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.06 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in

addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

B. OWNER waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to OWNER's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by OWNER; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.05, after Substantial Completion pursuant to paragraph 14.04, or after final payment pursuant to paragraph 14.07.

C. Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against CONTRACTOR, Subcontractors, ENGINEER, or ENGINEER's Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.08 Receipt and Application of Insurance Proceeds

A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08.B. OWNER shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on

account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

B. OWNER as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.

5.09 Acceptance of Bonds and Insurance; Option to Replace

A. If either OWNER or CONTRACTOR has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Partial Utilization, Acknowledgment of Property Insurer

A. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of OWNER or ENGINEER in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

6.02 *Labor; Working Hours*

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER.

6.03 *Services, Materials, and Equipment*

A. Unless otherwise specified in the General Requirements, CONTRACTOR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and

machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 *Progress Schedule*

A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.05 *Substitutes and "Or-Equals"*

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to ENGINEER for review under the circumstances described below.

1. *“Or-Equal” Items:* If in ENGINEER’s sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an “or-equal” item, in which case review and approval of the proposed item may, in ENGINEER’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment ENGINEER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items*

a. If in ENGINEER’s sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an “or-equal” item under paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR.

c. The procedure for review by ENGINEER will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances.

d. CONTRACTOR shall first make written application to ENGINEER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish

or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR’s achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER’s sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.05.A.2.

C. *Engineer’s Evaluation:* ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.05.A and 6.05.B. ENGINEER will be the sole judge of acceptability. No “or-equal” or substitute will be ordered, installed or utilized until ENGINEER’s review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an “or equal.” ENGINEER will advise CONTRACTOR in writing of any negative determination.

D. *Special Guarantee:* OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

E. *ENGINEER's Cost Reimbursement:* ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute.

F. *CONTRACTOR's Expense:* CONTRACTOR shall provide all data in support of any proposed substitute or "or-equal" at CONTRACTOR's expense.

6.06 Concerning Subcontractors, Suppliers, and Others

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to OWNER in advance for acceptance by OWNER by a specified date prior to the Effective Date of the Agreement, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

C. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

E. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with ENGINEER through CONTRACTOR.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms

to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

6.07 Patent Fees and Royalties

A. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 Permits

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

6.09 Laws and Regulations

A. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

B. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.

6.10 Taxes

A. CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER,

ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER, or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

B. Removal of Debris During Performance of the Work: During the progress of the Work CONTRACTOR shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. Cleaning: Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. Loading Structures: CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

A. CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to ENGINEER for OWNER.

6.13 Safety and Protection

A. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the

safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

A. CONTRACTOR shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 Hazard Communication Programs

A. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CONTRACTOR is obligated to act to prevent threatened damage, injury, or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 Shop Drawings and Samples

A. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials, and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.17.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, any related Work performed prior to ENGINEER's review and approval of the pertinent

submittal will be at the sole expense and responsibility of CONTRACTOR.

D. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

E. ENGINEER's Review

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will,

after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. ENGINEER's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. *Resubmittal Procedures*

1. CONTRACTOR shall make corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.18 *Continuing the Work*

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.19 *CONTRACTOR's General Warranty and Guarantee*

A. CONTRACTOR warrants and guarantees to OWNER, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or
2. normal wear and tear under normal usage.

B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. observations by ENGINEER;
2. recommendation by ENGINEER or payment by OWNER of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereto by OWNER;
4. use or occupancy of the Work or any part thereof by OWNER;
5. any acceptance by OWNER or any failure to do so;
6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;
7. any inspection, test, or approval by others; or
8. any correction of defective Work by OWNER.

6.20 *Indemnification*

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's

Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage:

1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and

2. is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of ENGINEER and ENGINEER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 7 - OTHER WORK

7.01 *Related Work at Site*

A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to CONTRACTOR prior to starting any such other work; and

2. if OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraph 10.05.

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

C. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure to so report will constitute an acceptance of such other work as fit and proper for

integration with CONTRACTOR's Work except for latent defects and deficiencies in such other work.

7.02 Coordination

A. If OWNER intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;
2. the specific matters to be covered by such authority and responsibility will be itemized; and
3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility for such coordination.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 Communications to Contractor

A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.02 Replacement of ENGINEER

A. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer to whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.03 Furnish Data

A. OWNER shall promptly furnish the data required of OWNER under the Contract Documents.

8.04 Pay Promptly When Due

A. OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.05 Lands and Easements; Reports and Tests

A. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish

reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ENGINEER in preparing the Contract Documents.

8.06 Insurance

A. OWNER's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 Change Orders

A. OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

8.08 Inspections, Tests, and Approvals

A. OWNER's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

8.09 Limitations on OWNER's Responsibilities

A. The OWNER shall not supervise, direct, or have control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. OWNER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

8.10 Undisclosed Hazardous Environmental Condition

A. OWNER's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

8.11 Evidence of Financial Arrangements

A. If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 *OWNER'S Representative*

A. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and will not be changed without written consent of OWNER and ENGINEER.

9.02 *Visits to Site*

A. ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

A. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If OWNER designates another

representative or agent to represent OWNER at the Site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Clarifications and Interpretations*

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

9.05 *Authorized Variations in Work*

A. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR, who shall perform the Work involved promptly. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefor as provided in paragraph 10.05.

9.06 *Rejecting Defective Work*

A. ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, or that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.07 *Shop Drawings, Change Orders and Payments*

A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.

C. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

9.08 Determinations for Unit Price Work

A. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding (except as modified by ENGINEER to reflect changed factual conditions or more accurate data) upon OWNER and CONTRACTOR, subject to the provisions of paragraph 10.05.

9.09 Decisions on Requirements of Contract Documents and Acceptability of Work

A. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 Limitations on ENGINEER's Authority and Responsibilities

A. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or

performance of any authority or responsibility by ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

C. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 Authorized Changes in the Work

A. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If OWNER and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change

Directive, a Claim may be made therefor as provided in paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Work as provided in paragraph 13.04.B.

10.03 *Execution of Change Orders*

A. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

1. changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.04 *Notification to Surety*

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

10.05 *Claims and Disputes*

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to ENGINEER and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the ENGINEER and the other party to the Contract within 60 days after the start of such event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless ENGINEER allows additional time).

B. *ENGINEER's Decision:* ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. an appeal from ENGINEER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal

of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

11.01 *Cost of the Work*

A. *Costs Included:* The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall

accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of CONTRACTOR.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators,

attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CONTRACTOR, whether at the Site or in CONTRACTOR's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the CONTRACTOR's fee.

2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the Site.

3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

4. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.

C. *CONTRACTOR's Fee:* When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

11.02 *Cash Allowances*

A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 *Unit Price Work*

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER subject to the provisions of paragraph 9.08.

B. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

C. OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in

Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

C. *CONTRACTOR's Fee:* The CONTRACTOR's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;

b. for costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. Any adjustment of the Contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

12.03 *Delays Beyond CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will

be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

12.04 *Delays Within CONTRACTOR's Control*

A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.05 *Delays Beyond OWNER's and CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 *Delay Damages*

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or

2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

ARTICLE 13 - TESTS AND INSPECTIONS;
CORRECTION, REMOVAL OR ACCEPTANCE OF
DEFECTIVE WORK

13.01 *Notice of Defects*

A. Prompt notice of all defective Work of which OWNER or ENGINEER has actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 *Access to Work*

A. OWNER, ENGINEER, ENGINEER's Consultants, other representatives and personnel of OWNER, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 *Tests and Inspections*

A. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;
2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and
3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection or approval.

D. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to OWNER and ENGINEER.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.E shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.04 *Uncovering Work*

A. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

B. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the

parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

13.05 *OWNER May Stop the Work*

A. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 *Correction or Removal of Defective Work*

A. CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the Project and replace it with Work that is not defective. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.07 *Correction Period*

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work

removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. CONTRACTOR's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER's recommendation of final payment, ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by CONTRACTOR pursuant to this sentence. If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.09 *OWNER May Correct Defective Work*

A. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.06.A, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors, and ENGINEER and ENGINEER's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.09 will be charged against CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, OWNER may make a Claim therefor as provided in paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective Work.

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 *Progress Payments*

A. *Applications for Payments*

1. At least 20 days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to pro-gress payments will be as stipulated in the Agreement.

B. *Review of Applications*

1. ENGINEER will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER or return the Application to CONTRACTOR indicating in writing

ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

2. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

3. By recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

4. Neither ENGINEER's review of CONTRACTOR's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment, including final payment, will impose responsibility on ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions

and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any Liens.

5. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. ENGINEER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Written Amendment or Change Orders;

c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or

d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

C. Payment Becomes Due

1. Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by OWNER to CONTRACTOR.

D. Reduction in Payment

1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

a. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;

c. there are other items entitling OWNER to a set-off against the amount recommended; or

d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.

2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld. OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

14.03 *CONTRACTOR's Warranty of Title*

A. CONTRACTOR warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall

fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 *Partial Utilization*

A. Use by OWNER at OWNER's option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which OWNER, ENGINEER, and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete,

CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

14.06 *Final Inspection*

A. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will promptly make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 *Final Payment*

A. *Application for Payment*

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

B. *Review of Application and Acceptance*

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. *Payment Becomes Due*

1. Thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.08 *Final Completion Delayed*

A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 *Waiver of Claims*

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 *OWNER May Suspend Work*

A. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not

more than 90 consecutive days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes a Claim therefor as provided in paragraph 10.05.

15.02 *OWNER May Terminate for Cause*

A. The occurrence of any one or more of the following events will justify termination for cause:

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);

2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;

3. CONTRACTOR's disregard of the authority of ENGINEER; or

4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs,

losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

C. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.03 *OWNER May Terminate For Convenience*

A. Upon seven days written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
4. for reasonable expenses directly attributable to termination.

B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 *CONTRACTOR May Stop Work or Terminate*

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for

Payment within 30 days after it is submitted, or OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to OWNER and ENGINEER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude CONTRACTOR from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 *Methods and Procedures*

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a

day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Agreement.

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

JOHNSON COUNTY SUPPLEMENTARY CONDITIONS

LIST OF SUBJECTS

SCOPE

- SC-1 DEFINITIONS AND TERMINOLOGY
 - SC-1.01 Defined Terms
 - SC-1.02 Terminology
- SC-2 PRELIMINARY MATTERS
 - SC-2.01 Delivery of Bonds and Evidence of Insurance
 - SC-2.02 Copies of Documents
 - SC-2.03 Commencement of Contract Times; Notice to Proceed
 - SC-2.05 Before Starting Construction
 - SC-2.06 Preconstruction Conference
 - SC-2.07 Initial Acceptance of Schedules
- SC-3 CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE
 - SC-3.03 Reporting and Resolving Discrepancies
- SC-4 AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS
 - SC-4.02 Subsurface and Physical Conditions
 - SC-4.03 Differing Subsurface or Physical Conditions
 - SC-4.04 Underground Facilities
 - SC-4.06 Hazardous Environmental Condition at Site
- SC-5 BONDS AND INSURANCE
 - SC-5.01 Performance, Payment, and Other Bonds
 - SC-5.03 Certificates of Insurance
- SC-6 CONTRACTOR'S RESPONSIBILITIES
 - SC-6.02 Labor; Working Hours
 - SC-6.08 Permits
 - SC-6.10 Taxes
 - SC-6.15 Hazard Communication Programs
 - SC-6.17 Resubmittal Costs
 - SC-6.19 CONTRACTOR's General Warranty and Guarantee
 - SC-6.20 Indemnification
- SC-8 OWNER'S RESPONSIBILITIES
 - SC-8.02 Replacement of ENGINEER
 - SC-8.11 Evidence of Financial Arrangements

- SC-9 ENGINEER'S STATUS DURING CONSTRUCTION
 - SC-9.03 Project Representative
 - SC-9.09 Decision on Requirements of Contract Documents and Acceptability of Work
- SC-10 CHANGES IN THE WORK; CLAIMS
 - SC-10.01 Authorized Changes in the Work
 - SC-10.05 Claims and Disputes
- SC-11 COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK
 - SC-11.01 Cost of the Work
- SC-12 CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES
 - SC-12.02 Change of Contract Times
- SC-13 TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK
 - SC-13.01 Notice of Defects
 - SC-13.03 Test and Inspections
- SC-14 PAYMENTS TO CONTRACTOR AND COMPLETION
 - SC-14.02 Progress Payments
- SC-16 DISPUTE RESOLUTION
- SC-17 MISCELLANEOUS
 - SC-17.04 Survival of Obligations
 - SC-17.05 Controlling Law
 - SC-17.06 Kansas Nondiscrimination Law
 - SC-17.07 Right to Examine and Audit Records; Contract Change Order Procedures; Overcharges

EXHIBITS

SUPPLEMENTARY CONDITIONS

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (EJCDC No. 1910-8, 1996 Edition) and other provisions of the Contract Documents as indicated. All provisions which are not so amended or supplemented remain in full force and effect.

SC-1. DEFINITIONS AND TERMINOLOGY.

SC-1.01. Defined Terms.

- A. Delete and replace the following definitions in Paragraph 1.01.A of the General Conditions:
1. Addenda - The written or graphic instruments issued by the OWNER prior to the opening of Bids which modify or interpret the Bid Documents or Contract Documents by additions, deletions, clarifications or corrections.
 5. Bid - means the offer or proposal of the Bidder duly submitted on the prescribed form(s), including any and all required bid document submittals, contained within the Bid Documents and setting forth the prices for the Work to be performed in response to the Invitation to Bid.
 6. "Bidding Documents" or "Bid Documents" - mean and include the Advertisement or Invitation to Bid or Notice to Bidders, Instructions to Bidders, Supplementary Instructions to Bidders, if any, the Bid Form, Bonds and all other bidding and contract forms to be modified consistent with these Instructions to Bidders and proposed Contract Documents, including General Conditions, Supplementary Conditions, Drawings, Specifications, and all Addenda and modifications issued prior to the opening of Bids.
 7. Bidding Requirements - The Advertisement or Invitation to Bid or Notice to Bidders, Instructions to Bidders, Supplementary Instructions to Bidders, if any, Bid Form, Bid Security Form, Bonds and other bidding requirements and bidding and contract forms to be modified consistent with the Instructions to Bidders and proposed Contract Documents.
 8. Bonds - Bid, performance, statutory and maintenance bonds, if required, and other instruments of security.
 12. Contract Documents – The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation

submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Johnson County Supplementary Conditions, Additional Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

15. CONTRACTOR - means the individual, partnership, corporation, association or other entity that the County has determined and declared to be the Successful Bidder and who has, following such determination and declaration, thereafter entered into the Agreement with the County to perform the Work.
 30. OWNER – The individual, entity, public body, or authority with whom the CONTRACTOR has entered into the Agreement and for whom the Work is to be performed. OWNER means the Board of County Commissioners of Johnson County, Kansas.
 34. Project - means the total construction of which the Work performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.
 42. Subcontractor - means the individual, partnership, corporation, association or other entity having a direct contract with the Contractor or any other subcontractor for the performance of a part of the Work at the site.
 44. Supplementary Conditions and/or Additional Supplementary Conditions – Those parts of the Contract Documents which amend or supplement these General Conditions.
- B. Add the following definitions to Paragraph 1.01.A of the General Conditions:
52. float - The amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the progress schedule.
 53. Owner's Agent. Owner's project manager who will be involved in the review and approval of applications for payment.

SC-1.02 Terminology.

- A. In Paragraph 1.02.C.1, insert the words “manual, code,” immediately preceding the word “inspection”.
- B. In Paragraphs 1.02.D.1, 1.02.D.2, and 1.02.D.3, add the words “and free of defects” to the end of each of these paragraphs immediately preceding the period.

SC-2. PRELIMINARY MATTERS.

SC-2.01. Delivery of Bonds and Evidence of Insurance. Delete Paragraph 2.01.A. in its entirety and insert the following in its place:

- A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds and Evidence of Insurance as CONTRACTOR may be required to furnish under the Bidding Documents if not required to be provided earlier by the Bidding Documents or the Notice of Award.

SC-2.02. Copies of Documents. Delete Paragraph 2.02 of the General Conditions in its entirety and insert the following in its place:

- A. OWNER shall furnish to CONTRACTOR up to but not more than eight (8) copies of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies may be furnished, upon request, at the cost of reproduction to be borne by CONTRACTOR.

SC-2.03. Commencement of Contract Times; Notice to Proceed. Delete Paragraph 2.3.A of the General Conditions in its entirety and insert the following in its place:

- A. The Contract Times will commence to run on the day indicated in the Notice to Proceed.

SC-2.05. Before Starting Construction. Delete Paragraph 2.05.C of the General Conditions in its entirety and insert the following in its place:

- C. Prior to execution of the Agreement by OWNER, and before any work at the site is started, CONTRACTOR shall deliver to OWNER, with a copy to ENGINEER, certificates (and other evidence of insurance requested by OWNER) which CONTRACTOR is required to purchase and maintain in accordance with Article 5, and OWNER, upon request, shall deliver to CONTRACTOR, with a copy to ENGINEER, certificates (and other evidence of insurance CONTRACTOR may reasonably request) which OWNER may have purchased in accordance with Article 5.

SC-2.06. Preconstruction Conference. Amend Paragraph 2.06.A of the General Conditions by inserting "OWNER," immediately preceding "CONTRACTOR".

SC-2.07. Initial Acceptance of Schedules. Amend Paragraph 2.07.A of the General Conditions by: (a) inserting "OWNER," immediately before "ENGINEER" in the fourth line of this paragraph; and, (b) inserting the words "OWNER and" immediately before "ENGINEER" in the fifth line of this paragraph.

Amend Paragraph 2.07.A.1 of the General Conditions by: (a) inserting the words "OWNER and" immediately preceding "ENGINEER" in the first sentence of this paragraph; and, (b) inserting the words "OWNER or" immediately preceding "ENGINEER" in the second sentence of this paragraph.

Amend Paragraph 2.07.A.3 of the General Conditions by inserting the words "OWNER and" immediately preceding "ENGINEER".

SC-3. CONTRACT DOCUMENTS; INTENT, AMENDING, REUSE

SC-3.03. Reporting and Resolving Discrepancies. In the second sentence of Paragraph 3.03.A.1., delete the words "until an amendment or supplement" and replace them with the words "unless ENGINEER determines in writing that no conflict exists or if ENGINEER determines a conflict does exist, until an amendment or modification".

SC-4. AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

SC-4.02. Subsurface and Physical Conditions.

- A. Amend Paragraph 4.02.A. of the General Conditions by: (a) deleting the words "Supplementary Conditions" and inserting in their place the words "Contract Documents","; and, (b) adding a "comma" immediately after the word "identify" followed by the words "if any".
- B. Amend Paragraph 4.02.B. of the General Conditions by: (a) inserting the words ", if any," immediately before the word "contained" in the third line of this paragraph; and, (b) deleting the words "Supplementary Conditions" in the sixth line and inserting in their place the words "Contract Documents".

SC-4.03. Differing Subsurface or Physical Conditions. Amend Paragraph 4.03.C.2.a. of the General Conditions by inserting in the second line of this paragraph immediately after the word "conditions" the following: "or reasonably should have known thereof".

SC-4.04. Underground Facilities. Amend Paragraph 4.04.A. of the General Conditions by deleting the words "Supplementary Conditions" in the seventh line of this paragraph and inserting in their place the words "Contract Documents".

SC-4.06. Hazardous Environmental Condition at Site.

- A. Amend Paragraph 4.06.A. of the General Conditions by deleting the words "Supplementary Conditions" in the second line of this paragraph and inserting in their place the words "Contract Documents".
- B. Amend paragraph 4.06.B of the General Conditions by deleting the words "Supplementary Conditions" in the sixth line of this paragraph and inserting in their place the words "Contract Documents".

SC-5. BONDS AND INSURANCE.

SC-5.01. Performance, Payment, and Other Bonds.

- A. Amend the first and second sentences of Paragraph 5.01.A of the General Conditions to read as follows:

CONTRACTOR shall furnish to OWNER Performance and Statutory Bonds, each in the amount equal to One Hundred percent (100%) of the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect for two (2) years after the date when final payment becomes due, except as otherwise provided by Law or Regulation or by the Contract Documents.

SC-5.03 Certificates of Insurance. Add the following new Paragraph B immediately after Paragraph 5.03A of the General Conditions:

- B. The CONTRACTOR shall furnish to the OWNER's Risk Management Office and to the ENGINEER a certificate of insurance verifying such coverage and identifying the Board of County Commissioners, Johnson County, Kansas and the ENGINEER, their officers, commissions, employees and agents as additional insureds as pertains to this Agreement per 5.04.B.1. The certificate holder on the certificate of insurance shall read as follows:

Board of County Commissioners
Johnson County, Kansas
c/o Risk Manager
111 South Cherry, Suite 2400
Olathe, Kansas 66061-3441

The Bid Request Number shall be referenced on the Certificate of Insurance.

SC-6. CONTRACTOR'S RESPONSIBILITIES.

SC-6.02. Labor; Working Hours. In Paragraph 6.02.A., add the following to the end of the paragraph: "The CONTRACTOR shall be responsible for the employment and payment of competent survey personnel."

SC-6.08. Permits. Amend Paragraph 6.08 of the General Conditions by deleting the words "Supplementary Conditions" in the first and second lines, respectively, of this paragraph, and inserting in their place the words "Contract Documents".

SC-6.10. Taxes. Delete Paragraph 6.10.A. of the General Conditions in its entirety and insert the following in its place:

- A. The OWNER shall obtain a project exemption certificate for the PROJECT from the Kansas Department of Revenue and provide the same to the CONTRACTOR to be used by the CONTRACTOR for the sales of tangible personal property to or services purchased by the CONTRACTOR for the work or portions thereof that may be properly exempt from the Kansas Retailer's Sales Tax Act and the Kansas Compensating Tax Act. Upon completion of the Work, the CONTRACTOR shall file with the OWNER on a form provided by the Kansas Department of Revenue, a sworn statement that all purchases made under the project exemption certificate were entitled to be exempt from the Kansas Retailer's Sales Tax Act and the Kansas Compensating Tax Act. The CONTRACTOR shall assume responsibility and be liable for the proper use of the project exemption certificate and shall pay all legally assessed penalties for improper use of the certificate and any and all taxes that are not otherwise exempt under the certificate.

SC-6.15. Hazard Communication Programs. Add the following new Paragraph B immediately after Paragraph 6.15.A of the General Conditions which is to read as follows:

- B. Chemical Warranty-Compliance With Toxic Substance Control Act. Notwithstanding anything to the contrary contained in these Contract Documents or represented by either party to the other, CONTRACTOR warrants that each and every chemical substance or product offered, sold, handled or used for the proposed Work under this Agreement, or otherwise transferred by CONTRACTOR to agencies and departments of the OWNER as of the date of such sale or transfer shall comply with OSHA Hazard Communication Standard 29 C.F.R. 1910.1200.

SC-6.17. Resubmittal Costs. Add the following paragraph after Paragraph SC-6.17.F:

- "G. Resubmittal Costs. CONTRACTOR shall reimburse OWNER for ENGINEER's charges for reviewing each resubmittal in excess of one resubmission. ENGINEER will record time required by ENGINEER in

evaluating resubmitted Shop Drawings and Samples by CONTRACTOR pursuant to paragraphs 6.17.D.3 and submit a copy of the charges to CONTRACTOR and OWNER. CONTRACTOR shall reimburse OWNER for the charges of ENGINEER. The charges shall be deducted by OWNER from the next submitted Payment Application of CONTRACTOR. CONTRACTOR shall not be entitled to any change in the Contract Price or Contract Times because of delay in the review process".

SC-6.19. CONTRACTOR's General Warranty and Guarantee. Insert the word "; or" at the end of Paragraph 6.19.B.8 of the General Conditions and add to the following Paragraph 6.19.B.9.

"9. any expiration of a correction period."

SC-6.20. Indemnification. Add the words "or furnish" to the fifth line of Paragraph 6.20.A.2 after the word "perform".

SC-6.20.C.3. Add this paragraph after Paragraph 6.20.C.2:

"Provided however, if the claim, damage, loss or expense referred to in Paragraph 6.20.A. results from failure of the ENGINEER to discover a condition or object which is underground or otherwise not reasonably observable by the ENGINEER, and if said failure to discover is apparent to the CONTRACTOR in that the said condition or object is omitted from the ENGINEER'S maps, drawings, opinions reports, surveys, change orders, designs or specifications, then the CONTRACTOR shall be liable for indemnification of ENGINEER under Paragraph 6.20 for damage resulting from said failure to discover unless CONTRACTOR shall have notified ENGINEER of the existence and location of such condition or object prior to the occurrence of such damage and in sufficient time for ENGINEER to have provision therefore. Further, in the event neither ENGINEER nor CONTRACTOR discover such condition or object, CONTRACTOR shall bear the burden of indemnification under Paragraph 6.20."

SC-8. OWNER'S RESPONSIBILITIES.

SC-8.02. Replacement of ENGINEER. Delete Paragraph 8.02.A of the General Conditions in its entirety and insert the following in its place:

- A. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer whose status under the Contract Documents shall be that of the former ENGINEER.

SC-8.11. Evidence of Financial Arrangements. Delete Paragraph 8.11.A of the General Conditions in its entirety.

SC-9. ENGINEER'S STATUS DURING CONSTRUCTION

SC-9.03. Project Representation. Add the following new paragraph immediately after Paragraph 9.03.A of the General Conditions.

- B. If a Resident Project Representative is furnished under Paragraph 9.03 of the General Conditions, the duties, responsibilities and limitations of authority of any such Resident Project Representative and assistants will be as provided in an exhibit attached to these Supplementary Conditions and made a part of the Contract Documents. The name(s) of the Resident Project Representative(s) will be furnished to the CONTRACTOR.

SC-9.09. Decisions on Requirements of Contract Documents and Acceptability of Work. Add the following at the end of the first sentence of Paragraph 9.09.A of the General Conditions: "insofar as the subject matter of any pertinent claim, dispute, or other matter falls within the realm of the technical expertise of ENGINEER, ENGINEER shall not render any decision on any claims, disputes, or other matters the subject matter of which, at ENGINEER's sole discretion, requires legal, rather than technical interpretation.

SC-9.09.B. Delete this paragraph in its entirety and replace it with the following:

- B. ENGINEER will be the initial judge of the acceptability of the Work. Claims relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work or seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of Paragraph 10.05. for recommendation by ENGINEER to OWNER. OWNER shall be the final determiner of the acceptability of the Work. ENGINEER shall not be liable to either OWNER or CONTRACTOR in connection with any recommendation. A recommendation of ENGINEER pursuant to this paragraph with respect to any Claim shall be a condition precedent to any exercise by CONTRACTOR of any rights or remedies otherwise available under the Contract Documents or by Laws and Regulations in respect to any Claim.

SC-10. CHANGES IN THE WORK; CLAIMS

SC-10.01. Authorized Changes in the Work. Add the following paragraphs after Paragraph 10.1.A:

1. The OWNER reserves the right to make modifications to the work included in this Contract to the extent that the total contract price Contract Price is not increased by more than 25 percent. Modifications which result in increases beyond this limit will be made only with the concurrence of the CONTRACTOR.

2. The CONTRACTOR shall not be entitled to an increase in the Contract Price resulting from delays to the Work due to weather conditions. Claims for an extension of the Contract Time may be made as provided in Article 12.

SC-10.05. Claims and Disputes. Delete Paragraph 10.05.B (including paragraphs 10.05.B.1 and 10.05.B.2) of the General Conditions in its entirety and insert the following in its place:

- B. ENGINEER'S Decision. ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. The rendering of a decision by ENGINEER pursuant to this paragraph 10.05 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

SC-11. COST OF THE WORK: CASH ALLOWANCES; UNIT PRICE WORK

SC.11.01. Cost of the Work. Insert the following after Paragraph 11.01.B.5.:

6. Sales, consumer, use and other similar taxes related to the Work that CONTRACTOR is liable.

SC-12. CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES.

SC-12.02. Change of Contract Times. Add the following new paragraphs after Paragraph 12.02.B of the General Conditions:

- C. A claim for an extension of the Contract Times (or Milestones), otherwise allowable under the Contract Documents, shall be granted only to the extent the time lost exceeds the float for the delayed activity at the time of the event giving rise to the claim. Float, whether expressly disclosed or implied in any manner, is jointly owned by the OWNER and CONTRACTOR.
- D. CONTRACTOR shall not use float suppression techniques (including, but not limited to, preferential sequencing caused by late starts of follow-up trades, unreasonably small crews, extended durations, or imposed dates) in information provided to ENGINEER.

SC-13. TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

SC-13.01. Notice of Defects. Amend Paragraph 13.01.A of the General Conditions by inserting in the first line of this paragraph immediately after the word “Prompt” the following: “written”.

SC-13.03. Tests and Inspections. Amend Paragraph 13.03.A of the General Conditions by inserting in the first line of this paragraph immediately after the word “timely” the following: “written”.

Amend Paragraph 13.03.F of the General Conditions by inserting in the third line of this paragraph immediately after the word “timely” the following: “written”.

SC-14. PAYMENTS TO CONTRACTOR AND COMPLETION

SC-14.02. Progress Payment. Amend the first line of Paragraph 14.02.A.1 of the General Conditions to read as follows: “At least thirty (30) days before the date”.

Add the following new paragraphs immediately following Paragraph 14.02.A.3 of the General Conditions:

4. **Materials and Equipment.** Payments for stored materials and equipment shall be based only upon the actual cost to CONTRACTOR of the materials and equipment and shall not include any overhead or profit to CONTRACTOR. Partial payments will not be made for undelivered materials or equipment.
5. **Schedules and Data.** During the progress of the Work, each application for Payment shall be accompanied by CONTRACTOR's updated schedule of operations or progress report, with such shop drawings schedules, procurement schedules, values of materials and equipment on hand included in application, and other data specified or reasonably required by ENGINEER.

Amend the first line of Paragraph 14.02.B.1 of the General Conditions to read as follows: “ENGINEER or OWNER'S AGENT will, within seven (7) business days after”.

Delete paragraph 14.02.C.1 of the General Conditions in its entirety and replace it with the following paragraphs:

1. Thirty days after presentation of the Application for Payment to Owner with ENGINEER's or OWNER'S AGENT's recommendation, the amount recommended (subject to the provision of paragraph 14.02.D) will become due and when due will be paid by OWNER to CONTRACTOR, unless extenuating circumstances exist which would preclude such payment by OWNER to CONTRACTOR. If such extenuating circumstances exist, then payment shall be made within forty-five (45) days after OWNER receives presentation of the Application for Payment.”

2. CONTRACTOR shall pay its subcontractors any amounts due within seven (7) business days of receipt of payment from OWNER, including payment of retainage, if retainage is released by OWNER, if the subcontractor has provided a timely, properly completed and undisputed request for payment to CONTRACTOR. Further, CONTRACTOR shall require its subcontractors to pay their subcontractors in the same manner.

SC-16. DISPUTE RESOLUTION. Delete Article 16 of the General Conditions in its entirety.

SC-17. MISCELLANEOUS.

SC-17.04. Survival of Obligations. Add the following new paragraph immediately after Paragraph 17.04.A of the General Conditions:

- B. CONTRACTOR shall obtain from all Suppliers and manufacturers any and all warranties and guarantees of such Suppliers and manufacturers, whether or not specifically required by the Specifications, and shall assign such warranties and guarantees to OWNER. With respect thereto, CONTRACTOR shall render reasonable assistance to OWNER when requested, in order to enable OWNER to enforce such warranties and guarantees. The assignment of any warranties or guarantees shall not affect the correction period or any other provisions of these Contract Documents.

SC-17.05. Controlling Law. Delete Paragraph 17.05 in its entirety and replace with the following paragraphs:

- A. The Contract Documents shall be governed, enforced and construed under the laws of the State of Kansas.
- B. Any action to enforce a right, duty or remedy in the Contract Documents, or at law or equity, shall be brought in the District Court of Johnson County, Kansas.
- C. All provisions contained in the Contract Documents are severable, and if, in the event any clause shall be held to be unconstitutional, invalid, or unenforceable by a Court of competent jurisdiction, the remainder of the Contract Documents shall be interpreted as if the unconstitutional, invalid or unenforceable clause(s) were not contained in the Contract Documents.
- D. The waiver of any party of a breach of any of the provisions of the Contract Documents shall not operate as, or be construed as, a waiver of any subsequent breach by either party. Any waiver of a breach by any party shall be in writing.
- E. This Agreement is subject to the provisions of the Kansas Cash Basis Law, *K.S.A. 10-1101, et seq.*, and amendments thereto (the "Act"). By virtue of this Act, the Owner is obligated to only pay periodic payments as contemplated

herein as may be lawfully be made from funds budgeted and appropriated for that purpose during its current budget year or from funds made available from any lawfully operated revenue producing source.

SC-17.06. Kansas Nondiscrimination Law. Add the following new paragraphs immediately after paragraph 17.05 of the General Conditions:

- A. The following provisions shall apply to this and all resulting contracts and subcontracts with and between all contractors, subcontractors, vendors, and/or suppliers connected with this Project, except (i) those whose contracts with the OWNER cumulatively total five thousand dollars (\$5,000) or less during the OWNER's fiscal year or (ii) those contracts with and between all contractors, subcontractors, vendors and/or suppliers who employ fewer than four (4) employees during the term of this Agreement:
- B. The CONTRACTOR shall observe the provisions of the Kansas Act Against Discrimination, K.S.A. 44-1001 et seq., and amendments thereto, the Kansas Age Discrimination in Employment Act, K.S.A. 44-1111 et seq., and amendments thereto, and the applicable provisions of the Americans With Disabilities Act (ADA), 42 U.S.C. 12101 et seq., and amendments thereto and shall not discriminate against any person in the performance of work under the present contract or in the admission or access to, or treatment or employment in, its programs or activities because of race, religion, color, sex, physical handicap unrelated to such person's ability to engage in the particular work, national origin, ancestry or political affiliation;
- C. In all solicitations or advertisements for employees, the CONTRACTOR shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Commission on Civil Rights ("Commission");
- D. If the CONTRACTOR fails to comply with the manner in which the CONTRACTOR reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and K.S.A. 44-1116, and amendments thereto, the CONTRACTOR shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the OWNER; and
- E. If the CONTRACTOR is found guilty of a violation of the Kansas Act Against Discrimination, the Kansas Age Discrimination in Employment Act, or the ADA under a decision or order of the Commission which has become final, the CONTRACTOR shall be deemed to have breached the present Agreement and it may be canceled, terminated or suspended, in whole or in part, by the OWNER.
- F. The CONTRACTOR shall include the provisions of paragraphs 17.06.C through 17.06.F inclusively in every subcontract and purchase order so that such provisions will be binding upon such subcontractor or vendor.

SC-17.07. Right to Examine and Audit Records; Contract Change Order Procedures; Overcharges.

- A. The CONTRACTOR agrees that the OWNER, or any of its authorized representatives, shall have access to, and the right to examine and audit, any and all books, documents, papers and records (collectively the "Records") of the CONTRACTOR involving transactions related to the contract (the "Contract") between the OWNER and CONTRACTOR hereunder, or any change order or Contract modification thereto, or with compliance with any clauses thereunder. Such Records shall include hard copy as well as computer readable data. The CONTRACTOR shall require all of its payees including, but not limited to, subcontractors, insurance agents or material suppliers (collectively the "payee(s)") to comply with the provisions of this clause by including the requirements hereof in a written agreement between the CONTRACTOR and payee(s). Further, the CONTRACTOR agrees to cooperate fully and will require all of its payees to cooperate fully in furnishing or making available to the OWNER any and all such Records. The OWNER's right to examine and audit any and all Records hereunder shall survive termination of the Contract.
- B. The CONTRACTOR agrees to follow the quality control change order processing system (the "System") utilized by ENGINEER and OWNER to ensure that any and all Contract change orders or Contract modifications (collectively the "Change Order(s)") that may be necessitated and result during the course of the performance of work or services rendered (the "Work") pursuant to, and under the requirements of, the Contract are warranted and properly processed. The System shall serve as a means for OWNER and CONTRACTOR representatives to ensure the propriety, justification and timeliness of the Change Order(s), the reasonableness and accuracy of the price for the Change Order(s), and full documentation to enable the parties to examine how the price was determined, reviewed, evaluated, negotiated, and accepted or rejected.
- C. The CONTRACTOR agrees that if at any time following thirty-six (36) months of termination of the Contract (the "audited period"), an audit performed by or for the Owner hereunder of the Records and/or Change Order(s) pertaining to, or in connection with, the Work and/or the Contract reveals that any overcharges were paid by the OWNER and were attributable to any error, omission, negligence, misrepresentation, or willful act on the part of the CONTRACTOR, or any of its officers, employees, subcontractors, agents or payees, then the CONTRACTOR, or any of its assigns or successors, shall, within thirty (30) days of receipt of written notice from the OWNER, refund upon demand, and be and remain liable to the OWNER for payment of, any such overcharges revealed, including interest thereupon, for the audited period, as well any and all out-of-pocket costs incurred by the OWNER with respect to conducting the audit and collecting the overcharges. Neither shall the making and acceptance of final payment under the Contract nor the

termination of the Contract constitute a waiver of any claim on the part of the OWNER to make demand upon the CONTRACTOR for any such overcharges and related costs thereto; provided, further, that any such demand of the OWNER made upon the CONTRACTOR shall not be subject to the claims and disputes procedural requirements or provisions, if any, of the Contract, but shall remain a continuing obligation of the CONTRACTOR until satisfied.

END OF SUPPLEMENTARY CONDITIONS



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/14/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER IMA, Inc. - Kansas City 9393 W. 110th Street Suite 600 Overland Park KS 66210	CONTACT NAME: IMA Wichita Team PHONE (A/C, No, Ext): 316-267-9221 E-MAIL ADDRESS: certs@imacorp.com	FAX (A/C, No):
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Zurich American Insurance Company		16535
INSURER B: Atlantic Specialty Insurance Company		27154
INSURER C: Indian Harbor Insurance Company		36940
INSURER D: American Guarantee and Liability Insurance		26247
INSURER E:		
INSURER F:		

License#: PC-1210733
CROSCON-03**COVERAGES****CERTIFICATE NUMBER:** 597712862**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☒ LOC ☐ OTHER:			GLO859600803	4/30/2023	4/30/2024	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 2,000,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 10,000,000 PRODUCTS - COMP/OP AGG \$ 10,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			BAP859615303	4/30/2023	4/30/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
D	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 0			AUC425515002	4/30/2023	4/30/2024	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ Y ☒ N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	WC859600703	4/30/2023	4/30/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 2,000,000 E.L. DISEASE - EA EMPLOYEE \$ 2,000,000 E.L. DISEASE - POLICY LIMIT \$ 2,000,000
C B B	Professional & Pollution Liab. Builders Risk - Reporting Installation Floater - Reporting			CEO744688607 7900130720010 7100337760011	4/30/2023 4/30/2023 4/30/2023	4/30/2024 4/30/2024 4/30/2024	See Below Any One Job Site Any One Job Site \$125,000,000 \$2,500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

-Professional Liability: \$5,000,000 Each Claim, \$10,000,000 Aggregate; Pollution Liability: \$10,000,000 Each Claim, \$10,000,000 Aggregate.
-2nd Layer Excess Liability: Policy #UXP3000009001, Effective 4/30/2023 - 4/30/2024, Insurer: Arch Insurance Company, NAIC #11150, \$15,000,000 Each Occurrence, \$15,000,000 Aggregate.
-3rd Layer Excess Liability: Policy #1000588349231, Effective 4/30/2023 - 4/30/2024, Insurer: Starr Indemnity & Liability Company, NAIC #38318, \$15,000,000 Each Occurrence, \$15,000,000 Aggregate.
RE: 2023-026 On-Call Wastewater Facility Repair & Improvement Services.
Certificate Holder Includes: The Board of County Commissioners of Johnson County, KS, its officers, Commissions, Agencies and employees.

See Attached...

CERTIFICATE HOLDER**CANCELLATION**

Board of County Commissioners
Johnson County, Kansas
c/o Risk Manager, FMA
111 South Cherry Street, Suite 2400
Olathe KS 66061-3486

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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**ADDITIONAL REMARKS SCHEDULE**Page 1 of 1

AGENCY IMA, Inc. - Kansas City		NAMED INSURED Crossland Heavy Contractors, Inc. PO Box 45 833 S. East Avenue Columbus KS 66725
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,****FORM NUMBER:** 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Certificate Holder and all other parties required by the contract are included as Additional Insured including Ongoing and Completed Operations on the General Liability Policy and Additional Insured on the Automobile Liability, Umbrella Liability and Pollution Liability Policies, if required by written contract or agreement, subject to the policy terms and conditions.

This Insurance is Primary & Non-Contributory on the General Liability, Automobile Liability and Umbrella Liability Policies, if required by written contract or agreement, subject to the policy terms and conditions.

A Waiver of Subrogation is provided in favor of Certificate Holder and all other parties required by the contract on the General Liability, Automobile Liability, Umbrella Liability and Workers Compensation Policies, if required by written contract or agreement, subject to the policy terms and conditions.

November 14th, 2025

To: City of Independence

Attn: Anthony Dahl and Zach Dean

RE: Maintenance Building & New Access Road

Please see the attached cost model for the New Maintenance Building & Access Road at the Courtney Bend Water Treatment Plant. Our proposal is based on a Guaranteed Maximum Price (GMP), and the City of Independence will only be billed for actual cost with associated mark-up. Our proposal includes 10.45% contingency to help cover any unforeseen items. If the contingency is not used, then it goes back to the you the Client. I have provided associated quotes from MAR Building Solutions, Hamm, Kansas City Winwater, and GBA for reference.

Inclusions:

- Supervision/Coordination/Scheduling
- Labor, material, & equipment to install ~1100LF of New Access Road based on 6" of base course and 6" of surface course aggregate with geotextile fabric beneath the roadway.
- Labor, material & equipment to install galvanized corrugated metal culvert pipe under access road.
- Labor, material, & equipment to install new Pre-Engineered Metal Maintenance Building with associated cast-in-place foundation scope.
- Engineering Services for Building & Foundation
- Below Grade Utilities – Waterline, Sewer Line, Sump Pump, & Sediment Bucket. Utilities will be terminated 5'-0" outside of building footprint.
- Prevailing Wage Rate Requirements per Jackson County
- Performance & Payment Bonds
- Allowance for Erosion Control Services & Seeding
- Allowance for Joint Sealants for Building
- Openings included in MAR Building Solutions Scope of Work
- Cost Model, Design Review, & General Conditions

Exclusions/Clarifications:

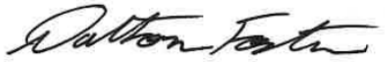
- Sales Tax
- Any item not stated in the outline scope of work above.
- Helical Piles, Piers, etc.
- Coatings
- HVAC, Plumbing, or Electrical (outside any items not stated in the outlined scope of work above.).

Pricing:

Proposal Total: **\$569,336**

Please feel free to call with any questions or concerns.

Regards,

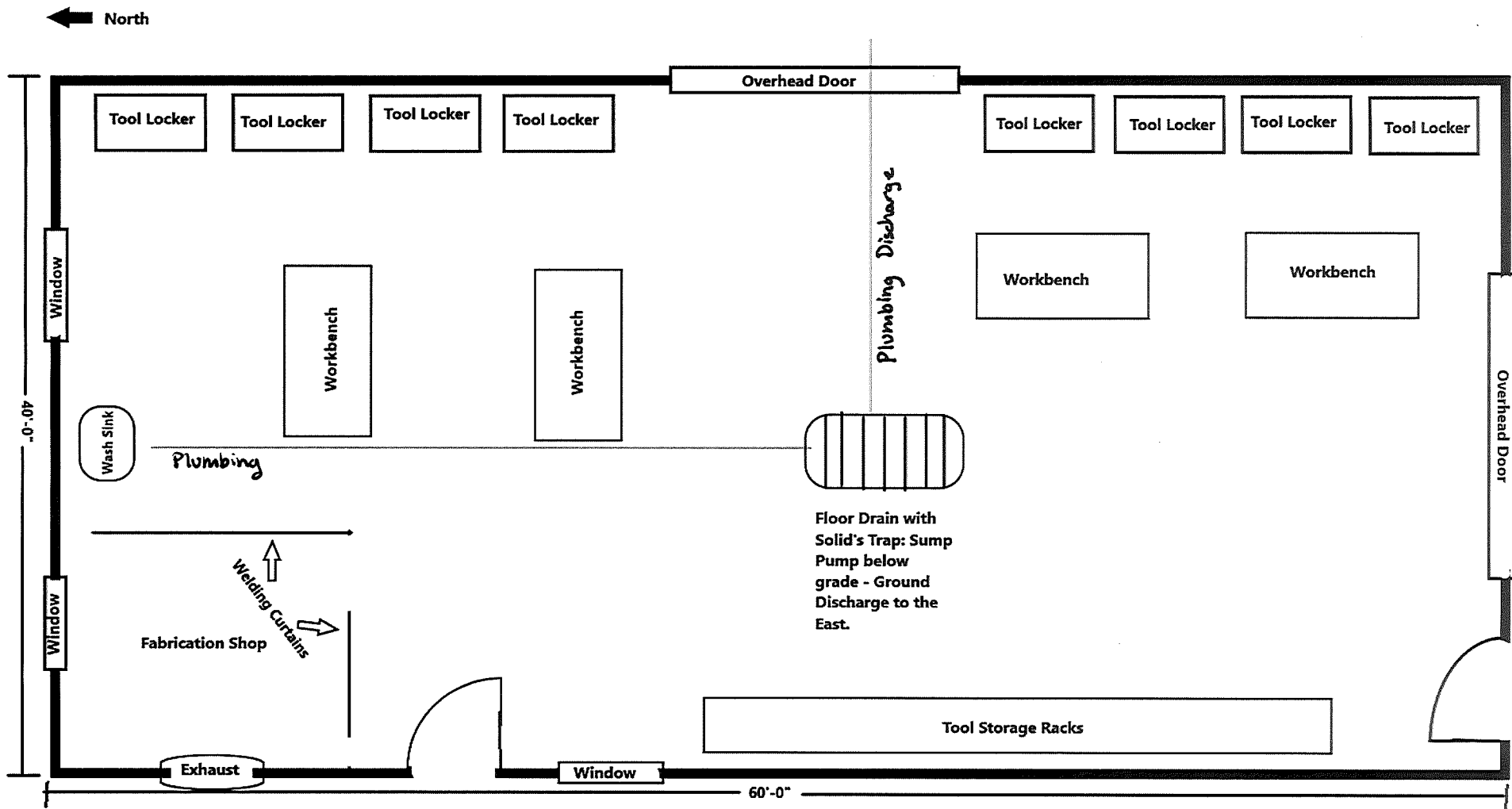
A handwritten signature in black ink, appearing to read "Dalton Foster".

Dalton Foster, Assoc. DBIA
Crossland Heavy Contractors
dfoster@heavycontractors.com



				MAINTENANCE BUILDING & ACCESS ROAD PRELIMINARY BUDGET						Costing Type/Origin Legend: DB - Design Builder (GC's & PR's) SP - Self-Perform S - Sub EMS - Equipment/Material Supplier P - Plug A - Allowance
SCHEDULE OF VALUES				BASE			CONTINGENCY			
ITEM	Division	BP	DESCRIPTION	CONTRACT ITEMS			% Contingency	Contingency \$	Total Price	
				QTY/ UOM	UNIT PRICE	Neatline Subtotal				
A			GENERAL REQUIREMENTS				\$3,500.00		\$0.00	
A1	1000		DB BONDS & INSURANCE - INCLUDED BELOW	1	LS	\$0.00	\$0	0%	\$0	\$0
A2	1000		MATERIALS TESTING SCOPE - ALLOWANCE	1	LS	\$2,500.00	\$2,500	0%	\$0	\$2,500
A3	1000		ENGINEERING SUB - INCLUDED BELOW	1	LS	\$0.00	\$0	0%	\$0	\$0
A4	1000		SURVEY & LAYOUT	1	LS	\$1,000.00	\$1,000	0%	\$0	\$1,000
B			EROSION CONTROL				\$3,000.00		\$150.00	\$3,150.00
B1	2000		EROSION CONTROL - SILT FENCE	1	LS	\$1,500.00	\$1,500	5%	\$75	\$1,575
B2	2000		EROSION CONTROL - SEEDING	1	LS	\$1,500.00	\$1,500	5%	\$75	\$1,575
C			PRE-ENGINEERED METAL BUILDING				\$352,441.00		\$46,747.92	\$399,188.92
C1	13000		PEMB - EARTHWORK	1	LS	\$25,000.00	\$25,000	12%	\$3,000	\$28,000
C2	13000		PEMB - CAST-IN-PLACE CONCRETE & REINFORCING STEEL	165	CY	\$900.00	\$148,500	15%	\$22,275	\$170,775
C3	13000		PEMB - JOINT SEALANTS	1	LS	\$5,000.00	\$5,000	12%	\$600	\$5,600
C4	13000		PEMB - FURNISH BUILDING, ERECTION, APPURTENANCES	1	LS	\$171,241.00	\$171,241	12%	\$20,549	\$191,790
C5	13000		PEMB - ANCHOR BOLT LAYOUT & HARDWARE INSTALL	36	EA	\$75.00	\$2,700	12%	\$324	\$3,024
D			NEW ACCESS ROAD				\$48,879.95		\$5,376.79	\$54,256.74
D1	32000		NEW ACCES ROAD - LAYOUT ROAD, SCARIFY & COMPACT SUBGRADE	1467	SY	\$2.20	\$3,227	11%	\$355	\$3,582
D2	32000		NEW ACCESS ROAD - INSTALLATION OF GEO FABRIC	13203	SF	\$0.85	\$11,223	11%	\$1,234	\$12,457
D3	32000		NEW ACCESS ROAD - INSTALLATION OF BASE COURSE & SURFACE COURSE	734	TN	\$45.00	\$33,030	11%	\$3,633	\$36,663
D4	32000		NEW ACCESS ROAD - CULVERT PIPE	1	EA	\$1,400.00	\$1,400	11%	\$154	\$1,554
E			UTILITIES				\$10,600.00		\$1,590.00	\$12,190.00
E1	33000		UTILITIES - WATERLINE	70	LF	\$40.00	\$2,800	15%	\$420	\$3,220
E2	33000		UTILITIES - SEWER LINE & APPURTENANCES	70	LF	\$70.00	\$4,900	15%	\$735	\$5,635
E3	33000		UTILITIES - PIPE MATERIALS	1	LS	\$2,900.00	\$2,900	15%	\$435	\$3,335

CONSTRUCTION SCOPE	\$418,420.95
ENGINEERING DESIGN	\$ 26,250
GENERAL CONDITIONS	\$ 30,336
COST OF WORK	\$ 475,006.47
CM FEE & (6.5% OF COST OF WORK)	\$ 32,847
BONDS AND INSURANCE	\$ 7,618
PROJECT TOTAL LESS CONTINGENCY	\$ 515,472
TOTAL CONTINGENCY WITH 6.5% FEE	\$ 53,865
TOTAL % CONTINGENCY	10.45%
PROJECT TOTAL INCLUDING CONTINGENCY	\$ 569,336



City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

Council action is requested to issue a purchase order to Remco Demolition, LLC, in the amount of \$248,200.00, and authorizing change orders of up to ten percent (10%) of the authorized amount, for the demolition of 111 E Maple Avenue. **Approved**

Recommendations:

The City issued a demolition bid for City Hall to its list of pre-qualified demolition contractors. The bid requested pricing for 2 options: (1) Removal of the building down to the first-floor slab, with utility disconnections and capping performed in accordance with City requirements and (2) the complete removal of the building structure, including all foundations and footings, with utility disconnections and capping performed in accordance with City requirements. All disturbed areas are to be backfilled, graded, seeded, and strawed to ensure a level, free-draining site.

Staff selected the 2nd option – the complete removal of the building structure, including all foundations and footings. This option provides the best situation for redevelopment on this site. A total of five bids were received, ranging from \$248,200 to \$495,000. Remco Demolition, LLC submitted the lowest bid and have performed numerous demolitions, including several City-initiated demolitions.

Rationale for Demolishing City Hall

Alignment with the Reshaping the Square Master Plan

The Reshaping the Square Master Plan envisions a long-term reinvestment in Historic Independence Square centered on the Truman Courthouse and its surrounding blocks. The plan calls for a core that is walkable, connected and activated by a mix of public, cultural, and commercial uses.

The current City Hall building does not support this vision. Its institutional design, orientation and deep setback break the street pattern and limit pedestrian activity. The site's size and location make it a prime redevelopment opportunity that could better integrate civic functions, open space and investment in keeping with the plan's design framework.

Demolishing City Hall would unlock the site for redevelopment that aligns with the Master Plan's goals—potentially accommodating new civic uses, a public plaza, and mixed-use development that reinforces the Square as the historic and cultural heart of the city.

Facility Condition and Cost of Renovation

According to the City Hall Renovation Report prepared by Project Advocates (May 17, 2024), the cost to renovate the existing 54,000-square-foot facility was estimated as follows:

Hard Construction Costs: \$20,790,000 (\$385/sf)

Soft Costs: \$10,610,000 (\$196.48/sf)

Total Estimated Cost: \$31.4 million (\$581.48/sf)

The report includes contingencies for escalation and abatement but still concludes that renovation is not practical due to extensive structural issues, outdated systems and unknown building conditions. The report notes that even with major investment, the building would remain inefficient and costly to maintain compared to modern alternatives.

Ongoing maintenance demands have continued to rise, including roof repairs, HVAC inefficiencies, and structural deterioration such as cracked masonry at the main entrance. The age and layout of the building also make compliance with ADA accessibility, modern security and energy performance standards difficult and expensive to achieve. Investing \$31 million in a 50-year-old building would not resolve its inherent inefficiencies or spatial limitations.

Strategic Redevelopment Opportunity

Demolition of the existing City Hall creates a rare opportunity to reimagine a full city block on the Square while still leaving a significant portion of the property for other strategic redevelopment opportunities.

In this case, the City has a strategic redevelopment opportunity with Mid Continent Public Library acquiring a portion of City Hall lot. MCPL intends to acquire approximately 1.2 acres of City-owned land—generally the area between Maple Avenue and Lexington Avenue, from Lynn Street to Memorial Drive—while the remaining portion of the property will remain under City ownership.

MCPL envisions constructing a new headquarters facility on the property for administrative operations and public programming. As part of the MCPL's commitment to public purpose and civic collaboration, the project will incorporate:

Shared-use civic space suitable for community meetings, work sessions, and public forums.

An outdoor public plaza and green space for events, leisure, and community gathering.

Enhanced pedestrian access and design integration with the surrounding area to support downtown revitalization and public access.

These features are intended to complement the City's goals for a vibrant, accessible, and inclusive civic environment. MCPL anticipates early construction could begin in mid-2026 with full construction beginning in late 2026 and early 2027.

Conclusion

The combination of extraordinary renovation costs, rising maintenance burdens and a strategic downtown redevelopment opportunity make demolition of the existing City Hall the most fiscally responsible and community-aligned course of action.

Removing the outdated facility will allow the City to advance the adopted vision for a vibrant, connected and economically strong Independence Square—one that honors the city's heritage while positioning it for the future.

Timeline

Demolition is expected to commence once all City functions have been fully relocated from the building. The work is anticipated to begin in March 2026, pending relocating City functions, and is projected to take approximately 30 days, pending weather conditions.

Background:

Staff recommends approval.

Emergency Justification:

Fiscal Impact:

The fiscal impact to the City is \$248,200.00. Funding for demolition is included in the Fiscal Year 2025-2026 in the Building Inspections section of the Community Development budget. This approval would also authorize future minor change orders up to \$24,820.00 in the event of unforeseen conditions.

Council Action:

Department / Contact	Community Development /
---------------------------------	-------------------------

REVIEWERS

Tom Scannell
Melissa Cabrera
Jeremy Cover
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. Bid Tabs Demo 111 E Maple



LICENSED • BONDED • INSURED

10/17/2025

Eric Fitch
City of Independence, MO
efitch@indepmo.org

111 E Maple Ave. Independence, MO
City Hall Demolition Proposal

Base Bid: Building Demo Option #1

Option 1: Removal of the building down to the first-floor slab, and standard kills of utilities, with any plumbing capped at the slab. Light poles should be removed. Parking areas to the west and north can remain. Any disturbed areas of exposed soil should be leveled, seeded and strawed. Abatement of 2 sinks with asbestos coating.

Base Bid: Building Demo Option #2

Option 2: Removal of the building including all footings, standard kills of utilities. Light poles should be removed. Parking areas to the west and north can remain. Any disturbed areas of exposed soil should be leveled, seeded and strawed. No areas should retain water after completion of leveling of the area. Abatement of 2 sinks with asbestos coating.

Bid Proposal-Option #1 **\$188,300.00**

Bid Proposal-Option #2 **\$248,200.00**

Invoiced on completion, net 30 days
Bid is valid for 60 days.
Salvage rights belong to Remco Demolition LLC.

All inclusions, exclusions, & clarifications stated within this proposal are to be included in any contract documents offered for signature

Respectfully,

Tony Spudic
Estimator
PO Box 270045
KC, MO 64127
913-298-9519

INDUSTRIAL ISW

Salvage & Wrecking Co. Inc.

Eric Fitch
City of Independence
111 E Maple Ave
Independence, MO 64050
816-325-7409
demos@indepmo.org

Project: 111 East Maple Ave
Independence, MO 64050

Proposal # 25-0323

Date: 10-17-2025

Thank you for contacting us for a proposal for the demolition of the commercial building located at **111 E Maple Ave, (City Hall Building), Independence, MO**. After going to the site, Industrial Salvage & Wrecking Co, Inc proposes the following.

Bid Breakdown

Option 1	\$222,600.00
Option 2	\$273,200.00

Option 1: Removal of the entire building structure down to the first-floor slab, capping all plumbing at the slab level, and performing standard utility kills for all services per City of Independence requirements. Light poles on-site will be removed, while parking areas to the west and north of the structure will remain. All disturbed areas will be graded, seeded, and strawed for erosion control, with appropriate measures maintained during and after demolition.

Option 2: Complete removal of the building structure, including all foundations and footings, with utilities disconnected and capped per City requirements. All light poles will be removed, while parking areas to the west and north will remain. Disturbed areas will be backfilled, graded, seeded, and strawed to ensure the site is level and free draining.

This price includes the following:

- Apply for the demolition permit.
- Have all utility kills and inspections completed.
- Receive the demolition permit at City Hall after kills are complete and proceed with physical demolition.
- Provide the Asbestos report with the demolition permit.
- Have the asbestos removed from the 2 sinks. Send the Demolition 10-day Notification to MODNR.

Acceptance of proposal: The parties have agreed to the above specifications and conditions and have hereby entered into the above contract. You are authorizing Industrial Salvage & Wrecking Co., Inc. to do the work as specified. Payment will be made as outlined above.

Charles Cacioppo Jr: _____ Date: _____
President

Owner's Signature: _____ Date: _____

Junior's Construction LLC
26994 Holt 270
Forest City, Mo. 64451

City of Independence
Community Development
111 E. Maple Ave.
Independence, Mo. 6405

City Hall Building Demo:

Option 1: \$ 225,000

Option 2: \$ 260,000

From: [Bob King](#)
To: [Demos](#)
Subject: 111 E Maple Ave
Date: Friday, October 17, 2025 9:26:16 AM

EXTERNAL EMAIL - CAUTION: This email originates from an EXTERNAL source. Do not reply, click links, scan QR codes, or open attachments unless you trust the source and know the content is safe. Report suspicious messages using the Phish Alert Button (PAB) or forward to phish-report@indepmo.org. Direct any questions or concerns to the Tech Services HelpDesk

King's Trucking LLC's bid for the above address is:

Option 1: Leaving the slab \$325,000

option 2: Removing of footings \$375,000

Thank you!



**KAW VALLEY
COMPANIES, INC.**

DEMOLITION PROPOSAL

Date: 10-17-25

To: Eric Fitch

City of Independence MO

From: Bob Lane

Kaw Valley Companies

Re: City Hall Demolition / Option #1

Kaw Valley Companies proposes the demolition of 111 E Maple Avenue Independence, MO for the lump sum of \$455,000.00 our quote includes the following:

1. Notifications and demolition permit.
2. Water and sewer kill. Coordinate gas and power kills.
3. Demolish and haul off the entire structure leaving the bottom concrete slab. Includes removing the first-floor exterior walls.
4. Cap any plumbing openings will be capped at the slab level.
5. Haul in 700 yards of dirt for grading site.
6. Hydro seed disturbed area.

Our quote excludes the following:

1. Asbestos or hazardous waste removal.
2. Removing the concrete footings, piers and slab.

All work will be done in accordance with city and state regulations.

Thank you,

Bob Lane

■ **EXCAVATING
&
GRADING**

■ **Dump Yard**
(913) 281-9950
ext. 105
(913) 281-9955 FAX

■ **Landscape Supply**
(913) 596-9752
(913) 287-5959 FAX

■ **SAND & GRAVEL**
(913) 287-0035

■ **WRECKING**

■ **SCRAP MANAGEMENT**
(913) 422-1954



**KAW VALLEY
COMPANIES, INC.**

DEMOLITION PROPOSAL

Date: 10-17-25

To: Eric Fitch

City of Independence MO

From: Bob Lane

Kaw Valley Companies

Re: City Hall Demolition / Option #2

Kaw Valley Companies proposes the demolition of 111 E Maple Avenue Independence, MO for the lump sum of \$495,000.00 our quote includes the following:

1. Notifications and demolition permit.
2. Water and sewer kill. Coordinate gas and power kills.
3. Demolish and haul off the entire structure.
4. Remove the concrete footings and slab.
5. Haul in 700 yards of dirt for grading the site.
6. Hydro seed disturbed areas.

Our quote excludes the following:

1. Asbestos or hazardous waste removal.
2. Removing the concrete piers under the slab.

All work will be done in accordance with city and state regulations.

Thank you,

Bob Lane

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&
GRADING**

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(913) 422-1954

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

Council action is requested to authorize the City Manager to execute a Letter of Intent with Mid-Continent Public Library outlining the general terms for the potential sale of a portion of City-owned property located at 111 E. Maple Ave. **Item passes 6-1**

Recommendations:

Staff recommends approval.

Background:

On September 2, 2025, the City Council approved Resolution No. 7164, expressing support for the Mid-Continent Public Library's proposed relocation of its headquarters to a portion of City-owned property located at 111 East Maple Avenue. The resolution authorized the City Manager to initiate discussions with the Library regarding the potential acquisition of the site and to negotiate and execute a Letter of Intent outlining the terms of the proposed property transfer.

The City of Independence and the Mid-Continent Public Library (MCPL) have discussed the potential sale of City-owned property located at 111 E. Maple Avenue, currently occupied by City Hall. MCPL seeks to construct a new library headquarters and civic space on the site, aligning with shared goals for downtown revitalization and expanded public amenities.

The attached Letter of Intent (LOI) outlines preliminary, non-binding terms for the proposed acquisition and development. The LOI does not create any legal obligation for either party to complete the transaction but establishes a framework for further negotiation and due diligence.

The City Council's authorization to execute the LOI signifies its support to proceed with negotiations; however, it does not represent final approval of the sale. Final approval would occur upon consideration and approval of a Purchase and Sale Agreement by the City Council.

Summary of the LOI

Transaction: A fee simple conveyance of the Property from the City to MCPL. The precise structure, terms, and conditions of the transaction shall be determined during MCPL's Due Diligence period and memorialized in a Purchase and Sale Agreement.

Intended Use: MCPL envisions constructing the following:

- Headquarters for administrative operations and public programming.
- Shared-use civic space for public meetings and public events.
- Outdoor public plaza and pedestrian enhancements supporting downtown access.

Purchase Price: This is to be based on fair market value, with possible adjustments for demonstrated public benefit or economic impact that includes:

- Creates and sustains local jobs through administrative, technical, and professional positions located within the community;
- Attracts investment and complementary development in alignment with the City’s economic development and land-use goals;
- Serves as a visible civic anchor that reinforces the City’s identity as a center for education, information access, and public service; and
- Contributes to the long-term vitality and walkability of the surrounding district through year-round staffing, programming, and community partnerships.

Due Diligence: 120 days (plus one optional 30-day extension) for title, survey, environmental, and utility review.

Closing: To occur within 60 days after completion of due diligence, targeted for first or second quarter of 2026.

Demolition: City to demolish existing City Hall and disconnect utilities before closing, providing inspection and completion documentation to MCPL.

Financing Contingency: MCPL’s obligation contingent upon securing acceptable funding for acquisition and development.

Approvals: Subject to approval by both the Independence City Council and the MCPL Board of Trustees.

Expiration: LOI terminates automatically if a purchase and sale agreement is not executed by April 1, 2026, unless extended in writing.

City Hall Property

The City Hall property encompasses approximately 4.88 acres and includes a 54,000-square-foot building with parking lots located to the north and west. The site is composed of multiple platted lots from the Independence Old Town and Waldo’s Addition subdivisions.

Potential Transfer and Project

MCPL intends to acquire approximately 1.2 acres of City-owned land—generally the area between Maple Avenue and Lexington Avenue, from Lynn Street to Memorial Drive—while the remaining portion of the property will remain under City ownership.

MCPL envisions constructing a new headquarters facility on the Property for administrative operations and public programming. As part of the MCPL’s commitment to public purpose and civic collaboration, the project will incorporate:

- Shared-use civic space suitable for community meetings, work sessions, and public forums.
- An outdoor public plaza and green space for events, leisure, and community gathering.
- Enhanced pedestrian access and design integration with the surrounding area to support downtown revitalization and public access.

These features are intended to complement the City’s goals for a vibrant, accessible, and

inclusive civic environment. MCPL anticipates early construction could begin in mid-2026 with full construction beginning in late 2026 and early 2027.

Reshaping the Square

The Reshaping the Square Master Plan envisions a long-term revitalization of Historic Downtown Independence, centered around the Truman Courthouse and its surrounding National Landmark District. The plan aims to restore the area as a vibrant hub of community life, commerce, and tourism, while honoring its deep historical roots, including its connection to President Harry S. Truman and the pioneer trails; it seeks to blend historic preservation with modern amenities to attract residents, businesses, and visitors.

The study area spans from Pleasant Street to the west, Walnut Street to the south, Truman Road to the north, and the railroad tracks east of Noland Road. A key opportunity lies in the planned relocation of City Hall and the Police Department, which would free up a significant block near the Courthouse for transformative development.

A potential concept for this space emphasizes enhanced civic engagement and community interaction through the creation of a dedicated community center and open event spaces. These features are essential for fostering a strong sense of belonging and encouraging active participation from both residents and visitors.

The plan acknowledges that implementation will take time, require strategic property acquisition, and adapt to changing economic conditions. However, even incremental progress is seen as impactful. Ultimately, the goal is to create a dynamic, inclusive, and economically vibrant downtown that reflects both the city's heritage and its future aspirations.

The proposed Mid-Continent Public Library Administrative Office with community space and public plaza directly supports the goals of the Reshaping the Square Master Plan by advancing its vision for a more vibrant, inclusive, and engaging Historic Downtown Independence.

By introducing a community-oriented facility near the Truman Courthouse, the project reinforces the plan's emphasis on civic engagement and public interaction, providing a modern gathering place that complements the district's historic character. The public plaza and open space further align with the plan's call for enhanced event areas and pedestrian-friendly environments that foster community connection and activity.

In repurposing an underutilized site for a high-quality civic and cultural use, the project exemplifies the plan's strategy to capitalize on opportunities created by the relocation of City Hall and to catalyze incremental redevelopment that attracts residents, visitors, and investment. Overall, the project embodies the plan's guiding principles—honoring Independence's history while creating contemporary amenities that strengthen downtown as the city's civic and cultural heart.

Prior City Property Transfer

The City has, in recent years, completed several property transfers to both public and private

entities that have supported community needs or furthered Council objectives.

Crysler Stadium – In 2023, the Independence School District (ISD) approached the City regarding the use of Chrysler Stadium as the home field for Van Horn High School’s baseball team. However, the District expressed reluctance to invest capital improvements into a facility it did not own.

As a result, the ISD Superintendent initiated discussions with the City to explore a path forward. Approximately one year ago, the City Council approved a 12-month lease agreement between the City of Independence and ISD for the use of Chrysler Stadium. At that time, both parties expressed a shared interest in ultimately transferring ownership of the facility to the School District.

In 2024, the lease was extended by mutual agreement for an additional 12 months to allow time for finalizing a development agreement. ISD intends to continue using the stadium as a home field for Van Horn High School baseball and has no plans to demolish the facility. Over the past year, ISD has invested significant time, labor, and financial resources to make the stadium usable for the team. These efforts have included turf and property maintenance, blight removal, and the upcoming replacement of the outfield scoreboard.

Given these investments and the District’s long-term commitment to the facility, the transfer of Chrysler Stadium from the City to the Independence School District occurred in 2025 and is considered a positive step—benefiting both City residents and the broader school district community.

Sea Avenue Lots – Located along Sea Avenue, just south of historic Woodlawn Cemetery, these lots were deemed surplus by the City. The surrounding neighborhood is primarily composed of single-family homes, with Woodlawn Cemetery providing a notable historic presence to the north. In 2018, following a Request for Proposals (RFP) process, the City transferred the property to a developer for the construction of five single-family residences.

Former Beauty Rest Hotel – Located on the south side of Salisbury Road, just west of Holder Road, this property had long been associated with illegal activity, prompting numerous complaints from nearby residents. To address these concerns and support neighborhood revitalization, the City acquired the site with the goal of facilitating infill residential development that complements the surrounding area. In 2018 after issuing a Request for Proposal seeking a developer, the City transferred the property to a developer for the construction of three single-family homes. As part of the redevelopment effort, the City also demolished the existing structures on the site.

Farmer’s Market Property – In 2015, the City transferred ownership of the property located north of Truman Road, between Main Street and Liberty Street, to a private developer for the construction of 12 owner-occupied townhomes on the former Farmer’s Market site. The proposed development includes private and shared green spaces, landscaping, and detached two-car garages for each unit. To support project financing, the developer intends to utilize Missouri Neighborhood Preservation Tax Credits.

These recent examples illustrate how the transfer of underutilized City property has advanced community goals—facilitating the development of affordable and workforce housing, stimulating investment in older neighborhoods, and preserving a civic icon for continued public use and enjoyment.

Emergency Justification:

Fiscal Impact:

Council Action:

Department / Contact	Community Development /
---------------------------------	-------------------------

REVIEWERS

Tom Scannell
Melissa Cabrera
Jeremy Cover
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. Letter of Intent

Letter of Intent – Acquisition of City-Owned Property

December __, 2025

Lisa Reynolds, Interim City Manager
Independence City Hall
111 E. Maple Avenue
Independence, Missouri 64050

Sent via Email: lreynolds@indepmo.org

Re: Letter of Intent – Acquisition of City-Owned Property at 111 E. Maple Avenue

Dear Ms. Reynolds:

This Letter of Intent (“LOI”) sets forth the preliminary and primarily non-binding understanding between the City of Independence, Missouri (“City”) and the Mid-Continent Public Library (“MCPL”) regarding the potential acquisition of certain real property owned by the City and located at 111 E. Maple Avenue, Independence, Missouri 64050, together with all rights, easements, and appurtenances related thereto, but excluding the existing City Hall improvements which the City intends to demolish prior to closing (“Property”). The exact boundaries and legal description of the Property shall be determined and agreed upon during the due diligence period and memorialized in the definitive Purchase and Sale Agreement (“PSA”). Each party affirms that it is a political subdivision of the State of Missouri with authority under applicable law to enter into this LOI and to perform its obligations hereunder.

1. Transaction Structure

The parties intend to negotiate in good faith for a fee simple conveyance of the Property from the City to MCPL. The precise structure, terms, and conditions of the transaction shall be determined during MCPL’s Due Diligence period and memorialized in a definitive PSA. This LOI contemplates the transfer of the underlying land only, excluding existing improvements to be demolished by the City prior to Closing, and is subject to the final legal description of the Property and to mutually agreed easements, licenses, or other recorded rights necessary for parking, utilities, and access.

2. Intended Use

MCPL currently envisions constructing a new headquarters and administrative facility on the Property to support its systemwide operations, public programming, and community engagement activities. While specific design and programming elements remain subject to refinement during project planning and approval, MCPL anticipates that the project will, to the extent feasible and appropriate, include:

- i. Shared-use civic or meeting space suitable for community gatherings.
- ii. An outdoor public plaza or green space designed for events, leisure, and community gatherings.
- iii. Improved pedestrian connections and site design integration with the surrounding area to support downtown revitalization and public access.

The parties acknowledge that the foregoing description is intended to express the general concept and public-purpose objectives of the proposed project and shall not be a binding design commitment. The anticipated uses are intended to complement the City's goals for a vibrant, accessible, and inclusive civic environment.

3. Purchase Price and Consideration

The purchase price shall be established through mutually agreed valuation methods, including a fair market value appraisal of the Property. Adjustments to the appraised value may be considered to reflect the stated Public Benefits (as defined herein) and the overall economic impact of the proposed project.

For purposes of this LOI, "Public Benefits" means the tangible and measurable benefits to the City and the public that serve a recognized civic, community, or economic development purpose and are consistent with the City's comprehensive, strategic plans, or Reshaping the Square Master Plan. Such Public Benefits may include, but are not limited to, the development of a public library headquarters facility that:

- i. Creates and sustains local jobs through administrative, technical, and professional positions located within the community;
- ii. Attracts investment and complementary development in alignment with the City's economic development and land-use goals;
- iii. Serves as a visible civic anchor that reinforces the City's identity as a center for education, information access, and public service; and
- iv. Contributes to the long-term vitality and walkability of the surrounding district through year-round staffing, programming, and community partnerships.

If necessary, each party may obtain its own independent appraisal, and in the event of a material variance in appraised values, the parties shall jointly select a third appraiser, whose determination shall be used to guide final negotiation of the purchase price.

4. Due Diligence

MCPL shall have one hundred twenty (120) days from the Effective Date to complete its Due Diligence (as defined herein), including, without limitation, review and investigation of title, survey, environmental, conditions, zoning and land use entitlements, access, parking, utilities, and any other matters reasonably necessary to determine the suitability of the Property for MCPL's intended use. One (1) thirty (30)-day extension of the Due Diligence period may be granted upon mutual agreement of the parties. If, during the Due Diligence period, MCPL discovers any environmental contamination or other conditions that materially affects the feasibility of the transaction, the parties shall negotiate in good faith regarding remediation responsibilities and potential adjustments to the transaction terms; provided, however, that MCPL may, in its sole discretion, terminate this LOI without liability upon written notice to the City.

5. Closing

Closing shall occur within sixty (60) days following the expiration or written waiver of the Due Diligence period, subject to satisfaction of the conditions precedent described herein and to receipt of all required governmental and organizational approvals. The parties presently anticipate a target Closing during the first or second quarter of 2026, or such other date as may be mutually agreed in writing.

Closing shall be expressly conditioned upon the following:

- i. MCPL's receipt of Financing Commitments (as defined herein) and satisfaction of all financing conditions on terms acceptable to MCPL in its sole discretion;
- ii. Receipt of all required zoning, land use, and permitting approvals necessary for MCPL's intended use of the Property;
- iii. Completion of rezoning of the Property to the Historic Square Zoning (HSQ) District, with such rezoning process to be undertaken by MCPL, at its cost, and with the City's reasonable cooperation and support through its standard administrative procedures.

6. Demolition and Inspections

As a condition precedent to Closing, and subject to execution of a definitive PSA, the City shall, at its sole cost and expense, demolish and remove the existing City Hall improvements located on the Property, including the capping, removal, or proper disconnection of all utilities, in compliance with all applicable laws, regulations, and environmental requirements. The City shall perform such demolition work using qualified contractors in accordance with applicable procurement and safety standards.

Upon completion of the demolition, the City shall obtain and provide to MCPL copies of all required demolition permits, completion certificates, inspection reports, and any related approvals issued by the appropriate governmental authorities. Closing shall not occur unless and until such demolition has been completed and all required inspection approvals have been received and delivered to MCPL's reasonable satisfaction, provided that MCPL's review and approval shall not be unreasonably withheld, conditioned, or delayed.

7. Financing Contingency

This transaction is contingent upon MCPL obtaining, on terms acceptable to it in its sole discretion, the necessary Financing Commitments (as defined herein) to complete the acquisition and intended development of the Property. MCPL shall use good faith efforts to obtain such Financing Commitments and shall provide the City with written notice upon securing them. If MCPL is unable to obtain Financing Commitments within the Due Diligence period (as may be extended by mutual written agreement), either party may terminate this LOI and any subsequent PSA upon written notice to the other, with no further obligation or liability.

For purposes of this LOI, "Financing Commitments" means binding commitments, approvals, or authorizations from lenders, grantors, bond issuers, or other funding sources sufficient to cover the costs of acquiring and developing the Property.

8. Approvals

This LOI and any subsequent agreements are expressly subject to:

- i. Formal approval by the Independence City Council, in accordance with applicable laws, charter provisions, and municipal procedures; and
- ii. Approval by the MCPL Board of Trustees at a duly noticed public meeting.

No obligation, liability, or commitment, financial or otherwise, shall arise under this LOI unless and until such approvals are obtained. If either governing body fails or declines to grant approval, this LOI shall

automatically terminate without further action by either party, and neither party shall have any continuing obligation or liability to the other.

9. Exclusivity

The City agrees that, during the Due Diligence period (as may be extended by mutual written agreement), it will not solicit, negotiate, or enter into any agreement, letter of intent, or understanding with any other party for the sale, lease, or other conveyance of the Property, or any portion thereof. This obligation shall remain effective only so long as MCPL is proceeding in good faith toward the completion of its Due Diligence and negotiation of a definitive PSA. If MCPL ceases to act in good faith, fails to meet material milestones during the Due Diligence period, or provides written notice of its intent not to proceed, the City's exclusivity obligation shall automatically terminate without further notice or action.

10. Confidentiality and Public Records

Parties acknowledge that the City and MCPL are public entities subject to the requirements of the Missouri's Sunshine Law, Chapter 610, RSMo, and agree to cooperate in good faith to invoke and apply the closed-meeting and closed-record provisions under § 610.021(2), RSMo, and any other applicable exemptions, to the extent permitted by law, for purposes of real estate negotiations and related confidential discussions. Nothing in this LOI shall be construed to require either party to withhold or delay the disclosure of any record of information that it reasonably determines is required to be made public under applicable law. Except as required by law, no press release, public statement, or other public announcement regarding this LOI or the proposed transaction shall be issued without the prior written consent of both parties, which consent shall not be unreasonably withheld, conditioned, or delayed.

11. Binding and Non-Binding Provisions

Except as expressly stated below, this LOI is non-binding and does not create any enforceable rights or obligations for either party. The parties acknowledge and agree that no binding contract for the purchase and sale of the Property shall exist unless and until a definitive PSA is executed and delivered by both parties.

Notwithstanding the foregoing, the following provisions shall be binding and enforceable upon execution of this LOI:

- Section 9. Exclusivity
- Section 10. Confidentiality and Public Records
- Section 13. Miscellaneous

All other provisions of this LOI are non-binding expressions of intent and are subject to further negotiation and approval by the respective governing bodies of each party.

12. Expiration of LOI

This LOI shall automatically terminate and be of no further force or effect if the parties have not executed and delivered a definitive PSA on or before April 1, 2026, unless such date is extended in writing by mutual agreement of the parties. Upon termination pursuant to this Section, neither party shall have any further obligation or liability to the other, except for those provisions expressly stated herein to survive termination.

13. Miscellaneous

This LOI shall be governed by and construed in accordance with the laws of the State of Missouri, without regard to conflict-of-law principles. Venue for any action or proceeding arising under or related to this LOI shall lie exclusively in the Circuit Court of Jackson County, Missouri, at Independence. Each party shall bear its own costs and expenses incurred in connection with the negotiation and preparation of this LOI and any related due diligence activities.

In the event of any dispute or disagreement arising out of or related to this LOI, the parties shall first endeavor to resolve such matter through good faith negotiations between authorized representatives before pursuing any other remedy.

Nothing contained in this LOI shall be construed to create or imply a partnership, joint venture, agency, fiduciary relationship, or other separate legal entity between the parties.

This LOI shall become effective as of the date it has been fully executed by the parties ("Effective Date"), and may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

If the foregoing reflects your understanding, please indicate your agreement by signing below.

Sincerely,

Aaron B. Mason, Executive Director
Mid-Continent Public Library

Acknowledged and Agreed:

Lisa Reynolds, Interim City Manager
City of Independence, Missouri
Date: _____

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

Council action is requested to authorize the City Manager to execute the Purchase and Sale Agreement between the City of Independence and Community Services League for the property at 136 E. White Oak Avenue. **Approved**

Recommendations:

Staff recommends approval.

Background:

The City of Independence owns the parcel located at 136 East White Oak Avenue, which contains one small accessory structure and has been used as a community garden in the past. Community Services League (CSL) has proposed acquiring the property for the development of approximately nine (9) tiny homes to serve individuals participating in CSL-supported housing stability programs. The proposed development aligns with City housing objectives and provides supportive service-oriented housing opportunities.

This agreement would convey the Property to CSL for redevelopment under specified conditions, requirements, and reversionary protections to ensure the site is developed as proposed.

Summary of Agreement**Purchase Price & Deposit:**

- Total purchase price is \$500.
- Purchaser deposits \$500 upon execution; deposit is nonrefundable except under expressly stated contingencies.

Due Diligence & Approvals:

- CSL would have 30-day Due Diligence Period for inspections, title review, survey, and environmental assessments.
- CSL would have 120-day Zoning/Land Use Approval Period for all required entitlements for the tiny homes project.
- CSL may terminate if approvals are not obtained.

Title & Closing Requirements:

- The City delivers a Special Warranty Deed subject to:
 - Use Restriction limiting development to nine tiny homes for CSL program participants.
 - Right of First Refusal recorded via Memorandum.

- Reversionary Interest if development does not timely commence.
- Closing occurs no later than 30 days after the Due Diligence Period, unless it is mutually extended.
- CSL bears all due diligence, title, recording, zoning, and development costs.

Reversionary Interest:

The City retains the right to reclaim the Property if CSL fails to commence development within 24 months of closing. Commencement requires:

1. Submittal of complete development applications (including final site plan) to both the City and Seller.
2. Start of sewer installation and site preparation.
3. Active pursuit of all required approvals and permits.

If reversion occurs, the City refunds the purchase price plus verified improvement costs (less depreciation and enforcement costs).

Use Restriction:

The Property must be developed and used for nine tiny homes serving CSL-supported housing programs. This restriction runs with the land for the specified duration.

Right of First Refusal:

If Purchaser intends to transfer the property in the future, the City retains a contractual right to purchase under terms described in the recorded Right of First Refusal Agreement.

The transfer of this property supports neighborhood reinvestment goals, supports local social service capacity and provides new housing options targeted to residents in need.

Emergency Justification:

Fiscal Impact:

Council Action:

Department / Contact	Community Development /
---------------------------------	-------------------------

REVIEWERS

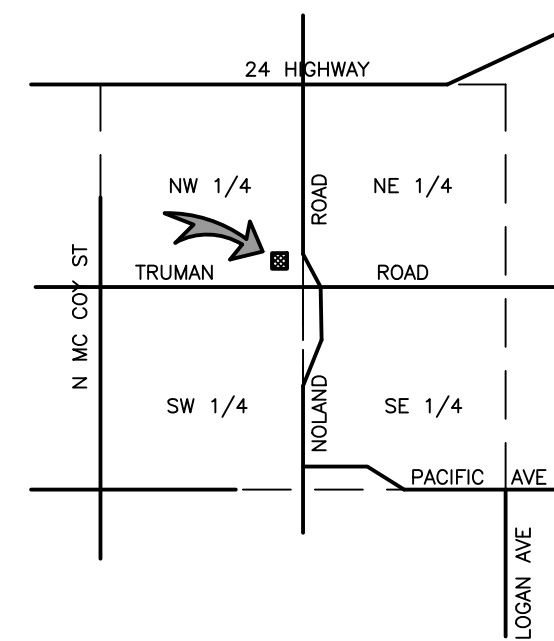
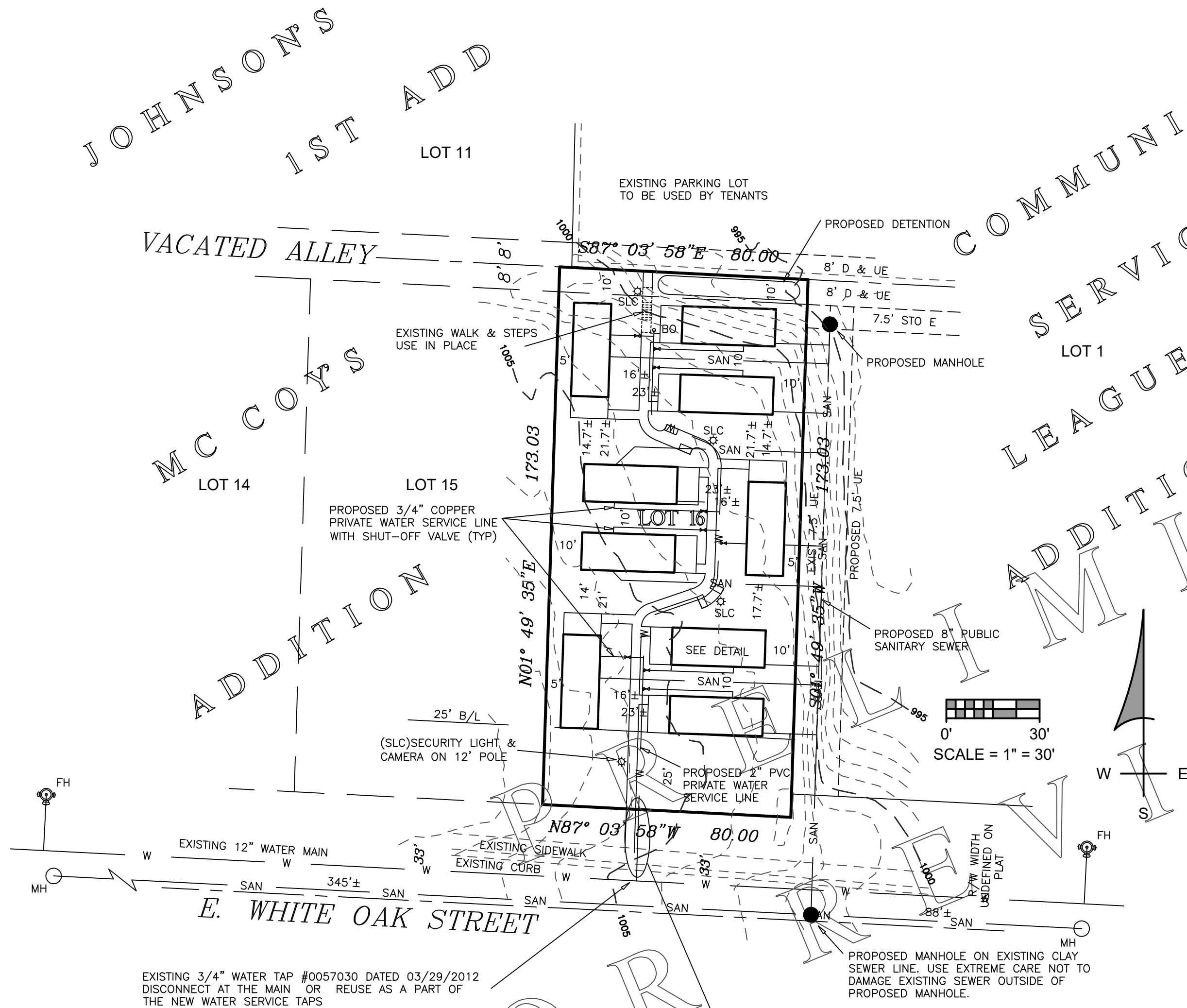
Tom Scannell
Melissa Cabrera

Jeremy Cover
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. Plan - The Cottages at White Oak
2. White Oak Purchase and Sale Agreement

Z:\CAD drawing (from home comp)\SUBDIVISION Files\McCoy's Add (IN)\McCoy's Add (IN).dwg, 8/28/2025 12:03:25 PM, DWG To PDF, PC



VICINITY MAP
SEC 2-T.49-R.32
NOT TO SCALE

PROPERTY DESCRIPTION:
CONTAINING 13,840 SQUARE FEET OR 0.3177 ACRES.

ALL OF LOT 16, McCOY'S ADDITION, A SUBDIVISION, IN INDEPENDENCE, JACKSON COUNTY, MISSOURI.

- SITE NOTES:**
- TOTAL LAND AREA = 13,840 SQ. FT.
 - PROPOSED IMPERVIOUS AREA:
BUILDINGS = 3,240 SQ.FT.
DECKS = 756 SQ.FT.
WALKS = 819.8 SQ.ST.
TOTAL PROPOSED IMPERVIOUS AREA = 4,815.8 SQ.FT.
OR 34.8% OF TOTAL PROPERTY.
 - STORM WATER FLOW: 100 YR STORM (Q=CIK)
PRE-DEVELOPMENT:
C = 0.5, I = 7.5, A = 0.32, K = 1.0
C = 1.20 CFS

POST DEVELOPMENT"
C = (0.5x65.2%) + (0.9x34.8%) = 0.64, I = 7.5, A = 0.32. K = 1.0
C = 1.54 CFS
 - DETENTION ANALYSIS:
V = (1.54-1.20) x 60 x 15 = 306.0 CU.FT.
 - TRASH DUMPSTER PROVIDED ON CSL PROPERTY EAST OF AND ADJACENT TO THIS PROPERTY.
 - EXISTING CHAIN LINK FENCE ON WEST PROPERTY LINE TO REMAIN. ALL OTHER EXISTING CHAIN LINK FENCING TO BE REMOVED.
 - CONTOUR LINES FROM CITY TOPO AND ARE SUBJECT TO FIELD CHECKING.

- SURVEY NOTES:**
- THIS DRAWING DOES NOT REPRESENT A BOUNDARY SURVEY AND NO CORNER MARKERS WERE CONFIRMED OR SET.
 - ALL DISTANCES SHOWN HEREON ARE SUBJECT TO A FINAL BOUNDARY SURVEY BEING PERFORMED.
 - THE BEARINGS SHOWN HEREON ARE BASED ON MISSOURI COORDINATE SYSTEM OF 1983 USING THE MODOT RTK NETWORK JULY 2025.
 - NO EASEMENTS WERE SHOWN ON THE PLAT AND A TITLE REPORT WAS NOT PROVIDED BY THE CLIENT TO DISCLOSE POSSIBLE EASEMENTS THAT MIGHT AFFECT THE SUBJECT PROPERTY.

SURVEYOR'S DECLARATION:
I HEREBY DECLARE THAT WE HAVE PREPARED THIS DRAWING FOR THE PURPOSE OF A BUILDING PERMIT APPLICATION AND DOES NOT REPRESENT A BOUNDARY SURVEY AS DEFINED BY THE MISSOURI STANDARDS FOR PROPERTY BOUNDARY SURVEYS.

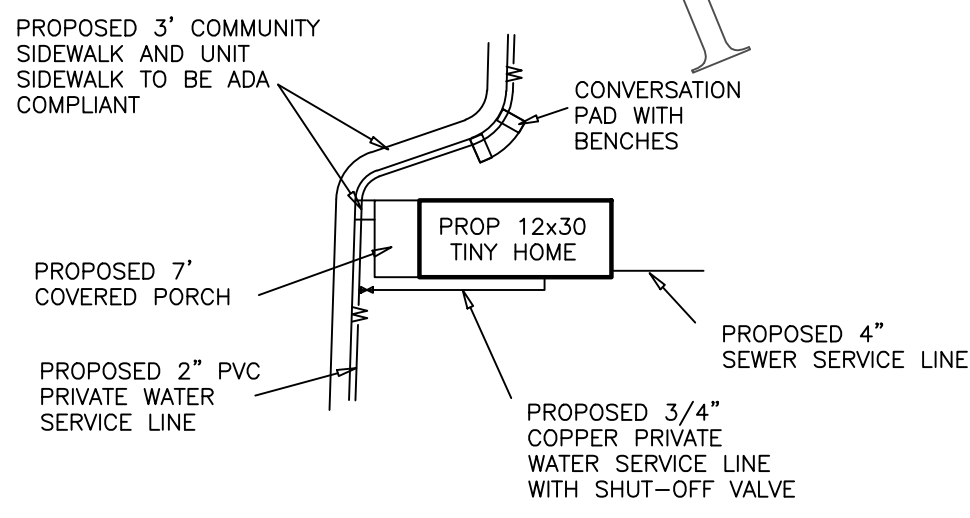
ERWIN W. GARD, PLS-1449

07/21/2025
DATE

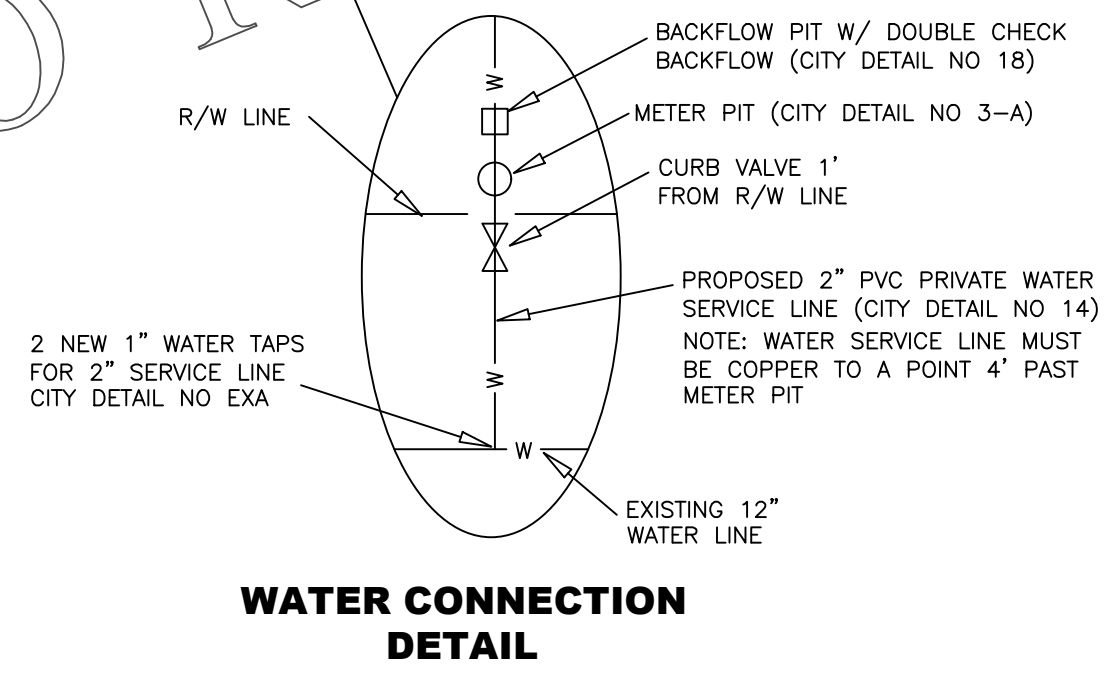
DRAWINGS OF A PRELIMINARY NATURE ARE NOT REQUIRED TO BE SIGNED OR SEALED PER RSMO 327.411(4)

SIGNATURE & SEAL WILL BE ADDED TO FINAL PRINTS

(SURVEYOR SEAL)



TYPICAL UNIT
DETAIL



WATER CONNECTION
DETAIL

REVISED: PER PRE-DEVELOPMENT MEETING AND STAFF COMMENTS AUGUST 20, 2025 - E. GARD 8/28/25

GARD HORIZON LLC LAND SURVEYING : BUILDING PERMIT & HOUSE PLAN SERVICES REAL ESTATE : LARGE FORMAT SCANS & PRINTS 1212 SW Luttrell, Suite C - Blue Springs, MO 64015 Phone: 816-295-5951 ~ Web: gardhorizon.com Erwin W. Gard, Owner / Manager Professional Surveyor ~ Realtor	PLOT PLAN 136 EAST WHITE OAK STREET LOT 16, McCOY'S ADDITION INDEPENDENCE, JACKSON COUNTY, MISSOURI	COMMUNITY SERVICE LEAGUE 404 NORTH NOLAND ROAD INDEPENDENCE, MISSOURI 64050 <table><tr><td>JOB NO.: 1376-2501</td><td>FIELD BK~PG GPS</td><td>MASTER FILE: SUBDIVISION M</td><td>SHEET 1</td><td>OF 1</td></tr><tr><td>DRAWN BY: E. GARD</td><td>DISK NO.: CAD Drawings</td><td>FILE NAME: McCoy's ADDITION MASTER</td><td></td><td></td></tr></table>	JOB NO.: 1376-2501	FIELD BK~PG GPS	MASTER FILE: SUBDIVISION M	SHEET 1	OF 1	DRAWN BY: E. GARD	DISK NO.: CAD Drawings	FILE NAME: McCoy's ADDITION MASTER		
JOB NO.: 1376-2501	FIELD BK~PG GPS	MASTER FILE: SUBDIVISION M	SHEET 1	OF 1								
DRAWN BY: E. GARD	DISK NO.: CAD Drawings	FILE NAME: McCoy's ADDITION MASTER										

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “Agreement”) is made and entered into as of [date], by the City of Independence, Missouri, a constitutional charter city and political subdivision under the laws of the State (the “City” and the “Seller”), and Community Services League of Jackson County, a Missouri Nonprofit Corporation (the “Purchaser”). (Seller and Purchaser are sometimes referred to herein individually as a “Party”, and collectively as the “Parties”).

RECITALS

WHEREAS, Seller is the owner of the property located at 136 East White Oak Avenue, Independence, Missouri 64050, as further described in **Exhibit A** together with any buildings and improvements thereon, and all personal property used in the operation of the buildings and improvements, including, if any, all mechanical systems, fixtures and equipment, heating, ventilating and air-conditioning equipment, electrical systems and lighting, plumbing equipment and fixtures, floor coverings, storm windows and doors, screens and awnings, and keys (collectively, the “Property”).

WHEREAS, Seller desires to sell the Property to Purchaser, and Purchaser desires to purchase the Property from Seller, for the purpose of developing and operating approximately nine (9) tiny homes on the Property as set forth in the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I. DEFINITIONS

Section 1.1. Definitions. In addition to the terms defined above in the introduction and recitals to this Agreement, the following terms when used in this Agreement shall have the meanings set forth in this Section 1.1.

“Business Day” means any day other than a Saturday, Sunday or federal legal holiday.

“Closing” means the closing of the transactions described in this Agreement, as described in Section 8.1.

“Deed Use Restriction” means the restriction described in Section 5.2(b).

“Deposit” has the meaning set forth in Section 3.2(a).

“Due Diligence Period” has the meaning set forth in Section 4.1.

“Reversionary Interest” means the Seller’s reversionary rights set forth in Section 5.4.

“Right of First Refusal” means the rights described in Section 5.3.

“Seller Due Diligence Materials” has the meaning set forth in Section 4.2.

“Title Commitment” has the meaning set forth in Section 5.1.

Section 1.2. Rules of Construction. The following rules shall apply to the construction and interpretation of this Agreement:

(a) Singular words shall connote the plural as well as the singular, and plural words shall connote the singular as well as the plural, and the masculine shall include the feminine, as the context may require.

(b) All references in this Agreement to particular articles, sections, subsections or clauses (whether in upper or lower case) are references to articles, sections, subsections or clauses of this Agreement. All references in this Agreement to particular exhibits or schedules (whether in upper or lower case) are references to the exhibits and schedules attached to this Agreement, unless otherwise expressly stated or clearly apparent from the context of such reference.

(c) The headings in this Agreement are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

(d) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms shall refer to this Agreement, and not solely to the provision in which such term is used.

(e) The terms “include,” “including” and similar terms shall be construed as if followed by the phrase “without limitation.”

(f) The term “sole discretion” with respect to any determination to be made a Party under this Agreement shall mean the sole and absolute discretion of such Party, without regard to any standard of reasonableness or other standard by which the determination of such Party might be challenged.

(g) Each Party and its counsel have reviewed and revised (or requested revisions of) this Agreement and have participated in the preparation of this Agreement, and therefore any rules of construction requiring that ambiguities are to be resolved against the Party which drafted the Agreement or any exhibits hereto shall not be applicable in the construction and interpretation of this Agreement or any exhibits hereto.

ARTICLE II. THE PROPERTY

Section 2.1. Description of the Property. Subject to the terms set forth in this Agreement and any related documents, at the Closing, Seller shall sell to Purchaser, and Purchaser shall purchase and accept from Seller, all right, title and interest of Seller in and to the Property, with such legal description included hereto as **Exhibit A** to be verified by the Title Company.

ARTICLE III. PURCHASE PRICE; PRORATIONS

Section 3.1. Purchase Price. The purchase price for the Property is Five Hundred Dollars (\$500) (the “Purchase Price”), which shall be paid to Seller, less the Deposit, at Closing.

Section 3.2. Deposit

(a) Upon mutual execution and delivery of this Agreement, Purchaser shall deposit with Seller, the sum of Five Hundred Dollars (\$500) (the “Deposit”) by wire transfer of immediately available funds.

Nonrefundable. The Deposit shall be nonrefundable to Purchaser, except as otherwise expressly provided in this Agreement, including but not limited to termination due to (i) Seller’s default, (ii) Purchaser’s exercise of any right to terminate under a contingency (e.g., title, inspection), or (iii) any other express right of termination set forth herein.

(a) Interest on Deposit. All interest accrued on the Deposit shall be credited to Seller.

(b) Disbursement of Deposit to Seller. At Closing, Purchaser shall receive a credit against the Purchase Price in the amount of the Deposit. If this Agreement is terminated for any reason and Purchaser is not entitled to a refund of the Deposit under an express provision of this Agreement, then Seller shall be entitled to retain the Deposit as full and complete liquidated damages.

(c) Refund of Deposit to Purchaser. If this Agreement is terminated and Purchaser is entitled to a refund of the Deposit, then Seller shall, upon written notice from Purchaser, disburse the Deposit to Purchaser no later than two (2) Business Days after such written notice (with the foregoing obligations of the Parties surviving the termination of this Agreement).

Section 3.3. Payment of Purchase Price. At Closing, Purchaser shall pay to Seller by wire transfer of immediately available funds an amount equal to the Purchase Price, less the Deposit (including any interest accrued thereon, if applicable) which shall be applied as a credit toward the Purchase Price at Closing. The amount payable by Purchaser at Closing shall be subject only to prorations, closing costs, and other adjustments as expressly provided in this Agreement. Purchaser shall not be responsible for any costs or expenses except as specifically set forth herein. Payment of the Purchase Price as adjusted at Closing shall constitute full satisfaction of Purchaser’s payment obligations for the Property.

Section 3.4. Prorations. Seller shall pay all general real estate taxes levied and assessed against the Property, and all installments of special assessments for the years prior to the Closing Date. All such taxes and installments of special assessments becoming due and accruing during the calendar year of Closing shall be prorated between Seller and Purchaser on the basis of such calendar year, as of Closing. If the amount of any tax or special assessment cannot be ascertained at Closing, pro-rata shall be computed on the amount for the preceding year’s tax or special assessment. Purchaser shall assume and pay all such taxes and installments of special assessments accruing after the Closing. Seller shall be solely responsible for any and all delinquent taxes or assessments, including penalties and interest, relating to any period prior to Closing.

Section 3.5. Other Costs.

(a) Seller’s Transaction Costs. Seller shall not be responsible for any additional costs or expenses not set forth in this Agreement.

Purchaser’s Transaction Costs. In addition to the other costs and expenses to be paid by Purchaser as set forth elsewhere in this Agreement, Purchaser shall pay for the following items in connection with this transaction: (i) the fees and expenses incurred by Purchaser in connection with any inspections or other due diligence activities; (ii) all title charges and survey costs, including the premium on the Title Policy, as well as for any updates and reliance letters with respect to any environmental, engineering, zoning and other similar third-party reports (if any) that are included in the Seller Due Diligence Materials (to the extent that Purchaser obtains or requests Seller to obtain such updates or reliance letters); (iii) any sales or similar tax and recording charges payable in connection with the conveyance of the Property; (iv) any mortgage tax,

title insurance fees and expenses for any loan title insurance policies, recording charges or other amounts payable in connection with any financing obtained by Purchaser; (v) one-all closing fees and expenses incurred by Purchaser or Seller; (vi) the costs for obtaining any title endorsements and extended coverage to the Title Policy; (vii) the fees and expenses of its own attorneys, accountants, advisors and consultants; and (viii) all charges for recording and/or filing the deed. All other fees, costs and expenses not expressly addressed in this Section 3.5 or elsewhere in this Agreement shall be paid by Purchaser.

(a) Survival. The Parties' obligations pursuant to the terms and conditions of this Section 3.5 shall survive the Closing and any termination of this Agreement.

ARTICLE IV. PURCHASER'S DUE DILIGENCE

Section 4.1. Due Diligence Period.

(a) Purchaser shall have a period of thirty (30) days following the execution of this Agreement (the "Due Diligence Period") to complete the Purchaser's due diligence.

(b) Termination During Due Diligence Period. Purchaser may terminate this Agreement at any time during the Due Diligence Period for any reason whatsoever in Purchaser's sole discretion by providing written termination notice to Seller, whereupon the Agreement shall terminate without further recourse to either party and the Deposit shall be promptly returned to Purchaser.

(c) Effect of Due Diligence Period Closing. At the end of the Due Diligence Period, Purchaser is considered to have accepted the Property in its existing condition. In the absence of a written termination notice, Purchaser shall be deemed to have completed all inspections and other due diligence necessary to accept this Agreement and proceed to Closing.

Section 4.2. Seller Due Diligence Materials. Within ten (10) days after execution of this Agreement, Seller shall provide Purchaser with the following documents, if in Seller's possession and not otherwise publicly available: the current title insurance policy, survey, plans and specifications for the Property, environmental reports, and structural and mechanical reports (the "Seller Due Diligence Materials"). Purchaser acknowledges and agrees that any Seller Due Diligence Materials delivered or to be delivered by Seller or any party on Seller's behalf, or consultants to Purchaser, are for informational purposes only and without representation or warranty of any kind or nature as to the truth, accuracy or completeness thereof. Purchaser acknowledges that its determination to proceed with purchase of the Property shall be made solely in reliance on its own reviews, audits and inspections and written materials produced in connection therewith during the Due Diligence Period and no reliance is made on the Seller Due Diligence Materials. Any Seller Due Diligence Materials shall be promptly returned to Seller upon request, in the event the Purchaser shall not purchase the Property as herein contemplated.

Section 4.3. Inspections; Survey. Purchaser acknowledges that Seller has provided the opportunity for Purchaser to make inspections (including but not limited to any soil tests, environmental tests or audits, foundation and mechanical inspections and such other inspections or surveys as Purchaser may reasonably request) and that Purchaser may conduct its own investigation of the condition of the Property, to the extent Purchaser deems such an investigation to be necessary or appropriate. Purchaser agrees that any inspections or tests that Purchaser deems appropriate or necessary, including all subterranean or other invasive testing shall be subject to Seller's consent, which shall not be unreasonably withheld or delayed. Purchaser's access and testing shall be completed in the presence of an authorized agent of Seller. Any alterations to the Property shall be restored by Purchaser at its sole cost and expense to the prior existing condition. Purchaser shall have the right to conduct environmental inspections, including a Phase I Environmental Report, of the

Property at its expense to satisfy itself with the absence of oil, asbestos, hazardous materials and/or hazardous substances on or about the Property. Purchaser may complete at its sole cost and expense during the Due Diligence Period a current ALTA Survey. Copies of any environmental reports obtained by the Purchaser will be provided to the Seller.

Purchaser shall indemnify, defend and hold Seller harmless from and against all claims, costs, demands and expenses, including without limitation, reasonable attorney's fees, court costs and other legal expenses, resulting from any inspections. Purchaser's obligations imposed by this paragraph shall survive termination of this Agreement.

Section 4.4. Representations. Purchaser acknowledges that neither Seller nor any party on Seller's behalf has made, nor do they hereby make, any representations as to the past, present or future condition, income, expenses, operation or any other matter or thing affecting or relating to the Property except as expressly set forth in this Agreement. Purchaser agrees to conduct its own due diligence investigation of the Property. Seller shall provide Purchaser with access to all material documents and information in Seller's possession or control relating to the Property, and shall promptly disclose any material adverse facts relating to the Property that become known to Seller prior to Closing.

Section 4.5. Zoning and Land Use Approvals. Purchaser shall have a period of one hundred twenty (120) days from the Effective Date of this Agreement ("Zoning Approval Period") to obtain, at Purchaser's sole cost and expense, all necessary zoning and land use approvals, permits, variances, or entitlements required for Purchaser's intended use and development of the Property ("the Approvals"). Purchaser shall have no obligation to close on the purchase of the Property unless and until Purchase has obtained the Approvals, in Purchaser's sole and absolute discretion. If Purchaser has not obtained the Approvals on or before the expiration of the Approval Period, Purchaser may, at its sole option, terminate this Agreement by delivering written notice to Seller on or before the expiration of the Approval Period, in which event the Deposit shall be returned to Purchaser and neither party shall have any further rights or obligations hereunder, except those that expressly survive termination. If Purchaser obtains the Approvals within the Approval Period, Purchaser shall notify Seller in writing and the parties shall proceed to Closing in accordance with the terms of this Agreement.

ARTICLE V. TITLE TO THE PROPERTY

Section 5.1. Title Insurance.

(a) **Title Commitment.** Seller shall within fifteen (15) days after this Agreement is entered coordinate and cause the Title Company to deliver to Purchaser a commitment for an ALTA form owner's policy of title insurance naming Purchaser as the proposed insured, in the full amount of the Purchase Price, issued by a national title insurance company (the "Title Commitment"), which shall be subject to Purchaser's review during the Due Diligence Period.

Encumbrances and Defects in Title. If the Title Commitment evidences any encumbrances on Seller's title or any defects on Seller's title to which Purchaser objects, Purchaser shall notify Seller within ten (10) days after receipt of the Title Commitment and copies of documents referenced in schedules to the Title Commitment. After that time, Purchaser is deemed to have accepted all such encumbrances or defects shown in the Title Commitment, except for Monetary Encumbrances (as hereinafter defined) Notwithstanding the foregoing to the contrary, Purchaser need give no notice of its disapproval of delinquent taxes or real property assessments or any mortgage, deed of trust, mechanic's lien or similar monetary encumbrances, all of which encumbrances (other than any such matters that are caused by Purchaser) shall automatically constitute Title Objections (collectively, "Monetary Encumbrances"), which

Seller may agree, at its sole discretion, to cure or remove prior to Closing. If Seller agrees to undertake to eliminate or cure to Purchaser's satisfaction any Title Objections, such elimination or cure shall be a condition precedent to Purchaser's obligation to acquire the Property.

(a) Costs and Expenses. Purchaser shall be responsible for the costs and expenses associated with the Title Commitment and the resulting title policy.

Section 5.2. The Deed.

(a) Special Warranty Deed. At Closing, Seller shall deliver to Purchaser a Special Warranty Deed in substantially the form attached hereto as **Exhibit D**, conveying marketable fee simple title, subject to the Deed Use Restriction, Right of First Refusal and Reversionary Interest, as provided herein.

(b) Deed Use Restriction. The Special Warranty Deed delivered by Seller to Purchaser pursuant to this Agreement contains a statement noting a use restriction on the Property. The use restriction language that will appear is set forth in the form of Deed attached hereto as **Exhibit D**. The statement on the Deed includes the (1) purpose of the restriction, (2) length of the restriction, (3) restriction will run with the land, and (4) the Seller retains the right to enforce the right of entry upon breach of the condition. Seller and Purchaser will signify their joint knowledge and acceptance of such use restriction by signing the Special Warranty Deed.

Section 5.3. Right of First Refusal. At Closing, Seller and Purchaser agree to enter into a Right of First Refusal Agreement (the "Transfer Restriction") in substantially the form attached hereto as **Exhibit B**, and a Memorandum of Right of First Refusal (the "Memorandum") in substantially the form attached hereto as **Exhibit C** memorializing the Transfer Restriction. The Memorandum will be filed of record in Jackson County, Missouri. The Transfer Restriction will explain, and the Memorandum will summarize, the (1) purpose for which the restraint is imposed, (2) duration of the restraint, and (3) method of determining price to be paid. Seller and Purchaser will signify their joint knowledge and acceptance of such Transfer Restriction and Memorandum by signing both documents.

Section 5.4. Seller Retains Reversionary Interest.

(a) Seller may enter Property. Seller shall have the right to enter the Property and reclaim title if, within twenty-four (24) months following Closing Purchaser has not commenced development of the Property as required by this Agreement. For purposes of this Section, "commencement of development" means that all of the following actions have occurred: Purchaser has submitted to both the City (in its governmental capacity) and Seller (as the contract party) a complete development application in accordance with the Unified Development Ordinance, including a final site plan and all supporting documents, for the construction of nine (9) tiny homes to be used as rental units for individuals in Community Services League supported programs, in substantial conformity with the preconstruction plan previously submitted by Purchaser to the City and reviewed in preliminary meetings.

1. Purchaser has commenced work on sewer installation and site preparation promptly following the transfer of title.
2. Purchaser is diligently pursuing all required City approvals and permits for the development as described herein.
3. Said development application shall be reviewed in accordance with the review and approval procedures outlined in the Unified Development Ordinance of the City Code. Purchaser may not sell or convey the property without Seller's written agreement, unless required improvements are made.

(b) Improvements Subject to Approval. For purposes of this Section, “Improvements” means the development and construction of nine (9) tiny homes on the Property, as described in Purchaser’s pre-construction application. All improvements under this **Section 5.4** shall be made according to the following:

1. The Purchaser shall design, engineer and construct the Improvements at its own expense.
2. The Purchaser shall submit for review and approval all plans, specifications, documentation, studies, and reports to construct the improvements to the Seller.
3. Purchaser shall have complete and exclusive control over the Improvements subject, however, to all applicable laws, rules, and regulations, including, but not limited to, all ordinances, rules and regulations of the City, such as zoning ordinances, building codes, and property maintenance codes. Developer hereby grants to the City, its agents and employees, the right to enter upon all improvements under the control of Developer located on the Property for the purpose of inspecting the Improvements between normal business hours. Developer shall have complete and exclusive control over the construction, management, sale or lease of the Improvements which it owns within the Property.
4. Purchaser must notify Seller of any changes to plans, both during and after approval process.

(c) Final Approval Required. All finished work under this **Section 5.4** must be approved by the Seller, which approval shall not be unreasonably withheld.

(d) Effect of Enforcement of Reversionary Right. If the Seller enforces this reversionary right, the Seller shall refund to Purchaser the Purchase Price of the Property, plus the actual costs of any and all permanent improvements made to the Property by Purchaser prior to the date of reversion less depreciation, if any, and less any actual expenses incurred by the Seller related to the initial sale of the Property and the Seller’s costs of enforcing its reversionary right. Upon Seller’s written notice to Purchaser that Seller intends to enforce this reversionary right, Purchaser shall immediately deliver to Seller a Special Warranty Deed conveying marketable fee simple title to Seller, free and clear of all liens and encumbrances except those liens and encumbrances shown in the title policy issued to Purchaser at Closing.

(e) Duration of Reversionary Interest. The reversionary interest of Seller, and the corresponding right to enforce such interest, shall cease, absent future agreement between the Parties to the contrary, following completion of Section 5.4.(a). Upon termination of Seller’s reversionary interest, Seller shall release the interest by appropriate filing with the office of the recorder in Jackson County, Missouri.

(f) Cure Period and Notice. Notwithstanding anything to the contrary in this Section 5.4, prior to the exercise of any revisionary rights by Seller, Purchaser shall have the right to cure any defaults that would otherwise entitle Seller to exercise such rights. Seller shall provide Purchaser with written notice specifying in reasonable detail the nature of the default. Purchaser shall have a period of thirty (30) days from receipt of such notice to cure the default to Seller’s reasonable satisfaction. Seller may not exercise its revisionary rights under this Section 5.4 unless and until Purchaser fails to cure the default within the applicable cure period.

ARTICLE VI. CONDITION OF THE PROPERTY

Section 6.1. Property Sold “As Is”. Purchaser acknowledges and agrees that (a) the purchase of the Property shall be on an “as is”, “where is”, “with all faults” basis, subject to ordinary wear and tear from the effective date of this Agreement until Closing, and (b) except as expressly set forth in this Agreement, Seller has no obligation to repair any damage to or defect in the Property, replace any of the Property or otherwise remedy any matter affecting the condition of the Property.

Section 6.2. Condition of Property. Seller shall maintain the Property shall in its current condition and shall be delivered at the Closing in the same condition as it is in at the time of expiration of the Due Diligence Period. Seller shall not commit or permit any waste, removal, or alteration of the Property without Purchaser’s prior written notice. If, before Closing, all or any part of the Property is destroyed or materially damaged after the Due Diligence Period, Seller shall promptly provide written notice to Purchaser of such event. Upon notice of such occurrence, Purchaser may re-inspect the Property and may, by written notice to Seller within 10 days after receiving Seller’s notice, terminate this Agreement. Purchaser acknowledges that the only structure currently on the Property is a shed.

ARTICLE VII. PURCHASER’S REPRESENTATIONS AND WARRANTIES

Section 7.1. Purchaser’s Representations and Warranties. Purchaser represents, warrants and agrees as follows:

(a) Organization and Power. Purchaser is duly formed, validly existing and in good standing under the laws of the State of Missouri, is qualified to do business in the State of Missouri.

(b) Authority and Binding Obligation. (i) Purchaser has full power and authority to execute and deliver this Agreement and all other documents to be executed and delivered by Purchaser pursuant to this Agreement (the “Purchaser Documents”), and to perform all obligations of Purchaser arising under each of the Purchaser Documents, (ii) the execution and delivery by the signer(s) on behalf of Purchaser of each of the Purchaser Documents, and the performance by Purchaser of its obligations under each of the Purchaser Documents, has been, or will be when executed and delivered, duly and validly authorized by all necessary action by Purchaser, and (iii) each of the Purchaser Documents, when executed and delivered, will constitute the legal, valid and binding obligations of Purchaser enforceable against Purchaser in accordance with its terms, subject to bankruptcy, insolvency and other laws affecting creditor’s rights or equity principles generally.

ARTICLE VIII. CLOSING

Section 8.1. Closing. The closing of this Agreement shall be held at 10:00 a.m., at the offices of the Title Company, on the earlier to occur of the 30th day following the end of the Due Diligence Period, or if said day falls on a weekend or legal holiday, the next Business Day thereafter, or at such other time and place as the Parties may mutually agree. Possession of the Property shall be delivered to Purchaser at the time of Closing.

Section 8.2. Closing Deliveries.

(a) Seller’s Deliveries. At the Closing, Seller shall deliver or cause to be delivered to Purchaser all of the (i) documents, each of which shall have been duly executed by Seller and acknowledged (if required), and (ii) other items, set forth in this Section 8.2(a) (the “Seller Closing Deliveries”), as follows:

1. A deed in the form of **Exhibit D**;
2. A Right of First Refusal Agreement in the form of **Exhibit B**, and the Memorandum

of Right of First Refusal in the form of **Exhibit C**;

3. Such other documents and instruments as may be reasonably requested by Purchaser or the Title Company in order to consummate the transaction described in this Agreement.

(b) **Purchaser's Deliveries.** At the Closing, Purchaser shall deliver to Seller all of the (i) documents, each of which shall have been duly executed by Purchaser and acknowledged (if required), and (ii) other items, set forth in this **Section 8.2(b)** (the "**Purchaser Closing Deliveries**"), as follows:

1. The Purchase Price to be paid by Purchaser;
2. Closing cost;
3. A counterpart of each of the documents and instruments to be delivered by Seller under **Section 8.2(a)** which require execution by Purchaser, including, without limitation, the Deed, Right of First Refusal Agreement, and Memorandum of Right of First Refusal; and
4. Such other documents and instruments as may be reasonably requested by Seller or the Title Company in order to consummate the transaction described in this Agreement.

ARTICLE IX. TERMINATION; DEFAULT; EFFECT

Section 9.1. Termination. If this Agreement is terminated by either Party pursuant to a right expressly given in this Agreement, Purchaser shall be entitled to an immediate return of the Deposit, and this Agreement shall thereafter become void and have no effect, without any liability on the part of any Party other than the provisions in this Agreement which expressly survive termination of this Agreement.

Section 9.2. Default. Seller or Purchaser shall be in default under this Agreement if either fails to comply with any material covenant, agreement or obligation within any time limits required by this Agreement. Following a default by either Seller or Purchaser under this Agreement, the non-defaulting party shall have the following remedies:

(a) **Purchaser Default.** If Purchaser defaults, Seller may terminate this Agreement by written notice to Purchaser, and retain the Deposit as liquidated damages as Seller's sole remedy (the parties recognizing that it would be extremely difficult to ascertain the extent of actual damages cause by Purchaser's default, and that the Deposit represents as fair an approximation of such actual damages as the parties can now determine), and Seller and Purchaser shall have no further rights or obligations under this Agreement, except those which expressly survive such termination.

(b) **Seller Default.** If Seller defaults, Purchaser may (i) specifically enforce this Agreement and recover damages suffered by Purchaser as a result of the delay in the acquisition of the Property; or (ii) terminate this Agreement by written notice to Seller, and, at Purchaser's option, pursue any remedy and damages available at law or in equity. If Purchaser elects to terminate this Agreement pursuant to this paragraph, the Deposit shall be returned to Buyer.

ARTICLE X. MISCELLANEOUS PROVISIONS

Section 15.1. Notices.

(a) **Method of Delivery.** All notices, requests, demands and other communications required to be provided by any Party under this Agreement (each, a "**Notice**") shall be in writing and delivered, at the sending Party's cost and expense, by (i) personal delivery, (ii) Federal Express or other reputable overnight

courier service, or (iii) facsimile transmission, with a verification copy sent on the same day by any of the methods set forth in clauses (i) or (ii) to the recipient Party at the following address or facsimile number:

If to Seller: Independence City Hall
Attn: City Manager
111 E Maple Ave
Independence, MO 64050

If to Purchaser: Community Services League of Jackson County
Attn:
404 N Noland Rd
Independence MO 64050

(b) Receipt of Notices. All Notices sent by a Party under this Agreement shall be effective upon (i) delivery, personally or by facsimile, as the case may be, to the address or facsimile number of the recipient Party, provided that such delivery is made prior to 5:00 p.m. (local time for the recipient Party) on a Business Day, otherwise the following Business Day, or (ii) the attempted delivery, personally or by facsimile, as the case may be, of such Notice if (A) such recipient Party refuses delivery of such Notice, or (B) such recipient Party is no longer at such address or facsimile number, and such recipient Party failed to provide the sending Party with its current address or facsimile number pursuant to Section 15.1(c), or (iii) one (1) Business Day after such Notice is deposited with an overnight delivery service for overnight delivery.

Section 15.2. Time is of the Essence. Time is of the essence of this Agreement; provided, however, that notwithstanding anything to the contrary in this Agreement, if the time period for the performance of any covenant or obligation, satisfaction of any condition or delivery of any Notice or item required under this Agreement shall expire on a day other than a Business Day, such time period shall be extended automatically to the next Business Day.

Section 15.3. Assignment. Purchaser shall not assign this Agreement or any interest therein (or any direct or indirect interest in Purchaser) to any Person, without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion.

Section 15.4. Governing Law. This Agreement shall be governed by, interpreted under and construed and enforced in accordance with, the laws of the State of Missouri, without reference to conflicts of laws principles. Should any part of this Agreement 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 Parties submit to the personal jurisdiction of and waive any personal jurisdiction or inconvenient forum objection to those courts.

Section 15.5. Severability. If any term or provision of this Agreement is held to be or rendered invalid or unenforceable at any time in any jurisdiction, (i) such term or provision shall not affect the validity or enforceability of any other terms or provisions of this Agreement, or the validity or enforceability of such affected term or provision at any other time or in any other jurisdiction, and (ii) in lieu of each term or provision that is invalid or unenforceable, a term or provision shall be added as part of this Agreement as similar as possible to such invalid or unenforceable term or provision while being valid and enforceable.

Section 15.6. Entire Agreement. This Agreement sets forth the entire understanding and agreement of the Parties hereto, and shall supersede any other agreements and understandings (written or oral) between the Parties on or prior to the date of this Agreement with respect to the transaction described in this Agreement.

Section 15.7. Amendments, Waivers and Termination of Agreement. No amendment or modification to any terms or provisions of this Agreement, waiver of any covenant, obligation, breach or default under this Agreement or termination of this Agreement (other than as expressly provided in this Agreement), shall be valid unless in writing and executed and delivered by each of the Parties.

Section 15.8. Execution of Agreement. A Party may deliver executed signature pages to this Agreement by facsimile transmission to any other Party, which facsimile copy shall be deemed to be an original executed signature page. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one agreement with the same effect as if the Parties had signed the same signature page.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Seller and Purchaser have executed this Purchase and Sale Agreement as of the day and year above written.

Seller:

CITY OF INDEPENDENCE, MISSOURI

[SEAL]

By: _____
City Manager

ATTEST:

City Clerk

ACKNOWLEDGMENT

STATE OF MISSOURI)
)
COUNTY OF _____) S.S.

On this _____ day of _____, 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the City Manager and City Clerk of the **CITY OF INDEPENDENCE, MISSOURI**, and that the seal affixed to the foregoing instrument is the seal of said city, and that said instrument was signed and sealed on behalf of said city by authority of its officers, and said officers acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said city.

IN WITNESSETH WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Notary Public - State of Missouri
Commissioned in _____

[SEAL]

My Commission expires: _____

Purchaser:

**COMMUNITY SERVICES LEAGUE OF
JACKSON COUNTY**
A Missouri Nonprofit Corporation

[SEAL]

By: _____
Name: _____

ATTEST:

By: _____
Name: _____

ACKNOWLEDGMENT

STATE OF MISSOURI)
) S.S.
COUNTY OF _____)

On this ____ day of _____, 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the _____ and _____ of **Community Services League of Jackson County, a Missouri Nonprofit Corporation**, and that the seal affixed to the foregoing instrument is the seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its officers, and said officers acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said Corporation.

IN WITNESSETH WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Notary Public - State of Missouri
Commissioned in _____

[SEAL]

My Commission expires: _____

Exhibit A

[Legal Description]

McCoy Addition- Lot 16 & South ½ of Vacated Alley lying North and Adjacent to Lot 16, in the City of Independence, Jackson County, Missouri. Parcel # 26-220-25-20-00-0-00-000

Exhibit B

[Right of First Refusal Agreement]

RIGHT OF FIRST REFUSAL AGREEMENT

THIS RIGHT OF FIRST REFUSAL, entered into as of MONTH __, 20__, between City of Independence, Missouri, a constitutional charter city organized and existing under the laws of the State of Missouri (the “Grantee”), having its mailing address as follows: 111 E Maple Ave, Independence, Missouri 64050, and Community Services League of Jackson County, a Missouri Nonprofit Corporation (the “Grantor”).

The Grantee and Grantor enter into this Right of First Refusal Agreement (the “Agreement”) in conjunction with, and as a condition to, the Purchase and Sale Agreement entered into as of the same date.

The Grantee and Grantor hereby acknowledge and agree that if and when Grantor wishes to sell, transfer, or otherwise dispose of the Property described in Exhibit A, Grantor must notify Grantee within fifteen (15) days of any of the following: (1) discussions with outside parties, (2) marketing of Property for sale, or (3) any conversations, offers, or proposals which could reasonably constitute a potential sale.

In such notice to Grantee, Grantor shall outline all material terms of the offer, including price, timing and any contingencies. Grantee shall respond within 30 days and either exercise or decline to exercise its Right under this Agreement. Grantee’s Right includes the right to respond to Grantor’s notice (the “Matched Offer”) and the right to enforce this Agreement through all available judicial means.

Grantee’s response (the “Matched Offer”) shall outline terms the Grantee finds reasonable and shall constitute a binding offer on the Grantee. Grantor must entertain and evaluate Grantee’s Matched Offer and is required to accept the Matched Offer if the terms are equivalent, better, or within a commercially reasonable deviation from outside offers Grantor receives or intends to receive. Grantor must notify Grantee of its acceptance of the Matched Offer, or if Grantor denies the Matched Offer, must give Grantee 30 days to present a new offer.

Grantor and Grantee hereby agree to use reasonable efforts to come to an agreement for the Grantee’s re-purchase of the Property, if and when Grantee exercises its Right under this Agreement.

This Right of First Refusal continues in effect until the earlier of (a) 10 years from the date of this Right of First Refusal or (b) conveyance of the Property in fee simple to Grantee or to a third party pursuant to the Right of First Refusal described herein. The Grantor and Grantee further agree to execute a Memorandum of Right of First Refusal, embodying the material terms of this Agreement, for recording with the Jackson County Recorder of Deeds.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Seller and Purchaser have executed this Purchase and Sale Agreement as of the day and year above written.

Seller:

CITY OF INDEPENDENCE, MISSOURI

[SEAL]

By: _____
City Manager

ATTEST:

City Clerk

ACKNOWLEDGMENT

STATE OF MISSOURI)
)
COUNTY OF _____) S.S.

On this _____ day of _____, 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the City Manager and City Clerk of the **CITY OF INDEPENDENCE, MISSOURI**, and that the seal affixed to the foregoing instrument is the seal of said city, and that said instrument was signed and sealed on behalf of said city by authority of its officers, and said officers acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said city.

IN WITNESSETH WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Notary Public - State of Missouri
Commissioned in _____

[SEAL]

My Commission expires: _____

EXHIBIT A
LEGAL DESCRIPTION

McCoy Addition- Lot 16 & South ½ of Vacated Alley lying North and Adjacent to Lot 16, in the City of Independence, Jackson County, Missouri. Parcel # 26-220-25-20-00-0-00-000

Exhibit C

[Memorandum of Right of First Refusal]

Document submitted for electronic

TITLE OF DOCUMENT: MEMORANDUM OF RIGHT OF FIRST REFUSAL

DATE OF DOCUMENT: MONTH __, 20__

GRANTOR: COMMUNITY SERVICES LEAGUE OF JACKSON
COUNTY, A MISSOURI NONPROFIT
CORPORATION

GRANTOR'S MAILING ADDRESS: _____

GRANTEE: CITY OF INDEPENDENCE, MISSOURI

GRANTEE'S MAILING ADDRESS: 111 E Maple Ave
Independence, Missouri 64050

RETURN DOCUMENTS TO: CITY OF INDEPENDENCE, MISSOURI
111 E Maple Ave
Independence, Missouri 64050

LEGAL DESCRIPTION: See **Exhibit A**

This cover page is attached solely for the purpose of complying with the requirements stated in
§§59.310.2; 59.313.2 Revised Missouri Statutes.

MEMORANDUM OF RIGHT OF FIRST REFUSAL

THIS MEMORANDUM OF RIGHT OF FIRST REFUSAL, made as of MONTH __, 20__, between **CITY OF INDEPENDENCE MISSOURI**, a constitutional charter city organized and existing under the laws of the State of Missouri (the “Grantee”), having its mailing address as follows: 111 E Maple Ave, Independence, Missouri 64050, to **Community Services League of Jackson County, a Missouri Nonprofit Corporation** (the “Grantor”).

WITNESSETH, THAT THE GRANTOR, in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations, and the Grantee, in consideration of the Special Warranty Deed, entered into a Right of First Refusal Agreement (the “Agreement”) on MONTH __, 20__. This Memorandum of Right of First Refusal embodies the material terms of the Agreement, and by recordation imposes notice on all parties dealing with the Grantor in relation to the Property described in Exhibit A.

The Agreement, in part, mandates that if Grantor wishes to sell property during the term of the Agreement, Grantor must notify Grantee within 15 days of (1) discussions with outside parties, (2) marketing of Property for sale, or (3) any conversations, offers, or proposals which could reasonably constitute a potential sale. In such notice, Grantor shall outline all material terms of the offer, including price. Grantee shall respond within 30 days and either exercise or decline to exercise its Right. Grantee’s response (the “Matched Offer”) shall outline terms the Grantee finds reasonable and shall constitute a binding offer on the Grantee.

This Right of First Refusal continues in effect until the earlier of (a) 10 years from the date of this Right of First Refusal or (b) conveyance of the Property in fee simple to Grantee or to a third party pursuant to the Right of First Refusal described herein.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Seller and Purchaser have executed this Purchase and Sale Agreement as of the day and year above written.

Seller:

CITY OF INDEPENDENCE, MISSOURI

[SEAL]

By: _____
City Manager

ATTEST:

City Clerk

ACKNOWLEDGMENT

STATE OF MISSOURI)
)
COUNTY OF _____) S.S.

On this _____ day of _____, 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the City Manager and City Clerk of the **CITY OF INDEPENDENCE, MISSOURI**, and that the seal affixed to the foregoing instrument is the seal of said city, and that said instrument was signed and sealed on behalf of said city by authority of its officers, and said officers acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said city.

IN WITNESSETH WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Notary Public - State of Missouri
Commissioned in _____

[SEAL]

My Commission expires: _____

EXHIBIT A
LEGAL DESCRIPTION

McCoy Addition- Lot 16 & South ½ of Vacated Alley lying North and Adjacent to Lot 16, in the City of Independence, Jackson County, Missouri. Parcel # 26-220-25-20-00-0-00-000

Exhibit D

[Form of Deed]

Document submitted for electronic recording

TITLE OF DOCUMENT: SPECIAL WARRANTY DEED

DATE OF DOCUMENT: MONTH __, 20__

GRANTOR: CITY OF INDEPENDENCE, MISSOURI

GRANTOR'S MAILING ADDRESS: 111 E Maple Ave
Independence, Missouri 64050

GRANTEE: COMMUNITY SERVICES LEAGUE OF JACKSON
COUNTY, A MISSOURI NONPROFIT
CORPORATION

GRANTEE'S MAILING ADDRESS:

RETURN DOCUMENTS TO: CITY OF INDEPENDENCE, MISSOURI
111 E Maple Ave
Independence, Missouri 64050

LEGAL DESCRIPTION: See **Exhibit A**

This cover page is attached solely for the purpose of complying with the requirements stated in §§59.310.2; 59.313.2 Revised Missouri Statutes.

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED, made as of _____, 20____, from **CITY OF INDEPENDENCE MISSOURI**, a constitutional charter city organized and existing under the laws of the State of Missouri (the “Grantor”), having its mailing address as follows: 111 E Maple Ave, Independence, Missouri 64050, to **Community Services League of Jackson County**, a Missouri Nonprofit Corporation (the “Grantee”).

WITNESSETH, THAT THE GRANTOR, in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations to it paid by the Grantee (the receipt of which is hereby acknowledged) does by these presents, **SELL** and **CONVEY** unto the Grantee, its successors and assigns, the lots, tracts or parcels of land described on **EXHIBIT A**.

WITNESSETH, THAT THE GRANTOR, does hereby covenant that Grantor will warrant and defend the title to said premises unto the Grantee and unto the Grantee’s successors and assigns forever, against the lawful claims and demands of all persons claiming under Grantor and no other.

TO HAVE AND TO HOLD, the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in any way appertaining unto the Grantee and unto its successors and assigns forever; the Grantor hereby covenanting that the said premises are free and clear from any encumbrance done or suffered or imposed by the Grantor, other than those expressly reserved in this Deed.

These restrictions and covenants are hereby declared to be covenants running with the land and shall be fully binding upon all persons or entities acquiring Property whether by descent, devise, purchase or otherwise, and any person by the acceptance of title to Property, or any portion thereof, shall thereby agree and covenant to abide by and fully perform the following restrictions and covenants:

Property shall be used solely for the uses as allowed by the UDO and other applicable city codes except the following uses are prohibited:

- Billboard
- Pawnshops and short-term loan services
- Group living facility
- Tobacco/convenience store
- Medical marijuana facility
- Alcohol sales

This covenant is to run with the land and shall be binding for a period of ten (10) years from the date hereof unless, by a vote of the majority of the City Council of the City of Independence, Missouri, taken prior to the expiration of said 10-year period and filed of record in Jackson County, Missouri, it is agreed to amend or release the same.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Seller and Purchaser have executed this Purchase and Sale Agreement as of the day and year above written.

Seller:

CITY OF INDEPENDENCE, MISSOURI

[SEAL]

By: _____
City Manager

ATTEST:

City Clerk

ACKNOWLEDGMENT

STATE OF MISSOURI)
) S.S.
COUNTY OF _____)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the City Manager and City Clerk of the **CITY OF INDEPENDENCE, MISSOURI**, and that the seal affixed to the foregoing instrument is the seal of said city, and that said instrument was signed and sealed on behalf of said city by authority of its officers, and said officers acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said city.

IN WITNESSETH WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Notary Public - State of Missouri
Commissioned in _____

[SEAL]

My Commission expires: _____

Purchaser:

**COMMUNITY SERVICES LEAGUE OF
JACKSON COUNTY**
A Missouri Nonprofit Corporation

[SEAL]

By: _____
Name: _____

ATTEST:

By: _____
Name: _____

ACKNOWLEDGMENT

STATE OF MISSOURI)
) S.S.
COUNTY OF _____)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, to me personally known, who, being by me duly sworn, did say that they are the _____ and _____ of **Community Services League of Jackson County**, a Missouri Nonprofit Corporation and that the seal affixed to the foregoing instrument is the seal of said Corporation, and that said instrument was signed and sealed on behalf of said Corporation by authority of its officers, and said officers acknowledged said instrument to be executed for the purposes therein stated and as the free act and deed of said Corporation.

IN WITNESSETH WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.

Notary Public - State of Missouri
Commissioned in

[SEAL]

My Commission expires: _____

EXHIBIT A
LEGAL DESCRIPTION

McCoy Addition- Lot 16 & South ½ of Vacated Alley lying North and Adjacent to Lot 16, in the City of Independence, Jackson County, Missouri. Parcel # 26-220-25-20-00-0-00-000

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

Council action is requested to issue purchase orders to Ceridian for the continuation of licensing and vendor support for the Ceridian/Dayforce Human Capital Management System in the amount of \$347,000 for fiscal year 2025-26, and to approve change orders of up to ten percent (10%) of the authorized amount. **Approved**

Recommendations:

Council approval is recommended.

Background:

This purchase will continue the licensing and vendor support for the Ceridian/Dayforce Human Capital Management system. Ceridian/Dayforce specifically supports functions related to employee management, including recruiting and timekeeping for City employees. Ongoing monthly subscription fees are \$27,365. Additional fees are incurred for add-on services, returned direct deposits, printed materials service fees, and other options in conjunction with timekeeping and payroll processes. Total monthly charges are estimated to be approximately \$28,900.

Attached to this item is the Ceridian/Dayforce contract and an example of a monthly invoice.

Approval of this item shall authorize change orders up to a total of ten (10) percent of the authorized amount for each order, provided appropriations are available.

Emergency Justification:**Fiscal Impact:**

The fiscal impact to the City is up to \$381,700 for fiscal year 2025-2026 including change orders up to 10% of the authorized amount, provided that funding is available. Budgeted dollars for the Human Resource Capital System is included in the fiscal year 2025-2026 adopted budget, page 198, account 0954230-5224, Internal Service Fund.

Council Action:

Department / Contact	Human Resources /
---------------------------------	-------------------

REVIEWERS

Carissa Smith
Jeremy Cover
Lisa Reynolds
Melissa Cabrera
Susanne Holland

ATTACHMENTS:

1. Dayforce Contract - City of Independence 2023-04-20 (1)
2. Dayforce req 20262380 \$29,196.86



ORDER FORM

Client Order No.: **Q-149351**
Generation Date: **March 23, 2023**
Offer Expiration: **March 31, 2023**
Service Term Length (from Subscription Start Date): **36 Months**
Territory: **United States**
Currency: **USD**

Client Information				
Client Name				
City of Independence the "Client"				
Service Contact Holly Dreyer		Phone No. (816) 325-7217	e-mail hdreyer@indepmo.org	
Billing Street Address 111 E Maple Ave		City Independence	State/Province MO	Zip/Postal Code 64050

Estimated Recurring Fees	Frequency	Product Type	Unit of Measure	Unit Price	Quantity	Price
Dayforce Subscription Fee*	Monthly	Subscription	Per Employee	\$9.58	1,100	\$10,538.00
Dayforce Year 1 Service	Monthly	Recurring	Each	\$1,435.00	1	\$1,435.00

Estimated Implementation and One-Time Fees	Frequency	Product Type	Unit of Measure	Unit Price	Quantity	Price
Dayforce Industry Solutions Implementation Fee	One Time	One Time	Each	\$200.00	850	\$170,000.00
Dayforce Education Consulting Services - Virtual	One Time	Training	Each	\$216.00	24	\$5,184.00
Dayforce Implementation Fee	One Time	Implementation	Each	\$110,733.75	1	\$110,733.75

Summary of Estimated Annual Totals	Total
Estimated Total Recurring Fees	\$143,676.00
Estimated Total One Time Fees	\$285,917.75

The Parties further acknowledge and agree that the following Service Particulars attached hereto shall apply (rather than the online equivalent Service Particulars):

- Dayforce-General Terms
- Dayforce-Payroll Terms
- Dayforce-Ancillary Services Terms

*Included in the Dayforce Subscription Fee:

Software Services:

- Dayforce Core (Includes Core Elements and HR & Self Service)
- Dayforce Payroll
- Dayforce Time and Attendance
- Dayforce Wallet
- Dayforce Industry Solutions
 - Dayforce Union Pay Extension
 - Dayforce Variable Pay Extension
 - Dayforce Advanced Data Extension
- Dayforce Education Package

The Dayforce Subscription Fee includes one (1) Federal, State, and Local Tax Filing ID

Each additional Federal Tax Filing ID will be charged at a price of \$55.00

Each additional State Tax Filing ID will be charged at a price of \$10.00

Each additional Local Tax Filing ID will be charged at a price of \$10.00

Prices are exclusive of all Taxes. Goods and/or materials, if any, shipped Delivered At Place (DAP).

Dayforce Wallet - On-Demand Pay will be deployed in the United States and/or Canada.

This Order Form, and the attached SOW(s), is entered into between Client and the Ceridian entity that has signed below, and is governed by the terms of the Master Services Agreement, attached hereto (the "MSA"). Capitalized terms used and not otherwise defined in the Order Form, or SOW(s) have the meaning set forth in the MSA.

In addition to the Fees set forth herein, Client will be charged for ad hoc/ancillary Fees as applicable in accordance with the applicable [Rate Sheet](#). Ceridian may change and/or expand the list of items and/or rate of such items from time to time by publishing a new Rate Sheet on the above site, and such changes shall apply to the Client effective the date of such change.

[signature page follows]

Client acknowledges having read and understood all terms of the Order Form, MSA, Service Particulars and, if applicable, SOW and Rate Sheet, all of which form an integral part of the Agreement between Ceridian and Client.

Per:

DocuSigned by:

Adam Clifton

Printed Name:

Adam Clifton

Title:

Account Executive Public Sector

Date:

4/20/2023

I have the authority to bind the corporation

In respect of the Line of Credit Agreement

Ceridian Dayforce Licensing LLC

Per:

DocuSigned by:

Adam Clifton

Printed Name:

Adam Clifton

Title:

Account Executive Public Sector

Date:

4/20/2023

I have the authority to bind the corporation

City of Independence

Per:

DocuSigned by:

Cindy Gray

Printed Name: Cindy Gray

Cindy Gray

Title: Director of Finance

Director of Finance

Date:

4/20/2023

I have the authority to bind the City



ATTACHMENT TO ORDER FORM
STATEMENT OF WORK
IMPLEMENTATION SERVICES FOR DAYFORCE

CLIENT INFORMATION	
Client Name	
City of Independence	the "Client"

This is the implementation SOW for Dayforce as contemplated in the Order Form made between Ceridian and Client. This SOW sets forth the details for the implementation Services and/or deliverables (the "Implementation Services") to be provided in respect of the Subscribed Modules and those Services described in the attached Order Form. Capitalized terms not defined in this SOW shall have the meanings ascribed to them in the MSA.

Ceridian's obligation to deliver the Implementation Services for the One Time Fees stated in the Order Form will survive for twelve (12) months from project kickoff. Should the project exceed twelve (12) months for any reason not the fault of Ceridian, Ceridian reserves the right to revisit the scope and/or the One Time Fees associated with the Implementation Services.

The Parties shall mutually agree during implementation to an anticipated Go Live Date. It is understood and agreed by the Parties that the Implementation Services are delivered in a very iterative and collaborative process and require regular and timely Client Data input, involvement and feedback (as requested by Ceridian). The Parties acknowledge and agree with the importance of using commercially reasonable efforts to achieve the respective timelines, and Ceridian will advise Client as soon as possible if any action or omission on the part of Client is delaying Ceridian's ability to perform the Implementation Services and may impact the anticipated Go Live Date (and Client shall not be entitled to any compensation or relief for loss resulting from a failure to meet such estimated timeframes).

1. Executive Summary

Client has engaged Ceridian to implement and provide education and training for the following bundled Subscribed Modules:

- Dayforce Core (Includes Core Elements and HR-& Self Service)
- Dayforce Payroll
- Dayforce Time and Attendance
- Dayforce Wallet
- Dayforce Single Sign On

For the following population:

- 1,100 Employees in the United States

2. Implementation Methodology and Fixed Fee Basis

Ceridian determines the scope of work, timelines and fixed Fees for Implementation Services on the basis that:

- The project will be delivered continuously in a single phase in accordance with the project plan;
- There will be adherence to Ceridian's Activate methodology and tooling, as described in this Section 2;
- There will be appropriate resource coverage and commitment to execute the planned activities, as described in Section 3;
- The Services will be delivered to fulfill the Dayforce functionality as defined in Section 4.

Any delays or phased rollout may impact the One Time Fees and could result in a complete work stoppage until resources can be reassigned.

The tasks, duties, responsibilities, and deliverables to be provided by Ceridian to Client in conjunction with the Implementation Services will be provided utilizing the methodology described below. Note: activities within each stage may be adjusted to reflect project scope, and/or complexity. Not all activities apply to all projects. Adjustments, as may be required, will be identified during the Initiate stage.

		Primary Responsibility	
Stage	High-Level Task	Ceridian	Client
Initiate	Project teams assigned	X	X
	Establish project roles and responsibilities	X	X
	Establish project governance with one weekly governance call	X	X
	Client PM, Super Users and Power Users complete required training		X
	Provide data in required templates provided by Ceridian		X
	Create CONFIG environment with data provided in required templates	X	
	Document integration and data conversion requirements, as appropriate	X	X
	Provide access to pre-production environments. Included as standard are two (2) pre-production environments: (1) CONFIG (accessible by Ceridian and Client, generally used for application configuration and testing), and (1) STAGE (accessible by Ceridian and Client, generally used for solution refinement). The CONFIG and STAGE environments (including all data) will be decommissioned after a period of sixty (60) days from the Go Live Date. In the case of a phased implementation, the CONFIG and STAGE environments will remain in place until the Go Live Date of the last phase of the project.	X	
Model	Complete requirements validation and solution design	X	X
	Develop solution design document	X	
	Create Client-specific test cases for user acceptance testing (UAT), and integration testing		X
	Finalize and sign-off on solution design document	X	X
	Complete role-specific training curriculum		X

Refine	Complete configuration or solution and execute Ceridian test cases	X	
	Prepare day in the life scenarios for testing		X
	Execute day in the life scenarios and document feedback		X
	Refine solution based on test/day in the life results vs. requirements, and confirm results with Client	X	
	Execute Client-specific test cases to append to Ceridian test cases for UAT and integration testing and document test results		X
	Complete final data loads and audit for parallel testing and go-live	X	X
	Conduct parallel payroll testing and document discrepancies		X
	Address Client's parallel payroll testing results through triage and resolution of Client's documented issues	X	
Experience	Complete organizational go-live preparedness activities		X
	Prepare production environment	X	
	Support two (2) live production runs through triage and resolution of Client's documented issues	X	
	Transition Client to Ceridian Customer Support	X	

On or after the Go Live Date, upon written request by Client via the Help Desk for Support, Ceridian will provide access to one (1) TEST environment (accessible by Ceridian and Client). The TEST environment will be decommissioned by Ceridian upon fifteen (15) days' prior written notice to Client should there be no activity for a period of sixty (60) days. Client may at any time request that the TEST environment be recommissioned via the Help Desk for Support.

3. Ceridian and Client Roles and Responsibilities

To facilitate the successful delivery of the Implementation Services, Client and Ceridian will ensure the appropriate individuals are assigned and available, as applicable, to fill the following roles with the associated responsibilities. Depending on project scope, not all projects will require separate individuals for all roles and/or responsibilities. Roles and responsibilities by individual will be confirmed and agreed upon by both Parties during the Initiate stage.

Ceridian Role / Responsibilities		Client Role / Responsibilities	
Project Sponsor	• Provide overall direction and management support for the Implementation team and actively participate in project governance • Allocate named necessary resources prior to project kickoff and adjust as required throughout the project • Participate in executive updates to ensure organizational alignment • Monitor project progress and address project escalations in a timely manner	Project Sponsor	• Provide overall direction and management support for the project team and actively participate in project governance • Allocate named necessary resources prior to project kickoff and adjust as required throughout the project • Participate in executive updates to ensure organizational alignment • Monitor project progress and address project escalations in a timely manner • Make business decisions in a timely manner
Project Manager	• Develop, maintain and track progress against the project plan and associated logs (risk log, issues log) • Manage milestone schedule with Client • Manage Implementation team resources and deliverables • Report on project status through meetings and reports, including project risks and issues with mitigation plans • Facilitate communication between project teams • Act as a central point of contact for all day-to-day activities • Monitor project scope and lead and manage change control activities • Facilitate Client's access to training	Project Manager	• Participate in development and update of project plan and associated logs (risk log, issues log) • Manage Client project team and third-party resources and deliverables • Facilitate communication between Ceridian, Client and third-party resources • Provide input to project status reports and participate in meetings • Act as a central point of contact for all day-to-day activities from all locations and/or business areas • Represent Client in change control activities • Provide consolidated testing results per Ceridian's methodology and format and per the project schedule • Plan and manage rollout strategy and logistics • Develop and manage the execution of an organizational readiness plan
Implementation Consultant(s)	• Ensure initial instance is set up and that initial back office data entry is complete • Lead requirements gathering/validation and documentation throughout the implementation • Facilitate completion of data load templates • Provide implementation best practices to leverage features and functionality • Lead solution design, configuration, quality assurance, review and refinement • Lead and execute required Ceridian testing and share Ceridian testing output with Client • Review Client-specific test cases • Support Client testing, parallel processing and data audit activities through issue triage and resolution of Client documented issues and defects • Provide in-depth product and/or domain knowledge as required throughout the project lifecycle • Participate in solution configuration, QA and refinement	Super Users, System Administrators, Power Users, SMEs	• Complete project workbooks and other templates provided by Ceridian to capture requirements • Participate in requirements gathering and validation sessions and validate documented requirements for accuracy and completeness • Confirm access to Ceridian Education Center and training materials • Organize internal participants as required • Validate documentation and configuration outputs and provide sign offs as defined by project plan • Review and approve Ceridian testing outputs with Implementation Consultant(s) • Advise if any requirements have been missed or any test cases are inaccurate • Develop Client-specific test cases • Execute day in the life scenario testing and document feedback: support Ceridian in solution refinement • Execute UAT testing and document results: support Ceridian in issue triage and resolution • Complete role-specific training at appropriate points in the project lifecycle as documented in the Ceridian Education Center training curriculum • Complete rollout of the solution across the organization

			• Complete organizational readiness activities • Assume ownership of the configured solution at go-live • Work with Implementation Consultant(s) to complete all required checkpoint milestones and sign offs
Data Consultant(s)	• Assist Client through the Getting Started data gathering • Provide guidance around completing the Ceridian data templates	Super Users, System Administrators, Power Users, Data SMEs	• Extract data from source systems and populate initial and subsequent data load templates in Ceridian required format • Extract data from source systems and populate parallel data load templates and final data load templates in Ceridian required format • Ensure accuracy of data from source systems and act as the central point of contact to address data issues in source systems • Assist Ceridian with data mapping
Technical Consultant(s)	• Engage with Client and Client's third-party vendors to validate file type, structure and mapping requirements to develop and test exports • Partner with Ceridian Consultant(s) on Dayforce configuration required to support exports • Develop and test exports and document data issues for correction by Client • Migrate Client and third-party vendor approved exports to production environment	Integration SMEs	• Provide contact information for Client's third-party vendors • Participate with Client's third-party vendors in gathering file specifications such as account structure, and file layout • Complete export details tab of project workbooks and other documentation in preparation for exports launch call per project schedule • Engage Client's third-party vendors regarding changes to exports/interfaces • Provide business requirements needed in order for exports to execute successfully • Review and approve file outputs during export testing with Client's third-party vendors and Ceridian Technical Consultant(s), including validation and resolution of data issues
Dayforce Education Services	• Provide access to Organizational Readiness Toolkit • Process access to Ceridian Education Center for all registered Client resources • Schedule and deliver Education Consulting sessions, Client exclusive sessions, and custom training sessions, as purchased	Org Readiness Lead	• Develop and execute organizational readiness plan • Register key project team resources and administrators for access to Ceridian Education Center • Monitor ongoing progress of training and organizational readiness activities • Develop and deliver training to end users
GL Consultant(s)	• Review and discuss business objectives, GL posting requirements and ensure that the org structure aligns with financial requirements • Advise on Dayforce General Ledger best practices to meet Client's business objectives • Propose solution and configuration options to help Client meet business needs • Guide Client through the appropriate order of features to successfully set up the GL • Assist with troubleshooting issues that arise with testing and reconciliation	GL SMEs	• Provide GL posting requirements, file specifications and file delivery requirements • Maintain timely communication with GL Consultant • Complete GL workbook • Complete micro-training as assigned prior to each meeting • Perform Dayforce General Ledger configuration tasks as assigned • Document and communicate test cases and Day in the Life scenarios to confirm successful setup with Client's Payroll Administrator • Review and approve output of test cases for the GL export file
Dayforce Wallet Customer Success Manager	• Work with the Dayforce Wallet Sponsor to determine the starting eligible employee population (and future population phased rollout, if applicable) and create any necessary employee groups for configuration settings • Review Dayforce Wallet configuration settings with Client and facilitate Client's election of such settings in the system • Present available resources to promote the Dayforce Wallet benefits to employees and work with Dayforce Wallet Sponsor to execute a plan	Dayforce Wallet Sponsor	• Ensure On-Demand Pay is configured concurrently with regular payroll as described in this SOW • As part of the implementation, work with the Dayforce Wallet Customer Success Manager to determine the eligible employee population at go-live and plans for a phased rollout (if applicable) • Act as champion for Dayforce Wallet within the Client organization, generally communicating benefits of Dayforce Wallet to Employees, either directly or by leveraging Ceridian-issued educational / promotional materials and helping to identify opportunities to engage the employee population in this regard

4. Services, Responsibilities and Deliverables for Implementation of Subscribed Modules and Core Functionality

The components listed below reflect those components and the corresponding scope that are available with respect to the Subscribed Modules listed in the Order Form. Ceridian will provide access to and implement those components indicated below as included. Additional Fees may apply to any additional Implementation Services requested by Client.

Unless a task, duty, responsibility or deliverable is expressly identified as included below, it is out of scope and will not be provided or performed by Ceridian as part of the Implementation Services. Without limiting the generality of this principle, Ceridian and Client expressly confirm that the following specific items are out of scope:

- Integration to third-party systems other than those identified below;
- Development of Client-specific process maps;
- Development of training materials outside of the education services specified herein;
- Client resource and/or third-party vendor management.

Component	Description	Scope
Dayforce Core Elements		
Organizational Hierarchy	Configuration of the core organizational hierarchy as defined and documented.	Included
Role Security	Configuration of security roles that define what areas of the application users can access and the specific permissions with that access.	Included

Pay Frequencies	Configuration of pay groups that define the frequency of pay for a group of employees as defined and documented. Pay frequency is defined as weekly, bi-weekly, semi-monthly, monthly. Scope assumes an average of five (5) pay frequencies with unique pay period start dates per Territory.	Included
HR Administration Configuration	Configuration of Client provided lists for employment status, employment status reasons, pay classes, pay types, relationship types, contact information types, marital status, and employee properties. Includes configuration of new hire role assignment and employee data mapping rules.	Included
iOS and Android Applications	Configuration of security roles that define what areas of the mobile application users can access. Employees can download the Dayforce mobile application from Apple's App Store or Google's Play Store.	Included
Dayforce HR & Self Service		
Administrator Self Service Forms	Configuration of HR specific Administrator level Self Service forms and associated workflow and guided processes screens as listed in the product documentation.	Included
Manager Self Service Forms	Configuration of HR specific Manager level Self Service forms as listed in the product documentation, and access to manager and employee form submission history.	Included
Employee Self Service Forms	Configuration of HR specific Employee level Self Service forms as listed in the product documentation, and access to form submission history.	Included
Workflows	Configuration of standard HR specific workflows defined as follows: commit to database, single approval, double approval, and conditional workflow.	Included
Guided Processes	Configuration of wizard-like collections of HR specific forms with configurable start and end messages to manage work and life events.	Included
Letter Management	Consultation on configuration and utilization of Dayforce Letter Management with Client's HR administrator through up to 2 scheduled weekly sessions. Each session includes Ceridian guidance and best practices.	Included
TeamRelate	Enablement of TeamRelate feature (English only), which allows employees to complete a TeamRelate survey, view their profile and the profile of other employees. Provides manager visibility into employee and team profile information, including communication styles, core convictions, and tips to help promote employee engagement.	Included
Dayforce Entitlements and Time Away From Work		
Entitlements	Configuration of rules that control how employees earn balances that represent their benefits, such as vacation, holiday time or personal days. Scope assumes up to 7 policies per Territory which are applied to employee populations (example; salaried, hourly, hourly exempt), and assumes a commonality/reusability factor of 20%.	Included
Time Away from Work	Configuration of time off policies to define parameters on how to request time off. Setup of time away from work form and manager approval.	Included
Dayforce Onboarding		
Onboarding	Consultation on configuration and utilization of Dayforce Onboarding with Client's onboarding administrator(s) through up to 10 scheduled weekly sessions for all Territories referenced in the Executive Summary. Each session includes guidance and best practices. Onboarding functionality is only available when Dayforce is the HR system of record.	Included
Dayforce United States and Canada Payroll		
Payroll Codes	Configuration of earning and deduction groupings that can be utilized for earnings or deduction calculations, pre-defined tax methods built in for compliance purposes, configurable limits and declining balances, arrears tracking and recovery. Configuration of earnings, deductions, memo calculations, and taxable benefits.	Included
Payroll Self Service Forms, Workflows and Guided Processes	Configuration of Payroll Specific Administrator, Manager and Employee level Self Service forms and associated workflows and guided processes screens as listed in the product documentation.	Included
Legal Entities	Configuration of legal entities (FEIN, CRA#) for the proper calculation and remittance of tax filing. Includes federal, state/provincial, local, and other employer and employee taxes.	Included
Employer Bank Accounts	Configuration of bank account information from which Client will fund payments for Client payroll.	Included
Deferred Compensation / RRSP and Pension Plans	Configuration for calculation of deferred compensation plans including RRSPs, Pension Plans, 401(k) and 403(b), Roth, catch-up and employer matches.	Included
Workers Compensation	Configuration of Workers Compensation accounts and rates, linking of those rates to jobs and positions, and creating associated Workers Compensation reporting.	Included
Third Party Payments	Configuration of third-party payees.	Included
Year End	Configuration of access to year end processing and year end documents, and filings.	Included
Payroll Production Reports	Enablement of standard payroll production reports and storage of a rolling thirty-six (36) months of the payroll production reports. Creation of Client-specific payroll production reports are not included.	Included
Payments to Non-Employees (Pensioners or Contractors)	Configuration of 1 additional pay group and legal entity for the explicit use of payments to contractors and configuration of 1 additional pay group and legal entity for the explicit use of payments to pensioners.	Included
Payroll Setup	Enablement of payroll properties in support of On-Demand Pay for each applicable pay group. (US and CA only)	Included
iOS and Android Applications	Enablement of the user access on the mobile application. (US and CA only)	Included

Employee Profile	Enablement or settings on the Employee Profile for all On-Demand Pay users. (US and CA only)	Included
Onboarding	Enablement of Dayforce Wallet in the employee onboarding process. (US and CA only)	Included
Dayforce Time and Attendance		
Scheduling	Configuration of shift rotations as documented. Consultation on scheduling best practices for both manual and rotation-based scheduling techniques.	Included
Pay Policies	Configuration of pay policies that define the assignment of pay rules and qualifiers to employees. Standard pay policies include regular time and overtime. Scope assumes an average of 5 pay policies per Territory with a commonality / reusability factor of 10%.	Included
Punch Policies	Configuration of punch policies that define an employee's time entry method and any optional rules and validation to be applied when an employee records working time. Standard punch policies include Salary, Hourly and Hourly Exempt. Scope assumes an average of 5 punch policies per Territory and a commonality / reusability factor of 50%.	Included
Time and Attendance Self Service Forms, Workflows and Guided Processes	Configuration of Time and Attendance specific Administrator, Manager and Employee level Self Service forms and associated workflows and guided processes screens as listed in the product documentation.	Included
Employee System Access	Consultation of Self-Service features that are in scope: Availability, Messaging and Alerts, Schedule Access, Timesheet Access, Employee Self Service Clock, and Time Away from Work Request screen. Ceridian will enable pertinent features as documented in the solution blueprint.	Included
Schedule Compliance	Configuration of employee policies, schedule alerts and warnings to facilitate compliance with legislative and company policies.	Included
Projects	Enablement of Projects functionality. Consultation through up to 3 scheduled sessions on how to define start/end dates, budget in hours or dollars and assignment to an area of the organization.	Included
Attendance Tracking	Configuration of attendance policies to define attendance incidents, how the occurrence of these incidents cause attendance violations, and the action to be taken for these violations.	Included
Shift Trading	Configuration of shift trading policies to define which employees can make shift trades, swaps, or re-trades with or without supervisor approval.	Included
Dayforce Education Services		
Dayforce Essentials Org Readiness Toolkit	Provide access to a set of tools for building and executing the Client's organizational readiness plan. The tools include introductory role-based videos, sample email announcements, sample job aids, communications and training project plan templates.	Included
Dayforce Education Consulting Services	One-on-one informal training/coaching via onsite or virtual delivery (as purchased) on specific tasks/processes as identified by Client. Training/coaching is limited to tasks such as transaction processing, explanation of Dayforce product concepts and processes, and minor administration or configuration updates. Access to training environments or training manuals are not included. Participants must meet pre-requisite knowledge either through attending Dayforce training or equivalent work experience.	Included
Platform/Technical		
Client Verified Single Sign On	Provide user authentication with Client's SAML 2.0 or ADFS Identity Management Solution where Client acts as the identity provider.	Included
Integration		
Interface Configuration	Configuration of interfaces within the framework of the Dayforce application. Scope assumes APIs or Web Services will be leveraged to the extent available. Scope assumes Client will consume and configure APIs and / or Web Services made available by Ceridian At project kickoff, Client and Ceridian will agree mutually on the named exports required to support accurate production runs at go-live. Client will provide contact information for named individuals for each third-party vendor no later than five (5) Business Days after project kickoff. For all exports from Dayforce to Client and / or third-party systems, Ceridian will produce exports as supported by Dayforce functionality per Client and / or third-party specifications and collaborate with Client and Client's third-party vendors to perform system integration testing. Loading historical hours for the purpose of FMLA eligibility reporting via an export file is out of scope Client is responsible for third party platform configuration requirements and ensuring platform availability at time of implementation. Client will adhere to Ceridian integration specifications. Client is responsible for the management of vendor response time as it impacts file deliveries. For all imports from source systems to Dayforce, Client and / or Client's third-party vendors will extract data from source systems, create files for import into Dayforce, adhering to Dayforce import specifications and participate with Ceridian to perform system integration testing. Imports that do not adhere to Dayforce import specifications are subject to additional Fees.	Up to 1 Imports Included Up to 1 Contribution Exports Included. Example: Pension, 401K, RRSP, Superannuation, Personal Retirement Savings Account, KiwiSaver Up to 0 Other Exports Included
Standard Ceridian Integrations	Up to 25 hours of consultation is included for any of the standard Ceridian integrations. Ceridian will work with Client to assist in enabling Ceridian's pre-built connectors. Client is responsible to complete the required configuration to use Ceridian's pre-built connectors in Dayforce as well as in the vendor systems. Client will provide contact information for named individuals for each third-party vendor within five (5) Business Days after project kickoff. Client is responsible for third-party platform configuration requirements and ensuring platform availability at time of implementation. Client will adhere to Ceridian integration specifications. Client is responsible for the management of vendor response time as it impacts delivery.	ESVS Integration (for US and CA only)

Client-Specific General Ledger Export	Consultation with named Client resource responsible for maintaining and posting payroll data to Client's financial system. Through a series of scheduled sessions Ceridian will educate Client resource on general ledger configuration and will provide guidance and best practices to enable the maintenance of the general ledger export from Dayforce. Client will complete required training prior to each scheduled session. The number of GL exports is determined by the number of unique file specifications that Ceridian will be required to configure. If Client does not engage or dedicate the required time in line with the payroll implementation cycle, it may result in the GL export(s) not being ready for the Client's first payroll commit and may be subject to additional Fees. Live Membership is required to access all training materials.	Up to 1 Included
Data Conversion Consulting Services		
Data Conversion Consulting Services	Data conversion consulting services to assist Client in preparation of data conversion files. Consulting services include a high-level overview of Dayforce import specifications, and assistance with mapping Client's existing data to Dayforce import specifications. Ceridian will provide guidance, best practices, answer questions and provide documentation where available. Client shall provide data, as specified by Ceridian, sufficient to meet Dayforce import file specifications. All data must be provided in the correct Dayforce specification format and layout template. Data must be provided for each load as required by the project plan. If data is being consolidated from multiple sources, it is Client's responsibility to consolidate the multiple sources into a single import file. Client will provide import data for conversion in the correct format and layout template, assist with the mapping process, validate, test and audit the conversion files prior to loading into the Dayforce application, and provide the completed file conversion acceptance form upon successful conversion of the data. If Client does not provide all required conversion data or fails to provide the required data per the agreed upon schedule, additional Fees may apply.	Included
Core Current Conversion	Import of formatted files containing current record for active and current year terminated employee data based on first live pay in Dayforce. This includes Core employee information, Employee demographic information, Work Assignment, Employment Status, Confidential Information, Emergency Contact, Direct Deposit, Current Employee Tax Parameters, Employee Elections, Current Year to Date Payroll information, and Employee outstanding balances, as provided by Client and meeting Ceridian's conversion file specifications. An external data source is defined as the HR, payroll or benefits system that Client will be converting to Dayforce as the system of record.	Active and Current Year Terminated Employees Included. Up to 5 external data source(s) included.
HR History	Import of prior years of HR history data for Job, Compensation, and Employment Status for active and current year termed employees as provided by Client and meeting Ceridian's conversion file specifications. HR history must be provided at the same time as the Core Conversion data is provided, and must be provided for each phase. Ceridian cannot load HR history separately. Years of history is calculated from the date of the first live pay in Dayforce.	Not Included
HR History, Previously Termed Employees	Import of previous year(s) termed employee's HR history data for Job, Compensation, and Employment Status for employees as provided by Client and meeting Ceridian's conversion file specifications. HR history must be provided at the same time as the Core Conversion data is provided and must be provided for each phase. Ceridian cannot load HR history separately. Years of history is calculated from the date of the first live pay in Dayforce.	Not Included
Earning Statements	Import of prior years' non-reportable earning statement / payslip data for employees as provided by Client and meeting Ceridian's conversion file specifications including running YTD totals for earnings, deductions, taxes, and gross pay. (US and CA only)	Not Included
Garnishment	Import of current employee garnishments for active employees as provided by Client and meeting Ceridian's conversion file specifications. (US and CA only)	Not Included

5. Acknowledgment Regarding Mid Quarter Start for US Payroll

Client acknowledges that a mid quarter start for first US payroll commit is only available if Client meets the qualifying criteria reasonably established by Ceridian. If Client qualifies, Client will be required to provide all additional data which meets Ceridian's conversion specifications. This data includes year to date payroll information accurate to the last complete quarter and current quarter to date payroll information containing Employee and employer taxable wages, wages to limit, and tax detail for each tax category. Client will also be required to provide Employee 12th day counts, weeks worked, hours worked, and other tax related information for the open quarter, as required by Client's state, and in accordance with Ceridian's specifications. Such data is required prior to Go Live Date, on a delivery date reasonably agreed to by the Parties. Client will be fully responsible and liable for any tax variation in any of the tax jurisdictions involved, and will be solely liable for any reconciliation due to any tax violation.



**ATTACHMENT TO ORDER FORM
STATEMENT OF WORK
DAYFORCE YEAR 1 SERVICE**

CLIENT INFORMATION

Client Name	
City of Independence	the "Client"

This is the Statement of Work ("SOW") for Dayforce Year 1 Services as contemplated in the Order Form made between Ceridian and Client. Where Dayforce Year 1 Plus Service is purchased, such Service includes everything stated herein with the applicable adjustments, as indicated. Client hereby engages Ceridian to provide the Services as more particularly described in this SOW, for the Fees set out in the Order Form. Capitalized terms not defined in this SOW shall have the meanings ascribed to them in the MSA.

1. Services, Responsibilities, and Deliverables

The Services consist of analysis, configuration, and deployment of the work products identified below in support of Client's Subscribed Modules. The Services are to be performed over the period of twelve (12) months from project kickoff, which will take place following Client's transition to Support (if applicable).

(i) In Scope Work: Where reasonably possible, Ceridian will deliver the following:

Activity	Description	Deliverable
Report modification or development	Ceridian will provide a) modification to two (2) Ceridian-delivered reports or b) creation of one (1) new custom report. If creation of a new report is requested, the report format to be delivered will be a column-based or equivalent style report with headings, data, subtotals, and grand totals. Ceridian will develop a supporting Software Requirements Specification document ("SRS") to document proposed report(s). Report requirements definition, configuration, testing, and development effort is not to exceed twenty-four (24) hours annually. Report analysis or development will not be performed during the last three (3) months of the applicable tax year.	SRS Modification of two (2) reports OR creation of one (1) new report.
Form modification or development (only applicable if Dayforce Year 1 Plus is purchased)	Ceridian will provide a) modification to two (2) Ceridian-delivered forms or b) creation of one (1) new custom form leveraging Ceridian's Dayforce form builder. Ceridian will develop a supporting SRS to document proposed form(s). Form requirements definition, configuration, testing, and development effort is not to exceed twenty-four (24) hours. Form analysis or development will not be performed during the last three (3) months of the applicable tax year.	SRS Modification of two (2) forms OR creation of one (1) new form.
Quarterly upgrade strategy and testing review and assistance	Ceridian will provide consulting assistance and best practices guidance around upgrades to Client's Ceridian Dayforce Production and TEST environments. Upgrade strategy and testing review and assistance is not to exceed six (6) hours (for Dayforce Year 1 Plus, not to exceed six (6) hours each quarter).	Create and document recommended upgrade review and testing plan.
Quarterly Entitlement, Payroll, WFM configuration review and assistance (only applicable if Dayforce Year 1 Plus is purchased)	In consultation with Client, Ceridian will identify requested changes to Client's existing Ceridian Entitlement, Payroll or Workforce Management solutions. Ceridian will develop a supporting SRS to document proposed changes. Upon approval by Client, Ceridian will configure changes in Client's TEST environment and upon approval from Client Ceridian will migrate changes in Client's Production environment. Testing is a Client responsibility. New Entitlement, Payroll or Workforce Management configurations are excluded from the Services and will be supported via Ceridian's standard Professional Services process, if requested by Client. Quarterly configuration review and assistance is not to exceed eight (8) hours each quarter.	SRS Configure changes in Client's TEST environment. Migrate changes in Client's PROD environment.
General configuration review and assistance	In consultation with Client, Ceridian will identify requested changes to Client's existing Ceridian solutions. Ceridian will develop a supporting SRS to document proposed changes. Upon approval by Client, Ceridian will configure changes in Client's TEST environment and upon approval from Client, Ceridian will migrate changes in Client's Production environment. Testing is a Client responsibility. General configuration assistance can be used in conjunction with any of the items listed herein or quarterly general configuration assistance can be used for any other configuration changes desired. New configurations are excluded from the Services and will be supported via Ceridian's standard Professional Services process, if requested by Client.	SRS Configure changes in Client's TEST environment. Migrate changes in Client's Production environment.

	General configuration review and assistance is not to exceed thirty-two (32) hours annually.	
Year-End and T4/W-2 Preparation (only applicable if Dayforce Payroll is purchased for the United States and / or Canada; not applicable to Dayforce Managed Services)	In consultation with Client, Ceridian will work with the customer to review the standard, delivered year-end tax reports. Ceridian will assist in advising Client on changes required based on information regarding issues/errors provided in the reports Reports to be reviewed include (as applicable): • T4 reports • Canada Wage and Tax report • W-2 exception report (as applicable) • US Wage and Tax report (as applicable) • 1099 report (as applicable) Ceridian will not be responsible for making any necessary adjustments to the employee records within the scope of these Services. If assistance is required, a Change Request may be required. Year-End and T4/W-2 Preparation is not to exceed eight (8) hours annually.	Review with Client the results from the identified reports and assist client in developing an action plan for remediating potential issues identified.
Year-End and P11d preparation and P60 publishing (only applicable if Dayforce Payroll is purchased for the United Kingdom)	In consultation with Client, Ceridian will work with the customer to review the standard, year-end tax reports. Ceridian will assist in advising Client on changes required based on information regarding issues/errors provided in the reports. P60s cannot be changed. Any updates to Employees' YTDs have to be done within the current tax year. Reports to be reviewed include (as applicable): • P60's • Payroll Summary YTD • P11d (as applicable) Ceridian will not be responsible for making any necessary adjustments to the employee records within the scope of these Services. If assistance is required, a Change Request may be required. Year-End and P60/11d preparation is not to exceed twenty-four (24) hours annually.	Review with Client the results from the identified reports and assist client in developing an action plan for remediating potential issues identified.
Open Enrollment configuration (only applicable if Dayforce Benefits is purchased for the United States and / or Canada)	In consultation with Client, Ceridian will configure, test and deploy Client's upcoming Plan Year Open Enrollment (OE) solution. Ceridian will develop a supporting SRS to document proposed solution. Upon approval by Client, Ceridian will configure changes in Client's TEST environment and upon approval from Client Ceridian will migrate changes in Client's Production environment. Testing is a Client responsibility. Development of, or modification to, carrier feeds is outside the scope of these Services Ceridian's Open Enrollment configuration and any supplemental carrier feed efforts must begin a minimum of sixty (60) days prior to Client's enrollment period. Open Enrollment and/or carrier feed development will not be performed between the period of October 1 and December 31, inclusive.	SRS Configure changes in Client's TEST environment. Migrate changes in Client's Production environment.
Benefit configuration (only applicable if Dayforce Benefits is purchased for the United Kingdom)	In consultation with Client, Ceridian will configure, test and deploy Client's rate plan updates / create new plans (if applicable). Ceridian will develop a supporting SRS to document proposed solution. Upon approval by Client, Ceridian will configure changes in Client's TEST environment and upon approval from Client Ceridian will migrate changes in Client's Production environment. Testing is a Client responsibility. Benefits update is not to exceed forty (40) hours annually.	SRS Configure changes in Client's TEST environment. Migrate changes in Client's Production environment.
ACA configuration (only applicable if Dayforce Benefits is purchased for the United States; not applicable to Dayforce Managed Services)	Ceridian will assist Client to configure, test and deploy Client's ACA solution. Ceridian will develop a supporting SRS to document the proposed solution. Upon approval by Client, Ceridian will configure changes in Client's TEST environment and upon approval from Client Ceridian will migrate changes in Client's Production environment. Testing is a Client responsibility. Client's prior year ACA data must exist within the Dayforce solution. Ceridian will not be responsible for missing, incomplete or incorrect ACA-related data. Loading or validating Client's ACA-related data is excluded.	SRS Configure changes in Client's TEST environment. Migrate changes in Client's Production environment.
Benefits carrier feed configuration (only applicable if Dayforce Benefits is purchased)	Ceridian will provide a) modification to three (3) standard-delivered carrier feeds or b) creation of one (1) new custom carrier feed (if certified).	SRS

for the United States and/or Canada)	If creation of a new custom carrier feed is requested, the report format to be delivered will be a column-based or equivalent style report with headings, data, subtotals, and grand totals. Ceridian will assist Client to configure, test and deploy Client's carrier feed. Ceridian will develop a supporting SRS to document the proposed solution. Upon approval by Client, Ceridian will configure changes in Client's TEST environment and upon approval from Client Ceridian will migrate changes in Client's Production environment. Testing is a Client responsibility. Carrier feed is not to exceed thirty-five (35) hours annually.	Configure changes in Client's TEST environment. Migrate changes in Client's Production Environment.
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(ii) Out of Scope Work: Unless an activity or deliverable is expressly set forth under "(i) In Scope Work" above, it is considered out of scope and will not be provided or performed by Ceridian.

2. Assumptions and Client Duties and Responsibilities

The Fees and estimated timelines are based on the following assumptions:

- Client will provide Ceridian with access to Client team members and stakeholders to support the Services and they will actively participate. Failure to provide Client team members may have adverse impacts upon service deliverables or dates;
- Client will provide access to Client's Ceridian TEST and Production environments;
- The Services are to be performed remotely. If Client requires onsite services, the Parties must agree to same in writing. Client agrees to pay for Ceridian's travel, lodging, meal and associated expenses. Client will provide Ceridian with appropriate meeting space and company property (e.g. projector, white board, etc.) for onsite meetings;
- Personnel assigned to meetings and workshops will actively participate, per the mutually agreed upon schedule;
- Client is responsible for managing their team members and stakeholders activities, deliverables, and dates in support of this SOW;
- Ceridian is not responsible for Client's lack of participation or inaccurate information provided to Ceridian.

Ceridian will not assume any liability for Client's interpretation of applicable law or regulations as a consequence of Ceridian providing the Services specified in this SOW, and Client remains solely responsible for all decisions affecting its employees and for using the Services in accordance with applicable law, professional guidelines, and privacy requirements in all jurisdictions where it operates. Client shall monitor changes to those laws applicable to Client's business, interpret applicable laws and regulations, determine requirements for compliance and notify Ceridian of any changes required as a result of such laws. Client shall conduct regular audits of Client's use of the Services. Client acknowledges and agrees that the Services do not constitute and shall not be relied upon by Client, as legal or financial advice. Client will not rely solely on its use of the Services to meet its compliance obligations.

3. Fees

(i) Client shall pay to Ceridian the monthly Recurring Fees set forth in the Order Form which will be invoiced and payable monthly in advance, commencing as of project kick off. Notwithstanding anything to the contrary in the Agreement, the Services shall not continue after the end of the twelve (12) month period.

(ii) In addition to the Fees, Client shall reimburse Ceridian for all expenses, if any, (and in accordance with Ceridian's expense policy and approved by Client) incurred in connection with the provision of the Services, including travel, accommodation and meals.



**ATTACHMENT TO ORDER FORM
STATEMENT OF WORK
DAYFORCE INDUSTRY SOLUTIONS SERVICES**

CLIENT INFORMATION	
Client Name	
City of Independence	the "Client"

This is the Statement of Work ("SOW") for Dayforce Industry Solutions as contemplated in the Order Form made between Ceridian and Client. Where Dayforce Industry Solutions are purchased, such Services include everything stated herein with the applicable adjustments, as indicated. Client hereby engages Ceridian to provide the Services as more particularly described in this SOW, for the Fees set out in the Order Form. Capitalized terms not defined in this SOW shall have the meanings ascribed to them in the MSA.

1. Services, Responsibilities, and Deliverables

The Services are to be performed on a project basis, with the support and maintenance services continuing throughout the Client's Service Term. For greater certainty, should Client request new or additional Services to the completed Services after the project is complete, Client must execute an additional Order Form to purchase such services.

(i) In Scope Work: The Services include building new rules and / or functionality that will be used in conjunction with the existing Dayforce policies. Ceridian will deliver the following, at the direction of Client:

Component	Description	Scope
Dayforce Union Pay Extension	The Dayforce Union Pay Extension is the configuration of a collection of rules and qualifiers that determine how an employee's pay is to be calculated when time is entered on the timesheet as specified by the Client related to requirements in union contracts and / or local collective bargaining agreements. Additional logic may be included (as documented by the Parties in the Extension Blueprint document) to address other types of pay as directed by the Client including retroactive pay calculations, union reciprocity rules, wage rate comparisons, overtime rules and exceptions, weighted overtime calculations, leave accrual rules and exceptions, fringe calculations and application, tech / flag / step / progression rules, or other union-specified requirements.	Creation of up to 7 union rules and / or qualifiers are included.
Dayforce Variable Pay Extension	The Dayforce Variable Pay Extension is the configuration of a collection of rules and qualifiers that determine how an employee's pay is to be calculated when time is entered on the timesheet as specified by Client's pay policies. Variable pay policies may include (as documented in the Extension Blueprint document) calculations to address piece-rate wage calculations, production pay calculations, complex bonus or commission logic, tips / tokens pooling, tips/tokens sharing, tip-to-minimum wage logic, wage parity logic, etc., as specified by Client.	Creation of 3 policies and / or rules are included.
Dayforce Advanced Data Extension	The Dayforce Advanced Data Extension is the configuration to produce reports, datafiles and / or data input or output interfaces related to the union, prevailing wage, and / or variable pay extensions which are not able to be produced by standard Dayforce reporting tools or APIs. Typical inputs / outputs (as documented in the Extension Blueprint document) include Point of Sale interfaces, ERP interfaces, job cost allocations, salary allocation, leave allocation, grant allocation, union reporting, electronic certified payroll reporting (e.g., LCP Tracker, eMars, Elation, etc.). Input interfaces must be produced by Client and meet formats specified by Ceridian. Outputs will be produced in the format required by Client to the extent supported by Ceridian. It is the responsibility of Client to identify any required data, input and/or output to be configured and to import the results into the third-party platform or application.	Creation of 1 unique input / outputs per month are included.
Support / Maintenance	On-going technical support and maintenance to the configured extensions. Ceridian is not responsible for legal or compliance updates to the rules created by Client as part of the Services set forth in this SOW.	Included

(ii) Client agrees that Ceridian will be the sole and exclusive owner of all Intellectual Property created in connection with the Services set forth in this SOW, including but not limited to any rules or functionality. Such Intellectual Property shall be considered Ceridian Property.

(iii) Out of Scope Work: Unless an activity or deliverable is expressly set forth under "(i) In Scope Work" above, it is considered out of scope and will not be provided or performed by Ceridian.

2. Assumptions and Client Duties and Responsibilities

The Fees and estimated timelines are based on the following assumptions:

- Client will provide Ceridian with access to Client team members and stakeholders to support the Services and they will actively participate. Failure to provide Client team members may have adverse impacts upon service deliverables or dates;
- Client will provide access to Client's Ceridian TEST and Production environments;
- The Services are to be performed remotely. If Client requires onsite services, the Parties must agree to same in writing. Client agrees to pay for Ceridian's travel, lodging, meal and associated expenses. Client will provide Ceridian with appropriate meeting space and company property (e.g. projector, white board, etc.) for onsite meetings;
- Personnel assigned to meetings and workshops will actively participate, per the mutually agreed upon schedule;
- Client is responsible for providing any source data from non-Dayforce platforms or applications to Ceridian in a format acceptable to Ceridian;

- Client is responsible for managing their team members and stakeholders activities, deliverables, and dates in support of this SOW;
- Ceridian is not responsible for Client's lack of participation or inaccurate information provided to Ceridian;
 - Client is familiar with day to day use of the Subscribed Modules (through relevant Ceridian training or equivalent work experience).

Ceridian will not assume any liability for Client's interpretation of applicable law or regulations as a consequence of Ceridian providing the Services specified in this SOW, and Client remains solely responsible for all decisions affecting its employees and for using the Services in accordance with applicable law, professional guidelines, and privacy requirements in all jurisdictions where it operates. Client shall monitor changes to those laws applicable to Client's business, interpret applicable laws and regulations, determine requirements for compliance and notify Ceridian of any changes required as a result of such laws. Client shall conduct regular audits of Client's use of the Services. Client acknowledges and agrees that the Services do not constitute and shall not be relied upon by Client, as legal or financial advice. Client will not rely solely on its use of the Services to meet its compliance obligations.

3. Fees

- (i) The Fees have been calculated taking into account the work and materials Ceridian has reasonably estimated will be required to deliver the Services. This estimate has been made by Ceridian in good faith based on the information available to Ceridian at the time of executing the Order Form, including information and representations provided by Client. To the extent that new or additional information becomes available to Ceridian which impacts the estimated Fees, the Parties shall mutually agree to necessary changes to the SOW (including to corresponding Fees).
- (ii) Client shall pay to Ceridian the Fees set forth in the Order Form. The Dayforce Industry Solutions Implementation Fee will be invoiced on a time and materials basis (the quantity reflected in the Order Form being an estimate only), billed monthly based on the amount of work completed each month. In the event that Client terminates the Services for any reason whatsoever, Client will be responsible to pay to Ceridian any Fees incurred for hours worked up to the date of termination. The Recurring Fees set forth in the Order Form which will be invoiced and payable in accordance with the payment terms for the Dayforce Subscription Fee.
- (iii) In addition to the Fees, Client shall reimburse Ceridian for all expenses, if any, (and in accordance with Ceridian's expense policy) incurred in connection with the provision of the Services, including travel, accommodation and meals.

The following terms and conditions are incorporated into the Order Form between Ceridian and Client and form an integral part of the Agreement.

MASTER SERVICES AGREEMENT

1. DEFINITIONS AND INTERPRETATION. As used in this Master Services Agreement:

- 1.1 **"Affiliate(s)"** means a person that directly or indirectly controls, is controlled by, or is under common control with, a Party, where "control" means the possession, directly or indirectly, or the power to direct or cause the direction of the management policies of a person, whether through the ownership of voting securities, by contract or otherwise;
- 1.2 **"Agreement"** means this Master Services Agreement and Data Processing Addendum, together with all Order Forms, Statements of Work, Service Particulars, Rate Sheets and other written documents made between Client and Ceridian whether by execution of such document by both Parties or incorporation by reference;
- 1.3 **"Business Day"** means any day of the year other than a Saturday, Sunday or a statutory or public holiday in the Territory(ies), but only to the extent such term refers to a Service being delivered in respect of such Territory;
- 1.4 **"Ceridian"** means the Ceridian entity that has signed the Order Form;
- 1.5 **"Ceridian Contractor"** means any person who is not a Party or an employee of Ceridian, who Ceridian contracts or otherwise engages to assist with or perform any part of the Services;
- 1.6 **"Ceridian Property"** means, collectively: (i) any and all systems, hardware, software, networks, online content, applications, source codes, specifications, templates, modules, devices, equipment, documentations or other property owned, licensed, leased, produced, designed, created or used by Ceridian as of the Effective Date or thereafter, whether for purposes of providing the Services pursuant to the Agreement or for any other purpose; (ii) all Confidential Information of Ceridian; (iii) all Materials; and (iv) any and all Intellectual Property in any of the foregoing or related thereto;
- 1.7 **"Client Data"** means any data of Client supplied by or on behalf of Client to Ceridian hereunder, or any such data created as a result of the processing of such data, including any data contained or embodied in Ceridian Property;
- 1.8 **"Confidential Information"** means any information identified by either Party and/or its Affiliates as "Confidential" and/or "Proprietary", or which, under the circumstances, ought to be treated as confidential or proprietary, including non-public information related to the disclosing Party's (and/or an Affiliate's) business, employees, service methods, software, documentation, financial information, prices and product plans;
- 1.9 **"Data Processing Addendum"** means the addendum to this MSA together with all annexes thereto that sets forth the terms and conditions pursuant to which Personal Data will be transferred and processed in the framework of the Agreement;
- 1.10 **"Effective Date"** has the meaning set forth in Section titled "Term";
- 1.11 **"Fees"** means the fees payable by Client to Ceridian for the Services, as contemplated in Section titled "Fees" below;
- 1.12 **"Go Live Date"** means in respect of a Service, the Go Live Date as defined in the applicable Service Particulars;
- 1.13 **"Including"** and **"Includes"** shall, wherever they appear in the Agreement, be deemed to be followed by the statement "without limitation", and neither of such terms shall be construed to limit any words or statement which it follows to the specific or similar items or matters immediately following it;
- 1.14 **"Intellectual Property"** means all intellectual property rights (including all copyrights, patents, trademarks, trade secrets, industrial designs and know how) and all applications, continuations, extensions, notices, licenses, sublicenses, agreements and registrations thereof in any jurisdiction;
- 1.15 **"Master Services Agreement"** or **"MSA"** means this master services agreement and any schedules, appendices or other attachments hereto;
- 1.16 **"Materials"** means all materials, documentation, forms, brochures, tip sheets, posters, and online content furnished by Ceridian to Client, and any derivatives thereof;
- 1.17 **"Non-software Services"** means Services which are non-software in nature and have a Recurring Fee as identified on the Order Form;
- 1.18 **"Order Form"** means the applicable order form signed by Client and Ceridian in respect of the Services;
- 1.19 **"Parties"** means collectively Client and Ceridian, and each is a "Party";
- 1.20 **"Rate Sheet"** means the applicable Rate Sheet posted on <https://clientcontractportal.ceridian.com>. Such Rate Sheet items are intended to compensate Ceridian for additional work and/or disbursements as a result of the occurrence of such events (e.g., NSF charge, client stop payment request). Ceridian reserves the right to change the list of items and/or charges on the Rate Sheet from time to time by posting an updated copy on the above site;
- 1.21 **"Sanctions"** means all applicable economic and financial sanctions laws and regulations imposed, administered, and enforced from time to time by (a) the United States government, including those administered by the United States Department of the Treasury's Office of Foreign Assets ("OFAC") or the United States Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom, Australia, or Canada;
- 1.22 **"Sanctioned Country"** means any country or territory subject to comprehensive Sanctions;
- 1.23 **"Sanctioned Person"** means (a) any person or entity in any Sanctions-related list of designated persons maintained by OFAC, the United Nations Security Council, the European Union, any member state of the European Union, the United Kingdom, Australia, or Canada, (b) any person or entity operating, organized or resident in a Sanctioned Country, (c) the government of a Sanctioned Country or the Government of Venezuela, or (d) any entity owned or controlled by, or acting for or on behalf of, such person or persons;
- 1.24 **"Service Particulars"** means the applicable Service Particulars for the Services posted on <https://clientcontractportal.ceridian.com> at the time of signing the applicable Order Form;
- 1.25 **"Service Term"** means the term length for a particular Service, as will be expressly set forth in the applicable Order Form;
- 1.26 **"Services"** means, collectively, the services supplied by Ceridian to Client under the Agreement, as such services are more particularly described in the Service Particulars or a Statement of Work, and each is a "Service";
- 1.27 **"Software"** means any software program(s) licensed or provided by Ceridian to Client through which the Service will be provided, as such Software may be more particularly described in the Service Particulars or Statement of Work;

1.29 "Statement of Work or SOW" means the applicable Statement of Work between Client and Ceridian, setting forth in detail the work, services and deliverables to be provided by Ceridian in respect of any professional services work;

1.29 "Subscription Start Date" means (i) in respect of the initial Order Form, the date on which Ceridian has provided a Client-specific production environment to the Client; (ii) in the case of a subsequent Order Form, the date on which Client has access (generally by way of access enablement instructions) to any of the Subscribed Modules and/or Services purchased in such Order Form; and (iii) in the case of Non-software Services, the "Go Live Date";

1.30 "Taxes" means all sales taxes, value added taxes, goods and services taxes, business transfer taxes, withholding taxes or any other taxes now or hereafter levied or imposed by any governmental authority by reason of or with respect to the provision of the Services to Client, but, for certainty excluding Ceridian's taxes for income derived under the Agreement; and

1.31 "Territory" means the territory or territories in respect of which the Services are to be delivered, as identified in the Order Form.

2. SERVICES

2.1 Services. Ceridian shall provide the Service(s) to Client as more particularly set forth in the Service Particulars. Client acknowledges and agrees that certain Services or parts thereof may be subcontracted by Ceridian to Ceridian Contractors, including Affiliates of Ceridian. However, regardless of any such subcontract, Ceridian shall remain solely liable for performance of the Services and all of its obligations hereunder.

Affiliates Use. All Services are provided to Client on the strict condition that they are used for Client's own internal business use within the respective Territory or Territories and not for re-sale by Client or for any use by Client that would constitute providing a service for third parties. However, and notwithstanding the above it is agreed that the Services may be used by Client's Affiliates provided that:

- 2.1.1 the Services are used by Client and/or its Affiliates only within the respective Territory in which Ceridian has agreed to provide such Service;
- (a) Client shall remain liable for the acts and omissions of all of its Affiliates as if the acts and omissions were acts and omissions of Client;
- 2.1.2 any loss or damage arising in connection with the Services incurred by such Client Affiliate shall be actionable by Client as if such loss and damage were incurred by Client, but shall not be actionable by Client's Affiliate directly against Ceridian or any Ceridian Contractor;
- (b) such Affiliate shall be deemed to have agreed to comply with all covenants and obligations on the part of Client herein, and agreed that Ceridian shall be entitled to all of the rights and benefits granted herein, as if such Affiliate has been a signatory to the Agreement;
- 2.1.3 Client shall be liable with the Affiliate for any and all Fees and other charges, arising as a result of such Affiliate's use of the Services, including any consequent increases in transactions, user numbers, set-up requirements, data records or Service provision; and
- (c) as a condition of allowing the Affiliate to access or continue to use the Services, Ceridian may, but shall not be obliged to, require the Affiliate to execute such documentation as reasonably required by Ceridian to confirm the Affiliate's agreement to the terms hereof.

2.2 Professional Services. Any work or services to be delivered by Ceridian which are not described in the Service Particulars shall be described in a Statement of Work. The scope of services in a Statement of Work may be amended from time to time upon mutual agreement in writing by the Parties. Ceridian shall assign employees or subcontractors qualified to perform such professional services work, who shall exercise due professional care and competence in the performance of such Services. With respect to such professional Services, Client shall:

- 2.2.1 furnish qualified personnel to work with Ceridian personnel in the execution of each Statement of Work;
- (d) supply adequate resources and information as mutually agreed upon;
- 2.2.2 notify Ceridian in writing of any request for changes to the Statement of Work; and
- (e) review and accept or reject each deliverable within ten (10) Business Days of notification by Ceridian of completion of such work, or within such other time frame (and/or in such manner) as may be expressly contemplated in a Statement of Work, such acceptance not to be unreasonably withheld. Subject to any express acceptance criteria to the contrary set forth in a Statement of Work, each deliverable will be deemed to be accepted by Client on the tenth (10th) Business Day after notification by Ceridian of completion of such work, unless Client has provided Ceridian (within such ten (10) Business Day period) with written notice rejecting such work and specifying the manner in which the deliverable is defective.

3. TERM AND TERMINATION

3.1 Term. This Master Services Agreement will become effective when the Order Form is signed by Client and by Ceridian (the "Effective Date"), and shall continue until terminated in accordance with the terms hereof. The Service Term for each particular Service shall commence on the Subscription Start Date and continue for the length of the Service Term expressly set forth in the Order Form.

Termination. The Agreement (or at the option of the Party exercising the termination right, only the affected Service) may be terminated as follows:

- 3.1.1 by Ceridian, if Client fails to pay any Fees when due (excluding any Fees disputed in good faith in accordance with Section 4.4 below), and such failure continues for a period of fourteen (14) Business Days after Ceridian provides Client with written notice of such breach and expressly refers to the threat of termination therein;
- (f) by either Party if the other Party fails to materially perform, or is otherwise in default of, any one or more of its material obligations under the Agreement (except failure by Client to pay Fees, when the provisions of the preceding subsection shall prevail), and fails to remedy such failure within thirty (30) days after receiving written notice of default from the non-defaulting Party specifying the particulars of the breach and expressly referring to the threat of termination under this subsection, or if such breach is of a nature that it cannot be reasonably remedied within such 30-day period, then if the Party fails to commence to remedy such breach within such 30-day period or thereafter fails to proceed diligently to remedy such breach;
- 3.1.2 immediately by either Party if the other Party is, or is deemed for the purposes of any law to be, unable to pay its debts as they fall due or insolvent, or any corporate action, legal proceedings or other procedure or step is taken against such Party in relation to or with a view to winding-up, dissolution, administration, reorganization (in each case, whether out of court or otherwise) in respect of such Party (or a Client Affiliate receiving Services) or any of its assets, or any analogous procedure or step is taken in any jurisdiction;
- (g) immediately by Ceridian, if Ceridian, in its reasonable opinion, determines Client's use of a Service may violate any applicable anti-corruption, anti-bribery, or anti-money laundering, law or regulation (as further set forth in Section 13.5 below);
- 3.1.3 upon written notice by either Party, if the Service Term for every Service has expired (without being renewed or continuing in accordance with the Service Particulars), or has otherwise been terminated as permitted in accordance with the terms of the Agreement; or
- (h) upon written notice by Client, and upon payment by Client of any applicable early termination fee in accordance with the Service Particulars.

4. FEES AND PAYMENT

4.1 Fees. Client will pay the Fees plus all applicable Taxes, in the amounts and in accordance with the payment terms and processes set forth in the Order Form, SOW, Service Particulars and/or Rate Sheet. Any Taxes imposed on any transactions between Client and Ceridian contemplated under the Agreement shall be the subject of an additional charge and shall be shown separately on any invoice or similar document together with the required tax registration numbers, and paid by the Party at the same time as the Party pays the amount in respect of which such Taxes are payable. All Fees (and applicable Taxes) for Services provided within the Territory(ies) are the sole responsibility of Client and will be invoiced to, and payable by, a single local Client entity located in such Territory (where Services are provided in more than one Territory, all Fees and applicable Taxes will be collectively invoiced). However, in the event that Services are invoiced to a Client entity from a Ceridian entity outside of the Territory in which Client entity receiving such Services is located, Client entity shall remit payment to the Ceridian entity issuing the invoice and shall be solely responsible to self-assess for all Taxes relating to such Services to the extent such Taxes are not paid to Ceridian. In addition, neither Party shall exercise the right of set-off against any Fees. If Client is entitled to a tax exemption authorized by the applicable tax authorities in the applicable Territory(ies), Client will provide the required documentation to Ceridian, within the specified timeframe, in order for such tax exemption to be applied to invoices. Additionally, as permitted by applicable law, Client will honor a valid exemption certificate provided by Ceridian or other mandated document evidencing Ceridian's exemption from or reduction of withholding tax, as authorized or required by applicable law and work with Ceridian to obtain any

relevant documentation evidencing the foregoing, prior to payment. Client shall provide Ceridian with documentation evidencing any tax withholdings paid to the applicable tax authority.

4.2 Expenses. Client shall, in addition to all Fees, reimburse Ceridian for all reasonable travel, accommodation and meal expenses (in accordance with Ceridian's then current expense policy) incurred in connection with the implementation and provision of the Services. Ceridian will advise Client prior to incurring such expenses and obtain Client's prior approval for same. Travel and subsistence will be charged from the location from which the respective Ceridian employee performing the work is based, to the required place of work, and Ceridian will endeavor to direct staff for most appropriate use of skills and economy of expense.

4.3 Late Fees. Ceridian may charge a late payment fee in the amount of 1% per month for late payments made by Client. Client agrees to pay late payment fees including all costs of collection (including reasonable legal fees and expenses). If Client fails to comply with any of the terms of payment for more than fourteen (14) Business Days after receipt of a written demand for payment (excluding any Fees disputed in good faith in accordance with Section 4.4 below), Ceridian may, in addition to any other right available to it, suspend performance of all or any part of its Services.

4.4 Good Faith Dispute. In the event of a good faith dispute with respect to any Fees, the payment due date (as it relates to the disputed amount) will not be calculated until the disputed amount has been settled to the satisfaction of both parties, acting reasonably, provided that the Client has given Ceridian written notice of the disputed amount (and the reasons for such dispute)

4.5 Currency. All amounts payable under the Agreement are payable in the currency stated in the relevant Order Form and shall be remitted to Ceridian in that currency.

5. CONFIDENTIALITY AND PRIVACY

5.1 Non-Disclosure. Neither Party shall disclose Confidential Information of the other Party except as permitted in accordance with the terms of the Agreement. The receiving Party shall use the same degree of care as it uses to protect its own Confidential Information of like nature, but no less than a reasonable degree of care, to maintain in confidence the Confidential Information of the disclosing Party. The foregoing obligations shall not apply to any information that (i) is at the time of disclosure, or thereafter becomes, part of the public domain through a source other than the receiving Party; (ii) is subsequently learned from a third party that does not impose an obligation of confidentiality on the receiving Party; (iii) was known to the receiving Party at the time of disclosure; (iv) was generated independently by the receiving Party; or (v) is required to be disclosed by law, subpoena or other legal process. Ceridian may transfer Client's Confidential Information to a governmental agency or other third party to the extent strictly necessary for Ceridian to perform its obligations under the Agreement or if Client has given Ceridian written authorization to do so.

5.2 Compliance. Each Party agrees to comply with the Data Processing Addendum.

5.3 Injunctive Relief. The receiving Party acknowledges and agrees that any breach by it or by any of its agents, representatives or employees of the provisions hereof may cause irreparable harm to the disclosing Party and that actual damages may be difficult to ascertain and in any event may be inadequate. Accordingly, in the event of such breach, the disclosing Party shall be entitled to seek temporary and/or permanent injunctive relief against the receiving Party and/or its agents, representatives and employees (in addition to such other legal or equitable remedies as may be available), without the necessity of proving irreparable harm or actual damage to the disclosing Party.

6. INTELLECTUAL PROPERTY

6.1 Ownership of Intellectual Property. Each Party shall remain the owner of all Intellectual Property it owns prior to the Effective Date and that which it creates in the performance of its obligations under the Agreement. As between the Parties and vis à vis any third party, Ceridian is and shall remain the sole and exclusive owner of all Ceridian Property and any and all components thereof, whether owned on the Effective Date or acquired thereafter, and Client is and shall remain the sole and exclusive owner of Client Data and any and all components thereof. Forthwith upon the expiration or termination of the Agreement or a particular Service, as the case may be, each Party shall forthwith return to the other Party, all such property in its possession or control relating to Agreement or terminated Service, as the case may be.

6.2 Right of Use. Ceridian hereby grants to Client, starting on the Effective Date and continuing for so long as required for a Service, the right to access and use the Software and such other Ceridian Property as may be required for Client to receive and use the Services internally within the Territory, subject to and in accordance with the following terms:

6.2.1 the Software and Ceridian Property is provided solely for the purpose of enabling Client to receive and use the Services, and without limitation, Client shall not use it in any manner that would be illegal, offensive or damaging to Ceridian or any third party;

(i) Client shall not assign, transfer, sublicense, charge or otherwise deal in, encumber or make available to any third party the Software or Ceridian Property, and any attempt to do so shall be null and void and shall constitute a material breach of the Agreement;

6.2.2 Client is responsible for all activities that occur in the accounts of its employees and agents, and for compliance by such parties with the Agreement, and shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services, as well as notify Ceridian promptly of any such unauthorized access or use;

(j) to the extent the Software or Ceridian Property is licensed to, or otherwise in the possession or under the control of, Client, then Client agrees not to modify, merge, copy, disseminate, display, disassemble, reverse engineer, tamper with, or otherwise attempt to decrypt or derive the source code, any trade secrets or any proprietary information or create any applications or any derivative works thereof.

6.3 Indemnity for Infringement. Ceridian will indemnify and hold Client harmless from and against any and all claims alleging that the Services and any Intellectual Property furnished by Ceridian violate any third party's patent, trade secret or copyright, except to the extent that such claims arise from Client's modification of the Services or Intellectual Property or from Client's use of such Services in excess of the provisions set out in this Section 6 (including the use by the Client or its Affiliates out of the Territory). However, Ceridian's liability hereunder shall be conditional upon Client providing Ceridian with timely written notice of any such claim or threat thereof, and the full and exclusive authority for, and information for and assistance with, the defense and settlement thereof. If such claim has occurred, or in Ceridian's opinion is likely to occur, Client agrees to permit Ceridian, at its option and expense, either to procure for Client the right to continue using the Intellectual Property, or replace or modify the same so that it becomes non-infringing. If neither of the foregoing alternatives is reasonably available, Ceridian may immediately terminate its obligations (and Client's rights) under the Agreement with regard to such Intellectual Property (if the Services are deliverable without such Intellectual Property) or terminate the Agreement in its entirety (to the extent Ceridian is not able to provide the Service without such Intellectual Property).

7. DISCLAIMER OF IMPLIED TERMS

7.1 The express and limited terms, representations and warranties provided in the Agreement (including in the Software Functionality and Global Use Guide, when applicable) comprise all of the representations and warranties made with respect to the Services, products, Intellectual Property and other items provided, furnished, licensed, leased or otherwise made available or performed to Client by Ceridian pursuant to or in relation to the Agreement. Any further or other warranties or conditions, whether express or implied, contractual or statutory, including any implied warranties or merchantability or fitness for a particular purpose, are expressly excluded to the extent permitted by law.

8. LIMITATIONS OF REMEDIES

8.1 Limitation of Liability. To the maximum extent permitted by applicable law, Client agrees that Ceridian's total maximum aggregate cumulative liability (including that of Ceridian's Affiliates and Ceridian Contractors) to the Client, its Affiliates and other related parties (collectively in this Section referred to as the "Aggrieved Parties") for all past, present and future claims, demands, actions, causes of actions, requests, lawsuits, judgments, damages, costs, expenses, prejudices or losses (collectively in this Section referred to as the "Claims") in relation to or arising under the Agreement (whether for breach of contract, strict or

statutory remedy, negligence or any other legal or equitable theory, shall be limited to the Aggrieved Parties' actual direct damages and shall not, under any circumstances, exceed, in the aggregate, for all Claims past, present and future, the total amount paid by the Client (and any Affiliates) under the Agreement during the 12 months immediately preceding the loss. This remedy shall be the Aggrieved Parties' sole and exclusive remedy against Ceridian, any Ceridian Affiliate and Ceridian Contractor. However, the above limitation of liability shall not apply to Claims relating to the following:

- 8.1.1 death or personal injury resulting from that Party's negligence;
- (k) that party's fraud, statements made fraudulently or willful misconduct;
- 8.1.2 any Claim for indemnity by the Client under Section 6.3 (IP Infringement); and
- (l) any acts or omissions for which the governing law prohibits the exclusion or limitation of liability.

8.2 **Damages Disclaimer.** To the maximum extent permitted by applicable law, and notwithstanding anything to the contrary contained in the Agreement, neither Party nor any of its Affiliates shall be liable for any indirect, consequential (including damages for business interruption or loss of business information or data), special, punitive, exemplary or incidental damages, or damages for loss of profits, goodwill, anticipated savings or revenues, arising in relation to or under the Agreement, even if advised of the possibility of such damages or if the possibility of such damages was reasonably foreseeable.

9. CHANGES TO LEGISLATION

9.1 In the event of a change to any applicable law or regulation affecting the Services, Ceridian may make changes to the Agreement as are reasonably necessary to address such changes, with thirty (30) days' prior written notice to Client. If, upon notification of the change, Client elects not to continue the Services, then notwithstanding anything to the contrary in the Agreement, Client may terminate the Agreement upon thirty (30) days' prior written notice without penalty or cancellation fees.

10. NOTICES

10.1 All notices to the Parties shall be in writing (including fax or similar writing) and shall be sent to Client at the address set forth on the Order Form, and to Ceridian to the attention and address of Client's account representative (if any) or to the local Ceridian service center or to such other address or fax number as either Party may hereafter specify by written notice to the other Party. Each such notice, request or communication shall be effective upon receipt, provided that if the day of receipt is not a Business Day, then the notice shall be deemed to have been received on the next succeeding Business Day.

11. FORCE MAJEURE

11.1 Neither Party nor their respective Affiliates (nor Ceridian Contractor) shall be held liable or responsible to the other Party nor be deemed to have defaulted under or breached the Agreement for failure or delay in fulfilling or performing any term of the Agreement (except for the failure to pay money) when such failure or delay is caused by or results from causes beyond the reasonable control of the affected Party.

12. BUSINESS CONTINUITY PLAN

12.1 Ceridian covenants, represents and warrants that it has developed, and will keep current a formal business continuity plan which details strategies for response to and recovery from potential disasters that could disrupt Ceridian's operations and timely delivery of the Services.

13. GENERAL PROVISIONS

13.1 The Agreement and the Parties' rights and obligations shall be governed by the laws of the state of Missouri.

13.2 Either Party may assign its rights and obligations under the Agreement without the consent of the other Party: (i) to an Affiliate of the assigning Party or to a partnership, limited liability company, joint venture or other similar legal entity, of which at least 50% of the equity interests are owned directly or indirectly by the assigning Party or any parent entity, but no such assignment shall release the assigning Party, and such Affiliate or successor entity shall be jointly and severally liable under the Agreement; or (ii) to any successor to its business, or a substantial part thereof, whether through merger, amalgamation, consolidation, divestiture or sale, provided that the proposed successor entity is not a primary competitor of the other Party. Further, Ceridian may without the consent of Client and without regard to any other limitations set forth in the Agreement, grant a security interest in this Agreement to a Ceridian lender, provided that such grant of security in no way affects or derogates from any of Client's rights under this Agreement. Any other transfer or assignment of the Agreement or any rights hereunder requires the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. The Agreement shall enure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns. Upon request of the non-assigning Party, any permitted assignee shall execute an agreement in writing with the other Party hereto assuming all obligations of its assignor under the Agreement. Any purported assignment in contradiction of this Section shall be null and void and be of no force or effect.

13.3 In the case of any conflict between the main body of the Agreement which are applicable to all Services, and the terms applicable to only one or more particular Service(s) as set forth in the Service Particulars, Order Form or Statement of Work, the terms of the Service Particulars, Order Form or Statement of Work shall govern, but only with respect to the particular Services and/or Territory to which the Service Particulars, Order Form or Statement of Work relates.

13.4 Client represents and warrants to Ceridian that Client is not a Sanctioned Person, and in connection with all activities conducted pursuant to or in connection with the Agreement, Client will comply with all applicable Sanctions. Without limiting the foregoing, Client represents and warrants that it will not request Services from Ceridian that relate, directly or indirectly, to transactions, dealings, or relationships with or involving a Sanctioned Person, and will not use the Services to benefit, directly or indirectly, any Sanctioned Person, unless such activity is first identified to Ceridian for review and Ceridian, in its sole discretion, specifically approves the activity.

13.5 Client is responsible for its own compliance with laws, regulations and other legal requirements applicable to the conduct of its business, use of the Services and Software, and agrees to comply with such laws, regulations and other legal requirements including applicable (i) anti-corruption and anti-bribery laws, including the U.S. Foreign Corrupt Practices Act 1977, Canadian Corruption of Foreign Public Officials Act and the UK Bribery Act 2010 and (ii) anti-money laundering laws or regulations. Ceridian reserves the right, at any time and without notice, to suspend any Service that Ceridian, in its reasonable opinion, determines Client's use of which may violate applicable law or regulation.

13.6 Client is solely responsible for the accuracy and completeness of all records and information furnished to Ceridian. In no event will Ceridian be responsible for any errors or matters existing prior to the Go Live Date, and any entries made by Client into the system thereafter, and Ceridian shall be entitled to rely solely on the information, authorizations, representations and warranties provided by Client pursuant to the Service Particulars. Ceridian is not obligated to commence providing Services until receipt from Client of all information reasonably required to be received from Client to provide the Services. Client will reimburse Ceridian for the costs of producing any information in Ceridian's possession or control relating to Client's business or employees that Ceridian produces in response to a Client request or court order. Ceridian may dispose of Client's records and data in accordance with Ceridian's data retention policy in effect from time to time (but in compliance with all privacy laws as contemplated in this Master Services Agreement).

13.7 No delay or indulgence by either Party at any time, to enforce any of the provisions of the Agreement, or any right with respect thereto, shall be construed as a waiver of such provision or right, nor shall it prejudice or restrict the rights of that Party. A waiver of its rights shall not operate as a waiver of any subsequent breach. No right, power or remedy conferred upon or reserved for either Party is exclusive of any other right, power or remedy available to that Party and the rights, powers and remedies shall be cumulative.

13.8 The Parties have expressly requested that the Agreement be drawn up in the English language.

13.9 Any provision of the Agreement which is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

13.10 Headings in the Agreement are for ease of reference only and will not affect its interpretation.

13.11 If more than one entity has signed the Agreement for the same Party, or an entity has signed for and on behalf of another entity in addition to itself, the covenants of all such entities shall be considered to be joint and several and shall apply to each of them. Additionally, should any one or more of such entities wish to amend the Agreement, or add or remove Services, it may do so separate and apart from the other entities of the same Party; provided however that: (i) the amendment or change to the Services shall only apply in respect of such entity(ies), and (ii) the entities comprising the Party shall only be jointly and severally liable in relation to the terms and Services common to such entities.

13.12 Notwithstanding the legal entity that has signed the Order Form on behalf of Ceridian, the Parties acknowledge and agree that, where applicable, Services will be provided by the local Ceridian Affiliate operating in the applicable Territory (and will be billed directly from same).

13.13 The Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements and understandings regarding the subject matter hereof, whether written or verbal. Any amendment to the Agreement must be in writing and signed by authorized representatives of both Parties.

Client hereby consents to Ceridian conducting credit investigations, from time to time, including such requests for and exchange of information to and from consumer reporting agencies or credit grantors as it may require to approve and maintain any funding arrangements to be granted by Ceridian in relation to the Services, and to provide payment history information to such agencies.



DATA PROCESSING ADDENDUM

This Data Processing Addendum set forth the terms and conditions pursuant to which Personal Data will be transferred and processed in the framework of the Agreement.

DEFINITIONS

For the purposes of this Data Processing Addendum, capitalized terms used shall have the following meanings:

"Authentication Credentials"	means the mechanism/tool used to prove a person's identity, such as passwords and access tokens.
"Controller"	means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the Processing of Personal Data.
"Data Protection Legislation"	means the applicable Laws of any country with regard to the protection of Personal Data relating to the Services, as amended or replaced from time to time.
"Data Subject"	means an identified or identifiable natural person to whom the Personal Data relates. An identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person. The relevant categories of Data Subjects are identified in <u>ANNEX 1</u> .
"GDPR"	means (i) Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) ("EU GDPR"); (ii) the EU GDPR as saved into United Kingdom law by virtue of section 3 of the United Kingdom's European Union (Withdrawal) Act 2018 (the "UK GDPR"); and (iii) any national data protection Laws made under (i) or (ii), in each case as applicable and as may be superseded, amended or replaced from time to time.
"Law(s)"	means all laws or statutes of any jurisdiction and any other regulation, ordinance, order, decree or rule having the force of law, whether in existence as of the Effective Date or promulgated thereafter, as amended or superseded.
"Personal Data"	means any information relating to a Data Subject provided by the Data Subject, Client, or a third party on either of their behalf in connection with the Services. The relevant categories of Personal Data covered by this Data Processing Addendum are identified in <u>ANNEX 1</u> .
"Personal Data Breach"	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise processed in connection with the provisioning of the Services.
"Processing", "Process(es)" or "Processed"	means any operation or set of operations which is performed upon Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
"Processor"	means a natural or legal person, public authority, agency or any other body which processes Personal Data on behalf of the Controller.
"Restricted Transfer"	means: (i) where the EU GDPR applies, a transfer of personal data from the European Economic Area to a country outside of the European Economic Area which is not subject to an adequacy determination by the European Commission; and (ii) where the UK GDPR applies, a transfer of personal data from the United Kingdom to any other country which is not subject based on adequacy regulations pursuant to Section 17A of the United Kingdom Data Protection Act 2018; and (iii) where Swiss Data Protection Legislation applies, a transfer of personal data from Switzerland to any other country which is not subject to an adequacy determination by the Swiss Federal Data Protection and Information Commissioner.
"Standard Contractual Clauses"	means (i) where the EU GDPR or Swiss Data Protection Legislation applies, the contractual clauses annexed to the European Commission's Implementing Decision 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council ("EU SCCs"); and (ii) where the UK GDPR applies, standard data protection clauses adopted pursuant to or permitted under Article 46 of the UK GDPR ("UK SCCs"), in the form posted on https://clientcontractportal.ceridian.com , as updated from time to time.
"Sub-processor"	means an entity (including any Ceridian Affiliate) engaged by Ceridian who undertakes to receive Personal Data intended for Processing pursuant to Article 7 hereof.

ARTICLE 1 INTERPRETATION

1.1 This Data Processing Addendum forms an integral part of the Agreement. The provisions of the Agreement therefore apply to this Data Processing Addendum. All capitalized terms not defined in this Data Processing Addendum will have the meaning set forth in the Agreement.

ARTICLE 2 SPECIFICATION OF THE DATA PROCESSING

2.1 Ceridian and Client each hereby represent that they will Process Personal Data relating to the Services in accordance with the obligations imposed upon them respectively under Data Protection Legislation. However, Ceridian is not responsible for determining the requirements of or compliance with any Data Protection Legislation or other Laws applicable to Client or Client's industry that are not generally applicable to Ceridian as a service provider.

2.2 Ceridian acknowledges that it is receiving Personal Data in connection with the performance of Services it provides under the Agreement. Ceridian shall Process Personal Data as per Client's written instructions as set forth in the Agreement, and the Client's use and configuration of features of the Services. Ceridian

acknowledges that the nature, purpose, subject matter, and duration of the Processing, and the type of Personal Data and categories of Data Subjects whose Personal Data will be delivered to Ceridian for Processing under the Agreement, are determined by the Client and shall be as set out in **ANNEX 1**. Client hereby gives Ceridian permission to use, transfer and Process such Personal Data as set forth in this Data Processing Addendum. As applicable under Data Protection Legislation, Ceridian shall immediately inform the Client if, in its opinion, any of Client's instructions violate Data Protection Legislation.

2.3 Ceridian shall use commercially reasonable efforts to cooperate with and assist Client for the fulfilment of Client's obligations under applicable Data Protection Legislation with respect to responding to requests of Data Subjects, Personal Data Breach notifications, and requests for audit or investigation from enforcement authorities.

ARTICLE 3 EXERCISE OF PERSONAL DATA RIGHTS

3.1 Where Personal Data is not made available through self-service access to Client or Client's employees, Ceridian will, without undue delay and in accordance with any time period specified under the applicable Data Protection Legislation either: (a) provide Client, in its role of Controller, with the direct ability through Ceridian's platform to access, correct, delete or otherwise fulfil requests from Data Subjects to exercise their rights under Data Protection Legislation in respect of their Personal Data; or (b) otherwise provide assistance to Client to access, correct, delete or otherwise fulfil requests from Data Subjects to exercise their rights under Data Protection Legislation in respect of their the Personal Data. in accordance with the instructions of Client and insofar as this is possible. The Client acknowledges and agrees that in the event such cooperation and assistance require additional resources on the part of Ceridian, such effort will be chargeable at a fee as mutually agreed to by the Parties acting reasonably.

ARTICLE 4 DISCLOSURE

4.1 Ceridian will not disclose Personal Data to any third party, except (a) as Client directs, (b) as stipulated in the Agreement, (c) as required for Processing by Sub-processors in accordance with Article 7, or (d) as required by applicable Law.

4.2 Ceridian shall inform the persons acting on its behalf and having access to Personal Data about the applicable requirements and ensure their compliance with such requirements through contractual or statutory confidentiality obligations to maintain the security and confidentiality of Personal Data in accordance with provisions appropriate to the sensitivity of the Personal Data. For the avoidance of doubt, such security and confidentiality measures shall provide a generally equivalent level of protection as set forth in the Agreement, including this Data Protection Addendum.

ARTICLE 5 DELETION AND RETURN OF PERSONAL DATA

5.1 Client Data:

- (a) Upon termination of the Agreement, Ceridian shall delete Personal Data on its systems as soon as reasonably and technologically practicable unless otherwise instructed by Client prior to the effective date of termination or as otherwise required by applicable Law. The Client will be solely responsible for ensuring that it has the necessary copies of all Personal Data during the Service Term and thereafter.
- (b) Where Client requests that Ceridian block, delete and/or return Personal Data (the costs attached to such request are at Client's expense), Client understands, acknowledges, and agrees that it can affect Ceridian's ability to perform the Services as a result of Ceridian complying with such request. As such, Ceridian shall not have any liability for breach of performance or any losses incurred by Client arising from or in connection with Ceridian's inability to perform the Services in accordance with the Agreement as consequence of Ceridian fulfilling Client's request.
- (c) Ceridian is not responsible for compliance with Client's data retention requirements.

ARTICLE 6 LOCATION OF PROCESSING

6.1 Personal Data that Ceridian processes on Client's behalf may be Processed in any country in which Ceridian and its authorized Sub-Processors operate to perform the Services and Client authorizes Ceridian to perform any such transfer of Personal Data to any such country and to Process Personal Data in such country in relation to the provision of the Services. Any transfer from one territorial jurisdiction to another territorial jurisdiction (the EU constituting one single jurisdiction for the purpose of this Article) will only be undertaken in compliance with the applicable Data Protection Legislation, such as the execution of an additional data transfer addendum, as required.

6.2 When the transfer of Personal Data from Client (or any of its Affiliates) to Ceridian is a Restricted Transfer, then the Standard Contractual Clauses shall be deemed incorporated into this Agreement and will apply to such transfer. The Standard Contractual Clauses are available at <https://clientcontractportal.ceridian.com>.

ARTICLE 7 USE OF SUB-PROCESSORS

7.1 Client acknowledges and expressly agrees that Ceridian may transfer Personal Data to Sub-processors for the provision of the Services and is granted a general authorization to engage Sub-processors provided such transfer is done in accordance with the terms of this Article 7.

7.2 Ceridian will enter into written agreements with any such Sub-processor which contain no less onerous data protection obligations as this Data Processing Addendum. Sub-processor written agreements will permit Sub-processors to obtain Personal Data only to deliver the services Ceridian has entrusted them with and will prohibit Sub-processors from using such Personal Data for any other purpose.

7.3 Where required by applicable Data Protection Legislation, Ceridian will make available a list of Sub-processors which shall be posted on the customer due diligence portal (<https://duediligence.ceridian.com>).

7.4 Where required by Data Protection Legislation, Ceridian will provide prior notice to inform Client about changes relating to the Sub-processors and in addition:

- (a) If Client reasonably objects to the Processing of Personal Data by one or more Sub-processors, then Client shall notify Ceridian in writing (including e-mail) within fifteen (15) Business Days after receipt of Ceridian's notice.
- (b) In the event Client reasonably objects to a Sub-processor, Ceridian shall as soon as is reasonably practicable take reasonably necessary steps to evaluate, investigate and address Client's concerns, including conducting further due diligence of the Sub-processor if necessary, and provide Client with a report detailing the actions taken to correct or mitigate such concerns and/or a remediation plan. If Ceridian and Client cannot mutually agree on the plan to mitigate the concerns, Ceridian may identify an alternative preferred Sub-processor, and the Parties shall meet in good faith to determine the feasibility of Ceridian engaging such Sub-processor to provide the Services, the timeframe required to source and deploy the Sub-processor, and any resulting additional fees which may be applicable. However, if the Parties are unable to agree to same within six (6) months, Client may terminate the relevant part of the Agreement regarding those Services which cannot be provided by Ceridian without the use of the Sub-processor concerned as its sole and absolute remedy.

ARTICLE 8 TECHNICAL AND ORGANIZATIONAL MEASURES

8.1 Ceridian has implemented and will maintain a security program that implements technical and organizational measures (taking into account state of the art and cost of implementation) appropriate to the nature, scope, context and purposes of Processing, as well as the risk of varying likelihood and severity for the rights and freedoms of Data Subjects, in order to protect Personal Data against accidental, unauthorized or unlawful access, disclosure, alteration, loss or destruction.

8.2 The technical and organizational measures addressed by Ceridian's security program are described in **ANNEX 2** of this Data Processing Addendum. Ceridian may adapt such measures from time to time, for example, as a result of the development of regulations, technology and other industry considerations.

8.3 During the term of this Data Processing Addendum, Client may request Ceridian to provide Client within a reasonable period of time with an updated description of the implemented technical and organizational protection measures.

ARTICLE 9 PRIVACY AND DATA PROTECTION REPRESENTATIVE

9.1 Ceridian has appointed an individual responsible for privacy and data protection matters. The appointed person can be reached at Privacy@Ceridian.com

ARTICLE 10 PERSONAL DATA BREACH

10.1 In the event of a Personal Data Breach of Client's Personal Data Processed by Ceridian or its Sub-processors, and irrespective of its cause, Ceridian shall notify Client without undue delay after having become aware of such Personal Data Breach.

10.2 Client must notify Ceridian promptly, upon becoming aware, about any possible misuse of its accounts or Authentication Credentials or any security issue related to its use of the Services.

10.3 The Party responsible for the Personal Data Breach shall without undue delay further investigate the Personal Data Breach and shall keep the other Party informed of the progress of the investigation and take reasonable steps to further minimize the impact. Both Parties agree to fully cooperate with such investigation and to assist each other in complying with any notification requirements and procedures.

10.4 A Party's obligation to report or respond to a Personal Data Breach is not and will not be construed as an acknowledgement by that Party of any fault or liability with respect to the Personal Data Breach.

10.5 Upon becoming aware of a Personal Data Breach, Ceridian shall inform Client without undue delay.

ARTICLE 11 DATA PROTECTION IMPACT ASSESSMENTS

11.1 Where Client is obligated by applicable Data Protection Legislation to execute a data protection impact assessment ("DPIA"), Ceridian shall provide reasonable cooperation and assistance to Client for the execution of the DPIA to allow Client to comply with its obligations (including any obligation to consult with competent data protection authorities). Ceridian shall be entitled to invoice Client on a time and material basis at the Ceridian's then current rates for any time expended for any such assistance.

ARTICLE 12 CLIENT RESPONSIBILITIES

12.1 Client shall comply with Data Protection Legislation as well as any other Laws applicable to Client or Client's industry. If compliance with any such specific Laws requires any actions with regard to data protection on the part of Ceridian in addition to the obligations set forth in this Data Processing Addendum, such actions will only be taken upon mutual agreement between the Parties. For the avoidance of doubt, where agreed by the Parties, Ceridian will use commercially reasonable efforts to accommodate additional requirements. In any event, Client will provide reasonable advance notice of the required actions, cooperate fully with Ceridian in respect thereof and compensate Ceridian for any such efforts that require additional services or investment or modifications in the Services, as agreed in advance by the Parties.

12.2 Client represents and warrants that, where it provides any Personal Data to Ceridian for Processing by Ceridian:

- (a) it has duly informed the relevant Data Subjects of their rights and obligations, and in particular has informed them of the possibility of Ceridian Processing their Personal Data on Client's behalf and in accordance with its instructions;
- (b) it has complied with all applicable Data Protection Legislation in the collection and provision to Ceridian of such Personal Data and has taken all necessary steps to ensure that Ceridian can Process such Personal Data, including by obtaining the Data Subjects' consent, if required; and
- (c) the Processing of such Personal Data in accordance with the instructions of the Controller is lawful.

12.3 Client shall take reasonable steps to keep Personal Data up to date to ensure the data are not inaccurate or incomplete with regard to the purposes for which they are collected.

12.4 If a Data Subject contacts Ceridian directly in order to exercise his or her individual rights such as requesting a copy, correction or deletion of his or her data or wanting to restrict or object to the Processing activities, Ceridian will promptly direct such Data Subject to Client. In support of the above, Ceridian may provide Client's basic contact information to the requestor, and, to the extent disclosed by the Data Subject, Data Subject's basic contact information and a summary of the request to Client. Client shall inform Data Subjects that they may exercise these rights solely vis-à-vis Client. Client agrees to answer to and comply with any such request of a Data Subject in accordance with applicable Data Protection Legislation.

12.5 With regard to components that Client provides or controls, including but not limited to workstations connecting to Ceridian Services, data transfer mechanisms used, and credentials issued to Client personnel, Client shall implement and maintain the required technical and organizational measures for data protection.

ARTICLE 13 NOTIFICATIONS

13.1 Unless legally prohibited from doing so, Ceridian shall promptly notify Client if it or any of its Sub-processors, with regard to Client's Personal Data:

- (a) receives an inquiry, a subpoena or a request for inspection or audit from a competent public authority relating to the Processing;
- (b) intends to disclose Personal Data to any competent public authority outside the scope of the Services of the Agreement. At the request of Client, Ceridian shall provide a copy of the documents delivered to the competent authority to Client.

13.2 Any notification under this Data Processing Addendum, including a Personal Data Breach notification, will be delivered to one or more of Client's contact persons via e-mail. Upon request of Client, Ceridian shall provide Client with an overview of the contact information of the registered Client's contact persons. It is Client's sole responsibility to timely report any changes in contact information and to ensure Client's contact persons maintain accurate contact information.

13.3 If either Party is subject to an inquiry by a data protection authority, regulator or agency, the scope of which includes operations or information within the other Party's control, each Party agrees to provide reasonable cooperation to the other Party.

ARTICLE 14 AUDIT & COMPLIANCE

14.1 In addition to Ceridian's obligations in [Article 8](#), where required by applicable Data Protection Legislation, Ceridian will assist Client in demonstrating compliance with this Data Protection Addendum by making available upon request of Client information reasonably necessary to demonstrate such compliance.

14.2 Where required by applicable Data Protection Legislation, or where a competent data protection authority requires this under applicable Data Protection Legislation, Client may, upon thirty (30) calendar days' prior written notice (or such shorter timeframe imposed by the competent data protection authority), at its own expense, instruct acknowledged audit professionals to conduct an audit of Ceridian's compliance with applicable Data Protection Legislation no more than once every twelve (12) months provided that such audit inquiries shall not unreasonably impact in an adverse manner Ceridian's regular operations and do not prove to be incompatible with the applicable Data Protection Legislation or with the instructions of a competent authority. In the case of a material Personal Data Breach established to be caused by Ceridian, the twelve (12) month interval shall not apply.

14.3 Before the commencement of any such audit inquiries, Client and Ceridian shall mutually agree upon the scope, timing and duration of the audit.

14.4 Client shall promptly notify Ceridian with information regarding any non-compliance discovered during the course of additional audit inquiries. Client agrees to provide Ceridian with a draft of the audit report for review. Ceridian is entitled to propose any amendments and add management comments to this draft before Client establishes the final version.

14.5 During such audit, Ceridian shall provide reasonable cooperation and assistance to the auditors. Ceridian shall be entitled to invoice Client, as mutually agreed between the Parties in advance, on a time and material basis at Ceridian's then current rates for any time expended for any such audit inquiries. Client shall not be entitled to claim compensation for any kind of audit expenses incurred by Client.

14.6 The Ceridian audit report, any other information to which Client or the aforementioned audit professionals have access pursuant to any audit activities, as well as an attestation of the implementation of the technical and organizational measures to protect Personal Data will be considered Ceridian Confidential Information.

ARTICLE 15 TERM AND TERMINATION

15.1 This Data Processing Addendum is effective once incorporated into the Agreement in accordance with the MSA to the Agreement, and remains in force until Processing of Personal Data by Ceridian is no longer required (a) in the framework of or pursuant to the Agreement or (b) for a period after termination of the Agreement or the relevant Services for any reason whatsoever, in accordance with Client's explicit instructions or other legally permissible basis.

ARTICLE 16 APPLICABLE LAW

16.1 This Data Processing Addendum and any rights and obligations arising out of it shall be interpreted according to and governed by the law governing the Agreement.

ANNEXES

1. Details of the Personal Data Processing
2. Technical and Organizational measures

ANNEX 1: DETAILS OF THE PERSONAL DATA PROCESSING

ARTICLE 1 CATEGORIES OF DATA SUBJECTS

Present and former job candidates, employees, contractors, agents and other collaborators of Client, as well as third parties who are appointed by the aforementioned persons as family members or contact persons.

ARTICLE 2 DURATION OF PROCESSING

The Personal Data shall be processed for the duration of this Agreement.

ARTICLE 3 CATEGORIES OF PERSONAL DATA

The Personal Data transferred concerns all relevant information that is required to deliver the requested Services, which may include (a subset of) the following categories of data:

- (a) Personal details such as name, birth date, etc.
- (b) Contact details such as address, e-mail address, telephone number, etc.
- (c) Marital status and information on partner and children
- (d) Payment details, including bank account number
- (e) Employee number
- (f) Job (description)
- (g) Employee contract data including but not limited to gross salary, compensations and other employee benefits
- (h) Social security number (if required for government declarations), or equivalent
- (i) Time registration and absence information
- (j) Qualifications, including CV and references
- (k) Information regarding education, training, etc. the Data Subject has received or will follow
- (l) Information regarding personal development and evaluations
- (m) Authentication Credentials to use the Services, such as username, IP address, PC Name, etc.
- (n) Activities performed by Client users in their use of the Services
- (o) Any other category of Personal Data agreed upon between Parties in the relevant service exhibit, service particulars, order form, statement of work or any other document of the Agreement.

Client's data fields can be partly configured as part of the implementation of the Services or as otherwise permitted within the scope of the Services and may include additional categories of personal data.

ARTICLE 4 PURPOSES OF PROCESSING OF PERSONAL DATA

Personal Data will be processed for the following purposes:

- (a) Performance of the Services including but not limited to:
 - (i) Talent acquisition
 - (ii) Employee HR administration
 - (iii) Payroll and employee benefits administration
 - (iv) Management of employee development and training plans
 - (v) Personal development and performance evaluation of employees
 - (vi) Workforce planning and organization
- (b) Compliance with Data Protection Legislation and information security requirements
- (c) Any other purpose of Processing of Personal Data agreed upon between Parties in the relevant service exhibit, service particulars, order form, statement of work or any other document of the Agreement.
- (d) Ceridian may de-identify Personal Data and use De-identified Data (as defined below), in aggregation with others', for the purpose of creating/improving the Services, products and software provided by Ceridian, trend analysis and benchmarks, and performing machine learning tasks such as sentiment analysis. De-identified Data may be utilized to deliver insights and provide analysis to third parties. De-identified Data will not be used to build household or consumer profiles. "De-identified Data" as used herein means data, whether used alone or in combination with other information, that does not allow an individual to be identified and is not capable of being reversed engineered. Ceridian represents that it implements technical safeguards that prohibit re-identification of Data Subjects to whom the data may pertain, business rules that specifically prohibit such re-identification, and business processes and technical safeguards that prevent inadvertent release of De-identified Data. Ceridian represents that it makes no attempt to re-identify De-identified Data.

ANNEX 2: TECHNICAL AND ORGANIZATIONAL MEASURES

Domain	Practices
Information Security Policy and Organization of Information Security	Ownership for Security and Data Protection. Ceridian has appointed an Information Security Officer responsible for coordinating and monitoring the security rules and procedures as well as data protection compliance. Security Roles and Responsibilities. Security responsibilities of Ceridian co-workers are formally documented and published in security and privacy policies. Risk Management Program. Ceridian executes periodical risk assessments of the implemented security controls.
Human Resources Security	Confidentiality obligations. Ceridian co-workers are subject to written confidentiality obligations Security and privacy training. Ceridian informs its co-workers about relevant security measures to protect Personal Data. Termination. Ceridian ensures according to formal security administration procedures that access rights are timely revoked upon termination.
Asset Management	Asset Inventory. Ceridian maintains an inventory of all computing equipment and media used. Access to the inventories is restricted to authorized Ceridian personnel. Asset Handling - Personal Data on portable devices are encrypted. - Ceridian has procedures for securely disposing of media and printed materials that contain confidential data.
Cryptography	Encryption of Personal Data is performed according to formal processes and encryption standards. Encryption mechanisms follow the highest standards available, only using strong ciphers.
Physical and Environmental Security	Physical Access to Facilities. - Ceridian limits access to facilities where Personal Data are processed to identified and authorized individuals. - Physical access to data centers is only granted following a formal authorization procedure and access rights are reviewed periodically Protection from Disruptions. Ceridian uses a variety of industry standard systems to protect its data centers against loss of data due to power supply failure, fire and other natural hazards.
Access Control	Access Policy. Ceridian enforces an access control policy based on least privileges principles. Access Authorization - Ceridian has implemented and maintains an authorization management system that controls access to systems containing Personal Data. - Every individual accessing systems containing Personal Data has a separate, unique identifier/username. - Ceridian restricts access to Personal Data to those individuals who require such access to perform their job function. Authentication - Ceridian uses industry standard practices to identify and authenticate Users who attempt to access Ceridian network or information systems, including strong authentication. - Where Authentication Credentials are based on passwords, Ceridian requires that the passwords are at least eight characters long and sufficiently complex. - De-activated or expired identifiers/usernames are not granted to other individuals. - Accounts will be locked out in case of repeated attempts to gain access to the information system using an invalid password. - Ceridian maintains practices designed to ensure the confidentiality and integrity of passwords when they are assigned and distributed, and during storage. Network access. Ceridian maintains control measures (e.g. firewalls, security appliances, network segmentation) to provide reasonable assurance that access from and to its networks is appropriately controlled.

ANNEX 2: TECHNICAL AND ORGANIZATIONAL MEASURES

Domain	Practices
Operations Security	Data Recovery Procedures - On an ongoing basis, but in no case less frequently than once a day (unless no data has been updated during that period), Ceridian maintains backup copies of Personal Data for recovery purposes. - Ceridian stores copies of Personal Data and data recovery procedures in a different place from where the primary computer equipment processing the Personal Data is located. Malicious Software. Ceridian maintains anti-malware controls to help avoid malicious software gaining unauthorized access to Personal Data. Security updates. Security patches are installed following a documented security patch management process. Event Logging. Ceridian logs access and use of its information systems containing Personal Data, registering the access ID, time and relevant activity.
Communications Security	Network Segregation. Ceridian has implemented a network segmentation policy and controls to avoid individuals gaining access to communication and systems for which they have not been authorized. Transfer outside own network. Ceridian encrypts, or provides the mechanisms to Client to encrypt, Client information that is transferred across public networks. Information Transfer. Any transfer of Personal Data to third parties is only performed when authorized and following the execution of a formal written non-disclosure agreement.
System Acquisition, Development & Maintenance	Security Requirements. Requirements for protecting data and systems are analyzed and specified. Change Control. Ceridian has implemented a formal change management process to ensure changes to operational systems and applications are performed in a controlled way.
Supplier Relationships	Supplier Selection. Ceridian maintains a selection process by which it evaluates the security and privacy practices of a subcontractor with regard to data handling. Contractual Obligations. Suppliers with access to Personal Data are subject to data protection and security obligations and these are formally integrated into supplier contracts.
Information Security Incident Management	Incident response. Ceridian maintains a record of security breaches with a description of the breach, the time period, the consequences of the breach, the name of the reporter, and to whom the breach was reported. Incident notification. For each security breach that impact the confidentiality or integrity of Personal Data, notification by Ceridian will be made without unreasonable delay.
Business Continuity Management	Disaster Recovery. Ceridian maintains a disaster recovery program (DRP). Redundancy. Ceridian's redundant storage and its procedures for recovering data are designed to attempt to reconstruct Personal Data in its last-replicated state from before the time it was lost or destroyed.
Compliance	Security Reviews. Information security controls are independently audited and reported to management on a periodical basis.

CERIDIAN

The following Service Particulars are incorporated into the Order Form between Ceridian and Client and form an integral part of the Agreement and are applicable to all Dayforce clients (which are clients who have purchased a Dayforce bundle as stated on the Order Form).

SERVICE PARTICULARS DAYFORCE GENERAL TERMS

1. CAPITALIZED AND DEFINED TERMS

1.1 All capitalized terms used herein and not defined shall have the same meaning as in the other documents that form part of the Agreement (as defined in the MSA).

1.2 As used herein:

- 1.2.1 *"Annual Inflation Index"* means (i) if the currency is USD, the Employment Cost Index for total compensation, for private industry workers, by occupational group and industry (not seasonally adjusted), for all workers (ECI), as published by the Bureau of Labor Statistics, US Department of Labor; (ii) if the currency is CAD, the Consumer Price Index, as published by Statistics Canada, Government of Canada; (iii) if the currency is GBP, the Retail Prices Index excluding mortgage interest, as published by the Office for National Statistics (United Kingdom); (iv) if the currency is AUD, the Consumer Price Index, all groups, non-seasonally adjusted, as published by the Reserve Bank of Australia; (v) if the currency is Euro, the Consumer Price Index (All Items), as published by the Central Statistics Office (Ireland); (vi) if the currency is NZD, the Consumers Price Index, as published by Stats NZ; and (vii) for all other currencies, the applicable price index published by the Organization for Economic Cooperation and Development for the applicable Territory;
- 1.2.2 *"Business Hours"* means Ceridian's regular business support hours on each Business Day;
- 1.2.3 *"Core Module"* means Dayforce Core, Dayforce Payroll, Dayforce Benefits Essential, or Dayforce Time and Attendance;
- 1.2.4 *"Delivery Assurance SOW"* means the Statement of Work detailing the Delivery Assurance Services;
- 1.2.5 *"Documentation"* means all documentation relating to the Software, whether in machine-readable or printed form, provided by Ceridian to Client, including any updates, revisions, new versions, and supplements to the Documentation;
- 1.2.6 *"Early Termination Fee"* has the meaning set forth in the Section titled "Early Termination Fee";
- 1.2.7 *"Go Live Date"* means in respect of the initial Order Form, the date on which a Core Module has been configured for use by Client; in the case of a subsequent Order Form, the date on which a Core Module has been configured for use by Client, or if a Core Module is not in scope, the date on which Client has access to any of the Subscribed Modules and/or Services purchased in such Order Form;
- 1.2.8 *"Implementation Services"* means the implementation Services and/or deliverables to be provided in respect of the Subscribed Modules and Services, as described in the applicable Implementation SOW;
- 1.2.9 *"Implementation SOW"* means the Statement of Work detailing the Implementation Services provided by Ceridian;
- 1.2.10 *"Minimum Monthly Employee Count"* means the greater of 100 Employees or eighty percent (80%) of the Number of Employees as indicated on Client's Order Form(s), which number represents the approximate current Number of Employees of the Client;
- 1.2.11 *"Modifications"* means any error corrections, modifications or enhancements to the Software that are included by Ceridian in Support of the Software to all clients;
- 1.2.12 *"New Versions"* means new versions of the Software that may be deployed by Ceridian to Client for license pursuant to these Service Particulars;
- 1.2.13 *"Number of Employees"* means the number of employee records in the Software that do not have a terminated status, including full-time and part-time employees as well as any contingent labor or contractors, or any other individual in respect of whom information is being recorded in a Subscribed Module, and all administrators or other users who are accessing the Software or database relating to the Services (for the purposes of these Service Particulars, each shall be considered an "Employee");
- 1.2.14 *"One Time Fees"* means those Fees set forth in the Order Form under the heading "Estimated Implementation and One Time Fees", including those Fees payable for the Delivery Assurance Services / Implementation Services, or are otherwise identified or understood to be one time or non recurring Fees, including any Fees payable with respect to change requests;
- 1.2.15 *"Planned Maintenance Window"* means Ceridian's planned maintenance hours, currently 2:00 a.m. to 6:00 a.m., Wednesdays and Thursdays, local to the data center in which Client's data is hosted (in the case of the United States and Canada - Eastern Time; in the case of the United Kingdom and Ireland - Greenwich Mean Time; and in the case of Australia and New Zealand - Australia Eastern Time);
- 1.2.16 *"Recurring Fees"* means those Fees set forth in the Order Form under the heading "Estimated Recurring Fees", or are otherwise identified or understood to be Fees which are payable on the periodic recurring basis stated in the Order Form;
- 1.2.17 *"Regular Maintenance"* means (i) maintenance performed during the Planned Maintenance Window and (ii) maintenance for which the Client is provided at least 24 hours' prior notice;
- 1.2.18 *"Service Level Agreement"* means the document attached hereto as Appendix A;
- 1.2.19 *"Services"* means, collectively, access to the Subscribed Modules, together with all other Services described in these Service Particulars;
- 1.2.20 *"Software"* means the software program(s) licensed by Ceridian to Client through which the Services will be provided, together with all Modifications and New Versions;
- 1.2.21 *"Subscribed Module(s)"* means, at a given date, the module(s) to which Ceridian will provide Client access as part of the Services and as set forth in the Order Form;

1.2.22 *“Support”* means the support and maintenance services provided by Ceridian to Client with respect to a Subscribed Module in accordance with these Service Particulars; and

1.2.23 *“Third-party Implementation Provider”* means a third-party trained in the Dayforce product and implementation methodology who Client contracts with to perform the implementation services and/or deliverables to be provided in respect of the Subscribed Modules and Services. For greater certainty, this is not intended to refer to a Ceridian Contractor.

2. IMPLEMENTATION

2.1 General Approach (applicable where Ceridian is providing the Implementation Services). Ceridian's general project approach to providing the Implementation Services is based on the concept of shared project responsibility, resulting in a cooperative, hands-on project that is jointly managed by Ceridian and Client. Ceridian works with Client to plan the project – its scope, schedule and resources. During the project planning phase, the Parties will agree upon their respective roles and responsibilities, which will be confirmed in writing and need to be completed in accordance with the agreed upon schedule in order for the Implementation Services to be delivered successfully and within the desired timeline set forth in the project plan. Ceridian will educate Client's resources on how to maintain the Subscribed Modules so that Client will become self-sufficient with the functionality of the Subscribed Modules.

2.2 General Approach (applicable where the Third-Party Implementation Provider is providing the Implementation Services). Client will contract with the Third-Party Implementation Provider to perform the implementation services and/or deliverables to be provided in respect of the Subscribed Modules and Services and Ceridian will provide Delivery Assurance Services in accordance with the Delivery Assurance SOW. Client resources will complete Dayforce Education Package training in accordance with the project timeline provided by the Third-Party Implementation Provider to become educated on how to maintain the Subscribed Modules and become self-sufficient with the functionality of the Subscribed Modules. Client acknowledges that the Third-Party Implementation Provider is solely responsible for the implementation services and Ceridian assumes no responsibility in that regard.

2.2.1 Ceridian will (as applicable) complete the setup for (i) tax and banking, (ii) Ceridian Clocks, and (iii) Dayforce Managed Services.

2.2.2 Client will be transitioned to Support once training and testing is complete, and Client has provided written acceptance of the completion of the implementation services with the Third-Party Implementation Provider, save for any open items which are material to the delivery of the Services (“Open Items”). All Open Items must be documented in writing by Client and Third-Party Implementation Provider, and upon completion, Client and Third-Party Implementation Provider shall confirm same in writing. For greater certainty, remediation of configuration issues with the Subscribed Modules is outside of Ceridian's Support obligations, as further outlined below.

2.3 Assumptions. In addition to the assumptions and requirements set forth herein and in the Implementation SOW / Delivery Assurance SOW, Client acknowledges and agrees that the above approach, One Time Fees and estimated timelines are based on the following assumptions (as applicable):

2.3.1 Client will accurately complete all applicable questionnaires, templates, discovery workbooks, and other documents and requests for data as reasonably required for Ceridian to fulfill its implementation roles and responsibilities;

2.3.2 Client will, where applicable, provide access to Client's personnel with the appropriate knowledge of Client's systems and its configuration, to assist in data analysis for HR data import, exports and configuration.

2.3.3 Client will provide any required data in the manner reasonably prescribed by Ceridian by the agreed upon timelines;

2.3.4 While both Ceridian and Client may have a project manager, Client is responsible for management of its own resources and engaging third-party vendors, as necessary. Lack of access to Client resources or Client's third-party vendor resources, or changes to any individuals filling Client roles identified in the Delivery Assurance / Implementation SOW may impact project timeline and costs;

2.3.5 Client will provide solution feedback and confirmation of acceptance through the prescribed process, and working with resources in a reasonable time frame per the project schedule.

2.3.6 Any changes to scope described in the Delivery Assurance SOW / Implementation SOW will be addressed through a change request;

2.3.7 The CONFIG environment (including all data) will be decommissioned after a period of sixty (60) days from the Go Live Date. In the case of a phased implementation, the CONFIG environment will remain in place until the Go Live Date of the last phase of the project. The TEST environment will remain active for the duration of the Service Term upon request by Client; and

2.3.8 Additional non-production environments may be provided by Ceridian for Client's use, subject to additional costs. Should Client's existing TEST environment be in use for a project at the time that another project / phase is commenced, an additional non-production environment will be required at an additional cost.

2.3.9 The following additional assumptions apply only where Ceridian is providing the Implementation Services:

2.3.10 Client will provide data requested by project team in a timely manner and per the project schedule;

2.3.11 Client Power User will be appointed during project launch stage, will complete necessary training per published curriculum prior to project kick-off, and will be available for the duration of the project;

2.3.12 Client will engage its third-party vendors as required in a timely manner and per the project schedule. Failure by Client's third-party vendors to adhere to project timelines may impact the project timeline and costs;

2.3.13 Client will confirm acceptance for all Implementation Services leveraging Ceridian implementation methodology templates in a timely fashion and per the project schedule;

2.3.14 Client will complete training activities as outlined in the training curriculum provided by Ceridian and per the project schedule prior to Go Live Date;

2.3.15 Client will follow the instructions contained in the training materials;

2.3.16 Client will identify export files by project kick-off. Any additional feed(s) identified thereafter may result in additional Fees;

3. SOFTWARE FUNCTIONALITY, HOSTING AND SUPPORT

3.1 Software Functionality

3.1.1 Client's election of the Subscribed Modules will be set forth in the Order Form, signed by both Ceridian and Client. Ceridian warrants that the Subscribed Modules and the Software shall substantially perform in accordance with the Software Functionality and Global Use Guide. Ceridian shall not be liable to remedy any failure of the Subscribed Modules and the Software resulting from the acts or omissions of Client, Third-Party Implementation Provider, or any third party (other than Ceridian Contractors), and is provided “as-is” and “as-available”. The Subscribed Modules

and the Software may be used by Client outside the Territory in accordance with the terms of the Software Functionality and Global Use Guide. Without limiting the terms of the Software Functionality and Global Use Guide, Client acknowledges and agrees that certain country specific laws (including privacy laws) outside of the Territory may, from time to time, restrict or prohibit Client's use of the Subscribed Modules and the Software, and Client is responsible for ensuring it is complying with such requirements.

3.2 Software Hosting and Support

3.2.1 Ceridian's Obligations.

- (i) Uptime. Ceridian shall host and provide ongoing support for the Software and supported third party products from data centers accessible via the internet. Ceridian will strive to ensure the web-based application interface for the production environment that will be accessed through Client URL, shall be available in accordance with the service levels set forth in the Service Level Agreement, failing which the Client shall be entitled to the rights and remedies set forth therein.
- (ii) Support. For so long as the Services remain in effect, and provided that Client has paid the applicable Fees, Ceridian shall provide Support in accordance with the following:
 - (a) Ceridian will, commensurate with the severity of the defect, correct any malfunction, defect or non-conformity in the operation of the Software from the [Software Functionality and Global Use Guide](https://clientcontractportal.ceridian.com) posted on <https://clientcontractportal.ceridian.com> (each, a "Defect") to enable the Software to substantially perform in accordance with the Software Functionality and Global Use Guide in effect at the time the Support is provided. Ceridian shall provide Client Named Support Users (as defined below) with access to (1) its toll free customer support telephone line (which rolls over to the emergency help line after Business Hours) and (2) online support portal (the "Help Desk") for reporting to Ceridian any Defects and for inquiries regarding the Services or ordinary use and operation of the Software as may arise from time to time. Live operators at the Help Desk shall be available during Business Hours. Client shall provide reasonable assistance related to Client systems, as required for Ceridian to correct a Defect. Such reasonable assistance may require Client to provide certain Client information, documentation, technical and other feedback related to Client's systems in order to assist Ceridian to correct such Defect;
 - (b) Support may be provided to Client Named Support Users through one or more of a number of means at Ceridian's reasonable discretion, such as telephone, e-mail, online meeting, or Internet self-service, which includes general technical information and assistance with Defect determination, isolation, verification, and resolution, during Business Hours with regard to in-person telephonic, e-mail and on-line meeting support, or 24/7 (excluding Regular Maintenance hours) with regard to Internet self-service. Support services are not to be used as an alternative to obtaining training. Client shall make commercially reasonable efforts to refer to the Documentation as a first step in answering questions and learning functions of the Services prior to contact with Ceridian with regard to problems or questions;
 - (c) In the event Client Named Support Users use the Help Desk to describe, categorize (in terms of nature and urgency) and submit requests for Support, Ceridian will provide a first response to such inquiry within the time frames set forth in the Service Level Agreement, failing which Client shall be entitled to the rights and remedies set forth therein;
 - (d) Only those named persons (as indicated on the Help Desk access list provided from time-to-time by Client to Ceridian) trained on the use and operation of the Software ("Client Named Support Users") may access to the Help Desk for Support. Ceridian reserves the right to establish a maximum number of Client Named Support Users, acting reasonably;
 - (e) Ceridian will use commercially reasonable efforts to perform all required maintenance to the Software (or any other elements of the hardware or infrastructure necessary for the provision of the Services contemplated under these Service Particulars) during the Planned Maintenance Window. Ceridian will use commercially reasonable efforts to keep the period during which Client's access to the Software is impeded during the Planned Maintenance Window to a minimum. Ceridian will notify Client of all maintenance at least twenty-four (24) hours in advance, provided that, for maintenance for which Ceridian cannot provide twenty-four (24) hour response, Ceridian will provide notice as soon as reasonably practicable. Ceridian will not be responsible for any damages or costs incurred by Client, if any, for scheduled down time. Ceridian may change its Planned Maintenance Window upon thirty (30) days' prior notice to Client; and
 - (f) support provided under these Service Particulars does not include services provided with respect to the following matters: (1) any problem resulting from configuration or customization of the Services (including any Professional Services) made by a party other than Ceridian, Client, or other party authorized by Ceridian; or (2) any problem caused by modifications of the Software not made or authorized by Ceridian (other than ordinary configuration changes the functionality for which is built into the Software and intended to be made by Client).
- (iii) Ceridian may from time to time (but shall not be required to unless a Modification is required to fix a Defect) make Modifications to the Software and/or its functionality, for purposes such as maintenance or upgrades, or otherwise as deemed appropriate by Ceridian. Such Modifications are within the discretion of Ceridian, and are not required to be made, but will not materially adversely affect Clients' Services (when viewed as a whole) or require the payment of additional Fees or costs. Modifications will be pre-announced a reasonable time in advance and Client shall have a reasonable opportunity to interact with modified Services in a non-live (e.g., test, sandbox) environment. Ceridian will only provide Support in respect of Ceridian Clocks as part of the Services, and will not provide Support or other assistance in respect of clocks or other hardware supplied by any other provider.

3.2.2 Client's Obligations.

- (i) Client will not: (a) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (b) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (c) send or store any virus, worm, time bomb, Trojan horse or other harmful or malicious code, file, script, agent or program; (d) interfere with or disrupt the integrity or performance of the Services or the data contained therein; or (e) attempt to gain unauthorized access to the Services or related systems or networks.
- (ii) Client will designate Client Named Support Users to triage all internal support incidents reported by end users. Triage occurring by Client Named Support Users includes: checking the Documentation for assistance in dealing with the reported incident, attempting to reproduce the incident in a production copy, and documenting the steps required to reproduce the incident. Upon reporting an incident, Client agrees to cooperate, work closely with, and provide assistance to Ceridian in the investigation, diagnosis, and resolution of the incident.
- (iii) Ceridian shall have the right to access Client's account from time to time, for purposes of Support, administration, invoicing and to inspect Client's utilization of the Services so as to ensure Client's compliance with the provisions of this Agreement, as reasonably necessary in Ceridian's sole discretion.
- (iv) Client is responsible for meeting the minimum software and system requirements needed to use the Services, as identified by Ceridian.

4. SERVICE FEES AND PAYMENT

4.1 Fees. The Fees payable by Client to Ceridian for the Services are as set forth in the Order Form. The Fees are exclusive of all Taxes. Except as otherwise stated herein, all invoices will be due and payable by Ceridian supported electronic means (e.g., direct deposit, pre-authorized debit) within thirty (30) days of the date of invoice.

4.2 One Time Fees

- 4.2.1 The One Time Fees for Implementation Services have been calculated taking into account the work and materials Ceridian has reasonably estimated will be required to implement the Service. This estimate has been made by Ceridian in good faith based on the information available to Ceridian at the time of executing the Order Form, including information and representations provided by Client. To the extent that new or additional information becomes available to Ceridian which impacts the estimated One Time Fees, the Parties shall mutually agree to necessary changes to the Implementation SOW (including to corresponding Fees).
- 4.2.2 (i) The One Time Fees for implementation (including any applicable conversion) Services and setup Services will be invoiced and payable in two (2) installments as follows: (a) in respect of the initial Order Form, fifty percent (50%) at the Subscription Start Date and fifty percent (50%) at Go Live Date; (b) in respect of a subsequent Order Form, (1) if a Core Module is in scope, fifty percent (50%) at the date Implementation Services are started (generally by way of a project kick off meeting) and fifty percent (50%) at Go Live Date; and (2) if a Core Module is not in scope, one hundred percent (100%) at the Subscription Start Date;
- (ii) The One Time Fees for Delivery Assurance Services will be invoiced and payable in accordance with the Delivery Assurance SOW;
- (iii) The One Time Fees for Dayforce Professional Services Time & Material Service will be invoiced and payable monthly, based on actual hours worked. The estimate in the Order Form / Change Request has been made by Ceridian in good faith based on the information available to Ceridian at the time, including information and representations provided by Client. Following discovery, a refined estimate will be provided in the form of a Software Requirements Specification. In the event that Client cancels the project, Client will be responsible to pay Ceridian for any Fees incurred for hours worked;
- (iv) All event-based One Time Fees will be payable upon event completion; and,
- (v) All other One Time Fees will be invoiced upon Subscription Start Date.

4.3 Recurring Fees

4.3.1 Except as otherwise stated below, the monthly Recurring Fees will be invoiced and payable monthly in advance, commencing as of the Subscription Start Date, based on the number of employees set forth in the Order Form. Upon the Go Live Date, the monthly Recurring Fees will be based on the Number of Employees as at the 15th of each calendar month, or such other date as may be communicated to Client by Ceridian. In no event will the Number of Employees used for calculating the monthly Recurring Fees for any given calendar month be less than the Minimum Monthly Employee Count. A designated bill cycle date will be established by Ceridian at order set-up for Recurring Fees. Services included in the Order Form that are based on a per occurrence (e.g., Fees for ancillary services shown on the Rate Sheet), will be invoiced monthly in arrears. The Recurring Fees for additional non-production environments (if applicable) will be invoiced monthly, commencing upon environment availability.

4.3.2 Where Client's Services include Managed Payroll and / or Managed Benefits Services in addition to Dayforce SaaS Services, the Minimum Monthly Employee Count specific to such managed Services will be calculated separately from the Minimum Monthly Employee Count for Dayforce SaaS Services.

4.3.3 The monthly Recurring Fees for Dayforce Managed Garnishments and Dayforce Managed Garnishments – Employee Contact Center will be invoiced and payable monthly in arrears based on the number of active garnishments each month, commencing after the first payroll processing in accordance with the designated bill cycle date as set forth above.

4.3.4 The monthly Recurring Fees for Dayforce Technical Account Manager, Dayforce Technical Account Manager – Additional, and Dayforce Dedicated Technical Account Manager will commence as of the date Implementation Services are started (generally by way of a project kick off meeting). Fees invoiced and payable prior to the Go Live Date will be discounted by fifty (50%) percent. A minimum of ninety (90) days' prior written notice to Ceridian is required to cancel Dayforce Technical Account Manager, Dayforce Technical Account Manager – Additional, or Dayforce Dedicated Technical Account Manager.

4.3.5 When and if made available by Ceridian, at Client's election, SMS text messaging for "Alerts and Notifications" functionality will be provided to Client at Ceridian's then current rate per message (both outbound and inbound messages shall be counted for the purposes of billing). Other miscellaneous charges may apply for mobile device access. Such Fees shall be billed based on the actual count for the previous month.

4.4 Training Fees. All event-based training Fees will be payable upon event completion. Subscription-based training Fees will be payable upon project kick-off (or if subscribed after kick-off, immediately upon subscription) and each renewal date thereof. Consulting-based training Fees will be invoiced on a time and materials basis, billed monthly based on the amount of work completed each month. The Fees stated in the Order Form have been calculated using an hourly rate based on the estimated hours stated therein, as determined by the Parties. The Fees payable will be based on actual hours worked. The training is for use within a twelve (12) month period, effective upon project kick-off of Implementation Services (or upon signing of subsequent Order Forms). The hourly rate will expire at the end of such twelve (12) month period. If Client terminates the Agreement, the associated Services, or the training project, as the case may be, for any reason, Client will be responsible to pay to Ceridian any Fees incurred for hours worked.

4.5 Hardware Fees. All One Time Fees in respect of purchased Ceridian Clocks, badges or other tangible items or hardware, will be invoiced upon shipment. Clock annual maintenance Recurring Fees will be invoiced upon shipment of the purchased Ceridian Clocks and each renewal date thereof. Clock subscription Recurring Fees will be invoiced upon shipment and each subsequent month. Recurring Fees with respect to webclocks will be invoiced upon configuration of the webclock and each subsequent month.

4.6 Annual Fee Increase. All Fees are subject to annual increases in an amount not to exceed the annual increase in the Annual Inflation Index for the respective billing currency (on a cumulative basis from the Subscription Start Date), the first such increase to be calculated and effective on the first anniversary of the Subscription Start Date.

5. SERVICE TERM AND TERMINATION

5.1 Service Term and Fees payable for Early Termination. The Agreement for the Services shall be effective and binding immediately upon execution of the Order Form, and unless terminated earlier by a Party as expressly permitted under the termination provisions of the Agreement, shall remain in effect for an initial Service Term equal to the number of months / years set forth in the Order Form calculated from the Subscription Start Date. The Service Term shall automatically continue after the expiration of the initial Service Term, on a month-to-month basis, on the same terms and conditions without the need for any written extension agreement, until terminated by either Party upon ninety (90) days' prior written notice to the other, or until terminated otherwise in accordance with the termination provisions in the Agreement. If Client terminates the Services prior to the expiration of the initial Service Term, in addition to being responsible to pay Ceridian Fees for all work and Services provided up to and including the effective date of termination of the Services (including all One Time Fees for work performed up to such date), Client shall be required to pay Ceridian the Early Termination Fee. Notwithstanding the foregoing, Client shall have the option to renew the initial Service Term for two (2) additional twelve (12) month periods (each a "Renewal Period"), on the same terms and conditions (with the exception that the Annual Fee Increase for each Renewal Period shall be at the Annual Inflation Index minus one percent (1%)), by providing Ceridian written notice not less than ninety (90) days prior to the expiration of the initial Service Term (or the first Renewal Period, as applicable) of its intention to exercise its option to renew.

5.2 Early Termination Fee. The early termination fee ("Early Termination Fee") is the fee payable by Client to Ceridian if Client terminates a Service before the end of the initial Service Term (except pursuant to Section 3.2.2 ("Material Breach") or Section 3.2.3 ("Insolvency") of the MSA by Ceridian). The Early

Termination Fee will be equal to the average monthly Recurring Fees (computed based on the average Recurring Fees paid by Client for Services during the three (3) month period preceding cancellation (or where three (3) months have not yet passed since the Go Live Date, then based on estimated annual fees as shown in the Order Form divided by twelve)) multiplied by the number of whole or partial months between the date that the cancellation is effective and the expiration date of the initial Service Term, less a discount equal to 25%.

5.3 Transition Assistance. Ceridian shall cooperate reasonably and in a timely manner on a time and materials basis with the efforts by Client, or any other party acting on Client's behalf, to provide for an orderly transition of the applicable Services to Client or another service provider.

6. ADDITIONAL PROVISIONS

6.1 TeamRelate. The TeamRelate feature made available via the Software is intended to be used as one part of an overall candidate and employee assessment process and is not designed or recommended for standalone use or as a replacement for the professional judgment of Client's employees. If Client becomes dissatisfied with the TeamRelate feature, Client's sole remedy shall be to discontinue its use.

6.2 Extended Access to Historical Data. To the extent Client is migrating the Services described hereunder from an existing Ceridian hosted platform (the "Prior Ceridian System"), Ceridian agrees to provide access to Client's data stored in the Prior Ceridian System (the "Historical Data") for a period of six (6) months following the Go Live Date (subject to any shorter retention period as required by applicable privacy or other laws) or on the Prior Ceridian System retirement date, whichever is earlier. Access to the Historical Data will be provided at no charge during such 6 month period. Unless otherwise agreed between the Parties in writing, access will be terminated without further notice upon expiration of the noted period.

6.3 Dayforce Engagement. Dayforce Engagement allows Client to conduct engagement surveys using pre-defined and Client-created surveys. Client remains solely responsible for complying with the laws and regulations associated with conducting engagement surveys, including any decisions affecting Employees and the conclusions drawn from the survey results.

6.4 Dayforce Safety Monitor. Dayforce Safety Monitor provides tools for collecting data relating to a public health emergency, and it is intended to be used as one part of Client's overall business continuity program. Dayforce Safety Monitor has not been designed or reviewed to comply with any specific application of the law, regulation or other requirement as it relates to Client. Client remains solely responsible for complying with any applicable laws relating to the collection of employee data.



Appendix A SERVICE LEVEL AGREEMENT

This document sets forth the specific performance measures that will be tracked and measured in connection with Ceridian's performance of the Services (the "Service Levels"), including the target level of Service which Ceridian strives to meet in delivering the Service (the "Service Target"), as well as the minimum acceptable level of Service below which Client shall be entitled to the recourse prescribed (the "Minimum Acceptable Level"). Ceridian will treat all Service Level failures as a priority and work diligently to avert or minimize any adverse effect such failure may have, including developing a work around solution. Ceridian will develop and implement a proposal for rectifying any such failure, and identify improved processes to identify, detect and avoid similar failures in the future. Without limiting the generality of anything herein, the Parties agree that in calculating the Service Levels for any period, Ceridian shall exclude any incident or failure which was caused by: (a) the negligence of Client, or Client failing to perform any of its covenants under the Agreement in a timely fashion or at all; and (b) any reason beyond the reasonable control of Ceridian, including (but not limited to) failure of Client's systems, failure of Client's internal network or access to the internet, acts of God, acts of war or terrorism, labor strikes or other act of force majeure.

If Ceridian fails to meet the Minimum Acceptable Level for a Service Level in any calendar month, Ceridian will provide a root cause analysis for the failure and a short-term plan (and long-term plan if appropriate) to return to acceptable Service Levels. If Ceridian fails to meet the Minimum Acceptable Level for the same Service Level any two consecutive calendar months, Ceridian will assign a senior support escalation contact to Client who will meet with the Client on a regular basis (at times and schedule as mutually agreed upon) until the Service Levels are restored.

1.0 Client Support Portal Service Levels

Objective: Ceridian will respond in a timely fashion to support enquiries from Client Named Support Users submitted through Ceridian's online support portal.

Definition: Client Named Support Users will use Ceridian's online support portal to describe, categorize (in terms of nature and urgency) and submit requests for Support. Ceridian will provide a first response to such inquiry within the time frames set forth below.

Method: Case management system tickets opened during the current measurement period will be used to compute the following: Total number of inquiries submitted through the portal and responded to within the corresponding acceptable time frame, divided by the total number of inquiries submitted through the portal.

Severity	Description	First Response	
		Application Support Standard	Application Support Premium (if purchased)
Urgent	A complete inability to use major functionality within the application resulting in a serious impact to the Client's business operations with no existing workaround	Within 1 Business Hour (Monday to Friday)	Within 1 Hour (Monday to Sunday)
High	Severely limited ability to use major functionality within the application that could impact the Client's business operations, with workarounds that may not fully address the issue	Within 8 Business Hours (Monday to Friday)	Within 4 Business Hours (Monday to Friday)
Medium	Minor errors in functionality within the application, often accompanied by workarounds	Within 12 Business Hours (Monday to Friday)	Within 12 Business Hours (Monday to Friday)
Low	General inquiries on the use of the application or; Minor cosmetic errors or incidents which otherwise do not require immediate attention or; Rare errors that appear during unusual conditions or are otherwise unlikely in normal use or; Errors which have a sustainable workaround	Within 24 Business Hours (Monday to Friday)	Within 24 Business Hours (Monday to Friday)

Performance Level:

Values	Metrics
Target Level for First Response	95% of enquiries will be responded to within the designated time frame
Minimum Acceptable Level for First Response	80% of enquiries responded to within the designated time frame.

Service Level Performance Tracking: Monthly**2.0 Software Availability**

Objective: Ceridian will provide Client's users with 24x7 access to information via the internet, except during scheduled maintenance.

Definition: The Client's production environment for the Software will be available 24 hours per day, 7 days a week, 365 days a year ("Total Minutes"), excluding:

- (a) Regular Maintenance;
- (b) unavailability due to improper configuration of the Software caused by the Client or the use of unsupported hardware or software; (collectively, "Maintenance Minutes").

The Client will be notified of scheduled maintenance through Ceridian's support notices program. An email will be sent from supportnotices@dayforce.com to all Client Named Support Users.

Method: Ceridian hosted services system records will be used to compute "Availability" as follows: (Total Minutes minus Maintenance Minutes) minus unscheduled downtime, divided by (Total Minutes minus Maintenance Minutes).

Performance Level:

Values	Metrics
Target Level	100% availability, excluding Maintenance Minutes.
Minimum Acceptable Level	99.75% availability, excluding Maintenance Minutes.

Service Level Performance Tracking: Monthly**Example**

April Total Minutes	30 days x 24 hrs x 60 mins	43,200 Total Minutes
April Maintenance Minutes	8 days x 4 hours / day x 60 mins	1,920
April Total Available Minutes	43,200 – 1920	41,280
April additional excused outages (e.g. force majeure)	0	0
April unexcused outages	30	30

Calculation

$$[(41,280 - 30) / 41,280 = 99.93\%]$$

Result: Meets Minimum Acceptable Level.



**SERVICE PARTICULARS
DAYFORCE PAYROLL TERMS
(US)**

(APPLICABLE ONLY TO DAYFORCE BUNDLES WHICH CONTAIN DAYFORCE PAYROLL)

1. CAPITALIZED AND DEFINED TERMS

1.1 All capitalized terms used herein and not defined shall have the same meaning as in the other documents that form part of the Agreement (as defined in the MSA) or the Dayforce General Terms (the Service Terms applicable to all Dayforce bundles), as applicable.

1.2 As used herein:

1.2.1 "ACA" means the Affordable Care Act;

1.2.2 "ACA Forms" means IRS Forms 1094-C and 1095-C;

1.2.3 "Funding Authorization" means such written authorization, power of attorney or other form executed by Client from time to time as reasonably required by Ceridian to authorize and permit Ceridian to withdraw money, forward payments or take other steps to facilitate the movement of payments as part of the Services;

1.2.4 "Funds" means those funds to be received by Ceridian from Client, in an amount equal to the Payments to be made for a particular Payroll;

1.2.5 "Payments" means any payments to be made by Ceridian on Client's behalf hereunder, to its Employees statutory remittances, tax filing liabilities and other third-party payments as directed by Client and agreed to by Ceridian;

1.2.6 "Payroll" means the Client Payments processed or to be processed by Ceridian with which the Services are associated;

1.2.7 "Tax Forms" means those forms, as supported by Ceridian's Software, as prescribed by Taxing Authorities from time to time which are required to be provided by Client to the Employees in connection with the remuneration paid or payable to the Employees;

1.2.8 "Taxing Authorities" means those government agencies to which tax remittances are made relating to compensation paid by Client to Employees, and any successors to such agencies; and

1.2.9 "Trust" means the trust(s) established pursuant to a written declaration of trust for the purposes of receiving Funds from its clients, or such additional or replacement trust(s) as may hereafter be established by Ceridian for such purposes.

2. ONGOING SERVICES

2.1 Funds Transfer (Ceridian Bank Account)

2.1.1 Ceridian's Obligations for Ceridian Direct Deposit and Ceridian Check. Where Ceridian is responsible for issuing Payments using the Trust, Ceridian will:

- (i) issue the Payments in accordance with the Payroll and Payment processing schedule, as agreed upon by the Parties, to meet Client's Payroll obligations, by way of: (a) submitting Payment information to the appropriate funds transfer network(s) in the form required for the electronic crediting/direct deposit of payment to the designated accounts of Employees; and/or (b) create negotiable paychecks to the order of Employees drawn on the Trust account. Each paycheck will be printed on Ceridian check stock with Ceridian officer's signature and Ceridian logo;
- (ii) for Ceridian Direct Deposit and Ceridian Check, process file reversals, request stop payment orders and request direct deposit reversals upon Client's written request
- (iii) for Ceridian Direct Deposit and Ceridian Check process stop payments and direct deposit reversals upon Client's written request (subject to any time restrictions reasonably prescribed by Ceridian);
- (iv) at the request of Client or at Ceridian's option, provide Client a report identifying un-cashed paychecks considered stale dated, and pay to Client an amount equivalent to any Payroll Funds held on account of Payments against which stop payments have been placed, or which are, according to banking practice, considered to be stale-dated (less a reasonable administration fee; or at the request of Client, such Payroll Funds may be credited to Client's next Payroll);
- (v) notify Client of exceptions related to paychecks processing and pre-notification rejections, bank requested notification of change requests, and returned credits, as applicable ("Exceptions");
- (vi) notify Client of any errors or other circumstances in the event Ceridian is unable to provide Payments and either re-performs Services (when possible) or arrange return of unpaid funds to Client. Unpaid Payroll Funds will be returned only after verification of available and sufficient fund balances (with time allowances for returned items) by the bank in which such funds are held; and
- (vii) monitor and interpret changes to those laws and regulations in the Territory pertaining to payroll gross-to-net calculations (including tax tables / tax rates) and modify the Software and Services as required to incorporate such changes and ensure the Software performs all such calculations in compliance with the applicable laws and regulations.

2.1.2 Client's Obligations for Ceridian Direct Deposit and Ceridian Check. Where Ceridian is responsible for issuing Payments using the Trust, Client will:

- (i) enter, maintain and transmit (via the Software) Payroll data to Ceridian, in such number of days as established by Ceridian (acting reasonably) prior to the date the paychecks are to be issued and deposits are to be made, as required to meet agreed upon processing schedules, as set forth in the Funding Authorization;
- (ii) review and audit all Payroll data, reports and other materials prior to committing the Payroll. Client shall correct any discrepancies or errors in such materials prior to the next scheduled processing;
- (iii) monitor changes to those laws specifically applicable to Client's business, interpreting applicable laws and regulations, determining the requirements for compliance with such laws and regulations, and notifying Ceridian of any changes to the Payroll processing required as a result of such laws;
- (iv) be responsible for compliance with earning statement obligations, retirement and benefit election and remittance requirements, garnishment obligations and any incorrect payments made to Employees as a result of incorrect, incomplete, and/or changed data or information received by Ceridian from Client;
- (v) correct Exceptions before transmitting Payroll data for Client's next Payroll (otherwise Client could be in breach of applicable laws or regulations);

- (vi) be responsible for contacting payees to resolve payment of any voided paychecks and reimburse Ceridian for any losses and fees incurred by Ceridian in circumstances where Ceridian honors Client's request to initiate a stop payment order and issues a replacement check, but the check originally issued is subsequently presented for payment by a holder in due course (including fraud or misconduct on the part of Employees) and Client shall reimburse Ceridian for any payments made or fees resulting from holder in due course claims;
- (vii) require Employees to complete, sign and maintain any account funding authorizations or other documents or authorizations necessary for Ceridian to provide Services, including authorizations for the initiation of credit entries. Without limitation, Client shall ensure that each Employee utilizing Ceridian Direct Deposit has authorized the initiation of credit entries and the crediting of the Employee account, as well as the debiting of the Employee account through a file reversal in the event of erroneous transactions (including but not limited to incorrect or duplicate transactions) a returned item from Client's account or any funding deficiency by Client (to extent permitted by law). Client must ensure that such authorizations are operative at the time of transmittal and crediting/debiting of the Employee accounts;
- (viii) hereby grant to Ceridian the authority to issue Payments on behalf of Client, and to take such other action as may be necessary from time to time in connection with the provision of the Services, which might authorize to instruct its bank to stop payment and authorize to refuse payment as required to provide the Services;
- (ix) forward or make available the Funds to an account established by the Trust as directed by Ceridian. The Funds will be provided by Client in a manner satisfactory to Ceridian (acting reasonably). Client will fully fund such account and as agreed upon by the Parties, shall either timely wire the funds, or shall timely authorize the initiation of debit entries and the debiting of the account in the amount and on the date specified and ensure that such authorization is operative at the time of transmittal and debiting of Client account. Ceridian shall not be obliged to release any Payroll documents or to make or honor any Payments until it has received confirmation that Client's financial institution upon which the Funds have been drawn has irrevocably honored such request for advance of funds. In this regard, Ceridian reserves the right, at its option, to implement such procedures as may reasonably be required to guarantee the irrevocable receipt by it of the Funds prior to Ceridian paying out any such funds;
- (x) provide Ceridian with Funds in an amount equal to the tax liability Payments to be made for a particular Payroll; and
- (xi) pay for all reasonable expenses incurred by Ceridian as a result of Client errors or omissions.

2.2 Payment Solutions (Client Bank Account)

- 2.2.1 Ceridian's Obligations. Where Client elects to issue Payments using its own checks and / or drawn on its own bank account, Ceridian will:
- (i) issue the Payments in accordance with the Payroll and Payment processing schedule, as agreed upon by the Parties, to meet Client's Payroll obligations, by way of: (a) submitting Payment information to the appropriate funds transfer network(s) in the form required for the electronic crediting/direct deposit of payment to Client's bank account; and/or (b) create negotiable paychecks to the order of Employees drawn on the Client's bank account. Each paycheck will be printed on standard check stock with Client officer's signature and, if selected, Client's logo using the check data and account provided by Client;
 - (ii) process file reversals, and request direct deposit reversals upon Client's written request;
 - (iii) notify Client of exceptions related to paychecks processing and pre-notification rejections, bank requested notification of change requests, and returned credits related to direct deposit services ("Exceptions");
 - (iv) notify Client of any errors or other circumstances in the event Ceridian is unable to provide payments and either re-performs Services (when possible) or arrange return of unpaid funds to Client. Unpaid Funds will be returned only after verification of available and sufficient fund balances (with time allowances for returned items) by the bank in which such funds are held; and
 - (v) monitor and interpret changes to those laws and regulations in the Territory pertaining to payroll gross-to-net calculations (including tax tables / tax rates) and modifying the Software and Services as required to incorporate such changes and ensure the Software performs all such calculations in compliance with the applicable laws and regulations.
- 2.2.2 Client's Obligations. Where Client elects to issue Payments using its own checks and / or drawn on its own bank account, Client will:
- (i) enter, maintain and transmit (via the Software) Payroll data to Ceridian, such number of days as established by Ceridian (acting reasonably) prior to the date the paychecks are to be issued and deposits are to be made, as required to meet agreed upon processing schedules, as set forth in the Funding Authorization;
 - (ii) review and audit all Payroll data, reports and other materials prior to committing the Payroll. Client shall correct any discrepancies or errors in such materials prior to the next scheduled processing;
 - (iii) monitor changes to those laws specifically applicable to Client's business, interpreting applicable laws and regulations, determining the requirements for compliance with such laws and regulations, and notifying Ceridian of any changes to the Payroll processing required as a result of such laws;
 - (iv) be responsible for compliance with earning statement obligations, retirement and benefit election and remittance requirements, garnishment obligations and any incorrect payments made to Employees as a result of incorrect, incomplete, and/or changed data and information received by Ceridian from Client;
 - (v) correct Exceptions before transmitting Payroll data for Client's next Payroll (otherwise Client could be in breach of applicable laws or regulations);
 - (vi) be responsible for contacting payees to resolve payment of any voided paychecks and reimburse Ceridian for any losses and fees incurred by Ceridian in circumstances where Ceridian honors Client's request to initiate a stop payment order and issues a replacement check, but the check originally issued is subsequently presented for payment by a holder in due course (including fraud or misconduct on the part of Employees);
 - (vii) require Employees to complete, sign and maintain any account funding authorizations or other documents or authorizations necessary for Ceridian to provide Services, including authorizations for the initiation of credit entries. Without limitation, Client shall ensure that each Employee utilizing Ceridian's direct deposit service has authorized the initiation of credit entries and the crediting of the Employee account, as well as the debiting of the Employee account through a file reversal in the event of a returned item from Client's account or any funding deficiency by Client (to extent permitted by law). Client must ensure that such authorizations are operative at the time of transmittal and crediting/debiting of the Employee accounts;
 - (viii) hereby grant to Ceridian the authority to issue Payments on behalf of Client, and to take such other action as may be necessary from time to time in connection with the provision of the Services, which might authorize to instruct its bank to stop payment and authorize to refuse payment as required to provide the Services;
 - (ix) ensure the Funds are available in the account from which Ceridian is drawing the Client Checks and/or initiating the Payments and authorize the initiation of debit entries and the debiting of the account in the amount and on the date specified and ensure that such authorization is operative at the time of transmittal of Client account; and
 - (x) pay for all reasonable expenses incurred by Ceridian as a result of Client errors or omissions.

2.3 Tax Filing Services

- 2.3.1 Ceridian's Obligations. Ceridian will:
- (i) prepare, deposit, and file Client's Payroll tax returns for those federal, state and local jurisdictions supported by Ceridian and reflected on Client's Tax jurisdictional profile;
 - (ii) remit Client's tax liabilities to Taxing Authorities as supported by Ceridian;
 - (iii) provide Client with a regular tax statement for each Client tax registration number processed by Ceridian;
 - (iv) provide, prepare and file employer Tax Forms in the formats required by each Taxing Authority provided that Ceridian has provided tax filing Services for Client for the entire calendar year or Client has provided year to date or quarterly tax filing data in accordance with Section 2.3.2(vii);
 - (v) respond to all Taxing Authorities inquiries pertaining to jurisdictions processed by Ceridian for periods of services provided by Ceridian. Ceridian shall provide Client with copies of correspondence sent to Taxing Authorities in the resolution of the inquiry; and
 - (vi) provide Client with online access to account information, including tax deposit history.
- 2.3.2 Client's Obligations. Client will:
- (i) prior to the first Payroll date, provide Ceridian with such information, forms, Powers of Attorney, written authorizations and other documentation as reasonably required by Ceridian in order to enable Ceridian to determine paid and accrued taxes and tax liabilities, and to remit Client's tax liabilities and otherwise act on Client's behalf in this regard;
 - (ii) provide accurate account numbers, remittance frequency and all other information required from time to time to permit accurate and timely remittance by Ceridian;
 - (iii) notify Ceridian in writing immediately of any changes to the frequency with which it must make its statutory remittances and provide Ceridian with any notices it receives from the Taxing Authorities relating to the frequency of such remittances or any other reporting requirements. Client shall continue to receive, review and be the contact for all correspondence and all other communications with the Taxing Authorities, but Client authorizes Ceridian to discuss matters relating to remittance of Client's source deductions with such Taxing Authorities;
 - (iv) communicate in writing any changes in services or changes that affect the information provided by Client to Ceridian ten (10) Business Days prior to the desired effective date of such change. Any penalty or other charges that result from incorrect, incomplete, or changed tax information provided by Client is Client's sole and exclusive liability and responsibility. Ceridian is not responsible for any matters existing prior to Ceridian's first Payroll date;
 - (v) review and compare the transmitted liabilities with Ceridian posted liabilities and notify Ceridian of any discrepancies within one (1) Business Day of initial receipt (or such other time period as reasonably established by Ceridian in accordance with its processing schedule
 - (vi) enter, maintain and transmit (via the Software) Payroll data to Ceridian, such number of days as established by Ceridian (acting reasonably) prior to the date the paychecks are to be issued and deposits are to be made, as required to meet agreed upon processing schedules;
 - (vii) provide mid quarter data within two (2) weeks of the Go Live Date, or by the 15th day of March, June, September, or December, whichever comes first, if Client's Go Live Date is after tax liabilities have been paid by Client in the quarter of service (or by such other deadlines as reasonably established by Ceridian from time to time in accordance with its processing schedule);
 - (viii) assist Ceridian in responding to inquiries or in processing amendment requests by providing the information necessary to meet Tax Authority requirements. Client shall provide Ceridian with written approval for amendments or inquiries resulting in additional tax, penalty and/or interest due, and agrees to fund these amounts in full prior to completion and submission;
 - (ix) retain records according to the schedules established by Taxing Authorities for Client. Ceridian has no responsibility or liability for maintaining or retaining records on behalf of Client;
 - (x) submit any necessary changes to the year-end tax file in accordance with the time frames reasonably established by Ceridian (such time frames will be established based on the time required, after receipt of such information by Ceridian, for Ceridian to perform its responsibilities within the time prescribed by the Taxing Authorities); and
 - (xi) provide Ceridian with Funds in an amount equal to the tax liability Payments to be made for a particular Payroll.

2.4 Year End Employee Tax Forms

- 2.4.1 Ceridian's Obligations. Ceridian will:
- (i) deliver the Tax Forms to Client no later than five (5) Business Days (or such other deadline as reasonably established by Ceridian from time to time in accordance with its processing schedule) after Client has committed/released to print (through the Software functionality) the Tax Forms in the year immediately following the calendar year for which the Tax Forms are being prepared (subject to Client's obligations to provide data and review output as contemplated herein, in a timely fashion);
 - (ii) provide support services via Ceridian's designated support portal for Client's technical personnel and primary users of the Services;
 - (iii) annually publish the Tax Forms production schedule;
 - (iv) print and/or post the type(s) and quantity of Tax Forms specified by Client and as the data appears in the file transmitted by Client; and
 - (v) package Tax Forms for shipment within five (5) Business Days (or such other deadline as reasonably established by Ceridian from time to time in accordance with its processing schedule) after Client has committed (through the Software application) to print/release the Tax Forms. Additional charges will apply for any Client requested (a) sorting and/or splitting, or (b) printing of Tax Forms.
- 2.4.2 Client's Obligations. Client will:
- (i) review Tax Forms upon receipt of same and notify Ceridian of any errors in such materials within two (2) Business Days (or such other deadline as reasonably established by Ceridian from time to time in accordance with its processing schedule) of receipt of printed Tax Forms; and
 - (ii) adhere to the annually published Tax Forms production schedule provided by Ceridian including: (a) completion of any necessary adjustments in the timeframe designated by Ceridian; and (b) committing the Tax Forms to print.

2.5 Wage Attachment Disbursements

- 2.5.1 Ceridian's Obligations. Ceridian will:
- (i) timely prepare and deposit Client's wage garnishment liabilities for those federal, state, and local payment processing units and individual third parties supported by Ceridian to which an Employee owes a debt and has agreed or is compelled by appropriate governmental authority to resolve via garnishment of Employee's wages;
 - (ii) collect funds to cover the total amount of wage garnishment liabilities transmitted by Client in accordance with the terms set forth in the Funding Authorization or in accordance with the timelines established by Ceridian from time to time, acting reasonably; and
 - (iii) provide a statement of account activity to Client summarizing funds collection and disbursement transactions. Ceridian is not responsible for providing additional administrative services including agency research, account reconciliation, and wage garnishment data input and adjustments except where Ceridian has agreed in writing to provide such services.

- 2.5.2 Client's Obligations. Client will:
- (i) provide wage garnishment data including wage order data, wage garnishment amounts, payee addresses, bank account information in a Ceridian approved format as outlined in user manuals, client communications and service advisories within the timeframes as required in respect of the Payroll data generally;
 - (ii) provide funds to cover the total amount of wage garnishment liabilities transmitted by Client in accordance with the terms set forth in the Funding Authorization;
 - (iii) notify Ceridian of any unscheduled and/or special Payroll runs that will impact wage garnishment data including void, manual, and/or adjustment transactions;
 - (iv) correct any errors before transmitting Client's next Payroll or wage garnishment data transmission. Any penalty or other charges that result from incorrect, incomplete, and/or changed wage garnishment data received by Ceridian from Client, or from Client's changed information or signatures and documents in Client's possession that are not provided to Ceridian in a timely manner are Client's sole and exclusive responsibility; and
 - (v) compensate Ceridian for any applicable late or miscellaneous fees related to the services. Any penalty or other charges that result from incorrect, incomplete, and/or changed wage garnishment data received by Ceridian from Client, or from Client's changed information that it has not disclosed to Ceridian in a timely manner is Client's sole and exclusive responsibility.

2.6 ACA Forms Filing Services *(APPLIES ONLY WHEN ACA MANAGEMENT IS PURCHASED)*

- 2.6.1 Ceridian will, upon receipt of complete, accurate and properly coded data in the format specified by Ceridian, annually file Client's ACA Forms in the format required by the Taxing Authority.
- 2.6.2 Client's Obligations. Client will:
- (i) prior to the Go Live Date and at appropriate intervals thereafter, provide Ceridian with such information, forms, written authorizations and other documentation as reasonably required by Ceridian to file ACA Forms;
 - (ii) provide complete and accurate data to Ceridian in a Ceridian specified manner, and promptly review and validate data and correct any incomplete, inaccurate and improperly coded data. Taxing Authorities will not accept a data file that is incomplete or improperly formatted;
 - (iii) adhere to the annually published ACA Forms production schedule provided by Ceridian including: (a) completion of any validation and necessary adjustments in the timeframe designated by Ceridian; and (b) committing the ACA Forms to Ceridian for processing; and
 - (iv) respond to Taxing Authority inquiries related to the ACA Forms.

2.7 ACA Forms Print and Image Services *(APPLIES ONLY WHEN ACA MANAGEMENT IS PURCHASED)*

- 2.7.1 Ceridian's Obligations. Ceridian will:
- (i) annually publish the ACA Forms production schedule;
 - (ii) subject to Client's obligations to provide complete, accurate and properly coded data, in a timely fashion, print and package ACA 1095-C Forms for shipment in accordance with its processing schedule. Employees may opt-out of receiving a printed form using the self-service functionality in the Software. Additional charges will apply for printing as well as any Client requested splitting of ACA Forms;
 - (iii) make available a copy of ACA Forms within the Software for review and approval by Client administrators. Upon approval, ACA Forms may be printed from the system; and
 - (iv) provide support services via telephone, electronic mail and/or access to Ceridian's designated web site for Client's technical personnel and primary users of the Services.
- 2.7.2 Client's Obligations. Client will:
- (i) complete web setup provided by Ceridian;
 - (ii) provide complete and accurate data to populate ACA Forms, and promptly review and validate data (including any codes auto-populated by the Software), and correct any incomplete, inaccurate and improperly coded data. Taxing Authorities will not accept a data file that is incomplete or improperly formatted; and
 - (iii) adhere to the annually published ACA Forms production schedule provided by Ceridian including: (a) completion of any validation and necessary adjustments in the timeframe designated by Ceridian; and (b) committing the ACA Forms to Ceridian for processing.

2.8 Employment and Salary Verification *(APPLIES ONLY WHEN EMPLOYMENT AND SALARY VERIFICATION IS PURCHASED)*

- 2.8.1 Ceridian's Obligations. Ceridian will:
- (i) conduct employment, income and other employment status verification searches (at the then current rate, to be confirmed at time of ordering) for Client. The third party contractor through whom Ceridian provides this Service is a Consumer Reporting Agency, as defined by the federal Fair Credit Reporting Act (FCRA). Information about applicable regulations currently in effect can be found at the Consumer Financial Protection Bureau's website: www.consumerfinance.gov/learnmore. The specific obligations of Furnishers of Information under the FCRA can be found at www.federalregister.gov/articles/2012/11/14/2012-27581/fair-credit-reporting-regulation-v-correction#h-14.
- 2.8.2 Client's Obligations. Client will:
- (i) provide Ceridian with the required information in time for Ceridian to complete the Services in accordance with the mutually agreed upon processing schedule;
 - (ii) as the data furnisher, be solely responsible for the accuracy of all data and information provided to Ceridian, and in this regard will participate (as needed) in consumer dispute resolution process that may occur related to the accuracy of information provided to Ceridian.

3. DAYFORCE WALLET / CARD PROGRAM. *(APPLIES ONLY WHEN CLIENT SUBSCRIBES FOR DAYFORCE WALLET IN AN ORDER FORM)*

3.1 As used in this Section 3:

- 3.1.1 "Accountholder Agreement" means the agreement to be entered into directly between an Employee and the Issuing Bank, with respect to the Employee's use of the Card and Dayforce Account;
- 3.1.2 "Advance" means any advance of monies made by Ceridian DF Licensing to the Trust, on behalf of the Client, in connection with and to fund On-Demand Pay, including:
- (i) On-Demand Pay amounts deposited into Dayforce Accounts;
 - (ii) applicable source deductions payable to Taxing Authorities in respect of Advances made to Employees; and
 - (iii) payments made to other third parties (in accordance with the rules configured in the Software) in connection with Advances made to Employees, including garnishments and benefit premiums;
- 3.1.3 "Card" means the access device or number associated with a Dayforce Account;

3.1.4 “*Ceridian DF Licensing*” means Ceridian Dayforce Licensing LLC, an Affiliate of Ceridian, licensed to provide the Advances contemplated for On-Demand Pay;

3.1.5 “*Dayforce Account*” means a Ceridian designated prepaid account established by an Employee with the Issuing Bank, into which Ceridian may distribute Payments (on behalf of the Client) to the Employee;

3.1.6 “*Dayforce Card Program*” (referred to as “*Dayforce Wallet*” on the Order Form) means, collectively, the overall program and associated mobile application functionality whereby Payments are made to the Dayforce Accounts, and (if made available by the Client) Employees may request advance payments of their wages or other compensation through On-Demand Pay, all as more particularly described in this Section 3;

3.1.7 “*Issuing Bank*” means the bank with which Ceridian has contracted to issue the Dayforce Accounts and Cards;

3.1.8 “*Line of Credit Agreement*” means the Line of Credit Agreement between Client and Ceridian DF Licensing, pursuant to which Ceridian DF Licensing will make available the Advances, the terms and conditions of which are set forth in Appendix A hereto;

3.1.9 “*Maximum Employee Advance*” means, in respect of each Employee, an amount equal to the Employee's gross wages or other compensation earned (during the then current Payroll period, as reflected in the Software) as of the date of the Advance request,

3.1.10 “*Network*” means the MasterCard, Cirrus and Maestro networks or substitute networks through which the Cards are accepted;

3.1.11 “*Next Scheduled Payroll*” means, at any given time, Client's immediately next scheduled Payroll to be processed hereunder;

3.1.12 “*On-Demand Pay*” means, where made available by Client to its Employees, the feature of the Dayforce Card Program whereby Ceridian (through Ceridian DF Licensing, under the Line of Credit Agreement) makes available to an Employee, an advance of net earned wages (or other earned compensation) prior to the Next Scheduled Payroll, by payment of such net earned amounts into the Employee's Dayforce Account; and

3.1.13 “*Rules*” means the laws, rules, regulations, by-laws or other operating standards or requirements of: (a) any Network; (b) any other card association operating a payment network which is utilized by Ceridian or the Issuing Bank for the purposes of provisioning a Dayforce Account or Card; (c) the National Automated Clearinghouse Association; or (d) other applicable regulators or associations with jurisdiction over activities associated with the Dayforce Card Program.

3.2 General. The Dayforce Card Program enables Client to make available to its Employees, the following:

3.2.1 the ability for Employees to establish individualized Dayforce Accounts, into which Payments (including On-Demand Pay) may be deposited, and from which the Employee may store, transfer and distribute funds, all as contemplated in the Accountholder Agreement; and

3.2.2 the ability to request payment of all or a portion of the Employee's wages or other compensation earned to date, prior to the Client's Next Scheduled Payroll.

3.3 Dayforce Accounts. In order to participate in the Dayforce Card Program, an Employee must enter into an Accountholder Agreement directly with the Issuing Bank. The Parties acknowledge and agree that the Dayforce Accounts are “payroll card accounts” as defined in Regulation E (12 CFR Part 205). Monies payable to an Employee will be deposited into an omnibus account in the name of the Issuing Bank (and under the issuing Bank's tax identification number), for the benefit of all Accountholders. Employee rights and obligations with respect to the Dayforce Account will be established by, and subject to, the terms and conditions of the Accountholder Agreement made between the Employee and the Issuing Bank, and may be maintained by Employee after his / her employment with Client ends. Ceridian or the Issuing Bank may refuse to issue or distribute a Dayforce Account to any Employee for which Ceridian or the Issuing Bank has not been able to independently verify the identity of the Employee, or where Ceridian has determined, in its sole discretion (acting reasonably), that an Employee represents an unreasonable risk (e.g. the Employee appears on a prohibited persons list).

3.4 Client Covenants. Client covenants, represents and warrants as follows:

3.4.1 it will offer Dayforce Accounts in accordance with applicable law; and

3.4.2 it will not distribute Payroll to Employees via Dayforce Accounts without first providing each Employee a copy of the applicable Accountholder Agreement and the Dayforce Accounts Fees disclosure form;

3.4.3 it will distribute to Employees such other program compliance related materials as may be reasonably requested by Ceridian from time to time; and

3.4.4 it will not distribute any materials with respect to the Dayforce Card Program that are not approved by Ceridian in advance.

3.5 Responsibility for Cards. To the extent physical Cards are provided to Client, Client accepts full responsibility for such Cards while in its possession or control (including inventory tracking and management), and will comply with all Rules issued at the time of physical card implementation. Client shall notify Ceridian and/or Ceridian's designee immediately upon becoming aware of any loss, theft, unauthorized use or fraudulent use of Cards and shall be fully responsible for the unauthorized or fraudulent use thereof.

3.6 Program Audit Rights. Client agrees that Ceridian, the Issuing Bank, and regulatory authorities having jurisdiction over Issuing Bank or Ceridian, will have the right to audit and inspect Client's books and records related to the Dayforce Card Program and Client's performance of its obligations with respect thereto, including: (a) any of Client's records pertaining to the set-up of Employees for participation in the Dayforce Card Program; and (b) marketing materials related to the Program. In the event a communication from a governmental authority regarding the Dayforce Card Program is received: (1) by Client, Client will promptly notify Ceridian; and (2) reasonably cooperate with any such inquiry received by Client, Ceridian or the issuing Bank.

3.7 On-Demand Pay.

3.7.1 As and when requested (and initiated) by an Employee through the Software, Ceridian will cause Ceridian DF Licensing to make an Advance (to the Trust) in an amount not to exceed the Maximum Employee Advance, to be distributed by the Trust as follows:

(i) payment of Employee's net wages (or other compensation) earned into the Employee's Dayforce Account.

(ii) withholding, and paying when due, the tax liabilities (as described in Section 2.3.1 above) payable in respect of the Advance, to the Taxing Authorities; and

(iii) withholding, and paying when due, other applicable third party payments (as configured in the Software) payable in respect of the Advance (such as, by way of example only, garnishments), to the respective third parties.

For the avoidance of doubt, certain limits and restrictions with respect to Advances can be configured in the Software, but in no event will an Employee be permitted to receive an Advance in an amount greater than the Maximum Employee Advance.

3.7.2 The Advances will be made by Ceridian DF Licensing on an interest free basis, provided the Advances are repaid in full on the Next Scheduled Payroll from the Payroll Funds provided by Client for the Next Scheduled Payroll. For the avoidance of doubt, Client will not be entitled to carry an ongoing balance beyond the Next Scheduled Payroll. Ceridian reserves the right to charge interest on any Advances not paid in full by the Next Scheduled Payroll, which will accrue from the date of default, at the interest rate as set forth in the Line of Credit Agreement.

3.7.3 Ceridian reserves the right to cease making Advances, in whole or in part, or to institute limits on the Advances, as it considers reasonable and prudent, at any time and from time to time, in its sole discretion. In this regard, Client acknowledges and agrees that while Ceridian (and Ceridian DF Licensing) may provide Advances under the Line of Credit Agreement initially without requiring security for the Line of Credit (by way of example only, during a pilot phase or initial roll out of the Dayforce Card Program), a priority security interest or other form of protection or assurance with respect to the Line of Credit will be required from Client when the On-Demand Pay feature is used by more Employees and / or the aggregate amount of the Advances exceeds the limits established by Ceridian where security is required, in its sole discretion.

3.7.4 In order to facilitate the Advances contemplated in connection with On-Demand Pay, Ceridian has arranged for its Affiliate, Ceridian DF Licensing, to provide Client a short term credit facility, on the terms and conditions as set forth in the Line of Credit Agreement. The Advances to be made by Ceridian DF Licensing under the Line of Credit will be provided directly to the Trust, to be distributed as set forth in Section 3.7.1 above, for and on behalf of the Client. **BY EXECUTING AN ORDER FORM SUBSCRIBING FOR THE DAYFORCE WALLET, IN ADDITION TO AGREEING WITH CERIDIAN TO THE TERMS OF THIS SECTION 3, CLIENT IS ALSO AGREEING WITH CERIDIAN DF LICENSING TO BE BOUND BY AND COMPLY WITH THE TERMS AND CONDITIONS OF THE LINE OF CREDIT AGREEMENT.** Access to the On-Demand Pay feature of the Dayforce Card Program, and the obligation of Ceridian to cause Advances to be made, is subject to Client agreeing to, and complying at all times with, the terms and conditions of the Line of Credit Agreement.

3.8 Contact with Employees. Client acknowledges and agrees that Ceridian (and / or the Issuing Bank, as applicable) may directly contact Employees as reasonably required in connection with the Dayforce Program, including: to provide additional information about features and functionality associated with the Dayforce Card Program; requesting information required to set up or maintain a Dayforce Account or Card, including verification of identity; provide support for Employees in connection with the Dayforce Card Program; and otherwise as reasonably required to meet its obligations to Client and the Employees in connection with the Dayforce Card Program.

3.9 Right to Change or Discontinue the Program. The Dayforce Card Program may be modified, suspended or discontinued by Ceridian at any time or from time to time, including as necessary to remain compliant with the Rules.

4. ADDITIONAL PROVISIONS

4.1 Client's Acknowledgement Regarding Trust Funds. Ceridian has established and shall maintain the Trust for the purpose of holding and keeping Funds and other trust funds received from its clients separate from Ceridian's own property. For clarity, the principal amount of the Funds received by Ceridian from Client shall at all times while in the possession or control of Ceridian, be held in the Trust. Client acknowledges that Ceridian is entitled to invest monies held by the Trust in accordance with the investment guidelines established from time to time by Ceridian, and that Ceridian, in its own capacity, is entitled as income beneficiary to all income and gains derived or realized from such investments and is not accountable to Client, the Employees, or any other person for such income or gains. The Trust is entitled to pledge such investments for borrowings of the Trust to facilitate the Payments, rather than converting the investments into cash. Notwithstanding any limitation of liability contained in the MSA, Ceridian shall fully and completely indemnify and save Client and Client's Affiliates harmless from and against any and all loss of any portion of the principal amount of the Funds (including any losses of principal resulting from the investment of the Funds) caused by Ceridian, to the extent such Funds were actually received by Ceridian.

Appendix A**Dayforce Card Program - Line of Credit Agreement**

This line of credit agreement ("*Line of Credit Agreement*") is made between Client and Ceridian Dayforce Licensing LLC ("*Ceridian DF Licensing*"), an Affiliate of Ceridian, as of the date of the Order Form signed by the Client subscribing for the Dayforce Card Program. Capitalized terms used herein are defined below.

RECITALS**WHEREAS:**

- A. Client and Ceridian HCM, Inc. ("*Ceridian*") have entered into (or are contemporaneously herewith entering into) the Ceridian HCM Agreement, pursuant to which the Parties agree that Ceridian will be providing Client with certain payroll processing services.
- B. Client is desirous of its Employees having access to Advances under the On-Demand Pay functionality offered by Ceridian under the Agreement.
- C. In order to facilitate the Advances contemplated in connection with On-Demand Pay, Ceridian has arranged for its Affiliate, Ceridian DF Licensing, to provide a short term credit facility to Client, on the terms and conditions as set forth in this Line of Credit Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained in this Line of Credit Agreement, Client and Ceridian DF Licensing agree as follows:

1. CAPITALIZED AND DEFINED TERMS; INCORPORATION OF TERMS

- 1.1. Incorporation of Terms.** This Line of Credit Agreement is entered into between Client and Ceridian Dayforce Licensing, in connection with the Ceridian HCM Agreement. In this regard, the Parties agree that the terms and conditions of the Master Services Agreement shall also apply to this Line of Credit Agreement, and are incorporated herein by reference; provided, however, that Section 8 (Limitation of Remedies) or any other similar provision of the Master Services Agreement limiting a party's liability to a multiple of the Fees paid by the Client thereunder, shall not apply to this Line of Credit Agreement. In the event of any conflict between the terms of the Master Services Agreement and the terms of this Line of Credit Agreement, the terms of this Line of Credit Agreement will prevail. All capitalized terms used herein and not defined shall have the same meaning as in the other documents that form part of the Ceridian HCM Agreement. In this regard, and for ease of reference, certain terms defined in the Ceridian HCM Agreement which are applicable to this Line of Credit Agreement, have been reproduced below, together with additional defined terms used herein.
- 1.2. Defined Terms.** As used herein:
 - 1.2.1. "Advance"** means any advance of monies made by Ceridian DF Licensing to the Trust, on behalf of the Client, in connection with and to fund On-Demand Pay, including:
 - 1.2.1.1. On-Demand Pay amounts deposited into Dayforce Accounts;
 - 1.2.1.2. applicable source deductions payable to Taxing Authorities in respect of Advances made to Employees; and
 - 1.2.1.3. payments made to other third parties (in accordance with the rules configured in the Software) in connection with Advances made to Employees, including garnishments and benefit premiums;
 - 1.2.2. "Ceridian HCM Agreement"** means the written agreement between Client and Ceridian pursuant to which Client engaged Ceridian to provide Client with certain payroll processing services, the details of which are known to the parties. The terms and conditions applicable to such agreement are set forth in an Order Form, together with the various terms and conditions incorporated therein by reference, including a Master Services Agreement, Service Particulars, Statement(s) of Work and other applicable documents and funding authorizations;
 - 1.2.3. "Ceridian DF Licensing"** means Ceridian Dayforce Licensing LLC, an Affiliate of Ceridian, licensed to provide the Advances contemplated for On-Demand Pay;
 - 1.2.4. "Dayforce Account"** means a Ceridian designated prepaid account established by an Employee with the Issuing Bank, into which Ceridian may distribute Payments (on behalf of the Client) to the Employee;
 - 1.2.5. "Dayforce Card Program"** means, collectively, the overall program whereby Payments are made to the Dayforce Accounts, and (if made available by the Client) Employees may request advance payments of their wages or other compensation through On-Demand Pay, all as more particularly described in the Ceridian HCM Agreement;
 - 1.2.6. "Issuing Bank"** means the bank with which Ceridian has contracted to issue the Dayforce Accounts and Cards;
 - 1.2.7. "Line of Credit Agreement"** means this Line of Credit Agreement;
 - 1.2.8. "Master Services Agreement"** means the written Master Services Agreement comprising part of the Ceridian HCM Agreement, and any schedules, appendices or other attachments thereto;
 - 1.2.9. "Maximum Credit Limit"** has the meaning set forth in Section 2.1.2 below;
 - 1.2.10. "Maximum Employee Advance"** means, in respect of each Employee, an amount equal to the Employee's gross wages or other compensation earned (during the then current Payroll period, as reflected in the Software) as of the date of the Advance request;
 - 1.2.11. "Next Scheduled Payroll"** means, at any given time, Client's immediately next scheduled Payroll to be processed hereunder;
 - 1.2.12. "On-Demand Pay"** means, where made available by Client to its Employees, the feature of the Dayforce Card Program whereby Ceridian (through Ceridian DF Licensing, under the Line of Credit Agreement) makes available to an Employee, an advance of net earned wages (or other earned compensation) prior to the Next Scheduled Payroll, by payment of such net earned amounts into the Employee's Dayforce Account; and
 - 1.2.13. "Prime Rate"** means the annual rate of interest announced from time to time by Ceridian's primary financial institution as a reference rate then in effect for determining interest rates on U.S. dollar commercial loans in the United States.

2. TERMS OF ADVANCE

2.1. Advances. Ceridian DF Licensing agrees to provide short term credit facility to Client, by way of Advances to be made to the Trust on behalf of Client to facilitate the On-Demand Pay requests, in accordance with the following:

2.1.1. Employee Advances. As and when requested by Ceridian (as initiated by an Employee through the Software), Ceridian DF Licensing will make an Advance to the Trust up to the Maximum Employee Advance, for and on behalf of the Client, for distribution to the Employee and others by the Trust as contemplated under the terms of the Dayforce Card Program. Each Advance processed by Ceridian DF Licensing will be considered an Advance at the end of the Business Day on the date of processing of the Advance.

2.1.2. Client Advance Limits and Restrictions. Ceridian DF Licensing reserves the right, in its sole and absolute discretion, to institute a maximum dollar amount (the "*Maximum Credit Limit*"), or to impose other restrictions or limits on the Advances to be made on behalf of the Client to its Employees hereunder. The Maximum Credit Limit and other restrictions and limits are subject to review and revision by Ceridian DF Licensing from time to time, with any such change to be communicated to Client in writing no less than one Payroll period in advance. In addition, this Line of Credit Agreement may be temporarily suspended from time to time, or terminated by Ceridian DF Licensing at any time, in each case in Ceridian DF License's sole discretion.

2.1.3. Due Diligence. Prior to the initial Advance and periodically thereafter, Ceridian DF Licensing may conduct due diligence to determine Client's eligibility to participate in the On-Demand Pay program. Client agrees to provide Ceridian DF Licensing with reasonable access to information as reasonably requested from time to time to evaluate Client's suitability for participation in the On-Demand Pay program, or to establish or review limits imposed on the Advances.

2.2. Notice of Client Default. Client agrees to immediately notify Ceridian DF Licensing upon becoming aware of the existence of any condition or event which with the lapse of time or failure to give notice would cause Client to be in breach of its obligations under this Line of Credit Agreement, including the ability to repay outstanding Advances. Such written notice will specify the nature and period of the existence of such condition or event, and any action which Client is taking or propose to take with respect thereto.

3. REPAYMENT

3.1. Repayment of Outstanding Advances. Client agrees to repay all outstanding Advances in full on the Next Scheduled Payroll, from Funds provided in the ordinary course by Client for the Next Scheduled Payroll, or such other payment method as agreed upon by Ceridian or Ceridian DF Licensing. For the avoidance of doubt, Client will not be entitled to carry an ongoing balance beyond the Next Scheduled Payroll. Ceridian DF Licensing reserves the right to charge interest on any Advances not paid in full by the Next Scheduled Payroll, with interest accruing from the date of default, at an interest rate equal to the Prime Rate plus two (2%) percent.

3.2. Client Breach. If Client fails to pay the full amount of all outstanding Advances on the Next Scheduled Payroll, Client agrees that Ceridian DF Licensing may:

3.2.1. immediately terminate Client's and/or its Employees' participation in On-Demand Pay;

3.2.2. subject to any right to notice of default and right to cure required by state law, declare all outstanding Advances immediately due and payable,

3.2.3. debit Client's bank account for all outstanding Advances;

3.2.4. exercise a right of offset against other Funds held in Trust on behalf of Client; and

3.2.5. pursue any and all other remedies available to it at law.

Client waives any and all defenses to liability under this Line of Credit Agreement other than payment in full.

3.3. Attorneys' Fees and Collection Costs. To the extent not prohibited by applicable law, Client shall pay Ceridian DF Licensing, on demand, any and all expenses, including, but not limited to, arbitration filing and other fees, collection costs, reasonable attorneys' fees, and all other expenses expended by Ceridian DF Licensing to obtain or enforce payment obligations of Client hereunder.

4. ADDITIONAL TERMS

4.1. Additional Assurance. Ceridian DF Licensing has agreed to provide an initial Line of Credit to Client, for the purposes Client's pilot participation in the On-Demand Pay Program, without requiring a security interest or other assurances of repayment of the Outstanding ODP amounts. However, the Parties acknowledge and agree that Ceridian DF Licensing shall have the right, in its sole discretion, to require that Client provide additional assurances to continue its participation in the On-Demand Pay Program as the number of potential Employees accessing funds through the On-Demand Pay Program increases, the potential dollar amount of the Credit Limit increases beyond the limit or threshold amount considered reasonable (in Ceridian's sole discretion) for an unsecured credit facility, or otherwise if Ceridian believes that the Client's ability to repay the Outstanding ODP amounts has deteriorated. Ceridian DF Licensing shall provide Client with notice of its intention to require such additional assurance, and the Parties will agree upon the nature and form of security to be provided, failing which Client's participation in the On-Demand Pay Program may be limited to the then current level (or such other limit as Ceridian considers reasonable in the circumstances for an unsecured facility) or terminated. By way of example only, the kinds of assurances reasonably acceptable to Ceridian DF Licensing, include the following: (i) granting Ceridian DF Licensing a security interest, (ii) providing Ceridian DF Licensing a letter of credit, (iii) pre-funding the Maximum Credit Balance or some other amount mutually agreed by the Parties, (iv) placing cash on deposit with Ceridian DF Licensing, or (v) revising the method and timing of funds transfer (e.g., requiring a drawdown wire to be processed at an earlier time than originally stipulated).

4.2. Transfer and Assignment. Ceridian DF Licensing reserves the right to sell, transfer, or assign all or any portion of its interest in this Line of Credit Agreement (including, without limitation, any amounts advanced hereunder from time to time) to another entity or person and Client hereby knowingly consents to such sale, transfer, or assignment. This Line of Credit Agreement, and the rights and obligations hereunder, may not be assigned by Client (including by operation of law) without Ceridian's prior written consent and any purported assignment in violation of the foregoing shall be void ab initio. For the avoidance of doubt, no such transfer or assignment shall be effective unless the assignee has agreed to be bound by the terms and conditions of this Agreement.

4.3. Term and Termination. This Agreement commences as of the Effective Date, and unless earlier terminated in accordance with the express terms hereof, will continue for so long as Ceridian continues to provide Client with the Dayforce Card Program Services under the Ceridian HCM Agreement. For the avoidance of doubt, this Line of Credit Agreement shall automatically terminate contemporaneously with the expiration or termination (for any reason) of the Ceridian HCM Agreement.

- 4.4. Breach, Default, and Termination.** Without limiting the generality of the application of the Master Service Agreement to this Line of Credit Agreement (as contemplated under Section 1.1 above), the parties agree that Section 3.2 (Termination) of the Master Services Agreement shall apply to this Line of Credit Agreement.

5. CLIENT'S REPRESENTATIONS AND WARRANTIES.

Client represents and warrants as follows on the date hereof and on the date any advance is made hereunder:

- 5.1. Formation.** Client is duly organized, validly existing, and in good standing under the laws of its state of incorporation and is duly qualified or licensed and in good standing to do business as a foreign entity in all jurisdictions in which Client does business.
- 5.2. Client's Authorization.** The execution, delivery and performance by Client of this Line of Credit Agreement are within Client's powers, have been authorized by all necessary corporate action and do not and will not contravene Client's Articles of Incorporation or Bylaws, violate any provision of law or result in a breach of or default under any other Line of Credit Agreement to which Client is a party, including any other financing agreements.
- 5.3. Litigation.** There is no pending or threatened action, claim, investigation, lawsuit or proceeding affecting Client before any court, governmental agency, arbitrator or arbitration panel, which if decided adversely to Client would have a material adverse effect on the financial condition or operations of Client.
- 5.4. Valid Obligations.** This Line of Credit Agreement when delivered hereunder will be legal, valid and binding obligations of Client, enforceable against Client in accordance with their respective terms.
- 5.5. Taxes.** Client (i) has filed all tax reports and returns, if any, required to be filed, including but not limited to reports and returns concerning income, franchise, employment, sales and use, and property taxes; (ii) has paid all of its tax liabilities, if any, which were due on or prior to the date hereof; and (iii) is not aware of any pending investigation by any taxing authority nor of any pending assessments or adjustments which would materially increase its tax liability.
- 5.6. Solvency.** Client is not in default under any agreement by which it has obtained the right to make and sell any of the services or other products sold and/or provided by it. Client represents that as of the date of this Line of Credit Agreement (i) Client has no present intention to close or cease operating its business, in whole or in part, temporarily or permanently, (ii) Client is solvent and not contemplating any insolvency or bankruptcy proceeding, (iii) during the four (4) months preceding the date hereof, Client has not discussed with or among Client's management, counsel, or any other advisor or creditor, any potential insolvency, voluntary or involuntary bankruptcy, receivership, or assignment for the benefit of creditors with respect to Client and no such action or proceeding has been filed or is pending, and (iv) no eviction or foreclosure is pending or threatened against Client.
- 5.7. Business Information.** All information (financial and other) provided by or on behalf of Client to Ceridian and Ceridian DF Licensing in connection with the execution of or pursuant to the Ceridian HCM Agreement and this Line of Credit Agreement and during the term of this Line of Credit Agreement is and will be true, accurate and complete in all respects.

6. GENERAL PROVISIONS

- 6.1. General Provisions of the Master Services Agreement Apply.** Without limiting the generality of the application of the Master Service Agreement to this Line of Credit Agreement (as contemplated under Section 1.1 above), the parties agree that Section 13 (General) of the Master Services Agreement shall apply to this Line of Credit Agreement.
- 6.2. Survival of Repayment Obligations.** Notwithstanding anything herein or in the Master Services Agreement to the contrary, Client's obligation to repay all Advances in full shall continue in full force and effect until all such Advances have been paid in full, notwithstanding the expiration or termination of this Line of Credit Agreement or the Ceridian HCM Agreement. Any Section herein that, by its terms, suggests survival beyond termination hereof, shall so survive until the natural expiration thereof.



SERVICE PARTICULARS DAYFORCE ANCILLARY SERVICES TERMS

(APPLICABLE TO THOSE ANCILLARY SERVICES PURCHASED BY CLIENT AS REFLECTED IN THE ORDER FORM)

Ceridian makes available certain ancillary services for use in connection with the Dayforce Services. Client may elect to use the following ancillary services at any time throughout the Service Term, at the then current Fee charged by Ceridian for such ancillary services (as set forth in the Order Form and/or Rate Sheet, as applicable). All capitalized terms used herein and not defined shall have the same meaning as in the other documents that form part of the Agreement (as defined in the MSA) or the Dayforce General Terms (the Service Terms applicable to all Dayforce bundles), as applicable.

1. INSIGHTS Conference Discounted Annual Pass (the "Pass"). For each annual Pass Fee paid, Client will be entitled to send one representative to the annual INSIGHTS conference. This Fee covers admission to the conference and all sponsored events ordinarily included with such Fee (see INSIGHTS brochure for more details). Should INSIGHTS Plus be chosen, the Fee covers the aforementioned admission as well as Client's access to the hands-on lab sessions offered. Client will be responsible for all travel, accommodations and other expenses incurred. The first year's Fee will be invoiced upon signing this document and payable in accordance with the payment terms for Client's other Services. Client will automatically be renewed to attend the conference each year of the Service Term, for the Fee set forth in the Order Form (which Fee may be increased by Ceridian each year by written notice to Client). The Pass will subsequently be billed each year of the Service Term one (1) year from the date of the original Pass invoice. If the Pass is cancelled sixty (60) days prior to the conference, a refund of the Pass Fee, minus an administrative fee (\$150 USD / \$195.00 CAD / £112.50 / €135.00 / \$220.50 AUD / \$232.50 NZD / \$201 SGD) (the "Insights Administrative Fee") will be provided to Client. If the Pass is cancelled within 59 days of the conference, a refund of fifty (50%) percent of the Pass Fee, minus the Insights Administrative Fee will be provided to Client. Client acknowledges that the Pass is valid only for the year it is administered and cannot be used for subsequent years of the Service Term.

2. Unemployment Compensation (Available in the United States only). Ceridian will become the "address of record" on behalf of Client to ensure the appropriate unemployment compensation forms are delivered on behalf of Client, and determine (in consultation with Client) whether or not unemployment claims should be protested and provide consultation on unemployment appeals and hearings. Ceridian will also verify unemployment rates and charges, protest invalid charges, verify annual unemployment tax rate assessment, calculate voluntary contributions when applicable and provide quarterly management reports. Client will deliver the required information in time for Ceridian to complete such services in accordance with the mutually agreed upon processing schedule, and will be solely responsible for the accuracy of all data and information furnished to Ceridian.

3. Block of Hours. Client may purchase a block of hours for Professional Services (as defined below) at a discounted hourly rate for use within a twenty-four (24) month period, effective upon project kick-off of Implementation Services (or upon signing of subsequent Order Forms). The Fees associated with the Professional Services set forth in the Order Form will be invoiced and payable on a monthly basis, based on actual hours worked, with any balance invoiced upon expiration of the 24-month period. Any Professional Service hours remaining at the end of said 24-month period will lapse and cannot be carried over to the following year. The discounted hourly rate shall apply to additional Professional Services hours upon Client's request during said 24-month period. Once the 24-month period has lapsed, additional hours will be subject to Ceridian's then current rate. If Client terminates the Professional Services for any reason, any remaining outstanding balance will be payable immediately. Client assumes all responsibility for determining the appropriate number of Professional Services hours it will require. While Ceridian provides historical or industry data as context for Client, Ceridian cannot be held liable for over or under estimation of hours Client may need pursuant hereto. In the event Client purchases an additional block of hours while hours remain on an existing block of hours, any inflight projects and any new Client requests for Professional Services will be applied against the existing block of hours until the project is completed (even after the block of hours is exhausted). Once the existing block of hours is exhausted, any new Client requests for Professional Services will be applied against the new block of hours. For the purposes of this section, "Professional Services" is for-fee work performed by Ceridian's Professional Services Team, as determined by Ceridian, which includes projects performed to complement, enhance, or modify Client's configuration and/or data to meet Client's current or future business needs.

4. Additional Environments. For purposes of conducting ongoing configuration activities in a non-production environment, Ceridian will provide Client with access to the number of additional non-production environments set forth in the Order Form. One Time Fees will be invoiced upon environment availability and Recurring Fees will be invoiced and payable monthly, commencing upon environment availability. Client may cancel an additional non-production environment without an applicable Early Termination Fee upon thirty (30) days' prior written notice to Ceridian.

5. Language Packs. Language Packs shall be added to the Software. Through this feature, Ceridian, for any given language, will translate labels in the user interface (UI) and may translate all, some, or none of the Dayforce admin & user guides, release notes, and interface specifications.

6. Application Support – Premium. In addition to the standard support provisions set out in the Dayforce General Terms, Client shall receive the enhanced first response times and hours of first response for urgent matters, as set forth in the following table:

7. SEVERITY	DESCRIPTION	FIRST RESPONSE
Urgent	A complete inability to use major functionality within the application resulting in a serious impact to the Client's business operations with no existing workaround	Within 1 hour (Monday to Sunday)
High	Severely limited ability to use major functionality within the application that could impact the Client's business operations, with workarounds that may not fully address the issue	Within 4 business hours (Monday to Friday)

8. Dayforce Managed Garnishments (Available for United States clients only, including Employees in Canada of such clients).

8.1 Ceridian's Obligations. Ceridian shall: (i) receive wage garnishment order directly from Client or by Electronic Income Withholding Orders (e-IWO) via the department of Health and Human Services for child support orders; (ii) notify sender if the information that Ceridian has received is insufficient. Ceridian is not responsible for any pre-existing errors or similar matters arising prior to commencement of the Services by Ceridian or for any errors that may occur in the event that Ceridian is not provided with the necessary information by Client in a timely manner; (iii) retain a copy of each order received, subject to Ceridian's data retention policies and as required to execute the Service; (iv) review, set-up, modify or terminate each garnishment in the payroll system as directed in the applicable wage garnishment order; (v) provide garnishment order information to impacted employees if required by applicable state laws; (vi) setup the required calculation method, target, goal, payee information and employee arrear amounts as required in the payroll system; (vii) ensure multiple employee garnishments are properly prioritized as per legislative requirements; (viii) configure garnishment administration fees as directed by the Client business rules; (ix) respond to Client requests regarding the appropriate wage garnishment deductions for bonuses and off cycle checks; (x) remit payment and required reporting to the appropriate payees as specified in the garnishment order; (xi) research and take action on any returned funds and determine if the employee or Client should be reimbursed for such funds; (xii) send notification to the originating party of the garnishment order stating that the payer is no longer an employee of the Client upon employee termination; (xiii) respond to routine agency interrogatories; (xiv) assist with management of garnishments pertaining to void and reissue of payroll checks; (xv) maintain garnishment rules in the system; (xvi) the Services do not include Ceridian appearing in court on behalf of Client or any activity that constitutes the practice of law. If legal representation of Client is required, Ceridian will furnish Client with the relevant wage garnishment data in Ceridian's possession to

support Client's efforts to comply with the request; and (xvii) upon termination of the Services, provide wage garnishment document images to Client at Ceridian's agreed rate as referenced in the Order Form.

8.2 Client's Obligations. Client shall: (i) submit a completed and signed e-IWO consent form listing each FEIN; (ii) assign a primary point of contact and designated alternate contact responsible for coordinating Service delivery; (iii) provide wage garnishment data including wage order details, wage garnishment amounts, payee addresses, bank account information, within the timeframes as required in respect of the Payroll data generally; (iv) except in the case of e-IWO, receive and retain the original wage garnishment orders and provide Ceridian a copy of wage garnishment orders via email or fax (not in paper form) or SFTP no later than three (3) Business Days after Client's receipt of such documents; (v) be responsible for the accuracy and completeness of wage garnishment orders and information provided to Ceridian; (vi) review garnishment reports to ensure receipt of all garnishments; (vii) notify Ceridian of any unscheduled and/or special payroll runs that will impact wage garnishments; and (viii) notify Ceridian three (3) weeks in advance of any bonus runs or lump sum payment to allow Ceridian adequate lead time to obtain agency direction for wage garnishment deductions from such payments. In the event Client business conditions do not allow adequate time for Ceridian to contact and receive a response from agencies regarding appropriate wage garnishment deductions, Ceridian will contact Client to approve the wage garnishment deduction amount and Client is solely responsible for the accuracy of the payroll deduction amount; any penalty or other charges that result from incorrect, incomplete, and/or changed wage garnishment data received by Ceridian from Client or from Client's changed information or signature and documents in Client's possession that are not provided to Ceridian in a timely manner are Client's sole and exclusive responsibility.

8.3 Employee Contact Center (Dayforce Managed Garnishments). Upon Client request and for additional Fees, Ceridian will provide authorized Employees with contact center support via phone or email to answer questions concerning the Services. Queries from spouses or third parties will not be honored by Ceridian; the only exceptions being cases for powers of attorney and estates. The contact center will be available Monday through Friday between 8:00 a.m. and 8:00 p.m. Eastern Time (excluding holidays).

9. Dayforce Technical Account Manager ("TAM") (Available in the United States, Canada, United Kingdom and Ireland). Client will be assigned a designated TAM to serve as a technical advisory resource to Client commencing at the date Implementation Services are started (generally by way of a project kick off meeting), for purposes of assisting Client with best practices, pre-go live readiness, post-go live activities including adoption of the Software within its organization, providing ongoing support of Software release readiness, optimization and risk reviews, and technical governance between Client and Ceridian. The TAM does not provide legal or tax advice.

10. Dayforce Technical Account Manager – Additional (Available in the United States, Canada, United Kingdom and Ireland). Client will be assigned an additional designated TAM to service the region which Client's primary TAM does not service (either the United States / Canada or the United Kingdom / Ireland).

11. Dayforce Dedicated Technical Account Manager ("DTAM") (Available in the United States and Canada only). Client will be assigned a named DTAM, dedicated to Client, to serve as a technical advisory resource to Client commencing at the date Implementation Services are started (generally by way of a project kick off meeting), for purposes of assisting Client with best practices, pre-go live readiness, post-go live activities including adoption of the Software within its organization, providing ongoing support of Software release readiness, optimization and risk reviews, and technical governance between Client and Ceridian. The DTAM does not provide legal or tax advice.

12. Dayforce Education Services.

12.1 Dayforce Essentials (applicable when a Core Module is purchased). Ceridian will make a set of tools available for the purposes of creating and executing communication and go-live training plans. The tools include introductory role-based videos, sample email announcements, sample job aids, communication and training project plan templates, and videos that provide an introduction to Dayforce module functionality.

12.2 Dayforce MyPath. Ceridian will provide pre-built end-user training content accessible via the Dayforce application or loaded in Client's learning management system, as elected by Client, for an additional Fee. All users with access to the Dayforce application will have access to content during the subscription period which includes e-learning, student guides and job aids.

12.3 Dayforce MyPath Pro. Ceridian will provide pre-built training content accessible via the Dayforce application or loaded into Client's learning management system, as elected by Client, for an additional Fee. All users with access to the Dayforce application will have access to content during the subscription period which includes e-learning, student guides and job aids. Allows a single named user with an active subscription to author content.

12.4 Dayforce Education Package. Ceridian will provide a certain number of Live Memberships based on the Number of Employees (1-999 Employees – 3 Live Memberships; 1000–4999 Employees - 5 Live Memberships; 5000+ Employees – 10 Live Memberships). Client will be entitled to the Services set forth in the sections titled "Dayforce Live Membership" and "Dayforce MyPath".

12.5 Dayforce Education Package Pro. Ceridian will provide a certain number of Live Memberships based on the Number of Employees (1-999 Employees – 3 Live Memberships; 1000–4999 Employees - 5 Live Memberships; 5000+ Employees – 10 Live Memberships). Client will be entitled to the Services set forth in the sections titled "Dayforce Live Membership" and "Dayforce MyPath Pro".

12.6 Dayforce Live Membership. For each Live Membership purchased, a single named member may attend any publicly scheduled training session offered to Dayforce clients or access recorded or self-paced content available through the Ceridian Education Center during the subscription period. Members must register their name and email address with Ceridian. Members must self-enroll using online registration tools. Membership can be transferred to a new user if the current member is no longer accessing the Dayforce application.

12.7 Instructor-Led Client Exclusive Training. Ceridian will provide instructor-led training delivered exclusively to the Client via onsite or virtual delivery. Standard Dayforce Education training environment and course materials will be used. Client will receive soft copy of course materials for distribution to participants and up to 12 participants may attend a session. Client can create a tailored agenda by selecting relevant course topics available in the standard course offerings.

12.8 Dayforce Custom Go-Live Training – Employee/Manager. Ceridian will provide go-live training for managers and employees, accessible via the Dayforce application. The course consists of custom-developed content (1-6000 Employees - 15 topics; 6001+ Employees - 25 topics; Retail sector (regardless of the Number of Employees) – 20 topics) using Client's configuration to cover unique business processes and standard content for core functionality being deployed. The content will be developed in one language (English). The content is relevant to employee or manager use of Dayforce and assumes one role each for manager and employee audiences. One day of instructor-led training or content walk-through to serve as Train-the-Trainer session is included (additional days may be purchased). Two review cycles are included: cycle 1 captures client feedback and cycle 2 validates that feedback from cycle 1 was properly implemented. Client must reserve 3 weeks for development following completion of UAT and integration testing, and will assume all risks (time delay and additional costs) associated with configuration changes.

12.9 Dayforce Custom Training – Other. Ceridian will provide custom training for defined Client users. The course consists of custom-developed content using Client's configuration to cover unique business processes and/or standard content repurposed to focus on core functionality being deployed. A quote setting out details of the training will be approved by the Client in advance of development and delivery of training.

12.10 Dayforce Reporting Workshop. Ceridian will provide a one-day assessment to evaluate Client's reporting requirements. The assessment includes an analysis of 3 to 5 reports, recommended reporting solutions, and assessment of Client reporting skillset. Client must provide detailed examples of required reports. Following the assessment, Ceridian will provide a two-day workshop to train/coach up to 3 Client representatives to develop reports as identified in the Reporting Assessment. Participants must meet knowledge and skill prerequisites as identified in the Reporting Assessment.

12.11 Dayforce Education Consulting Services. Ceridian will provide one-on-one informal training/coaching via onsite or virtual delivery (as purchased) on specific tasks/processes as identified by Client. The training/coaching is limited to tasks such as transaction processing, explanation of Dayforce product concepts and processes, and minor administration or configuration updates. Access to training environments or training manuals are not included. Participants must meet pre-requisite knowledge either through attending Dayforce training or equivalent work experience.

12.12 Dayforce Payroll Administrator Fast Start. Ceridian will work with Client to identify key processes and tasks that need to be completed to review and process pay, using Dayforce Payroll (does not apply to in-country payroll services). Through one-on-one coaching (up to 8 hours), Ceridian will provide an overview of fields on the HR record relevant for payroll and a walk-through of the pay cycle, basic payroll auditing reports, and processing pay. A recommendation will be made for additional training which is available on the Ceridian Education Center. Walk-through will use the Client's environment and standard Dayforce Education reference materials. Client resource is assumed to have payroll domain expertise and experience using payroll software. Services to be delivered virtually.



Dayforce US, Inc.
3311 E Old Shakopee Rd Ste 400
Minneapolis MN 55425-1361
United States

Customer: 56512 City of Independence

Bill To:

Accounts Payable
Diana Keerhan
City of Independence
111 E Maple Ave
Independence MO 64050
United States

Date	10/20/2025
Due Date	11/19/2025
Invoice #	IN1691467
Terms	Net 30
Currency	US Dollar

Ship To:

Diana Keerhan
City of Independence
111 E Maple Ave
Independence MO 64050
United States

Invoice

Description	Tax	Qty	Rate	Amount
ID: NS:56512				
Dayforce Subscription Fee Service Period: 11/1/2025 - 11/30/2025	N	1075	23.82	\$25,606.50
Dayforce Tax Filing - Add'l State Juris (1st Included) Service Period: 9/1/2025 - 9/30/2025	N	5	10.89	\$54.45
Notification of Change (NOC) Service Period: 9/1/2025 - 9/30/2025	N	1	12.50	\$12.50
Returned Direct Deposit Service Period: 9/1/2025 - 9/30/2025	N	2	35.00	\$70.00
Dayforce Printed Materials - Next Day Service Service Period: 9/1/2025 - 9/30/2025	N	3	1.90	\$5.70
Quarterly Trust Maintenance Fee - active check activity Service Period: 9/1/2025 - 9/30/2025	N	1	50.00	\$50.00
ID: {none}				
Dayforce Touch Clock (Subscription) Service Period: 10/1/2025 - 10/31/2025	Y	3	107.80	\$323.40
Dayforce Year 1 Service Subscription Fee Service Period: 10/1/2025 - 10/31/2025	N	1	1435.00	\$1,435.00

For questions regarding this invoice please email AccountsReceivable@dayforce.com
Any unapplied cash or credits will be applied to past due balances after 120 days, if remittance is not provided.

**PLEASE RETURN THIS PORTION OF
INVOICE WITH YOUR PAYMENT TO:**

Dayforce US, Inc.
PO Box 772830
Chicago, IL 60677-2830

Customer: 56512 City of Independence

Invoice #: IN1691467
Invoice Date: 10/20/2025
Due Date: 11/19/2025

Invoice Total: \$29,196.86
Cash/Credits Applied: -\$0.00

Balance Due: \$29,196.86



IN1691467



Dayforce US, Inc.
3311 E Old Shakopee Rd Ste 400
Minneapolis MN 55425-1361
United States

Description	Tax	Qty	Rate	Amount
Dayforce Touch Clock (Subscription) Service Period: 10/1/2025 - 10/31/2025	Y	14	107.80	\$1,509.20
Subtotal				\$29,066.75
Tax				\$130.11
Total				\$29,196.86

Carissa Smith

For questions regarding this invoice please email AccountsReceivable@dayforce.com
Any unapplied cash or credits will be applied to past due balances after 120 days, if remittance is not provided.

PLEASE RETURN THIS PORTION OF
INVOICE WITH YOUR PAYMENT TO:

Dayforce US, Inc.
PO Box 772830
Chicago, IL 60677-2830

Customer: 56512 City of Independence

Invoice #: IN1691467
Invoice Date: 10/20/2025
Due Date: 11/19/2025

Invoice Total: \$29,196.86
Cash/Credits Applied: -\$0.00

Balance Due: \$29,196.86



IN1691467

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

A public hearing for the application to rezone the property at 19405 E. 40th Street Court S from R-6, Single Family Residential, to O-1, Office-Residential. ***New Information Only.***

Recommendations:**Background:****Emergency Justification:****Fiscal Impact:****Council Action:**

Department / Contact	Community Development /
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REVIEWERS

Tom Scannell
Jeremy Cover
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. 10-28-25 Public Notice Proof

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, October 28, 2025, and by the Independence **City Council** at 6 p.m., Monday, December 15, 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 25-100-21 – Rezoning – 19405 E. 40th Street Court S.
- A request to rezone the property from R-6 (Single-Family Residential) to O-1 (Office 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 6 day of October, 2025.

Tom Scannell, Community Development Director
The City of Independence, Missouri is an Equal Opportunity Employer/Contractor/MFD

Published in the Examiner, Oct 11, 2025

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City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

25-121 **2R** An ordinance approving a rezoning from District R-6 (Single-Family Residential) to District O-1 (Office-Residential) for the property located at 19405 E. 40th Street Court

S. 2R Item passes 7-0 Ord. No. 19763

Recommendations:

Commissioner Young made a motion to recommend approval to rezone the property 19405 E. 40th Street S. from R-6 (Single-Family Residential) to O-1 (Office-Residential). A second was made by Commissioner Ferguson. The Independence Planning Commission voted as follows:

Commissioner Nesbitt – Absent

Commissioner Ferguson – Yes

Commissioner Ashbaugh – Yes

Commissioner O’Neill – Yes

Commissioner Torres – Yes

Commissioner Young – Yes

Commissioner Wiley – Yes

The motion passed, and such the application is forwarded to the City Council for its consideration. Staff recommends approval of this application.

Background:

Matt Covenington requests to rezone the subject property from R-6 (Single-Family Residential) to O-1 (Office-Residential).

Property History:

The northern parcel was never formally platted. In 1975, it was annexed into the City through Ordinance No. 2864 and designated R-1 (Single-Family Residential). In 1980, the zoning was amended to R-1b (Single-Family Residential). The parcel was later separated from a larger parent tract during the establishment of the Little Blue Trace Park and the Jackson Drive right-of-way. With the adoption of the Unified Development Ordinance (UDO), the zoning designation was updated from R-1b to R-6 (Single-Family Residential).

Proposal:

The applicant intends to develop a three-story 40-unit apartment structure at 19405 E. 40th Street Court S. The Peaks at Blue River development, located at the southeast corner of Jackson Drive and 40th Street Court S., includes two tracts containing 2.04-acres and 0.79-acres which are currently zoned O-1 (Office-Residential) and R-6 (Single-Family Residential), respectively. This rezoning request has been submitted to rezone the 0.79-acre parcel to O-1. An application for a Minor Subdivision has also been submitted to combine these tracts. The property contains no development or impervious cover. The Little Blue Trace Park abuts the

southeastern boundary of the parcel. This smaller triangular parcel will provide needed open space and outdoor amenities for the development contained on the larger parcel.

Given this proposal is not a Planned-Unit-Development (PUD), the development will be fully reviewed administratively. Upon the rezoning of the northern parcel, Community Development will need to review the joining of the two parcels via the Minor Subdivision process and then review the proposed development via the final plan review and building permit processes.

Physical Characteristics of Property:

The northern parcel is triangular in shape, abutting the Little Blue Trace Park on the east and on the north by the Jackson Drive right-of-way. The property is relatively flat, with scruffy plantings along the east and is lower than the right-of-way, sloping east toward the park. Much of the parcel is in FEMA identified flood plains.

Characteristics of the Areas:

The vicinity of the proposed development is predominately nursing and skilled care, multiple-family residential, retail and restaurant uses. To the southwest is senior living uses. Then, to the west, a nursing home and across Jackson Drive, to the northwest, are retail and restaurant uses. North, across Jackson Drive, is an undeveloped property. To the west lies the Little Blue Trace Park, the Little Blue River and a multiple-use trail.

ANALYSIS

Consistency with *Independence for All*, Strategic Plan:

The project should achieve the goal of, "livability, choice, access, health and safety through quality neighborhoods." The project should improve visual appearance, improve public infrastructure and facilities.

Comprehensive Plan Tools and Policies for the Current Designation:

The Comprehensive Plan envisions the area around the rezoning to be Mixed Use. The relevant Guiding Principle would be that it facilitates the development of a connected, mixed-use neighborhood, which this residential component would further that mixed-use designation.

Zoning:

The applicant proposes District O-1 (Office Residential) which allows for multifamily housing, offices, banks, business services, daycare centers, nursing homes, government facilities, churches, funeral and interment services, schools, colleges and universities and crop agriculture. District R-6 zoning allows single-family housing, home-based daycare, government facilities, churches, schools, utilities, cemeteries, crops and gardening.

Historic and Archeological Sites:

There are no apparent historic or archeological issues with this property.

Floodplain/Stream Buffer and Stormwater Drainage:

The southeastern portion of the parcel subject to rezoning is located in FEMA Zone AE, with the northwestern developable portion located in FEMA Zone X "areas determined to be inside the

0.2% annual chance floodplain." The Little Blue Trace Park contains a buffer along the Little Blue River.

Access to Property:

Access to the development on the south parcel will be via entry/exits along 40th Street Court.

Sidewalks and Trail Connection:

A completed sidewalk is required along 40th Street Court. There will be a walking trail amenity on the north parcel, which will also connect to the sidewalk along Jackson Drive (that crosses the bridge) and provides access to the Little Blue Trace Park multi-use trail.

Utilities and Drainage Easement Vacation:

This developed neighborhood has all utility services available in the area and new easements will be established with the Minor Subdivision. The northern parcel, in particular, will require a drainage easement vacation.

CIP Investments:

The city does not have any capital improvement 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.*

The Comprehensive Plan envisions Mixed Uses for the area. Staff feels the O-1 zoning, which is adjacent along 40th Street Court, is appropriate given the nursing and senior living uses in the area.

2. *Conformance of the requested zoning with any adopted neighborhood or sub-area plans in which the property is located or abuts.*

The properties are within the Little Blue Valley Plan Area.

3. *The compatibility of the proposed zoning with the zoning and use of nearby property, including any overlay zoning.*

There are nearby and adjacent O-1 zoned properties with nursing and senior residential uses to the west and south.

4. *The compatibility of the proposed zoning and allowed uses with the character of the neighborhood.*

The O-1 zoning is compatible with the area's existing nursing and senior residential uses.

5. *The suitability of the subject property for the uses to which it has been restricted under the existing zoning regulations.*

The R-6 zoning is not compatible with existing zonings and uses in the area.

6. *The length of time the subject property has remained vacant as zoned.*

This property has always been vacant.

7. *The extent to which approving the rezoning will detrimentally affect nearby properties.*

The rezoning should have no detrimental effect on area 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 rezoning is denied, the applicants will not be able to combine this parcel with the one adjacent to the south, and thus not have sufficient open space for their development.

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
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. Draft Ordinance 25-100-21
2. Rezoning Staff Report 25-100-21
3. Narrative_Redacted
4. Application_Redacted
5. Notification Letter
6. Notification Addresses
7. Notification Area Map
8. Affidavit
9. Zoning Plat
10. Concept Plan
11. Comprehensive Plan
12. Zoning Map
13. Planning Commission Meeting Minutes 10-28-25
14. Ord. No. 19763

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE APPROVING A REZONING FROM DISTRICT R-6 (SINGLE-FAMILY RESIDENTIAL) TO DISTRICT O-1 (OFFICE-RESIDENTIAL) FOR THE PROPERTY LOCATED AT 19405 E. 40TH STREET COURT S.

WHEREAS, a request by Matt Covington to rezone the property located at 19405 E. 40th Street Court S. from District R-6 (Single-Family Residential) to District O-1 (Office-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 October 28, 2025 and rendered a report to the City Council recommending 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, after due public notice in the manner prescribed by law, the City Council held a public hearing and rendered a vote of approval for the Rezoning of said property; 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-6 (Single-Family Residential) to District O-1 (Office-Residential) and shall be subject to the regulations of said district:

SEC-21 TWP-49 RNG-31 --- BEG 1458.86' MOL S OF NW COR SW 1/4 TH S 40 DEG 12 MIN 00 SEC E 281.83' TH SWLY 244.14' TH N ALG 361.4' MOL TO POB

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:

Interim City Manager

MEETING DATE: October 28, 2025,

STAFF: Brian L. Harker, Planner

PROJECT NAME: Peaks at Blue River

CASE NUMBER/REQUEST: **Case 25-100-21 – Rezoning – 19405 E. 40th Street Court S.** – A request to rezone the property from R-6 (Single-Family Residential) to O-1 (Office-Residential).

APPLICANT: Matt Covington
JES Development Company, Inc.

OWNER: Brian Kimes
Peak at Blue River, LP

PROPERTY ADDRESS: 19405 E. 40th Street Court S.

SURROUNDING ZONING/LAND USE:

Northeast: R-6 (Single-Family Residential)...undeveloped tract
Southwest: O-1 (Office-Residential)...undeveloped tract and senior apartments
Southeast: R-6 (Single-Family Residential)...county park
Northwest: O-1 (Office Residential)...nursing home

PUBLIC NOTICE:

- Letters to adjoining property owners – October 10, 2025
- Public Notice published in the Kansas City Star – October 8, 2025
- Signs posted on property – October 10, 2025

FURTHER ACTION:

Following action by the Planning Commission, this rezoning request is scheduled for first reading by the City Council on December 1, 2025 and the public hearing/second reading on December 15, 2025.

RECOMMENDATION

Staff recommends **APPROVAL** of this Rezoning request.

PROJECT DESCRIPTION & BACKGROUND INFORMATION

PROJECT DESCRIPTION: – A request by Matt Covington to rezone a tract of land located at 19405 E. 40th Street Court S.

Current Zoning:	R-6 (Single-Family Residential)	Proposed Zoning:	O-1 (Office-Residential))
------------------------	---------------------------------	-------------------------	---------------------------

Current Use:	Undeveloped tract
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Zoning History

1975 – 1980: R-1 (Single-Family Residential)
1980 - 2009: R-1b (Single-Family Residential)
2009 - Present: R-6 (Single-Family Residential)

Property History:

The northern parcel was never formally platted. In 1975, it was annexed into the City through Ordinance No. 2864 and designated R-1 (Single-Family Residential). In 1980, the zoning was amended to R-1b (Single-Family Residential). The parcel was later separated from a larger parent tract during the establishment of the Little Blue Trace Park and the Jackson Drive right-of-way. With the adoption of the Unified Development Ordinance (UDO), the zoning designation was updated from R-1b to R-6 (Single-Family Residential).

Proposal:

The applicant intends to develop a three-story 40-unit apartment structure at 19405 E. 40th Street Court S. The Peaks at Blue River development, located at the southeast corner of S. Jackson Drive and E. 40th Street Court S., includes two tracts containing 2.04-acres and 0.79-acres which are currently zoned O-1 (Office-Residential) and R-6 (Single-Family Residential), respectively. This rezoning request has been submitted to rezone the 0.79-acre parcel to O-1. An application for a Minor Subdivision has also been submitted to combine these tracts. The property contains no development or impervious cover. The Little Blue Trace Park abuts the southeastern boundary of the parcel. This smaller triangle parcel will provide needed open space and outdoor amenity for the development contained on the larger parcel.

Given this proposal is not a Planned-Unit-Development (PUD), the development will be reviewed in full administratively. Upon the rezoning of the northern parcel, Community Development will need to review the joining of the two parcels via the Minor Subdivision process and then review the proposed development via the Final Plan Review and building permit processes.

Physical Characteristics of Property:

The northern parcel is triangular in shape abutting the Little Blue Trace Park on the east and on the north by the Jackson Drive right-of-way. The property is relatively flat, with scruffy plantings along the east and is lower than the rights-of-way, sloping east toward the park. Much of the parcel is in FEMA identified flood plains.

Characteristics of the Areas:

The vicinity of the proposed development is predominately nursing and skilled care, multiple-family residential, retail and restaurant uses. To the southwest is senior living uses. Then, to the west a nursing home and across Jackson Drive, to the northwest, are retail and restaurant uses. North, across Jackson Drive, is an undeveloped property. To the west lies the Little Blue Trace Park, the Little Blue River and a multiple-use trail.

ANALYSIS**Consistency with *Independence for All*, Strategic Plan:**

The project should achieve the goal of, “livability, choice, access, health and safety through a quality neighborhoods”. The project should improve visual appearance, improve public infrastructure and facilities.

Comprehensive Plan Tools and Policies for the Current Designation:

The Comprehensive Plan envisions the area around the rezoning to be Mixed Use. The relevant Guiding Principle would be that it facilitates the development of a connected, mixed-use neighborhood, which this residential component would further that mixed-use designation.

Zoning:

The applicant proposes District O-1 (Office Residential) allows for multiple-family, office, banks, business services, daycare centers, nursing homes, government facilities, churches, funeral and interment services, schools, colleges and universities and crop agriculture. District R-6 zoning allows single-family housing, home based daycare, government facilities, churches, schools, utilities, cemeteries, crops and gardening.

Historic and Archeological Sites:

There are no apparent historic or archeological issues with this property.

Floodplain/Stream Buffer and Stormwater Drainage:

The southeastern portion of the parcel subject to rezoning is located in FEMA Zone AE, with the northwestern developable portion located in FEMA Zone X “areas determined to be inside the 0.2% annual chance floodplain”. The Little Blue Trace Park contains buffer along the Little Blue River.

Access to Property:

Access to the development on the south parcel will be via to entry/exits along 40th Street Court.

Sidewalks and Trail Connection:

A completed sidewalk is required along 40th Street Court. There will be a walking trail amenity on the north parcel, which will also connect to the sidewalk along Jackson Drive (that crosses the bridge) and provides access to the Little Blue Trace Park multi-use trail.

Utilities and Drainage Easement Vacation:

This developed neighborhood has all utility services available in the area and new easements will be established with the Minor Subdivision. The northern parcel, in particular, will require a drainage easement vacation.

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.***
The Comprehensive Plan envisions Mixed Uses for the area. Staff feels the O-1 zoning, which is adjacent along 40th Street Court, is appropriate given the nursing and senior living uses in the area.
2. ***Conformance of the requested zoning with any adopted neighborhood or sub-area plans in which the property is located or abuts.***
The properties are within the Little Blue Valley Plan Area.

3. ***The compatibility of the proposed zoning with the zoning and use of nearby property, including any overlay zoning.***

There are nearby and adjacent O-1 zoned properties with nursing and senior residential uses to the west and south.

4. ***The compatibility of the proposed zoning and allowed uses with the character of the neighborhood.***

The O-1 zoning is compatible with the area's existing nursing and senior residential uses.

5. ***The suitability of the subject property for the uses to which it has been restricted under the existing zoning regulations.***

The R-6 zoning is not compatible with existing zonings and uses in the area.

6. ***The length of time the subject property has remained vacant as zoned.***

This property has always been vacant.

7. ***The extent to which approving the rezoning will detrimentally affect nearby properties.***

The rezoning should have no detrimental effect on area 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 rezoning is denied, the applicants will not be able to combine this parcel with the one adjacent to the south, and thus not have sufficient open space for their development.

EXHIBITS

1. Narrative
2. Application
3. Notification Letter
4. Address List
5. Notification Area Map
6. Affidavit
7. Zoning Plat
8. Concept Plan
9. Comprehensive Plan Map
10. Zoning Map



Engineering Surveys & Services

DELIVERING YOUR VISION™

September 11, 2025

Mr. Brian Harker
City Planner
City of Independence
111 E Maple Avenue
Independence, Missouri 64050

RE: Peaks at Blue River
Site Plan Cover Letter
E 40th Street Court S
Independence, MO

Dear Mr. Harker:

We are pleased to submit plans for review of the Peaks at Blue River development located at the corner of Jackson Drive and E 40th Street Court S. The parcel includes two tracts containing 2.04-acres and 0.79-acres which are currently zoned O-1 and R-6, respectively. A rezoning request has been submitted to rezone the 0.79-acre parcel to O-1. A plat has also been submitted to combine these tracts. The property contains no development or impervious cover. The Little Blue River is near the southern boundary of the parcel. The southern portion of this site is located in FEMA Zone AE, with the northern developable portion located in FEMA Zone X "areas determined to be inside the 0.2% annual chance floodplain". The site contains a 150' stream buffer along the Little Blue River.

Development proposes a three-story 40-unit independent senior housing building, parking lots, dumpster enclosure/shed combination, and stormwater improvements. The proposed development will include 1.03 acres of impervious cover. The maximum gross square footage of building floor area on the site is 47,152 S.F. There is no off-site parking proposed, and a total of 61 parking stalls are included on the site.

Please see the enclosed documents for the site plan review of Peaks at Blue River. Please contact me if you have any questions.

Thank You,

Matthew Kriete, P.E.

cc: Brian Kimes, Peaks at Blue River, L.P., via email
Matt Covington, AEP, via email
ES&S PN: 16552



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

Peaks at Blue River

Project Name

19401 E 40TH STREET CT S INDEPENDENCE, MO 64057

Project Address/Location

0	0.79	1	Yes
Sq. Ft. of Building	Acreage	Number of Lots/Tracts	Stream Buffer (Yes or No)
R-6	O-1	Vacant	Multi-Family Senior Living
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	☐ One 24" x 36" set of plans for Land Sub. & Site Dev.
☒ Application Fee	☒ One PDF copy of a plat map or site plan
☐ Cover Letter Describing Details of Project	☒ Legal Description of the property in question

Contact Information

Applicant

Matt Covington

JES Dev Co, Inc

Name

Company

Owner

Brian Kimes

Peaks at Blue River, LP

Name

Phone

Email

Phone

Email

Architect/Engineer/Surveyor/Other: Engineer

Architect/Engineer/Surveyor/Other: Architect

Alex Gustafson

ESS Inc.

Maggie Brennan

Rosemann & Associates

Name

Company

Name

Phone

Email

Phone

Email

The applicant hereby agrees that the information provided above is accurate.

Applicant's Signature

Date

Owner's Signature

Date

May 2022

Property Owner Notification Letter

City of Independence, Missouri

Date: October 9, 2025

Case No. 25-100-21

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: 3-Story, 40 Unit Independent Senior Living Facility

Applicant: Matt Covington - JES Development Company

Location of Property: 19405 E. 40th St Ct S, Independence, MO

Planning Commission Meeting Date: October 28, 2025, at 6:00 p.m.

City Council Meeting Date: December 15, 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.

Matt Covington
Applicant (or Owner/Agent)

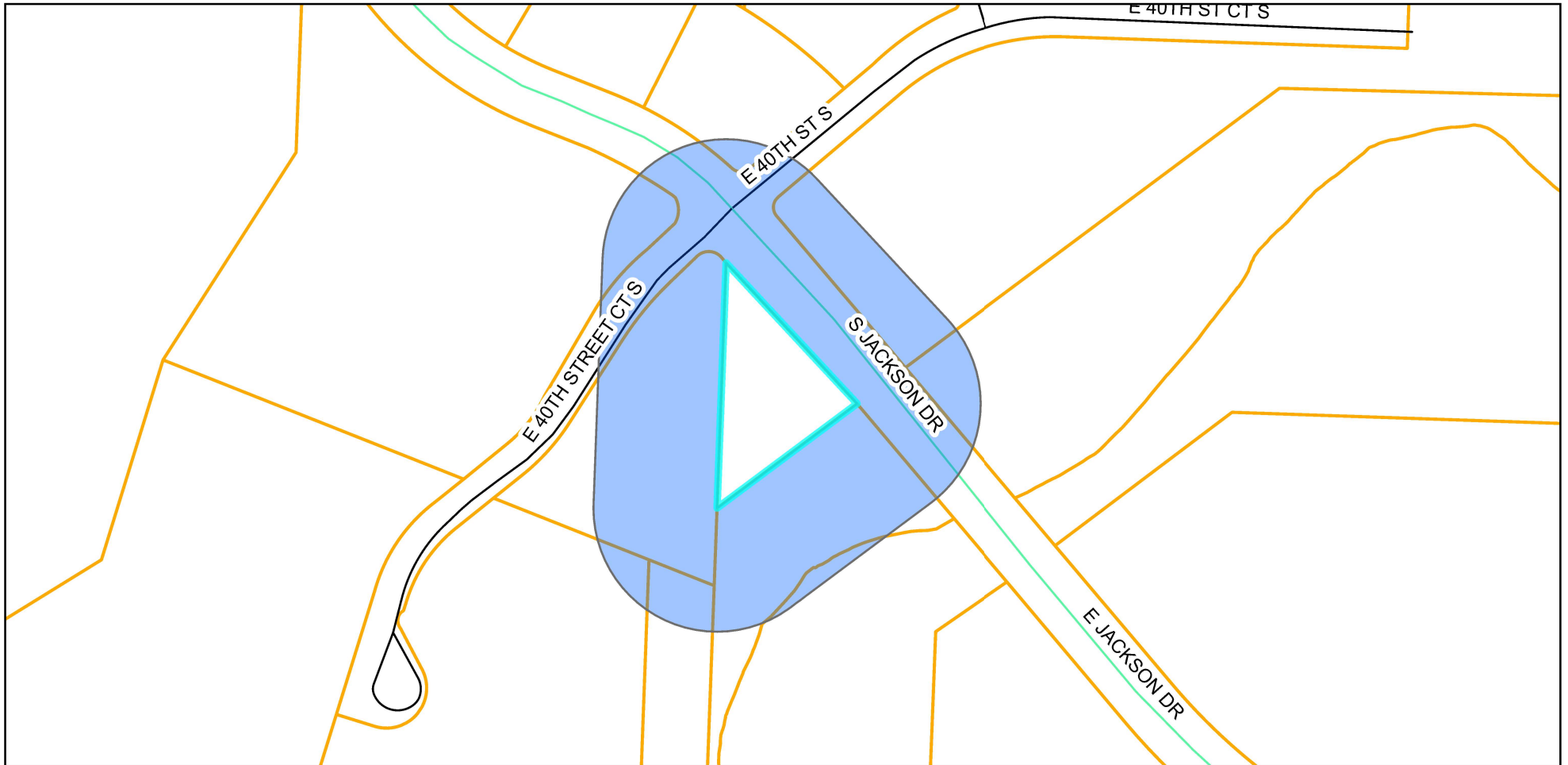
For more information, contact the Community Development Department at 816-325-7421.

Property Address	Property Owner	Owner Address	City	State	ZIP Code
3980 S JACKSON DR	3980 SOUTH JACKSON DRIVE LLC	262 N UNIVERSITY AVE	FARMINGTON	UT	84025
19400 E 40TH STREET CT S APT 301	JACKSON COUNTY MISSOURI	415 E 12TH ST	KANSAS CITY	MO	64106
19401 E 40TH STREET CT S	JACKSON CREEK WHITAKER LLC	227 N SANTA FE STE 67401	SALINA	KS	67401
NO ADDRESS ASSIGNED BY CITY	REORGANIZED CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS	1001 W WALNUT ST	INDEPENDENCE	MO	64050
19401 E 40TH STREET CT S	JES DEV CO INC	206 PEACH WAY	COLUMBIA	MO	65201
4011 S JACKSON DR	QUINTOR ENTERPRISES LLC	2618 CASELLA WAY	SAN RAMON	CA	94582

Notification Area Map

19401 E 40th Street Ct S

Case #25-100-21



Legend

 Notification Area

Streets

 Local

 Major Arterial

 Parcels

0 125 250 500 US Feet

Prepared For: Planning Commission
Meeting Date: October 28, 2025



Property Owner Notification Affidavit

STATE OF MISSOURI

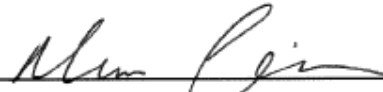
COUNTY OF JACKSON

Case No. 25-100-21

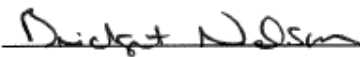
I, Matt Covington, of lawful age being first duly sworn upon oath, state:

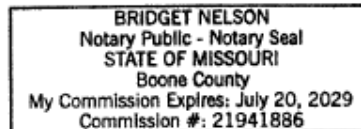
That I am the (agent, ^{Rep}owner, attorney) for the property for which the application was filed and did, not later than fifteen (15) days prior to the date of the public hearing scheduled before the Planning Commission, mail notices to all persons owning property within 185 feet of the subject property. **The list of property owners to whom notice has been mailed is attached.**

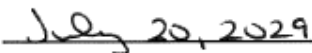
These notices were mailed on the 10th day of October, 2025.

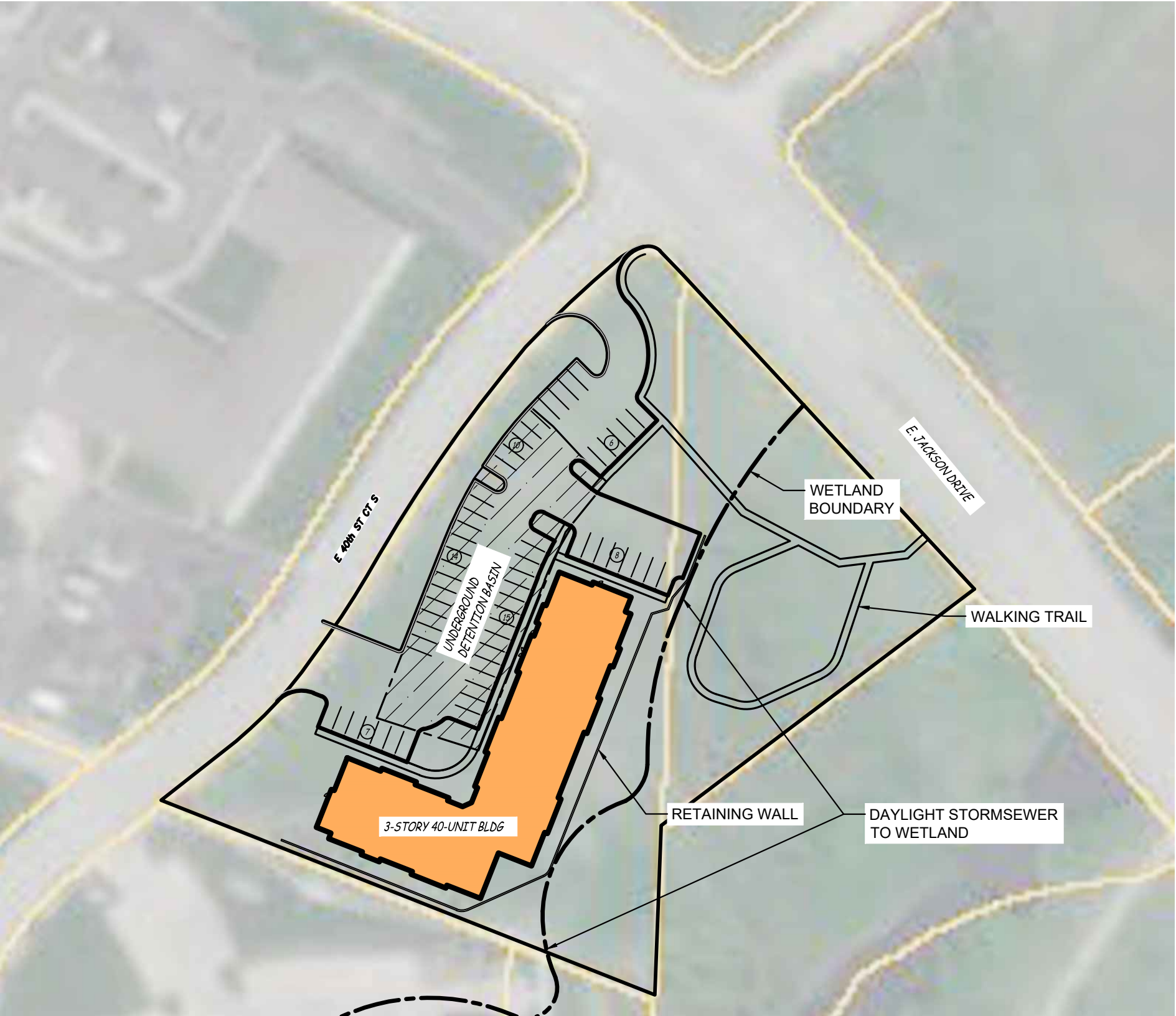

Signature of Agent, Owner or Attorney
Rep

Subscribed and sworn to before me this 10 day of October, 2025.


Notary Public




Commission Expiration Date



CONCEPT PLAN
INDEPENDENCE PROPERTY
INDEPENDENCE, JACKSON COUNTY, MO
APRIL 17, 2025



SITE INFO NOTE

LOT AREA (WEST LOT) = 2.90 ACRES
ZONED: O-1 - OFFICE
CURRENT PROPERTY USE: VACANT
PROPOSED USE: INDEPENDENT SENIOR LIVING
3-STORY BUILDING: 45 UNITS
MAXIMUM BUILDING HEIGHT: 40 FT
MAXIMUM DENSITY = 1,000 S.F. SITE AREA/UNIT
(21.8 UNITS/AC)
PROVIDED DENSITY = 2,807 S.F. SITE AREA/UNIT
(15.5 UNITS/AC)
SETBACKS: FRONT ABUTTING R-ZONED LOT = 50'
OTHER FRONT = 15'
SIDE/REAR = 0'/20'
BUFFER REQUIRED = NO
SCREENING REQUIRED = YES
TREE PRESERVATION REQUIRED = YES
DETENTION = UNDERGROUND
WATER QUALITY REQUIRED = YES
VOLUME REDUCTION REQUIRED = YES

PARKING NOTE

CATEGORY: MULTI-UNIT SENIOR APARTMENT
REQUIRED PARKING
1.5 PER UNIT
40 UNITS = 60 SPACES
PROVIDED PARKING
1.5 PER UNIT
40 UNITS = 60 SPACES



**Engineering Surveys
& Services**
1113 Fay Street, Columbia, Mo 65201
573 - 449 - 2646
www.ess-inc.com

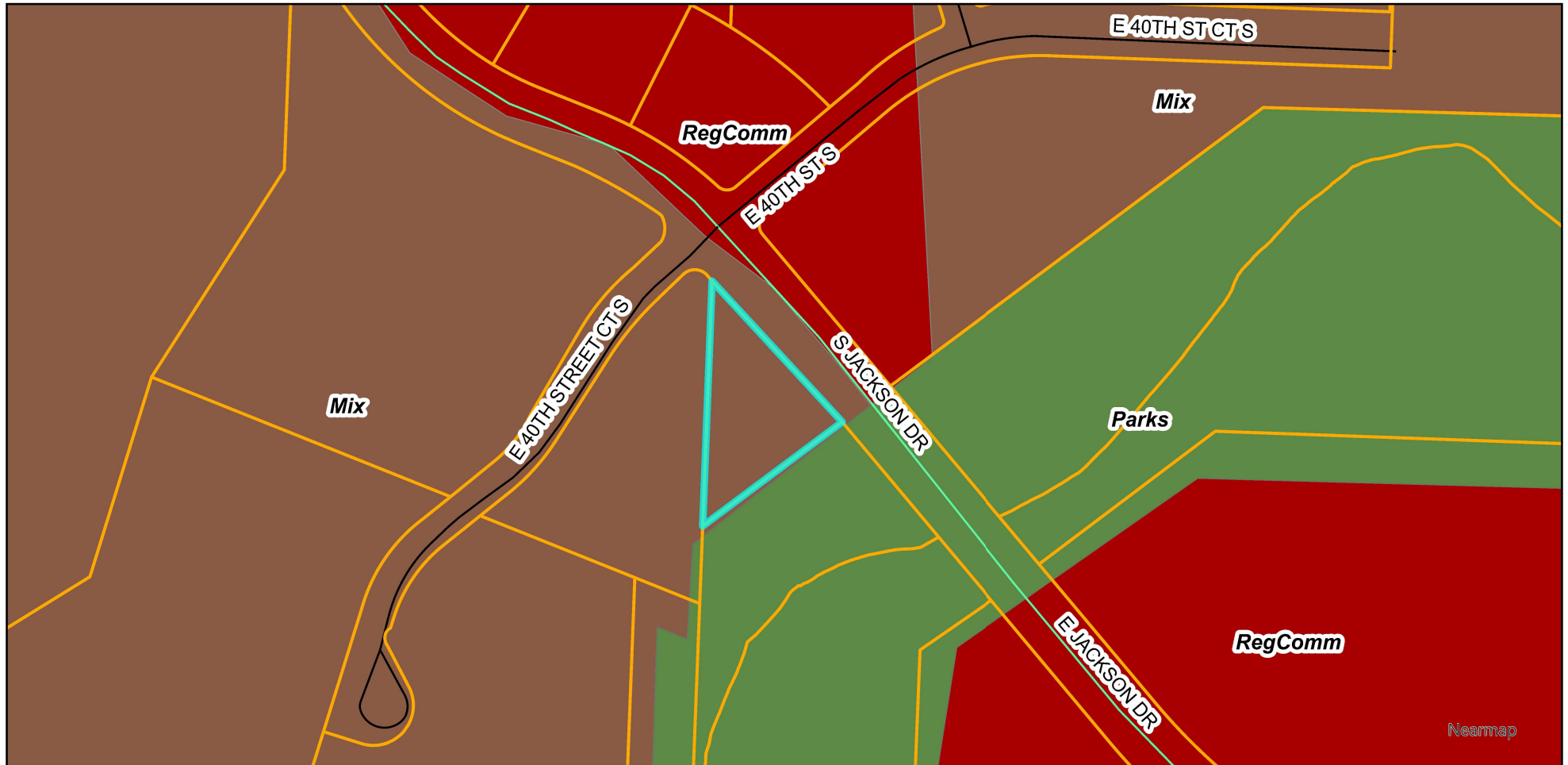
MO Land Surveying Corp. # 2004004672
Missouri Engineering Corp. # 2004005018

ES&S NO. 15267

Comprehensive Plan

19405 E 40th Street Ct S

Case #25-100-21



Legend

Parcels

Comprehensive
Plan

Mixed Use

Regional
Commercial

Parks

0 125 250 500 US Feet

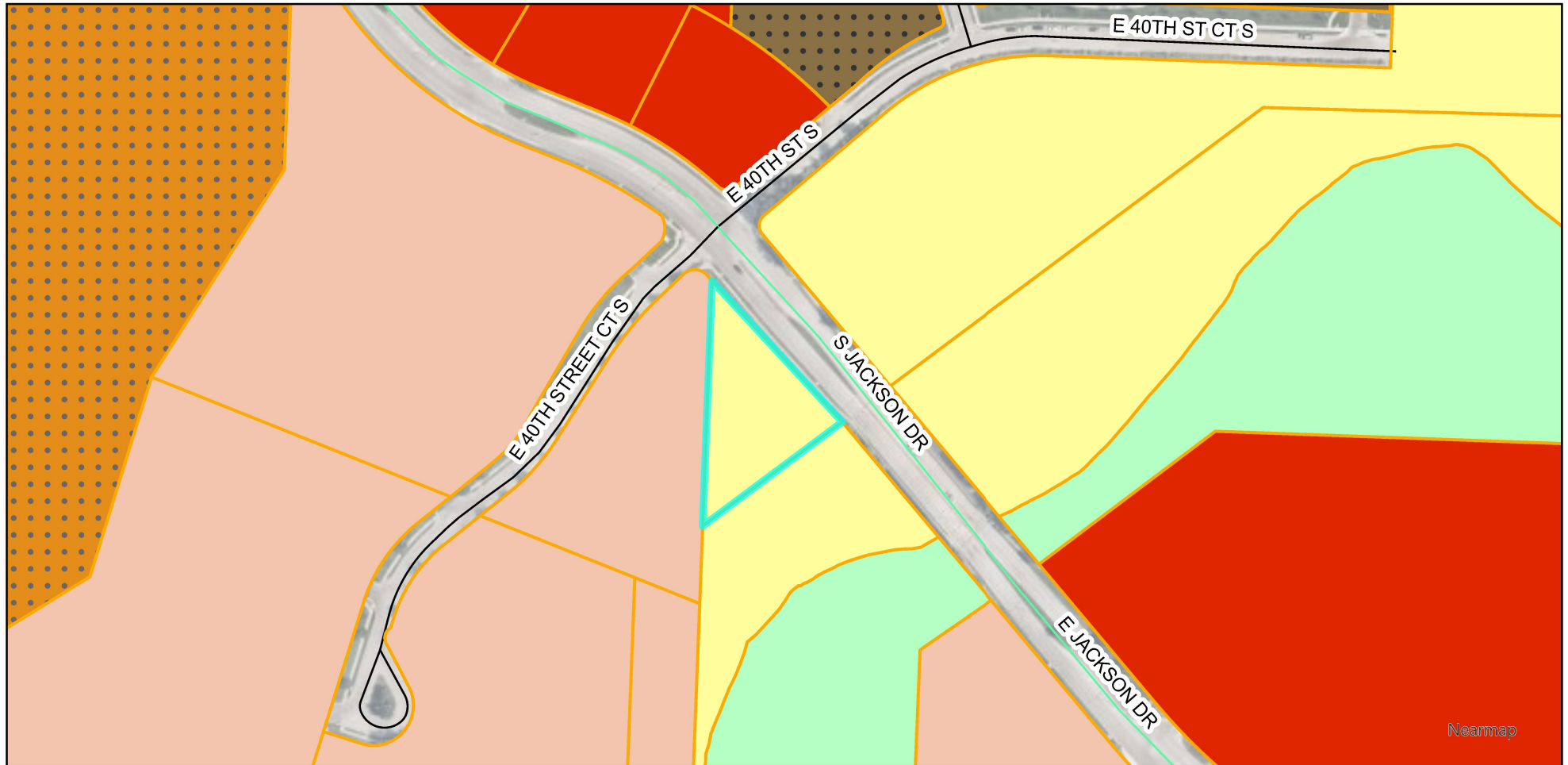
Prepared For: Planning Commission
Meeting Date: October 28, 2025



Zoning Map

19405 E 40th Street Ct S

Case #25-100-21



Legend

 Parcels	 O-1	 R-6
Zoning District	 R-18/PUD	 R-A
 C-2	 R-30/PUD	

0 125 250 500 US Feet



Prepared For: Planning Commission
 Meeting Date: October 28, 2025





Planning Commission Minutes

October 28, 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 10/28/2025, 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, Dan O'Neill, Virginia Ferguson, Jose Torres, Michael Young. Absent - Edward Nesbitt.

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 – October 14, 2025

Motion

Commissioner Dan O'Neill made a motion to approve the Consent Agenda. Commissioner Michael Young seconded the motion. The motion was approved Yes 6, No 0, Abstained 0.

PUBLIC HEARINGS

1. Case 25-100-21 – Rezoning – 19405 E. 40th Street Ct S - A request to rezone the property from R-6 (Single Family Residential) to O-1 (Office Residential).

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.

In response to Chairwoman Wiley's question, Mr. Harker confirmed that the request pertains only to the property's zoning and does not include approval of the plat.

Applicant Comments

Matthew Kriete of Engineering Surveys & Services, 1775 W. Main, Sedalia, stated that he is representing the applicant and is available to answer any questions.

Public Comments

No public comments.

Motion

Commissioner Michael Young made a motion to approve the case. Commissioner Virginia Ferguson seconded the motion. The motion was approved Yes 6, No 0, Abstained 0.

OTHER BUSINESS

1. **Case 25-400-16 – Short-Term Rental – 2804 S. Whitney Ave** – A request to operate a Short-Term Rental at the property.

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. Mr. Harker reviewed the conditions of approval.

In response to Chairwoman Wiley's questions, Mr. Harker stated that the business had been operating prior to applying for this permit.

Applicant Comments

Lucy Vu Mashburn, 1008 Aspen Drive, Liberty, stated that she was representing the property owner and was available to answer any questions. Ms. Vu Mashburn added that the neighboring property owner, Ivy Kettlewell, would serve as the primary point of contact for any issues related to the property.

Public Comments

No public comments.

Motion

Commissioner Dan O'Neill made a motion to approve the case. Commissioner Michael Young seconded the motion. The motion was approved Yes 6, No 0, Abstained 0.

2. **Case 25-400-17 – Short-Term Rental – 23601 E. Strode Rd** – A request to operate a Short-Term Rental at the property.

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 Chairwoman Wiley's questions, Mr. Glaser stated that the business had been operating prior to applying for this permit.

Applicant Comments

Mark Kitchens, 333 SE Alexandria Drive, Lee's Summit, stated that they initially believed the property was located within the City of Blue Springs, which is why they had been operating without a license. He provided background information on the property and discussed plans for the surrounding properties owned by his family.

Public Comments

No public comments.

Motion

Commissioner Eric Ashbaugh made a motion to approve the case. Commissioner Michael Young seconded the motion. The motion was approved Yes 6, No 0, Abstained 0.

3. **Case 25-400-20 – Short-Term Rental – 1231 S. Ash Ave** – A request to operate a Short-Term Rental at the property.

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. It was noted that there was a mistake in the staff report and it should have stated that there is a maximum of 6 adults.

In response to Chairwoman Wiley's question, Mr. Glaser stated that this applicant has not yet begun operating.

Applicant Comments

Alicia Gibson, 19405 E. State Route 78, stated that she works for BearBnB KC and would assist the owner in operating the short-term rental if approved. She reviewed the company's operating practices and stated she was available to answer any additional questions.

Public Comments

No public comments.

Motion

Commissioner Michael Young made a motion to approve the case. Commissioner Dan O'Neill seconded the motion. The motion was approved Yes 6, No 0, Abstained 0.

4. **Case 25-400-21 – Short-Term Rental – 802 N. Delaware St** – A request to operate a Short-Term Rental at the property.

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 Chairwoman Wiley's question, Mr. Glaser stated that this applicant has not yet begun operating. He noted that although the property is located within a historic district, no additional permits would be required unless the owner intends to make physical alterations to the property.

Applicant Comments

Alicia Gibson, 19405 E. State Route 78, stated that she works for BearBnB KC and would assist the owner in operating the short-term rental if approved. She reviewed the company's operating practices and stated she was available to answer any additional questions.

Public Comments

No public comments.

Motion

Commissioner Dan O'Neill made a motion to approve the case. Commissioner Jose Torres seconded the motion. The motion was approved Yes 6, No 0, Abstained 0.

5. **Case 25-400-22 – Short-Term Rental – 16100 E. 38th Street S** – A request to operate a Short-Term Rental at the property.

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. Mr. Harker reviewed the conditions of approval. It was noted that there was a mistake in the staff report and it should have stated that there is a maximum of 6 adults.

In response to Chairwoman Wiley's questions, Mr. Harker stated he believed that the business had been operating prior to applying for this permit.

Applicant Comments

Mike and Rebecca Tomlin, 2909 S Swope Drive, noted they have not been operating and were available for any questions.

Public Comments

No public comments.

Motion

Commissioner Dan O'Neill made a motion to approve the case. Commissioner Michael Young seconded the motion. The motion was approved Yes 6, No 0, Abstained 0.

ROUNDTABLE - NEXT MEETING NOVEMBER 18, 2025

ADJOURNMENT

The meeting was adjourned at 7:16 p.m.

BILL NO. 25.121

ORDINANCE NO. 19763

AN ORDINANCE APPROVING A REZONING FROM DISTRICT R-6 (SINGLE-FAMILY RESIDENTIAL) TO DISTRICT O-1 (OFFICE-RESIDENTIAL) FOR THE PROPERTY LOCATED AT 19405 E. 40TH STREET COURT S.

WHEREAS, a request by Matt Covington to rezone the property located at 19405 E. 40th Street Court S. from District R-6 (Single-Family Residential) to District O-1 (Office-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 October 28, 2025 and rendered a report to the City Council recommending 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, after due public notice in the manner prescribed by law, the City Council held a public hearing and rendered a vote of approval for the Rezoning of said property; 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-6 (Single-Family Residential) to District O-1 (Office-Residential) and shall be subject to the regulations of said district:

SEC-21 TWP-49 RNG-31 --- BEG 1458.86' MOL S OF NW COR SW 1/4 TH S 40 DEG 12 MIN 00 SEC E 281.83' TH SWLY 244.14' TH N ALG 361.4' MOL TO POB

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 15th DAY OF Dec., 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:


Interim City Manager

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

Council action is requested on the application received from Fringe Beerworks for Retail Selling of Intoxicating Liquor by the Drink that will be located at 4354 S. Noland Rd. **Item passes 7-0**

Recommendations:

This application meets the requirements of the City's Alcoholic Beverage Code.

Background:

The applicant is requesting City Council approval for a Retail Selling of Intoxicating Liquor by the Drink license including Sunday Sales. The Sunday Sales license will be approved administratively should the City Council approve the liquor license. The applicant has also requested a manufacturing license to manufacture twenty-two (22) percent or less alcohol-content intoxicating liquor. This license has already been approved administratively. The hours of operation will be Monday – Sunday 12:00 pm – 10:00 pm. The applicant has indicated that this location will have alcohol sales that meet the City's Alcoholic Beverage Code.

Background:

Applicant: Fringe Beerworks

Name of business: Fringe Beerworks

Business Address: 4354 S. Noland Rd.

Size of establishment (includes outdoor patio space if applicable): Fringe Beerworks will be operating within approximately 6,000 square feet of commercial building space.

Liquor License Types: Retail Selling of Intoxicating Liquor by the Drink license including Sunday Sales and Manufacturing twenty-two (22) percent or less alcohol-content intoxicating liquor

Types of Alcohol to be sold/served: Intoxicating Liquor in original package

History of any liquor license at this location; if a new building, provide a brief update on the construction: This location has operated as a brewery/distillery and bar since 2020 when Apex Aleworks opened. Apex Aleworks closed their doors in 2024 and the unit has remained empty. Fringe Beerworks has leased the space and plans to continue the same business operation of brewery/distillery and bar. Owners Eddie Pease and Mark Myers plan is to sell alcoholic beverages made onsite at their in-house bar as well as beverages from other local distributors. This location will also be the primary brewery/distillery for another Fringe Beerworks location in Lee's Summit and for other distribution needs. There are other active liquor licenses within 1000 feet of this location: Next Level Soccer Training, Price Chopper, and Red Lobster are located to the north, Hy-Vee and Olive Garden are located to the south.

Location proximity to school, church, or residential zoning: According to the City's mapping system there are no schools within 300 feet but there is one church: Noland Road Baptist Church. There is residential zoning located within 300 feet as well.

Managing Officer Information and results from background check: Fringe Beerworks has indicated that Eddie Pease will serve as the appointed managing officer. The background investigation conducted by the Missouri State Highway Patrol on Edward Pease revealed he meets the requirements of the Alcoholic Beverages code.

Emergency Justification:

Fiscal Impact:

Council Action:

Department / Contact	Community Development /
---------------------------------	-------------------------

REVIEWERS

Tom Scannell
Melissa Cabrera
Jeremy Cover
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. Redacted Fringe Beerworks Liquor Application
2. Aerial Imagery
3. Zoning Map
4. Notification Letter Fringe Beerworks
5. Notification Area Map
6. Notification Addresses

Application Form

Application Type: ☒ Package ☒ Drink ☒ Manufacturing ☒ Wholesale ☐ Special ☐ Ownership Change

Business Information

This Business is a: ☐ Sole Proprietor ☐ Partnership ☐ LP ☐ LLC ☒ Corporation Legal Name of Entity

Type of Business Doing Business as (d/b/a) (if different than above)

Fringe Beerworks

Physical Address City State Zip Mailing Address (if different from above)

4354 S Noland Rd. Independence, MO 64055

Phone Cell Phone Email

[Redacted] /fringebeerworks@gmail.com

State & Date of Incorporation or Organization Missouri Retail Sales Tax Number

MO Dec 2016 - 23129131

Date business scheduled to open

9/1/25

Give dimensions or square footage of the building, outdoor patio, and any other areas in which alcoholic beverages may be stored or dispensed: *6000*

Is the proposed location within 300 feet of a church, school, or hospital? *No*

Proposed hours of operation: *12-10 daily*

If existing business, from whom was the business purchased? *n/a*

Date of purchase: Date of Possession: *9/4/25*

Does the former owner of the business have any interest, either directly or indirectly, in the business for which you seek a license? If so, explain: *No*

n/a

I hereby apply to the City of Independence, MO, for the following license(s) for the business and premises described above (mark all license types for which you are applying on page 2). I also certify that the information given in this application is true to the best of my knowledge and that the license is non-transferable. I also agree that this business will observe the restrictions specifically enumerated in Chapter 2 of the Independence City Code related to alcoholic beverages.

Signature of Applicant Printed Name

Eddie Pease

Title Date

Managing Member 11/10/25

Liquor License Types (mark all license types for which you are applying)

All liquor licenses are effective for one (1) year, beginning July 1 and ending June 30. Any liquor license application made between January 1 and March 31 will be charged a prorated fee equal to one-half of the annual license fee (listed below). Those licenses will expire June 30 of that year. Applications made between April 1 and June 30 will be charged the full license fee (listed below), however those licenses will expire June 30 the following year.

Package Liquor Licenses

- ☐ P1 – Retail Selling of Intoxicating Liquor of all kinds in the original package (\$150.00)
- ☐ P3 – Retail Selling of Beer only in the original package; includes Sunday Sales (\$150.00)
- ☐ S – Sunday Sales (\$300.00)
- ☐ T – Tasting Permit (\$25.00)

Drink Licenses

- ☒ T1 – Retail Selling of Intoxicating Liquor by the Drink (\$450.00)
- ☐ T2 – Retail Selling of Malt Liquor & Wine by the Drink (\$150.00)
- ☐ T3 – Retail Selling of Beer by the Drink; includes Sunday Sales (\$150.00)
- ☐ R1 – Restaurant Selling Intoxicating Liquor (\$450.00)
- ☐ R2 – Restaurant Selling Beer; includes Sunday Sales (\$150.00)
- ☐ F1 – Tax Exempt Organizations Selling Intoxicating Liquor (\$300.00)
- ☐ H1 – Hotel Selling Intoxicating Liquor (\$450.00)
- ☐ Z1 – Consumption of Intoxicating Liquor (\$150.00)
- ☐ S – Sunday Sales (\$300.00)

Manufacturing, Distilling, Blending Licenses

- ☐ M1 – Manufacturing, Distilling, Blending Intoxicating Liquor of all kinds (\$300.00)
- ☒ M2 – Manufacturing twenty-two (22) percent or less alcohol- content intoxicating liquor (\$300.00)
- ☐ M3 – Manufacturing, Brewing Malt Liquor (\$300.00)

Wholesale Licenses

- ☐ W1 – Wholesale selling of Intoxicating Liquor of all kinds (\$300.00)
- ☐ W2 – Wholesale selling of twenty-two (22) percent or less alcohol-content intoxicating liquor (\$300.00)
- ☐ W3 – Wholesale selling of malt liquor (\$300.00)

Special Licenses

- ☒ S1 – Microbrewery (\$7.50 per 100 barrels produced)
- ☒ S2 – Domestic Winery (\$7.50 per 500 gallons produced)
- ☐ S4 – Picnic 7 Day Intoxicating Liquor by the Drink (\$15.00 per day)
- ☐ S6 – July 4th Celebration Malt Liquor & Light Wine by the Drink (\$15.00 per day)
- ☐ C1 – Caterer Intoxicating Liquor by the Drink – Up to 7 Days (\$15.00 per day)
- ☐ C2 – Caterer Intoxicating Liquor by the Drink – Up to 50 Days (\$500.00)
- ☐ C3 – Caterer Intoxicating Liquor by the Drink – Unlimited Days (\$1,000.00 per day)



Managing Officer, Sole Owner, or Managing Partner
Information

Liquor License Regulated Industries Division

111 E. Maple Avenue
Independence, MO 64050

Application Form (816) 325-7079
blicenses@indepmo.org

Full Name Social Security Number Sex Age Height Weight Date of Birth Place of Birth Are you a U.S. Citizen Home

Edward J Pease
Address City State Zip Place of Birth

Employment Address City State

City or Town where the Managing Officer, Sole Owner, or Managing Partner pays taxes:

Lees Summit, MO

Will this person be in active control and management of this business? Please explain (part-time/full-time, etc.):

Full-Time

Have you, any partner or employee ever been arrested anywhere in the United States for the violation of any City, State or Federal Law? If so, who, where, when and what offense (do not include minor traffic offenses):

N/A

Have you, any partner or employee ever been the holder of a license to manufacture or sell alcoholic beverages, which was revoked? If so, explain:

N/A

Have you, or any member of your household or immediate family, ever made application for a permit for the Director of Liquor Control that was denied? If so, explain and provide approximate date of denial:

N/A

Do you rent or lease the premises for which this business is to be used? If so, give terms of rent or lease, and name and address of property owner:

Yes, South Noland Plaza



Liquor License Regulated Industries Division

111 E. Maple Avenue
Independence, MO 64050
(816) 325-7079
Application Form bllicenses@indepmo.org

Partnership or Member Information (complete only for partnerships or LLCs with multiple members) Give partnership or LLC name (if not already listed above) and the name, address, and percentage ownership interest of each partner or member:

Eddie Pease 55%.

Mark Myers 45% - [REDACTED]

Corporate Information (complete only for a corporation)

List full name, complete address, phone number, date of birth and Social Security Number of all corporate officers: President:

Vice President:

Secretary:

Treasurer:

Managing Officer:

Names, address, and phone number of shares owned of all stockholders who hold 10% or more of the capital stock:

N/A

Is the corporation or any stockholder or the managing officer thereof, or any member of his/her household or immediate family, have interest directly in any other permit issued by the Director of Liquor Control? If so, explain:

N/A

Has any stockholder of the corporation or an officer ever been employed by any person, partnership, or corporation that had a license revoked or suspended? If so, who, where, when and what offense:

N/A

Alcoholic Beverage Code Certifications – Adult Materials

X I certify this establishment will not display or sell books, photos, magazines, videos, or other periodicals which are distinguished or characterized by the principal emphasis on matters depicting, describing, or relating to specified sexual activities.

I certify this establishment will display or sell books, photos, magazines, videos, or other periodicals which are distinguished or characterized by the principal emphasis on matters depicting, describing, or relating to specified sexual activities.

Alcoholic Beverage Code Certifications – Allow Entry for Inspection

X I agree that I will permit the entry of any officer or investigator who has legal authority for the purpose of inspection; and will permit the removal of all things and articles which may be in violation of the ordinances of Independence, Missouri, and the laws of the State of Missouri or the United States.



Liquor License

Regulated Industries Division

111 E. Maple Avenue
Independence, MO 64050
(816) 325-7079

Application Form

blicenses@indepmo.org

Alcoholic Beverage Code Certifications – Restaurant Liquor Sales

☐ **If qualifying as a restaurant:** I certify that at least 50% of the gross sales of the business for which this license application is made will consist of food.

Alcoholic Beverage Code Certifications – Package Liquor Sales

If applying for a package liquor license: I certify that, at all times, I will keep a stock of goods having a value according to my original invoices of at least one thousand dollars (\$1,000.00), exclusive of the inventory value of the fixtures and of the intoxicating liquor, which I shall offer for sale on said premises. Check one of the following:

This location will have alcohol sales that are less than 90% of gross store sales.

This location will have alcohol sales that are more than 90% of gross store sales.

Additional Documentation Required

1. Letter of Explanation – Letter explaining why the application is being submitted by outlining the operations of the business and the use of the liquor license, should it be approved.
2. A recent photo of the Managing Officer.
3. Criminal Record Check – Missouri Highway Patrol criminal record check for the Managing Officer, Sole Owner, or each partner or member of a partnership or LLC.
4. Copy of the Managing Officer's paid Missouri personal property tax receipt for year immediately preceding the date of application.
5. Copy of Missouri voter registration card for the Managing Officer.
6. Recent photos of the interior and exterior of the premises to be licensed. If the building is under construction, the applicant shall provide a copy of the plans and specifications of the building.
7. Floorplan of the premises to be licensed including any areas where alcoholic beverages will be stored, sold, or consumed including outdoor patio areas.

8. Copy of Jackson County Business Property Tax receipt for year immediately preceding date of application. (If the business was new after January 1 of that year, it is exempt from this requirement.
9. Business License Application – Applicant must submit a Business License application that includes a letter of “No Tax Due” dated within the previous 90-days for the MO sales tax number provided and a certificate of liability insurance.
10. License Fee: Check or money order payable to the City of Independence. See page 2 for current annual license fees.

Please return this application and all required documents to the Regulated Industries Division at the address above. For questions about completing this application, please contact Jordan Ellena at JEllena@indepmo.org or by phone at 816-325-7183.

April 2021 5 of 5

Delaney Peters

From: Fringe Beerworks <fringebeerworks@gmail.com>
Sent: Monday, November 10, 2025 4:09 PM
To: Delaney Peters; Jordan Ellena
Subject: Re: Liquor License Application
Attachments: 20251110_165258.PDF; 20251110_165634.PDF; MOCCHWeb (1).pdf; MOCCHWeb.pdf; IMG_2795.JPG; 486292286_1264452568800122_7403958878605989596_n.jpg; view-from-parking-lot.jpg

EXTERNAL EMAIL - CAUTION: This email originates from an EXTERNAL source. Do not reply, click links, scan QR codes, or open attachments unless you trust the source and know the content is safe. Report suspicious messages using the Phish Alert Button (PAB) or forward to phish-report@indepmo.org. Direct any questions or concerns to the Tech Services HelpDesk

To Whom It May Concern,

Please treat this as my letter of explanation. The goal for this space is to get open and start selling alcoholic beverages made on site. In addition to beverages made onsite we plan to offer beverages from notable distributors in the Kansas City area. This is already an established business located in Lee's Summit, MO and we are treating the new location as primary for brewing of alcoholic beverages, servicing the Lee's Summit taproom and our own distribution needs.

Attached are the application, photo of myself, criminal background checks, personal property tax receipt, voter registration card, photos the interior and exterior, floorplan, and business license is in process with Delaney, thus her being cc'd.

Cheers,

Eddie

On Mon, Nov 10, 2025 at 2:58 PM Delaney Peters <dpeters@indepmo.org> wrote:



Delaney Peters

Business License Compliance Officer

O – 816-325-7590

**JACKSON COUNTY BOARD OF
ELECTION COMMISSIONERS**

Post Office Box 296
Independence, Missouri 64051
816-325-4600 • www.jcebmo.org

RETURN SERVICE REQUESTED



THIS IS YOUR POLL NOTIFICATION

ELECTION: Special Election

DATE: 11/4/2025

TOWNSHIP: PR

PRECINCT: 19A

NOT A VALID ID

ID Number: [REDACTED]



EDWARD J PEASE

YOUR VOTING LOCATION IS:

LONGVIEW COMMUNITY
CENTER

3801 SW LONGVIEW RD LEES
SUMMIT MO 64081

VOTE HERE: 6AM – 7PM





No Match Notification

A statewide search of the identifiers below has revealed no criminal conviction or sex offender information on file. Fingerprints were not provided and thus the result of the search cannot be guaranteed.

Date of Search: 09/24/2025

Name (1): EDWARD PEASE

Name (2): EDDIE PEASE

Name (3):

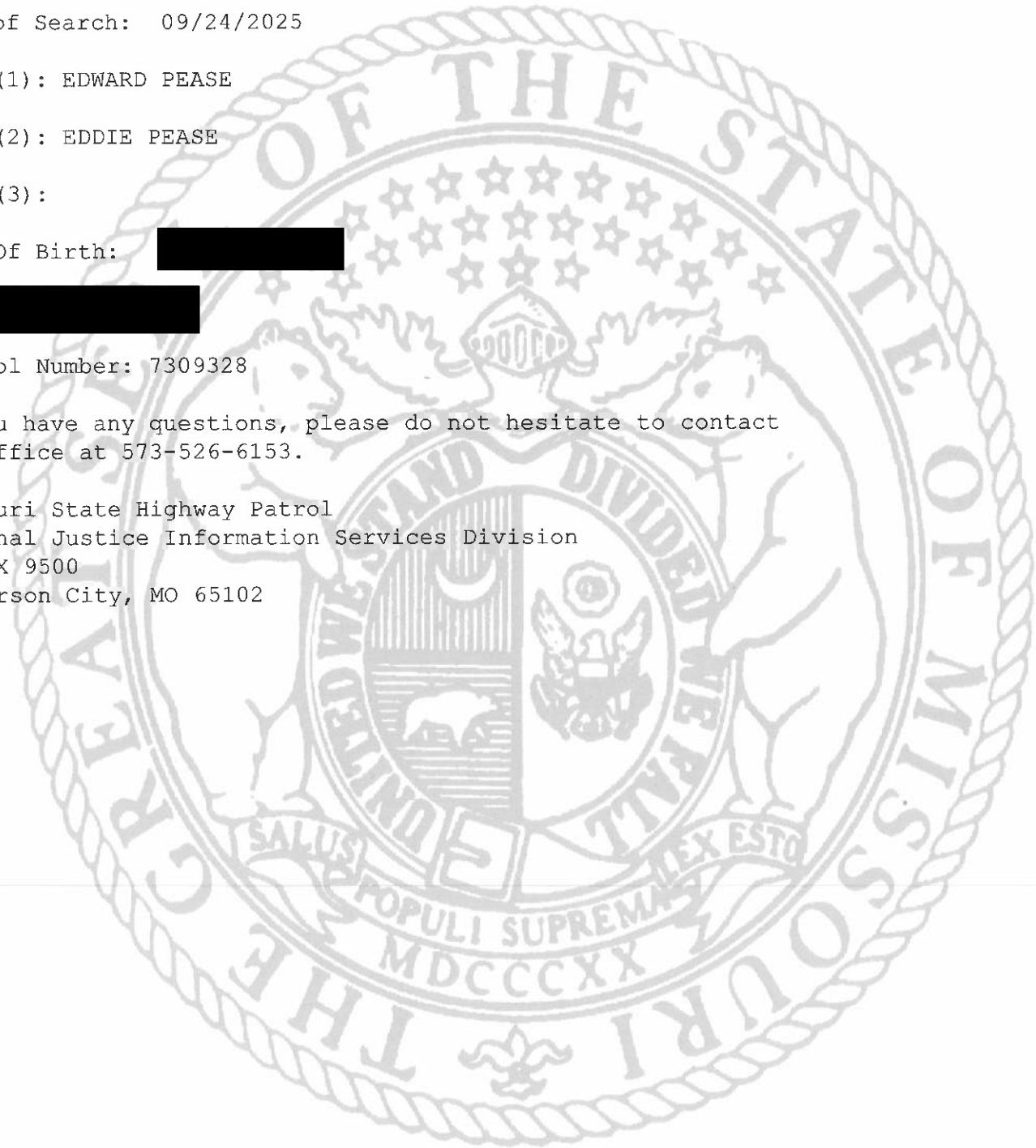
Date Of Birth: [REDACTED]

SSN: [REDACTED]

Control Number: 7309328

If you have any questions, please do not hesitate to contact our office at 573-526-6153.

Missouri State Highway Patrol
Criminal Justice Information Services Division
PO BOX 9500
Jefferson City, MO 65102





DISSEMINATED TO: MARK MYERS

* * MISSOURI CRIMINAL HISTORY * *

DATA AS OF OCT 1 2025 4:36PM

THIS RAP SHEET WAS PRODUCED IN RESPONSE TO THE FOLLOWING REQUEST:

SID NUMBER: MO93279193
PURPOSE CODE: E OPEN PUBLIC RECORD
ATTENTION: MACHS

THIS RECORD IS PROVIDED IN RESPONSE TO YOUR REQUEST. ALL ENTRIES
ARE COMPILED FROM THE INFORMATION FURNISHED TO THE CENTRAL REPOSI-
TORY. USE OF THE INFORMATION CONTAINED IN THIS RECORD IS GOVERNED
BY STATE AND FEDERAL LAW. BECAUSE MODIFICATIONS AND ADDITIONS MAY
BE MADE AT ANY TIME, A NEW RECORD SHOULD BE REQUESTED WHEN NEEDED
FOR SUBSEQUENT USE. FOR SPECIFIC DATA ABOUT CHARGES OR ARRESTS,
CONTACT THE CONTRIBUTING AGENCY. THE RECIPIENT OF THIS RECORD IS
RESPONSIBLE FOR ALL SECONDARY DISSEMINATION.

**** UNAUTHORIZED DISSEMINATION OF THIS RECORD ****

**** WILL SUBJECT THE DISSEMINATOR TO CRIMINAL ****

**** AND CIVIL PENALTIES ****

IDENTIFICATION

SID NUMBER
MO93279193

SOCIAL SECURITY

NAME(S) USED
MYERS, MARK B

DATE(S) OF BIRTH

SEX
MALE

RACE
WHITE

HEIGHT

WEIGHT

CRIMINAL HISTORY

===== CYCLE 1 ===== OCN 4U001112 =====

----- ARREST -----

OCN: 4U001112
ARREST DATE: 09/05/2025
ARREST AGENCY: MO0480800 Lee's Summit PD
AGENCY CASE NUMBER:
ARREST NAME: MYERS, MARK B
COUNT: 001
CHARGE LITERAL: DWI - ALCOHOL



OFFENSE TYPE: LOCAL ORDINANCE
CLASS:
STATE CODE: ORD577.0-041Y20215499.0
STATUTE CITATION: ORD5770
NCIC CODE: 5499
STATUS DATE: 09/05/2025

----- PROSECUTION -----

COUNT: 001
ACTION: CHARGE FILED
PA CASE NUMBER: 230039216
COURT CASE NUMBER: 230039216
CHARGE PROSECUTED: DWI - ALCOHOL
OFFENSE TYPE: LOCAL ORDINANCE
STATE CODE: ORD577.0-041Y20215404.0

IDENTIFICATION RECORDS OBTAINED FROM THE CRIMINAL RECORDS REPOSITORY MAY BE USED SOLELY FOR THE PURPOSE REQUESTED. ALL ARREST ENTRIES CONTAINED IN THIS RECORD ARE MATCHED BY FINGERPRINT COMPARISONS. AS PER SECTION 610.120 RSMO, CLOSED RECORDS SHALL BE INACCESSIBLE TO THE GENERAL PUBLIC. THEY SHALL BE AVAILABLE ONLY TO CRIMINAL JUSTICE AGENCIES AND AGENCIES AS DESCRIBED IN 610.120 RSMO WITH SUBMISSION OF FINGERPRINTS. THE SUBJECT OF THIS RECORD SHALL BE AFFORDED THE OPPORTUNITY TO CHALLENGE CORRECTNESS, ACCURACY AND/OR COMPLETENESS OF THIS RECORD PURSUANT TO SECTION 43.532 RSMO. A CHARGE WITHOUT FINAL DISPOSITION CARRIES THE PRESUMPTION OF NOT GUILTY UNTIL THE TIME IT IS ADJUDICATED GUILTY, SUSPENDED IMPOSITION OF SENTENCE DISPOSITIONS ARE NOT CONVICTIONS AND ARE CLOSED RECORDS WHEN PROBATION IS COMPLETED OR FINALLY TERMINATED. UNLESS FINGERPRINTS ACCOMPANY YOUR INQUIRY, WE CANNOT GUARANTEE THIS RECORD RELATES TO THE PERSON IN WHOM YOU HAVE AN INTEREST.

QUESTIONS REGARDING INFORMATION CONTAINED WITHIN THIS RESPONSE MAY BE DIRECTED TO:
THE MISSOURI STATE HIGHWAY PATROL
CRIMINAL JUSTICE INFORMATION SERVICES DIVISION
P.O. BOX 9500
JEFFERSON CITY, MO 65102
573-526-6153

END OF RECORD

Receipt Details

Receipt Number
14467348

Tender Type
Electronic Check

Total Amount
Paid
\$1,273.35

Receipt Year
2024

Payer Name
PEASE LISA &
EDWARD J JR

Payer Address



Personal Property

Property Account Number 096009498

Amount Applied
\$1,273.35

Tax Year 2024

Receipt Details

Type
AUTO

Make
HONDA

Model
CR-Z

Series
2D 2WD

Model Year
2011

Item ID
JHMZF1C44BS015889

Type
TRUCK/SUV

Make
HONDA

Model
TRUCK

Series
UNSPECIFIED

Model Year
2003

Item ID
5J6YH28513L050295

Type
TRUCK/SUV

Make
HONDA

Model
ODYSSEY

Series
5D 2WD

Model Year
2019

Office
10' x 10'

Bulk
7.5' x 5.5'

Storage
9.5' x 20'

Winery
9.5' x 10'
fermenters
A B C

Food Prep and
Storage

Walkin
Cooler
Taproom
19' x 10.5'

Bar
21' x 8.5'

Brew House
24' x 15'

fermenters

1 2 3 4 5

Walk Through
24' x 7.5'

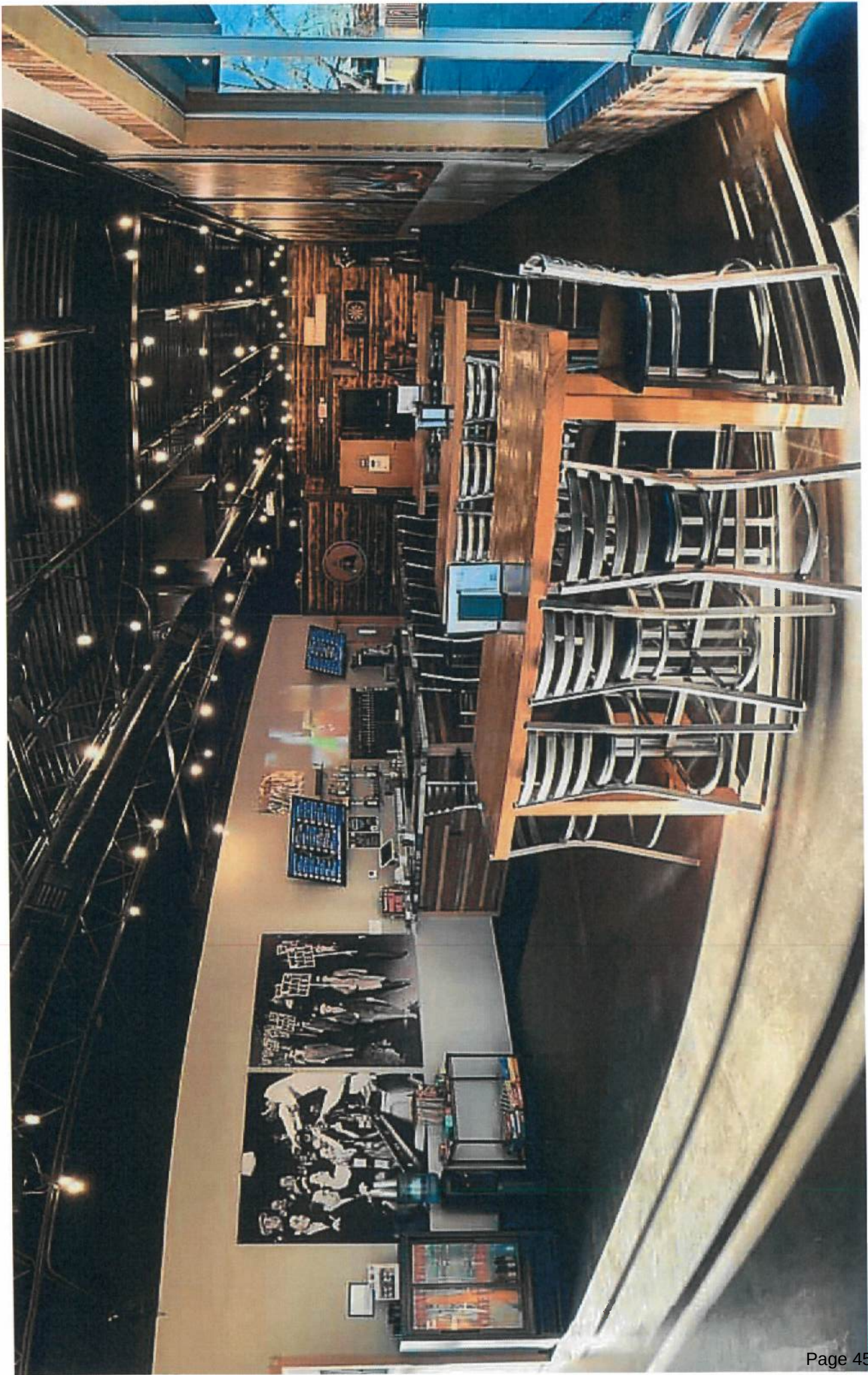
Bulk
6' x 5'

ADABU
8' x 6'

21.5'

24'

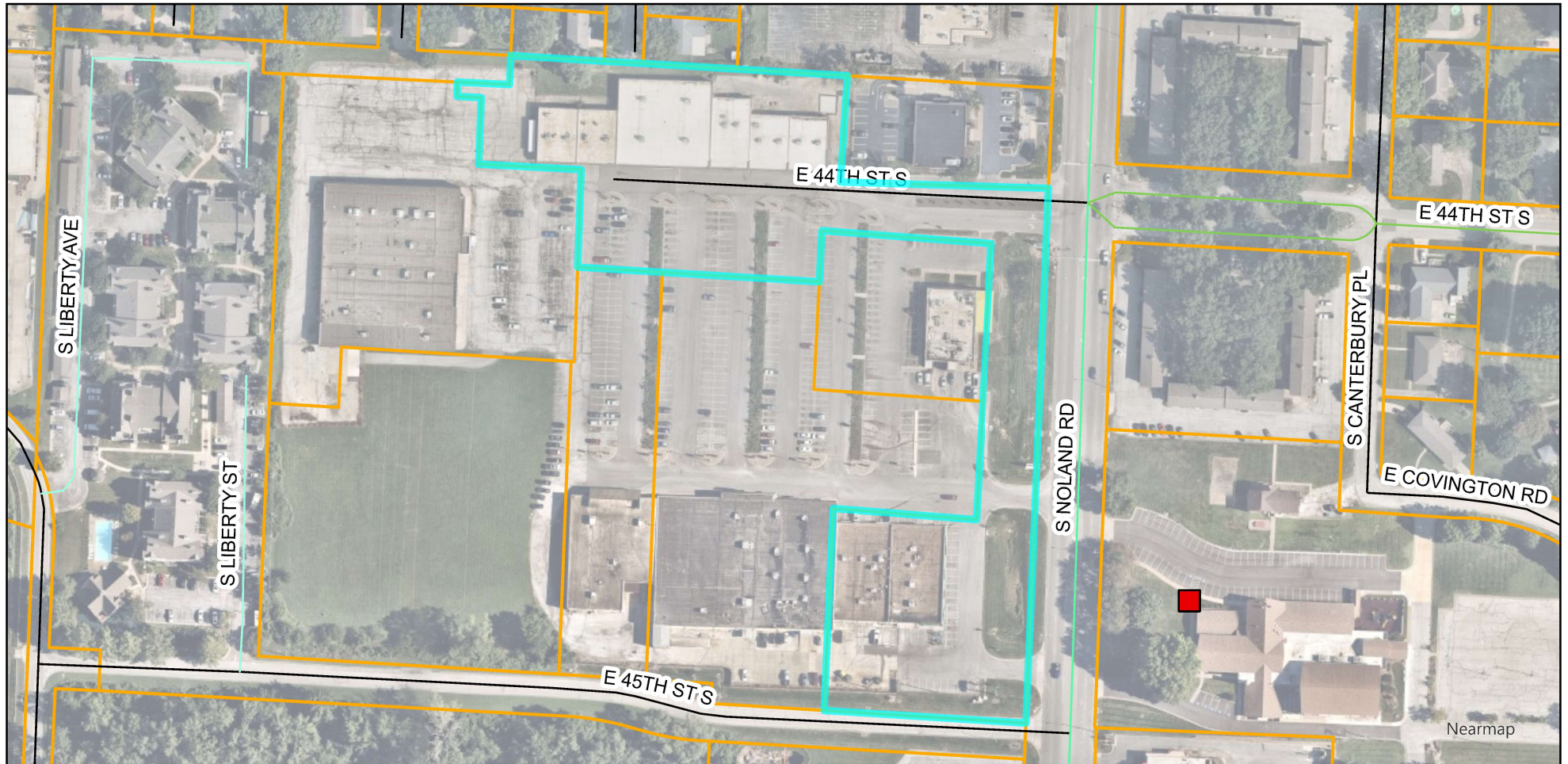
Storage





Aerial Imagery

4354 S Noland Rd



Legend

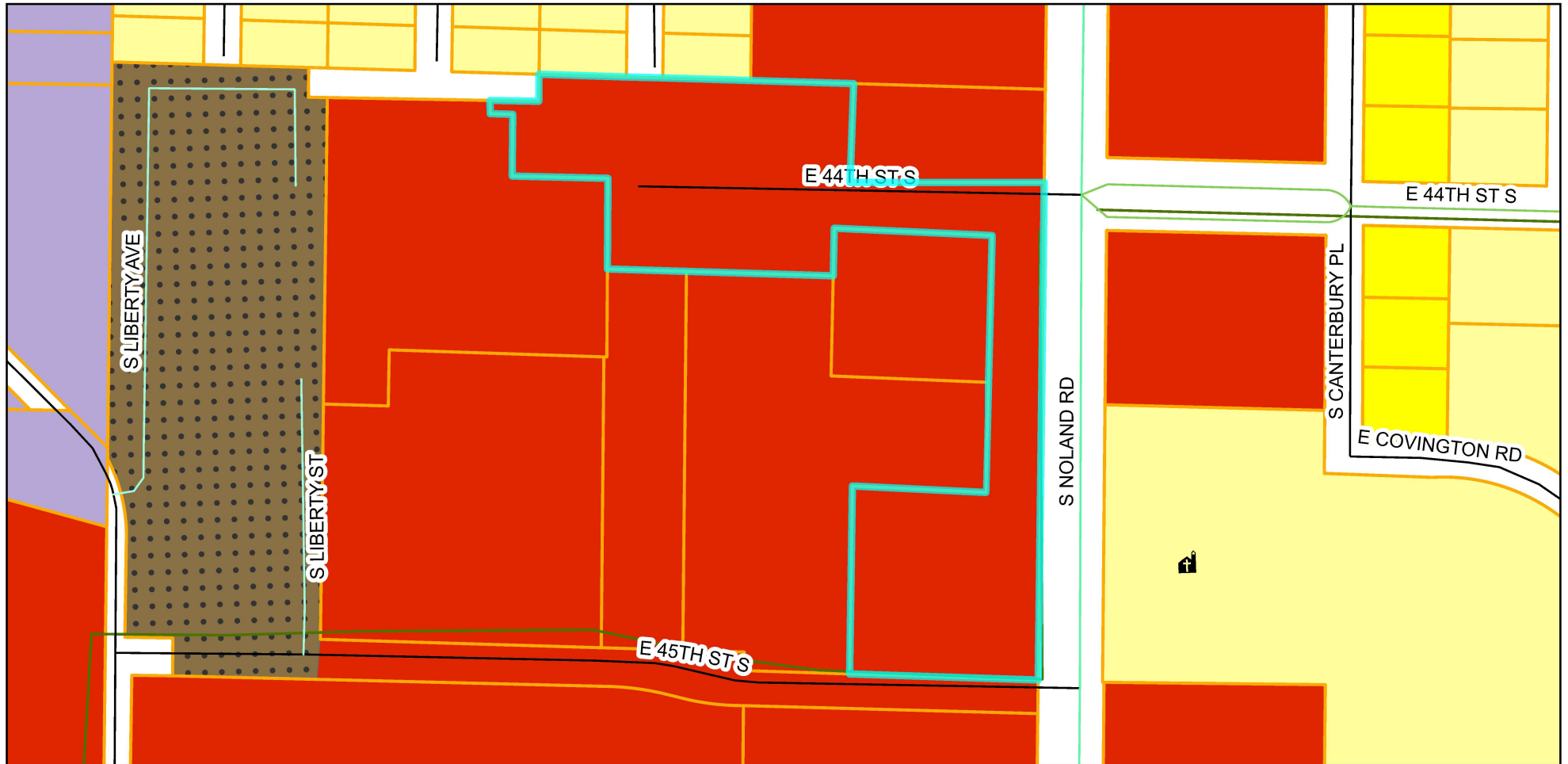
-  Houses of Worship
-  Parcels

Prepared For: City Council
Meeting Date: December 15, 2025



Zoning Map

4354 S Noland Rd



Legend

	Parcels	Zoning District			R-12
	Churches		C-1		R-30/PUD
	Day Care		C-2		R-6
			I-1		

0 125 250 500 US Feet



Prepared For: City Council
 Meeting Date: December 15, 2025





December 1, 2025

Dear Property Owner:

Fringe Beerworks has submitted a liquor license application for the Retail Selling of Intoxicating Liquor by Drink with Sunday Sales with the City of Independence Regulated Industries Division. The application is for Fringe Beerworks located at 4354 S. Noland Rd., Independence, MO 64055.

City Code requires written notification of the public hearing to all Property Owners within three hundred (300) feet of the proposed premises. The public hearing pertaining to this case is scheduled for the regular City Council meeting at 6:00 p.m., Monday, December 15, 2025 in Council Chambers at 111 East Maple Ave.

During the public hearing, you will have an opportunity to speak for or against this liquor license application before the City Council considers this application. You do not need to sign-up to speak at this public hearing.

Please contact our Regulated Industries division at (816) 325-7183 or at jdodson@indepmo.org if you have any questions regarding this notice.

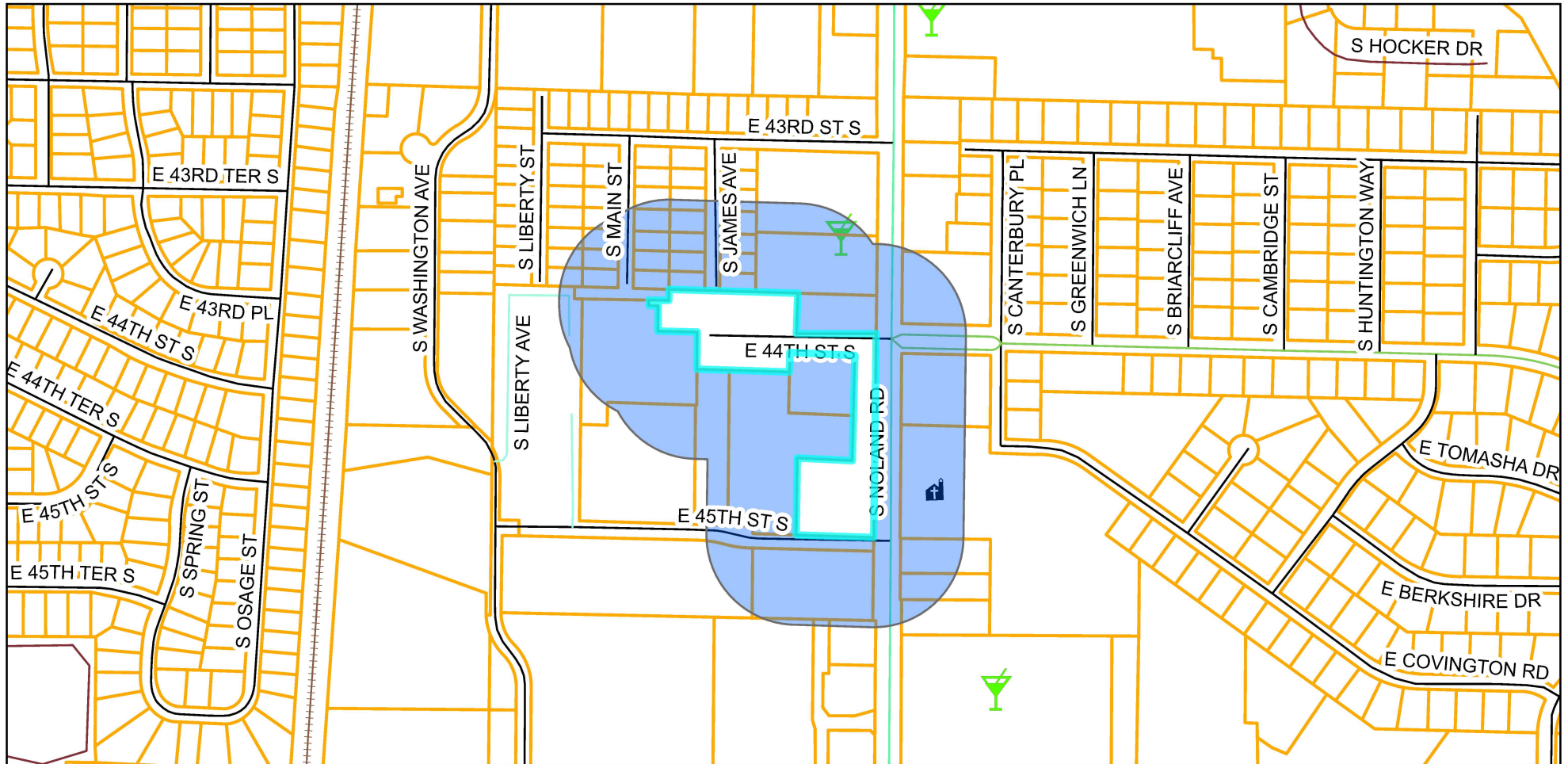
Regards,

Jill M. Dodson

Jill M. Dodson
Regulated Industries Supervisor

Notification Area Map

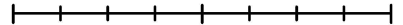
4354 S Noland Rd



Legend

-  Notification Area
-  Parcels
-  Churches
-  Liquor Licenses-Active

0 250 500 1,000 US Feet



Prepared For: City Council
 Meeting Date: December 15, 2025



Owner	Address	City	State	ZIP Code
14000 APARTMENTS LLC	14020 E 44TH ST APT E	INDEPENDENCE	MO	64055
4319 S MAIN STREET LLC	2225 NW SUMMERFIELD DR	LEES SUMMIT	MO	64081
A7G INVESTMENTS LLC	27607 E RED FOX ST	LAKE LOTAWANA	MO	64086
ALL ABOUT INVESTMENTS, LLC	833 SW LEMANS ST	#200 LEES SUMMIT	MO	64082
AREC 1 LLC	PO BOX 29046	PHOENIX	AZ	85038
ASH ROY L & DIANA J	4323 S JAMES	INDEPENDENCE	MO	64055
CALDWELL LESA M	4327 S JAMES AVE	INDEPENDENCE	MO	64055
CAMPBELL LOREN H & DOROTHY L -TRUSTEE	11605 E 39TH ST	INDEPENDENCE	MO	64052
CERNA ZOILA	4319 S JAMES AVE	INDEPENDENCE	MO	64055
COBRAND REMY L	4316 S MAIN ST	INDEPENDENCE	MO	64055
COFFMAN DARREN & ANGELA	3803 S UNION ST	INDEPENDENCE	MO	64055-3149
COOK JACOB D & PINKERTON EMMA L	4315 S JAMES AVE	INDEPENDENCE	MO	64055
CRABTREE DANIEL R & SHELIA M	4320 S MAIN ST	INDEPENDENCE	MO	64055
CURRY INVESTMENT COMPANY	2700 KENDALLWOOD PKWY	GLADSTONE	MO	64119
DRESCH BRENDA J	4324 S JAMES AVE	INDEPENDENCE	MO	64055
GAGE CALLIE	4311 S MAIN ST	INDEPENDENCE	MO	64055
GATHERING BAPTIST CHURCH, THE	4505 S NOLAND RD	INDEPENDENCE	MO	64055
GILL PROPERTY SOLUTIONS LLC	1030 S PURDUE RD	GRAIN VALLEY	MO	64029
GLO-RAE INVESTMENT CO & SIXBE CO INC	605 W 47TH ST	KANSAS CITY	MO	64112
HELTON JAMES L	4315 S MAIN	INDEPENDENCE	MO	64055
HERRERA RAMON	4311 JAMES AVE	INDEPENDENCE	MO	64055
K & P RENTALS LLC	9115 E 58TH TER	RAYTOWN	MO	64133
LIBERTY SAVINGS BANK	16 W FRANKLIN ST	LIBERTY	MO	64068
MIJ PROPERTY LLC	14548 SHERWOOD ST	LEAWOOD	KS	66224
NNN REIT, LP	450 S ORANGE AVE STE 900	ORLANDO	FL	32801
NOLAND FASHION SC LLC	605 W 47TH ST STE 200	KANSAS CITY	MO	64112
NOLAND SOUTH DEV CO	4800 MAIN ST STE 400	KANSAS CITY	MO	64112
NOLAND SOUTH DEVELOPMENT COMPANY	1000 WALNUT STE 900	KANSAS CITY	MO	64106
RUIZ MARIA ISABEL	4323 S LIBERTY ST	INDEPENDENCE	MO	64055
SBD PROPERTY ACQUISITIONS LLC	1501 NW MOCK AVE	BLUE SPRINGS	MO	64015
SNYDER PROPERTIES LLC	4408 S CANTERBURY PL APT E	INDEPENDENCE	MO	64055
SOFIA SHANNON MARIE	4327 S MAIN ST	INDEPENDENCE	MO	64055
TRAN JOSEPH P	4319 S LIBERTY ST	INDEPENDENCE	MO	64055
WAHN SHERRY L	410 NE DUNCAN RD	BLUE SPRINGS	MO	64014
WALTERS INVESTMENTS LLC	4406 CAMBRIDGE CT	INDEPENDENCE	MO	64055
WILLIAMSBURG SQUARE APARTMENTS LLC	80 MAIN ST STE 560	WEST ORANGE	NJ	7052

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

Council action is requested on the application received from Bleu House Bistro, Inc. for Restaurant Selling Intoxicating Liquor for Bleu House Bistro that will be located at 15800 E. US Hwy. 24. **Item passes 7-0**

Recommendations:

This application meets the requirements of the City's Alcoholic Beverage Code.

Background:

The applicant is requesting City Council approval for a Restaurant Selling Intoxicating Liquor license. The applicant has also requested a Sunday Sales license that will be approved administratively should the City Council approve the liquor license. The hours of operation will be Monday – Thursday 6:00 am – 2:00 pm, Friday – Saturday 8:00 am – 11:00 pm and Sunday 8:00 am – 2:00 pm. The applicant has indicated that this location will have alcohol sales that meet the City's Alcoholic Beverage Code.

Background:

Applicant: Bleu House Bistro, Inc.

Name of business: Bleu House Bistro

Business Address: 15800 E. US Hwy. 24

Size of establishment (includes outdoor patio space if applicable): Bleu House Bistro will be operating within approximately 2,000 square feet: 1,500 square feet indoor space and 500 square feet patio space.

Liquor License Types: Restaurant Selling Intoxicating Liquor license including Sunday Sales

Types of Alcohol to be sold/served: Intoxicating Liquor in original package

History of any liquor license at this location; if a new building, provide a brief update on the construction: This will be the first business and liquor license at this location. The owner of the property and Bleu House Bistro has resided at this address for several years. She will maintain residence in the upper level of the home while the business will operate on the lower level and outside patios. She has made improvements per the City's request and has met all the zoning requirements. There is one active liquor licensed establishment within 1000 feet: Quik Trip is located to the northeast.

Location proximity to school, church, or residential zoning: According to the City's mapping system there are no churches or schools within 300 feet. There is residential zoning located within 300 feet.

Managing Officer Information and results from background check: Bleu House Bisto, Inc. has indicated that Debra Miller will serve as the appointed managing officer. The background investigation conducted by the Missouri State Highway Patrol on Debra Miller revealed she meets the requirements of the Alcoholic Beverages code.

Emergency Justification:

Fiscal Impact:

Council Action:

Department / Contact	Community Development /
---------------------------------	-------------------------

REVIEWERS

Tom Scannell
Melissa Cabrera
Jeremy Cover
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. Redacted Bleu Bistro Liquor License Application
2. Aerial Imagery
3. Zoning Map
4. Notification Letter
5. Notification Area Map
6. Notification Addresses

Application Type: ☐ Package ☒ Drink ☐ Manufacturing ☐ Wholesale ☐ Special ☐ Ownership Change

Business Information

This Business is a: ☐ Sole Proprietor ☐ Partnership ☐ LP ☐ LLC ☒ Corporation

Bleu House Bistro, Inc

Legal Name of Entity

Restaurant

Type of Business

(same)

Doing Business as (d/b/a) (if different than above)

15800 E US Hwy 24 Independence mo. 64050

Physical Address

City

State

Zip

(same)

Mailing Address (if different from above)

[Redacted]

[Redacted]

[Redacted]

Phone

Cell Phone

Email

MO - 4-26-17

26043386

State & Date of Incorporation or Organization

Missouri Retail Sales Tax Number

Date business scheduled to open

Give dimensions or square footage of the building, outdoor patio, and any other areas in which alcoholic beverages may be stored or dispensed: indoors (41 occupancy - 1500 ft²) patios - 500 ft²

Is the proposed location within 300 feet of a church, school, or hospital? no

Proposed hours of operation: (m-Thur) 6A-2pm Fri+Sat (8A-11pm) Sun (8-2pm)

If existing business, from whom was the business purchased? n/a - new

Date of purchase: n/a Date of Possession: n/a

Does the former owner of the business have any interest, either directly or indirectly, in the business for which you seek a license? If so, explain: no.

[Redacted]

I hereby apply to the City of Independence, MO, for the following license(s) for the business and premises described above (mark all license types for which you are applying on page 2). I also certify that the information given in this application is true to the best of my knowledge and that the license is non-transferable. I also agree that this business will observe the restrictions specifically enumerated in Chapter 2 of the Independence City Code related to alcoholic beverages.

Debra S. Miller
Signature of Applicant

Debra S. Miller
Printed Name

owner
Title

Date

Liquor License Types (mark ☐ license types for which you are applying)

All liquor licenses are effective for one (1) year, beginning July 1 and ending June 30. Any liquor license application made between January 1 and March 31 will be charged a prorated fee equal to one-half of the annual license fee (listed below). Those licenses will expire June 30 of that year. Applications made between April 1 and June 30 will be charged the full license fee (listed below), however those licenses will expire June 30 the following year.

Package Liquor Licenses

- ☐ P1 – Retail Selling of Intoxicating Liquor of all kinds in the original package (\$150.00)
- ☐ P3 – Retail Selling of Beer only in the original package; includes Sunday Sales (\$150.00)
- ☐ S – Sunday Sales (\$300.00)
- ☐ T – Tasting Permit (\$25.00)

Drink Licenses

- ☐ T1 – Retail Selling of Intoxicating Liquor by the Drink (\$450.00)
- ☐ T2 – Retail Selling of Malt Liquor & Wine by the Drink (\$150.00)
- ☐ T3 – Retail Selling of Beer by the Drink; includes Sunday Sales (\$150.00)
- ☒ R1 – Restaurant Selling Intoxicating Liquor (\$450.00)
- ☒ R2 – Restaurant Selling Beer; includes Sunday Sales (\$150.00)
- ☐ F1 – Tax Exempt Organizations Selling Intoxicating Liquor (\$300.00)
- ☐ H1 – Hotel Selling Intoxicating Liquor (\$450.00)
- ☐ Z1 – Consumption of Intoxicating Liquor (\$150.00)
- ☒ S – Sunday Sales (\$300.00)

Manufacturing, Distilling, Blending Licenses

- ☐ M1 – Manufacturing, Distilling, Blending Intoxicating Liquor of all kinds (\$300.00)
- ☐ M2 – Manufacturing twenty-two (22) percent or less alcohol-content intoxicating liquor (\$300.00)
- ☐ M3 – Manufacturing, Brewing Malt Liquor (\$300.00)

Wholesale Licenses

- ☐ W1 – Wholesale selling of Intoxicating Liquor of all kinds (\$300.00)
- ☐ W2 – Wholesale selling of twenty-two (22) percent or less alcohol-content intoxicating liquor (\$300.00)
- ☐ W3 – Wholesale selling of malt liquor (\$300.00)

Special Licenses

- ☐ S1 – Microbrewery (\$7.50 per 100 barrels produced)
- ☐ S2 – Domestic Winery (\$7.50 per 500 gallons produced)
- ☐ S4 – Picnic 7 Day Intoxicating Liquor by the Drink (\$15.00 per day)
- ☐ S6 – July 4th Celebration Malt Liquor & Light Wine by the Drink (\$15.00 per day)
- ☐ C1 – Caterer Intoxicating Liquor by the Drink – Up to 7 Days (\$15.00 per day)
- ☐ C2 – Caterer Intoxicating Liquor by the Drink – Up to 50 Days (\$500.00)
- ☐ C3 – Caterer Intoxicating Liquor by the Drink – Unlimited Days (\$1,000.00 per day)

Managing Officer, Sole Owner, or Managing Partner Information

Debra S. Miller [REDACTED]
Full Name Social Security Number
F 69 5'3" 190 [REDACTED] Amsterdam, ny yes
Sex Age Height Weight Date of Birth Place of Birth Are you a U.S. Citizen
15800 E US Hwy 24 Independence mo 64050
Home Address City State Zip
Centerpoint Hospital 816-698-7000 [REDACTED]
Place of Employment (other than business) Employment Phone Email
19600 E 39th St. S. Independence mo 64057
Employment Address City State Zip

City or Town where the Managing Officer, Sole Owner, or Managing Partner pays taxes:

Independence, mo.

Will this person be in active control and management of this business? Please explain (part-time/full-time, etc.):

yes - FT manager on site

Have you, any partner or employee ever been arrested anywhere in the United States for the violation of any City, State or Federal Law? If so, who, where, when and what offense (do not include minor traffic offenses):

no.

Have you, any partner or employee ever been the holder of a license to manufacture or sell alcoholic beverages, which was revoked? If so, explain:

no.

Have you, or any member of your household or immediate family, ever made application for a permit for the Director of Liquor Control that was denied? If so, explain and provide approximate date of denial:

no.

Do you rent or lease the premises for which this business is to be used? If so, give terms of rent or lease, and name and address of property owner:

no. I am the owner.

Partnership or Member Information (complete only for partnerships or LLCs with multiple members)

Give partnership or LLC name (if not already listed above) and the name, address, and percentage ownership interest of each partner or member:

n/a.

Corporate Information (complete only for a corporation)

List full name, complete address, phone number, date of birth and Social Security Number of all corporate officers:

President: Debra S. Miller

Vice President: n/a

Secretary: Daniel Miller

Treasurer:

Managing Officer: Debra S. Miller

Names, address, and phone number of shares owned of all stockholders who hold 10% or more of the capital stock:

Debra S. Miller - 100%

Is the corporation or any stockholder or the managing officer thereof, or any member of his/her household or immediate family, have interest directly in any other permit issued by the Director of Liquor Control? If so, explain:

no.

Has any stockholder of the corporation or an officer ever been employed by any person, partnership, or corporation that had a license revoked or suspended? If so, who, where, when and what offense:

no.

Alcoholic Beverage Code Certifications – Adult Materials

- ☒ I certify this establishment will not display or sell books, photos, magazines, videos, or other periodicals which are distinguished or characterized by the principal emphasis on matters depicting, describing, or relating to specified sexual activities.
- ☐ I certify this establishment will display or sell books, photos, magazines, videos, or other periodicals which are distinguished or characterized by the principal emphasis on matters depicting, describing, or relating to specified sexual activities.

Alcoholic Beverage Code Certifications – Allow Entry for Inspection

- ☒ I agree that I will permit the entry of any officer or investigator who has legal authority for the purpose of inspection; and will permit the removal of all things and articles which may be in violation of the ordinances of Independence, Missouri, and the laws of the State of Missouri or the United States.

Alcoholic Beverage Code Certifications – Restaurant Liquor Sales

- ☒ **If qualifying as a restaurant:** I certify that at least 50% of the gross sales of the business for which this license application is made will consist of food.

Alcoholic Beverage Code Certifications – Package Liquor Sales

If applying for a package liquor license: I certify that, at all times, I will keep a stock of goods having a value according to my original invoices of at least one thousand dollars (\$1,000.00), exclusive of the inventory value of the fixtures and of the intoxicating liquor, which I shall offer for sale on said premises. Check one of the following:

- ☐ This location will have alcohol sales that are less than 90% of gross store sales.
☐ This location will have alcohol sales that are more than 90% of gross store sales.

Additional Documentation Required

- ✓ 1. Letter of Explanation – Letter explaining why the application is being submitted by outlining the operations of the business and the use of the liquor license, should it be approved.
- ✓ 2. A recent photo of the Managing Officer.
- ✓ 3. Criminal Record Check – Missouri Highway Patrol criminal record check for the Managing Officer, Sole Owner, or each partner or member of a partnership or LLC.
- ✓ 4. Copy of the Managing Officer's paid Missouri personal property tax receipt for year immediately preceding the date of application.
- ✓ 5. Copy of Missouri voter registration card for the Managing Officer.
- ✓ 6. Recent photos of the interior and exterior of the premises to be licensed. If the building is under construction, the applicant shall provide a copy of the plans and specifications of the building.
- ✓ 7. Floorplan of the premises to be licensed including any areas where alcoholic beverages will be stored, sold, or consumed including outdoor patio areas.
- ✓ 8. Copy of Jackson County Business Property Tax receipt for year immediately preceding date of application. (If the business was new after January 1 of that year, it is exempt from this requirement. "new")
- ✓ 9. Business License Application – Applicant must submit a Business License application that includes a letter of "No Tax Due" dated within the previous 90-days for the MO sales tax number provided and a certificate of liability insurance.
- ✓ 10. License Fee: Check or money order payable to the City of Independence. See page 2 for current annual license fees. \$750.00

Please return this application and all required documents to the Regulated Industries Division at the address above. For questions about completing this application, please contact Jordan Ellena at JEllena@indepmo.org or by phone at 816-325-7183.

BLEU HOUSE BISTRO

15800 E US Hwy 24
Independence, MO 64050
816-886-8500

11/1/25

TO: **ALCOHOL LICENSING DIVISION**

I am applying for a full, by the drink, liquor, beer and wine licenses for my new Restaurant Bleu House Bistro here in Independence, Missouri. My occupancy capacity is 41 indoors with also three outdoor patio areas available outside. I have a small full bar, and we plan to be open daily for Happy Hours, and on the weekend evenings till 11pm for reservations only pre-fix dinners with wine. A Sunday champagne brunch is also being planned from 9am-3pm. Food will be served every day beginning at 6am-6pm on M-Thur, and at 8 am-11pm Fri-Sat. . We are a French Bistro, so wine especially, will play an important role in the success of the French Cuisine being served here. We also will have a coffee bar, to which alcohol may be added to special hot and cold coffee drinks. If you need any further information I can be reached at [REDACTED] on my cell phone line. Thank you for your consideration in this matter..

Sincerely,

DEBRA S MILLER- OWNER/MANAGER

BLEU HOUSE BISTRO





No Match Notification

A statewide search of the identifiers below has revealed no criminal conviction or sex offender information on file. Fingerprints were not provided and thus the result of the search cannot be guaranteed.

Date of Search: 10/16/2025

Name (1): DEBRA MILLER

Name (2): DEBRA GREENE

Name (3):

Date Of Birth: [REDACTED]

SSN: [REDACTED]

Control Number: 7334507

If you have any questions, please do not hesitate to contact our office at 573-526-6153.

Missouri State Highway Patrol
Criminal Justice Information Services Division
PO BOX 9500
Jefferson City, MO 65102

JACKSON COUNTY

Jackson County Collector
415 E. 12th Street Suite 100
Kansas City, MO 64106
816-881-3232

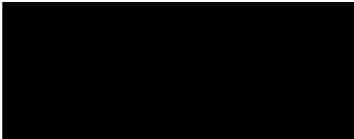
Received By:	diazmax	Receipt Number:	14296190
Location:	conv	Receipt Year:	2024
Session:	2024-11-22-diazmax	Date Received:	11/22/2024

PAYMENT RECEIPT - DUPLICATE - colltemp3 10/15/2025 12:17:55PM

Type	Description	Balance	Net Tax	Interest	Fees Penalties	Current Due	Current Paid	Balance Remaining													
Personal Property	Bill Number: 2024-16929995 Bill Year: 2024 Installment(s): 1 PIN: 205848738 Interest Date: 12/31/2024 TAG: 035	0.00	0.00	0.00	0.00	0.00	73.07	0.00													
	<table><tr><td>Type</td><td>Year</td><td>Make</td><td>Model</td><td>Series</td><td>VIN</td><td>Value</td></tr><tr><td>TRUCK/SUV</td><td>2008</td><td>FORD</td><td>EXPEDITION</td><td>4D 4WD</td><td>1FMFU18558LA68112</td><td>2,700.00</td></tr></table>	Type	Year	Make	Model	Series	VIN	Value	TRUCK/SUV	2008	FORD	EXPEDITION	4D 4WD	1FMFU18558LA68112	2,700.00						
Type	Year	Make	Model	Series	VIN	Value															
TRUCK/SUV	2008	FORD	EXPEDITION	4D 4WD	1FMFU18558LA68112	2,700.00															
Payment was received by interest date.																					
Totals:		0.00	0.00	0.00	0.00	0.00	73.07	0.00													
Tender Information:			Charge Summary:																		
Check		73.07	Personal Property					0.00													
Total Tendered		73.07	Total Charges					0.00													

Jackson County Jackson County Collector 415 E. 12th Street Suite 100 Kansas City, MO 64106

By Whom Paid:



BALANCE REMAINING	0.00
CHARGES	0.00
PAID	73.07
CHANGE	0.00

JACKSON COUNTY
BOARD OF ELECTION COMMISSIONERS
P.O. Box 296 • Independence, MO 64051 • 816-325-4600
VOTER IDENTIFICATION CARD
"PLEASE KEEP THIS CARD"

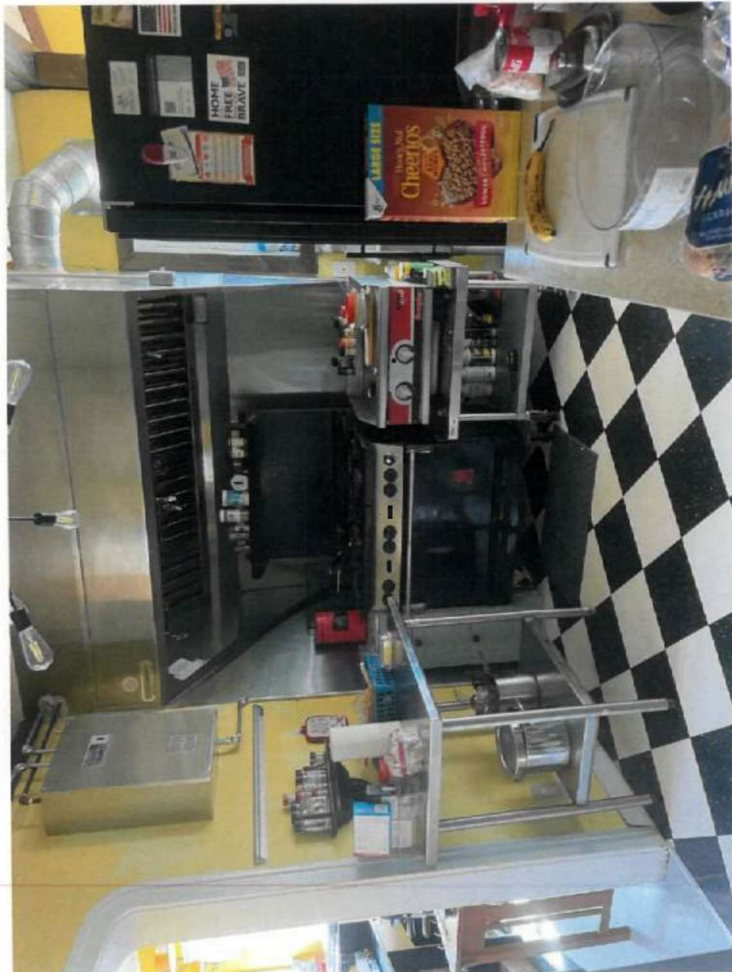
Miller Debra Susan

TWP	PCT	CON	SEN	REP	CO	CTY
B2	02B	5	11	20	3	IN02

ID No. 751468352

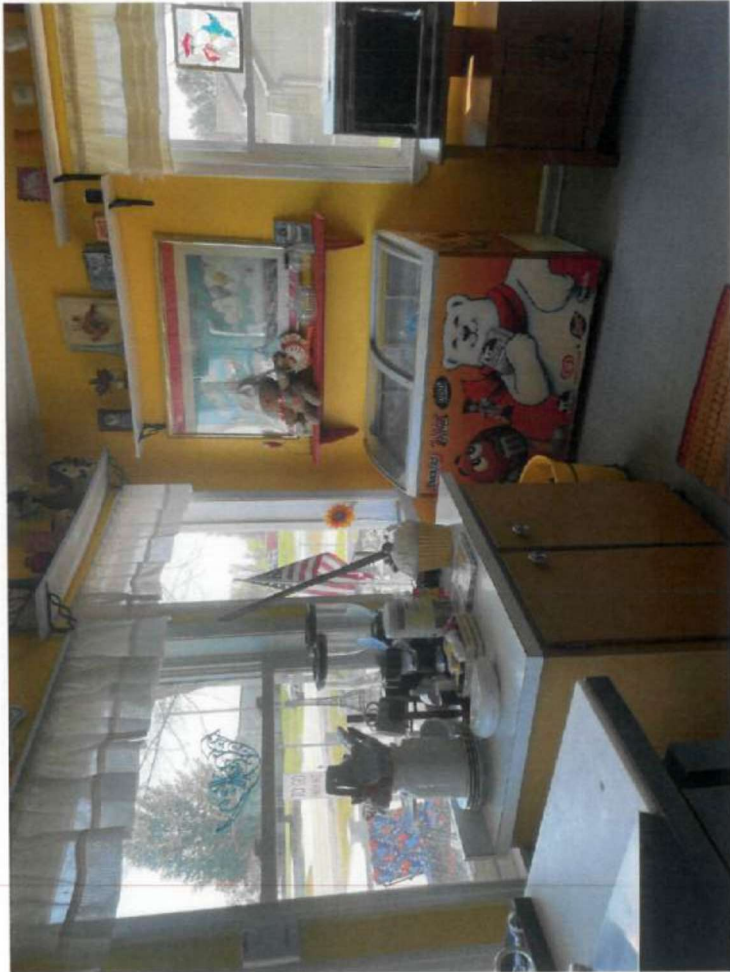


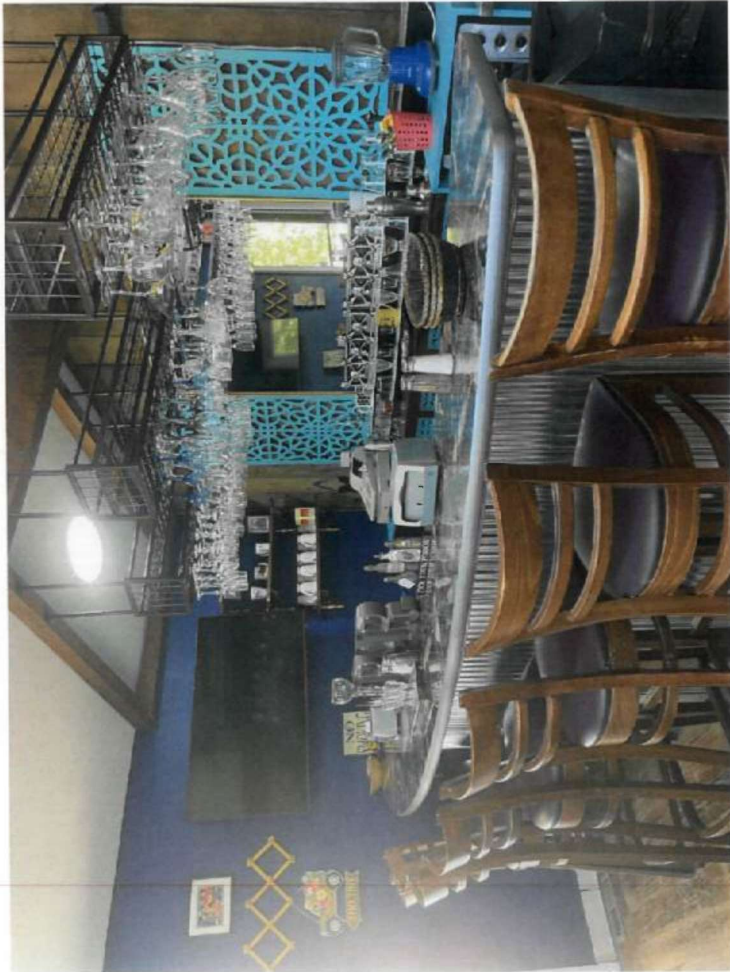


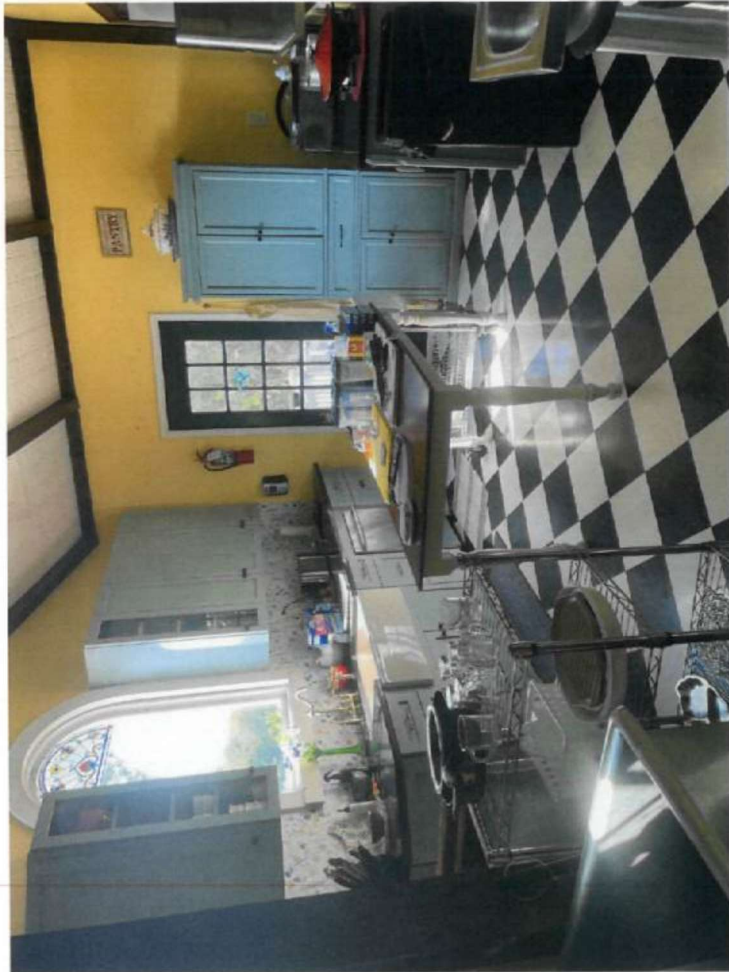




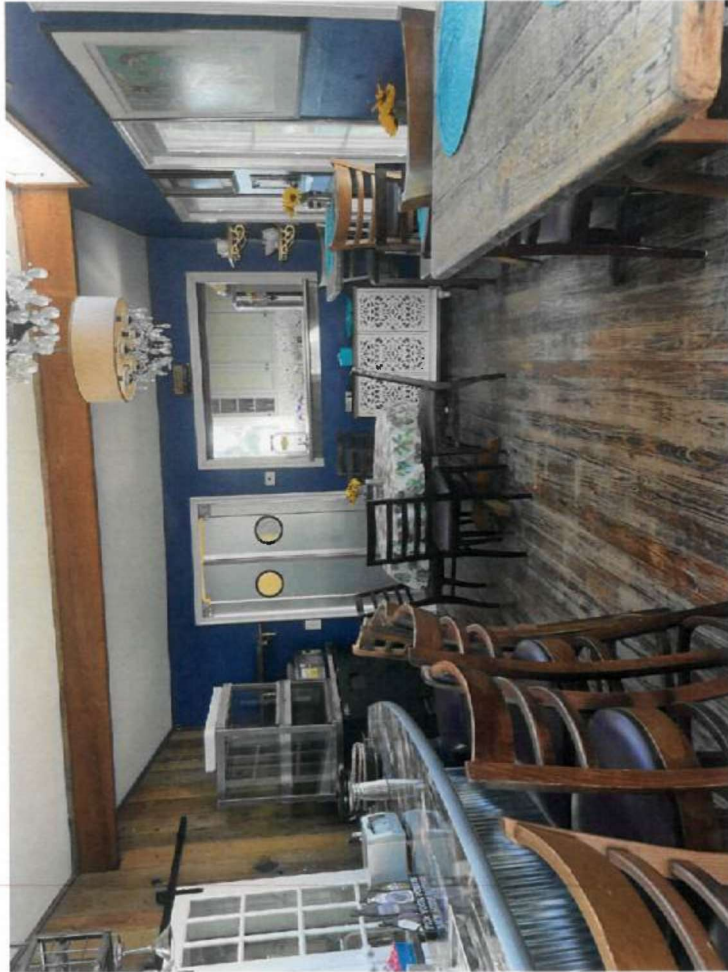




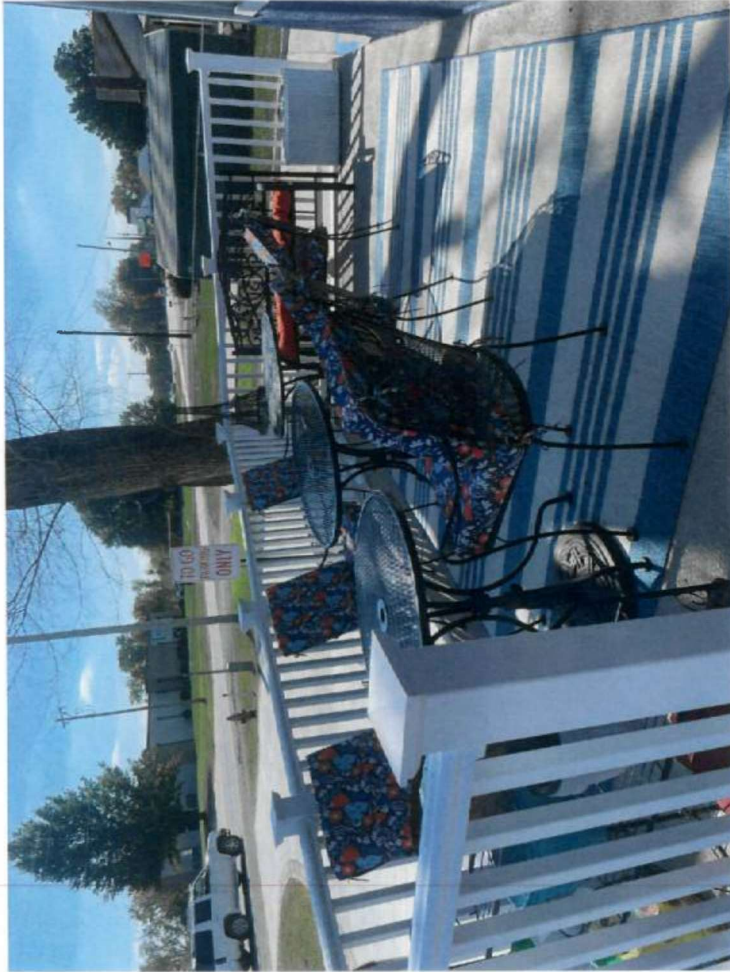


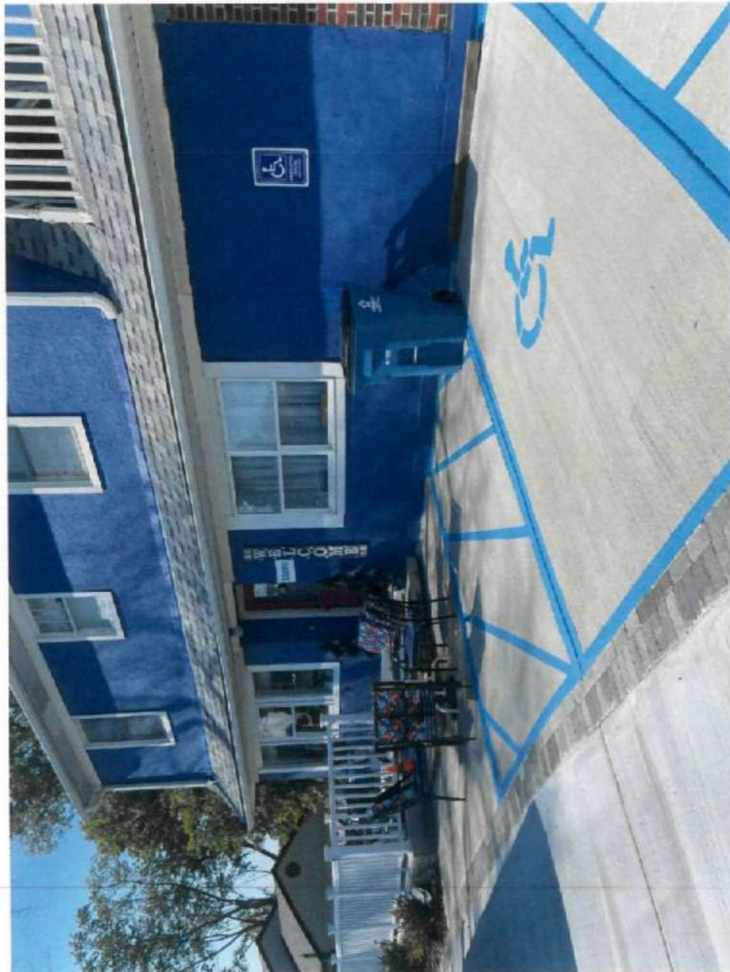


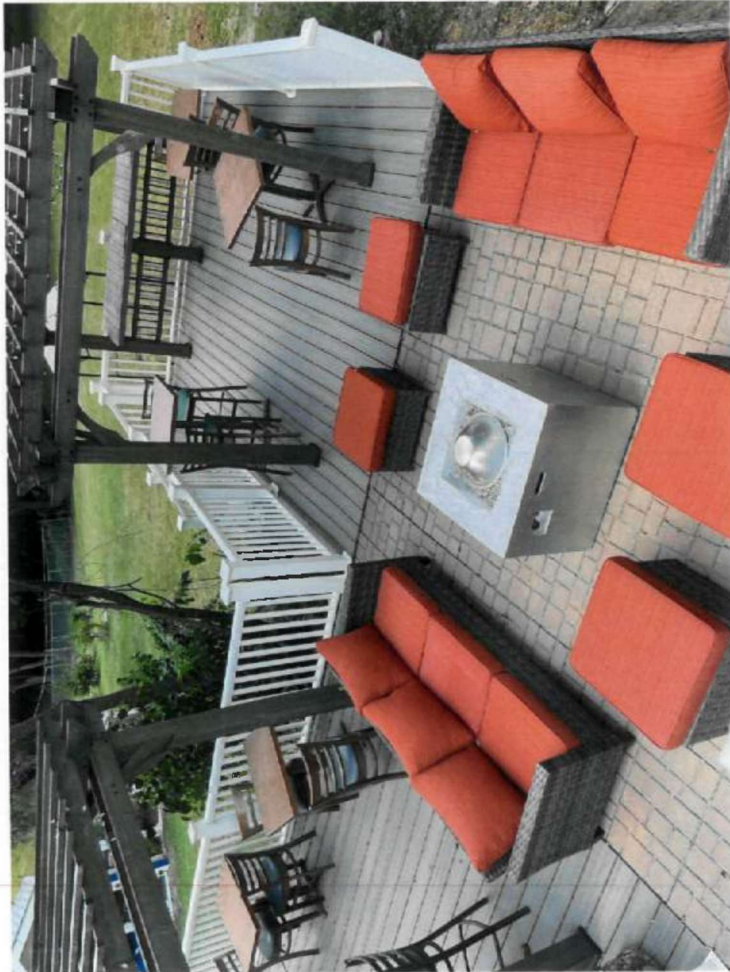


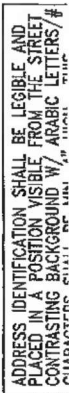












TAXATION DIVISION
PO BOX 3666
JEFFERSON CITY, MO 65105-3666



Missouri
DEPARTMENT OF REVENUE

Telephone: 573-751-9268
Fax: 573-522-1265
E-mail: taxclearance@dor.mo.gov

BLEU HOUSE BISTRO INC
15800 E US HIGHWAY 24
INDEPENDENCE, MO 64050-2015

DATE: 10/10/2025
VALID THROUGH: 01/08/2026

CERTIFICATE OF NO TAX DUE

MISSOURI ID: 26043386
Notice Number 2059280931

To Supervisor of Liquor Control: The Department of Revenue, State of Missouri, certifies the above listed taxpayer has filed all required returns and paid all sales, use, or withholding tax due, including penalties and interest, and does not owe any sales, use, and withholding tax, as of October 9, 2025. This review does not include returns that are not required to be filed as of this date or that have been filed but not yet processed by the Department.

This certificate is only for the purpose of obtaining a liquor license and is not pursuant to Section 144.150, RSMo.

This statement only applies to sales, use, and withholding tax due and is not to be construed as limiting the authority of the Director of Revenue to assess, or pursue collection of liabilities resulting from final litigation, default in payment of any installment agreement entered into with the Director of Revenue, any successor liability that may become due in the future, or audits or reviews of the taxpayer's records as provided by law.

THIS CERTIFICATE REMAINS VALID FOR 90 DAYS FROM THE ISSUANCE DATE.

TAXATION DIVISION

Aerial Imagery

15800 E US 24 Hwy



Legend

- | | | | |
|--|----------------------------|---|---------|
|  | Liquor Licenses-
Active |  | Schools |
|  | Houses of
Worship |  | Parcels |

0 50 100 200 US Feet

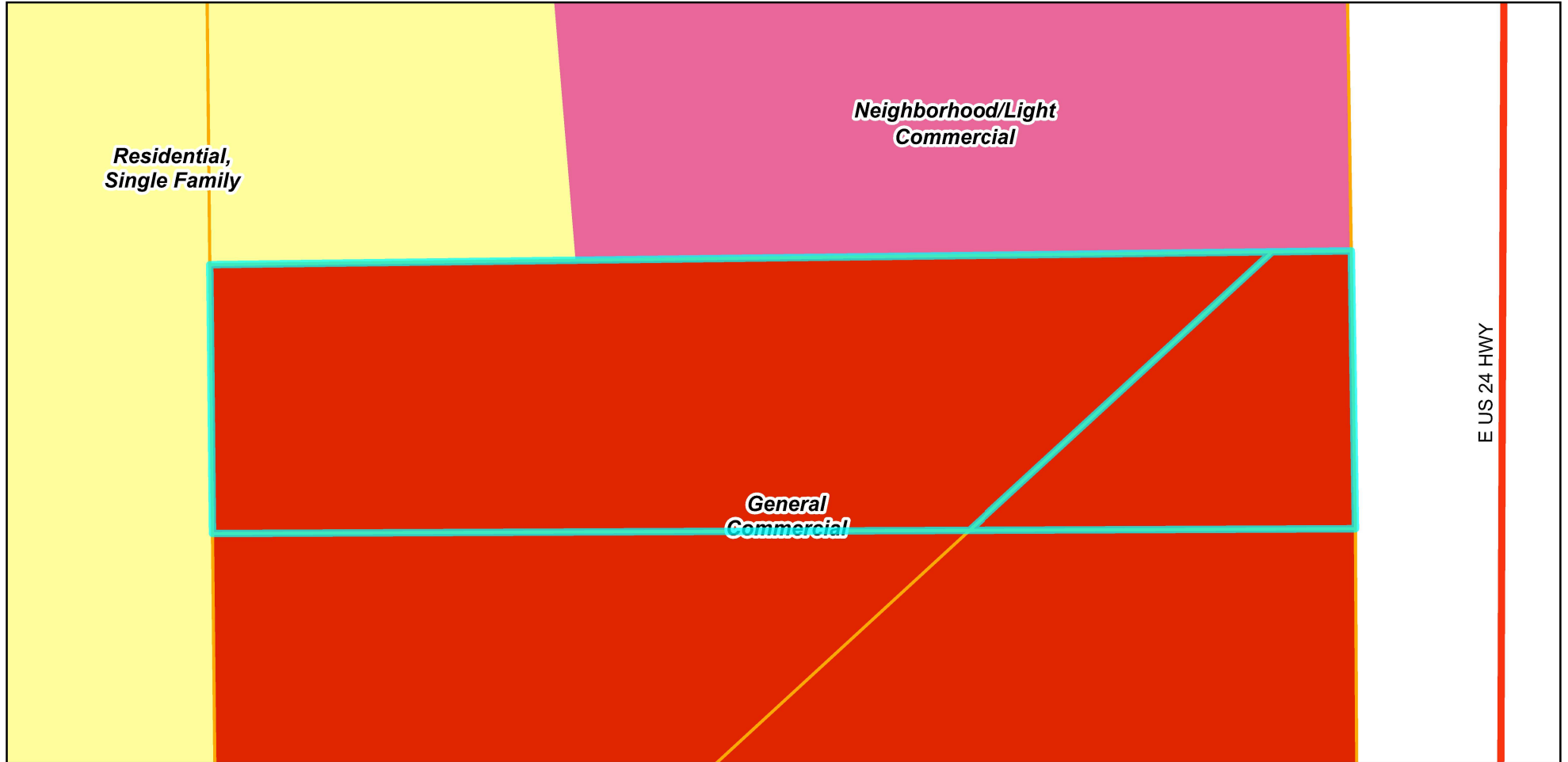


Prepared For: City Council
Meeting Date: December 15, 2025



Zoning Map

15800 E US 24 Hwy



Legend

- | | | | | | |
|--|-------------------------|---|---------|---|-----|
|  | Liquor Licenses- Active |  | Parcels |  | R-6 |
|  | Houses of Worship | Zoning District | | | |
|  | Schools |  | C-1 |  | C-2 |

0 50 100 200 US Feet

Prepared For: City Council
Meeting Date: December 15, 2025





December 1, 2025

Dear Property Owner:

Bleu House Bistro, Inc. has submitted a liquor license application for the Restaurant Selling Intoxicating Liquor with Sunday Sales with the City of Independence Regulated Industries Division. The application is for Bleu House Bistro located at 15800 E. US 24 Hwy., Independence, MO 64050.

City Code requires written notification of the public hearing to all Property Owners within three hundred (300) feet of the proposed premises. The public hearing pertaining to this case is scheduled for the regular City Council meeting at 6:00 p.m., Monday, December 15, 2025 in Council Chambers at 111 East Maple Ave.

During the public hearing, you will have an opportunity to speak for or against this liquor license application before the City Council considers this application. You do not need to sign-up to speak at this public hearing.

Please contact our Regulated Industries division at (816) 325-7183 or at jdodson@indepmo.org if you have any questions regarding this notice.

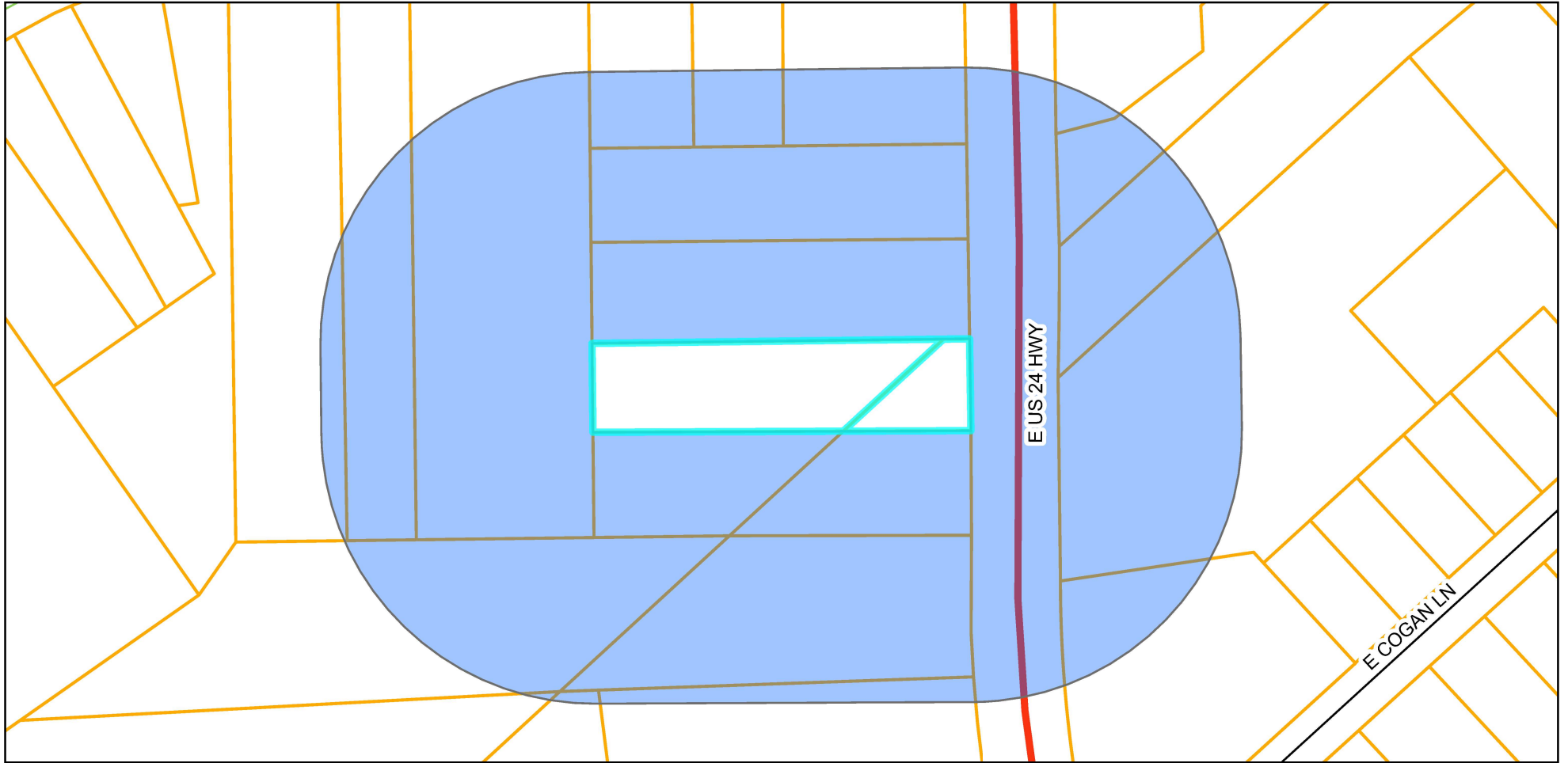
Regards,

Jill M. Dodson

Jill M. Dodson
Regulated Industries Supervisor

Notification Area Map

15800 E US 24 Hwy



Legend

-  Notification Area
-  Parcels

0 250 500 1,000 US Feet



Prepared For: City Council
Meeting Date: December 15, 2025



Property Address	Property Owner	Owner Address	City	State	ZIP Code
15650 E US 24 HWY	DTR MANAGEMENT LLC	923 NE WOODS CHAPEL RD STE 460	LEES SUMMIT	MO	64064
15700 E US 24 HWY	DTR MANAGEMENT LLC	922 NE WOODS CHAPEL RD STE 460	LEES SUMMIT	MO	64064
15800 E US 24 HWY	MILLER DEBRA S	15800 E 24 HIGHWAY	INDEPENDENCE	MO	64050
15801 E US 24 HWY	NS RETAIL HOLDINGS LLC	2021 MCKINNEY ST STE 1150	DALLAS	TX	75201
15803 US 24 HWY	WILSON HOMES & CONSTRUCTION LLC	15803 E US 24 HWY	INDEPENDENCE	MO	64050
15805 E US 24 HWY	GERKEN HOLDINGS LLC	RR 316 OLD KC RD	PAOLA	KS	66071
15810 E US 24 HWY	PATEL HASMUKH & INDUBEN	15804 E 24 HWY	INDEPENDENCE	MO	64050
15814 E US 24 HWY	MEDVED DAVID M & MICHELE R	10236 W 49TH PLACE	MERRIAM	KS	66203
15818 E US 24 HWY	MARMON COMERCIAL LLC	5600 W 95TH ST STE 307	OVERLAND PARK	KS	66207
15823 E US 24 HWY	KCMO PROPERTY, LLC	15831 E US 24 HWY	INDEPENDENCE	MO	64050
682 N ALLEN RD	RODRIQUEZ JESUS	3814 CRESCENT AVE	KANSAS CITY	MO	64133
686 N ALLEN RD	WATSON THOMAS W & TIBBETTS CARRIE S	686 N ALLEN RD	INDEPENDENCE	MO	64050
688 N ALLEN RD	SCOTT LUCAS K & GABRIELLE S	688 N ALLEN RD	INDEPENDENCE	MO	64050
694 N ALLEN RD	DARR MICHAEL DEWAYNE	688 N ALLEN RD	INDEPENDENCE	MO	64050
700 N ALLEN RD	VUNCANNON JAMES A & SHELLIE D	700 N ALLEN RD	INDEPENDENCE	MO	64050
NO ADDRESS ASSIGNED BY CITY	EDINGTON DONNA K & BRASHEAR JUNE	15796 E US 24 HWY	INDEPENDENCE	MO	64050

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

25-117 **2R** An ordinance authorizing the City to enter into a Cooperative Agreement relating to the Pavilions at Hartman Heritage Community Improvement District. **2R Item passes 7-0**
Ord. No. 19764

Recommendations:

Council approval is recommended.

Background:

The Pavilions at Hartman Heritage Community Improvement District (the "CID") was formed on July 7, 2025 by Ordinance No. 19691. Formation of the CID was conditioned on the later execution of a cooperative agreement. The CID covers property located to the northwest of the intersection of Interstate Highway 70 and Little Blue Parkway in Independence, Missouri, and is generally bounded by East Jackson Drive to the east, south and west, and the Little Blue Trace Trail to the north. It is authorized to impose a sales tax of up to 1.0%.

The CID was formed with a blight finding to fund renovations to blighted private improvements. The CID board is controlled by the landowner. The cooperative agreement places responsibility on the District to collect and distribute the CID revenues.

Emergency Justification:**Fiscal Impact:**

If the City incurs costs in the future in connection with the improvements, the City administrative services, or any other action that the District requests the City to take, and such costs are authorized for payment or approved for payment in accordance with this Agreement, the District shall pay for such City reimbursable costs within a reasonable time of receipt of an invoice from the City.

Council Action:

Department / Contact	Community Development /
---------------------------------	-------------------------

REVIEWERS

Tom Scannell
Melissa Cabrera
Jeremy Cover
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. Ordinance - Approving Cooperative Agreement (Hartman Pavilions CID)
2. Cooperative Agreement (Hartman Pavilions CID)
3. Ord. No. 19764

Bill No. _____

Ordinance No. _____

AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO A
COOPERATIVE AGREEMENT RELATING TO THE PAVILIONS AT
HARTMAN HERITAGE COMMUNITY IMPROVEMENT DISTRICT.

WHEREAS, pursuant to Sections 67.1401 to 67.1571 RSMo, as amended, the City Council of the City of Independence, Missouri (the “City”) passed Ordinance No. 19691 (the “CID Creation Ordinance”) establishing the Pavilions at Hartman Heritage Community Improvement District (the “CID”);

WHEREAS, the CID Creation Ordinance conditions approval of the CID on the City and the CID later entering into a cooperative agreement to govern the relationship of the CID and the City;

WHEREAS, the City Council now desires to approve and enter into the Cooperative Agreement (defined herein).

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

SECTION 1. The Intergovernmental Cooperative Agreement (the “Cooperative Agreement”) between the City and the CID is hereby approved in substantially the form attached hereto as **Exhibit A**.

SECTION 2. The Mayor or (Interim) City Manager of the City is hereby authorized and directed to execute the Cooperative Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the Cooperative Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

SECTION 3. This Ordinance shall take effect and be in full force as provided by the City Charter.

[remainder of page intentionally left blank]

PASSED THIS ____ DAY OF DECEMBER, 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:

Interim City Manager

Exhibit A

Cooperative Agreement

INTERGOVERNMENTAL COOPERATIVE AGREEMENT

THIS INTERGOVERNMENTAL COOPERATIVE AGREEMENT (“Agreement”), entered into as of this day of _____, 2025, between the CITY OF INDEPENDENCE, MISSOURI, a political subdivision of the State of Missouri (“City”), and the PAVILIONS AT HARTMAN HERITAGE COMMUNITY IMPROVEMENT DISTRICT, a Missouri political subdivision and community improvement district (“District”) (the City and the District are collectively referred to herein as the “Parties” and individually as “Party”, as the context so requires).

RECITALS

WHEREAS, on July 7, 2025, the City Council adopted Ordinance No. 19691 establishing the District as a political subdivision pursuant to the Act; and

WHEREAS, all of the real property within the District is legally described on the attached Exhibit A and shown on the map attached as Exhibit B; and

WHEREAS, the City declared the property within the District to be a blighted area pursuant to the Act; and

WHEREAS, the intended funding mechanism for the District is the Sales Tax (defined herein) imposed to pay or reimburse the Parties for: (a) costs of formation of the District, (b) costs of the Improvements, and (c) District Administrative Costs (defined herein); and

WHEREAS, on _____, 2025, the Board of Directors, the governing body of the District, adopted Resolution No. _____ imposing the Sales Tax subject to the approval of the Sales Tax by the qualified voters within the District in accordance with the Act; and

WHEREAS, on _____, 2025, pursuant to an election conducted by the Jackson County Board of Election Commissioners, qualified voters within the District approved the Sales Tax; and

WHEREAS, the District Sales Tax is expected to become effective on _____, 2025; and

WHEREAS, the Parties desire to set forth through this Agreement their respective rights and obligations with respect to the Improvements and the operation of the District.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants herein contained, the Parties agree as follows:

ARTICLE 1: DEFINITIONS, RECITALS, AND EXHIBITS

Section 1.1 Recitals and Exhibits. The representations, covenants, and recitations set forth in the foregoing recitals and the exhibits attached to this Agreement are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they

were fully set forth in this Section, and the appropriate exhibits are incorporated into each section of this Agreement that makes reference to an exhibit.

Section 1.2 Definitions. In addition to words and terms defined by the Act and elsewhere in this Agreement, the following words and terms shall have the meanings ascribed to them in this Section unless the context in which such words and terms are used clearly requires otherwise:

“Act” means the Missouri Community Improvement District Act, §§ 67.1401, *et seq.*, RSMo, as amended.

“Agreement” means this Intergovernmental Cooperative Agreement, as from time to time amended in accordance with its terms.

“Account” means the account established and held by the District at a bank selected by the District for the deposit of District Revenue and for the payment of Eligible Costs.

“Applicable Laws” means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, requirement, or decision of or agreement with or by any unit of government.

“Board of Directors” means the Board of Directors of the Pavilions at Hartman Heritage Community Improvement District.

“City” means the City of Independence, Missouri, a municipal corporation of the State of Missouri.

“City Administrative Services” means the services to be provided by the City to the District as specifically described in Section 4.5 of this Agreement.

“City Clerk” means the Clerk of the City.

“City Council” means the governing body of the City.

“City Finance Director” or “Director of Finance” means the Director of Finance for the City.

“City Hall” means the official office of the City located at 111 E. Maple, Independence, Missouri 64050.

“City Manager” means the City Manager of the City.

“City Reimbursable Costs” means those costs described in Section 4.7 of this Agreement.

“Developer” means HC Independence, LLC, a Delaware limited liability company.

“District Administrative Costs” means the amounts incurred by the District for overhead expenses of the District for administration, operation, implementation, collection, and

enforcement incurred in connection with the Improvements and the District Revenue. District Administrative Costs include, without limitation, the following: actual, reasonable expenses that are necessary or desirable for the operation of the District as permitted under the Act that shall include, but are not limited to, costs associated with elections, notices, publications, meetings, supplies, equipment, photocopying, the engagement of legal counsel, accounting, engineering, land use planning, financial auditing services, insurance, administration of the Sales Tax, enforcement and collection of the Sales Tax, and other professional consultants or services.

“District” means the Pavilions at Hartman Heritage Community Improvement District, a political subdivision of the State of Missouri and community improvement district established in accordance with the Act.

“District Revenue” means the Sales Tax revenue collected by DOR on behalf of the District and deposited in the Account and such other revenue earned or received by the District from other sources.

“District Land” means the real property within the District legally described in the attached Exhibit A.

“DOR” means the Missouri Department of Revenue.

“Eligible Costs” means all of the following: (a) costs of formation of the District (including legal fees and publication costs) up to a maximum of \$30,000, (b) Improvement Costs up to a maximum of \$9,193,735, (c) interest on Improvement Costs allowable under **Section 4.8**, (d) District Administrative Costs, and (e) City Reimbursable Costs.

“Event of Default” means any event specified in Section 6.1 of this Agreement.

“Excusable Delays” means delays due to acts of terrorism, acts of war or civil insurrection, strikes, riots, floods, earthquakes, fires, tornadoes, casualties, acts of God, labor disputes, governmental restrictions or priorities, embargoes, national or regional material shortages, failure to obtain regulatory approval from any Federal or State regulatory body, unforeseen site conditions, material litigation by parties other than a Party and not caused by any Party's failure to perform, or any other condition or circumstances beyond the reasonable or foreseeable control of the applicable Party using reasonable diligence to overcome which prevents such Party from performing its specific duties or obligation hereunder in a timely manner.

“Improvements” means the renovation of existing buildings on District Land, including but not limited to interior improvements and the replacement of exterior facades and parapets, HVAC systems and appurtenances, roofing systems, lighting systems and signage.

“Improvement Costs” means all actual and reasonable costs and expenses which are incurred by, at the direction of or otherwise with the consent of the District with respect to construction and performance of the Improvements, including the actual and reasonable cost of labor and materials payable to contractors, builders, suppliers, vendors, and materialmen for the Improvements that are constructed by or on behalf of the District, plus all actual and reasonable costs to plan, finance, develop, design, and acquire the Improvements.

“Mayor” means the Mayor of the City.

“Sales Tax” means a sales and use tax levied by the District on the receipts from the sale at retail of all eligible tangible personal property or taxable services at retail within its boundaries pursuant and subject to the Act at a rate not to exceed one percent (1.0%) for a period of up to twenty seven (27) years from the date of the Ordinance, unless otherwise extended by the mutual agreement of the Parties and in accordance with the Act.

ARTICLE 2: REPRESENTATIONS

Section 2.1 Representations by the District. The District represents that:

A. The District is a community improvement district and political subdivision, duly organized and existing under the laws of the State of Missouri, including particularly the Act.

B. The District has authority to enter into this Agreement and to carry out its obligations under this Agreement. By proper action of its Board of Directors, the District has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

C. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement and the performance of or compliance with the terms and conditions of this Agreement by the District will not conflict with or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, any mortgage, deed of trust, lease, or any other restriction or any agreement or instrument to which the District is a party or by which it or any of its property is bound, or any order, rule, or regulation of any court or governmental body applicable to the District or any of its property, or result in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the District under the terms of any instrument or agreements to which the District is a party.

D. Except as to the shared benefits among all property owners within the District that are anticipated to result from the Improvements, no member of the Board of Directors has any significant or conflicting interest, financial or otherwise, in the Improvements or in the transactions contemplated by this Agreement. Any member of the Board of Directors who has a significant or conflicting interest, financial or otherwise, in the Improvements or in the transactions contemplated by this Agreement shall disclose said interest to the Parties and refrain from voting and/or making any final approval decisions regarding the Improvements or other transactions contemplated by this Agreement, unless the Parties mutually agree that said member of the Board of Directors may otherwise participate in the voting and/or making decisions regarding the Improvements or other transactions contemplated by this Agreement.

E. There is no litigation or proceeding pending or threatened against the District affecting the right of the District to execute or deliver this Agreement or the ability of the District to comply with its obligations under this Agreement or which would materially adversely affect its financial condition.

F. The District acknowledges that the funding, construction and performance of the Improvements is of significant value to the City, the District, the District Land, and the general public.

Section 2.2 Representations by the City. The City represents that:

A. The City is duly organized and existing under the Constitution and laws of the State of Missouri, as a constitutional charter city and is a political subdivision in which the District is located.

B. The City has authority to enter into this Agreement and to carry out its obligations under this Agreement, and by proper action of its City Council, the City Manager or other designated City official has been duly authorized to execute and deliver this Agreement.

C. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the performance of or compliance with the terms and conditions of this Agreement by the City will not conflict with or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, any mortgage, deed of trust, lease, or any other restriction, agreement, or instrument to which the City is a party or by which it or any of its property is bound, or any order, rule, or regulation of any court or governmental body applicable to the City or any of its property, or result in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the City under the terms of any instrument or agreement to which the City is a party.

D. To the City's knowledge, no member or employee of the City has any significant or conflicting interest, financial or otherwise, in the Improvements or in the transactions contemplated by this Agreement. The City shall take reasonable steps to ensure that any member or employee of the City who has a significant or conflicting interest, financial or otherwise, in the Improvements or in the transactions contemplated by this Agreement shall disclose said interest to the Parties and refrain from voting and/or making any final approval decisions regarding the Improvements or other transactions contemplated by this Agreement, unless the Parties mutually agree that said member or employee of the City may otherwise participate in the voting and/or making decisions regarding the Improvements or other transactions contemplated by this Agreement.

E. There is no litigation or proceeding pending or threatened against the City affecting the right of the City to execute or deliver this Agreement or the ability of the City to comply with its obligations under this Agreement.

F. The City acknowledges that the funding, construction and performance of the Improvements is of significant value to the City, the District, the District Land, and the general public.

ARTICLE 3: MUTUAL COOPERATION

Section 3.1 Litter and Trash Cleanup, Walkability and Security. The Parties agree and acknowledge that the City has adopted Resolution No. 6337 requiring special taxing jurisdictions such as the District to adopt policies to address litter and trash cleanup, walkability

and security within the City. The Parties agree that the District has limited revenue with which to expend towards these issues. However, the District agrees to develop such policies which may be in the form of recommendations to property owners which address these issues, and will use commercially reasonable efforts to ensure that its activities are in conformance with these requirements.

Section 3.2 Financing Improvements.

A. Subject to the limits set forth in the Petition, the District may issue obligations to fund all or a portion of the Improvement Costs as permitted by Section 67.1491, RSMo.

B. The District shall be solely responsible for payment of Improvement Costs with the proceeds of obligations or other District Revenue.

Section 3.3 Completion of the Improvements. The Improvements shall be completed by December 31, 2030. No payment of District Revenues shall be made for Improvements completed after such time and such costs shall not constitute Eligible Costs.

Section 3.4 Certificate of Completion. Upon substantial completion of the Improvements, the District shall or shall cause the Developer to submit to the City a Certificate of Completion substantially in the form attached hereto as Exhibit C ("Completion Certificate"). The District or the Developer shall certify that the Improvements have been completed in accordance with the approved final plans and specifications and all Applicable Laws.

Section 3.5 Ownership and Maintenance of Improvements. The District's initial primary role is to fund and/or assist in the funding of the Improvements. It is not intended for the District to own title to the Improvements or to the property upon which the Improvements are undertaken. The Developer shall be responsible for maintenance of the Improvements after completion.

ARTICLE 4: COLLECTION OF FUNDS

Section 4.1 Imposition of the Sales Tax. The District has taken all actions necessary to impose the Sales Tax. DOR will collect the Sales Tax as provided in the Act. All District expenditures and payments from Sales Tax revenue shall be subject to annual appropriation of the District.

Section 4.2 Administration and Collection of the Sales Tax.

A. DOR will collect the Sales Tax as provided in the Act and deposit monthly collections into the Account pursuant to an agreement between the District and DOR.

B. The District shall: (i) perform or provide for the performance of all functions incident to the administration, enforcement, and operation of the Sales Tax, to the extent not performed by DOR, pursuant to the Act, and subject to this Agreement; (ii) maintain the Account for deposit of all District Revenue and pay any reasonable bank fees; (iii) maintain the District's checkbook, write checks, and arrange for check signatures by authorized District officers for payment of District-approved expenditures; and (iv) prepare or cause to be prepared financial

statements according to accounting principles generally accepted in the United States of America and the budgets and reports as set forth in Section 5.1 or such other documents as may be required under the Act or by the Applicable Laws.

At any time during the term of the Sales Tax, the District may: (i) enter into any contract required by DOR for the collection of the Sales Tax and disbursement thereof to the Account in accordance with the Act; and (ii) prescribe any required forms and administrative rules and regulations for reporting the Sales Tax.

Upon the expiration of the Sales Tax, all funds remaining in the Account shall continue to be used solely in accord with this Agreement and the Act.

C. The District shall notify the City in writing of each meeting of the Board of Directors by delivering a copy of such notice and an agenda for the noticed meeting by U.S. postal service or electronic mail to the City Clerk at the address provided in Section 7.4. All meeting notices shall be posted at the District's official office, as designated in the District's bylaws.

Section 4.3 Investment of District Revenue. District Revenue on deposit in the Account shall be funds of the District only and shall not be deemed to be City funds. The Board of Directors may invest the District Revenue on deposit in the Account in accordance with the Act and other Applicable Laws. All interest earned upon the balance in the Account shall be deposited to the credit thereof.

Section 4.4 District Administrative Costs. The District shall pay for the District Administrative Costs of the District from District Revenue. The District Administrative Costs shall be included in the District's annual budget, as provided in Section 5.1. In the course of performing the City Administrative Services set forth in this Agreement, the City shall not incur District Administrative Costs or other costs for the District or otherwise obligate the District without the express prior written approval of the District, which approval shall be given only in the District's sole discretion.

Section 4.5 City Administrative Services.

A. The Parties acknowledge that the administrative services to be performed by the City and the District under this Agreement are mutually beneficial and necessary to allow the District to undertake the Improvements for which it was created.

B. The City shall perform the City Administrative Services as described below at no cost to the District: The City shall keep accurate records of information and documents received or prepared by the City in connection with the District and such records shall be open to the inspection of officers of the District. Any District records which are confidential pursuant to Section 32.057, RSMo, shall be obtained by the District from the Missouri Department of Revenue.

Section 4.6 Enforcement of the Sales Tax. As provided in the Act and Applicable Laws, DOR will enforce the Sales Tax. To the extent that the Sales Tax is not enforced by DOR, the District shall be responsible to prosecute or defend all actions, lawsuits, or proceedings necessary for collection and enforcement of the Sales Tax.

Notwithstanding anything to the contrary in this Agreement, the District shall not be required to undertake any enforcement action if the cost of such enforcement is reasonably expected to exceed the amount of revenues sought to be collected or if the amount sought to be collected exceeds the expected enforcement costs and the difference, in the District's discretion, is not enough to justify an enforcement action. Any costs incurred by the District in an attempt to enforce and/or collect the Sales Tax pursuant to this Section shall be considered as a District Administrative Cost.

Section 4.7 City Reimbursable Costs. If the City incurs costs in the future in connection with the Improvements, the City Administrative Services, or any other action that the District requests the City to take, and such costs are authorized for payment or approved for payment in accordance with this Agreement, the District shall pay for such City Reimbursable Costs within a reasonable time of receipt of an invoice from the City. Any Improvement Costs to be incurred by the City must be approved by the District in writing before being incurred. If the City seeks reimbursement for future Improvement Costs that the District did not approve in writing before the City incurred such costs, the District, in its sole discretion, may, but is not obligated to, treat all or any portion of such costs as City Reimbursable Costs and pay the City in accordance with this Agreement. If the District elects not to reimburse the City for all or any portion of Improvement Costs incurred by the City without the District's prior approval, the District shall have no further obligation with respect to such costs. Notwithstanding the foregoing, all payments of City Reimbursable Costs are expressly subject to the District having sufficient unencumbered funds available to make any such payment. The Costs of City Administrative Services and the costs of any other actions that the District specifically requests the City to take shall automatically be treated as City Reimbursable Costs.

Section 4.8 Improvement Costs and Interest on Improvement Costs. The District shall pay such Improvement Costs as qualify as Eligible Costs and for which the District has received certificate(s) listing such Improvement Costs, explaining their qualification as Eligible Costs and certifying such Improvement Costs to be Eligible Costs, accompanied by itemized invoices, receipts or other information sufficient to demonstrate such eligibility.

Interest shall accrue to the party that has paid any certified Improvement Costs from the date of certification to the date of payment from District Revenue. The rate of interest shall be determined on each January 1 and shall be, for such year, equal to the prime rate reported in the most recently published "Money Rates" column or any successor column of *The Wall Street Journal*, currently defined therein as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks (if *The Wall Street Journal* ceases publication of the prime rate, then "prime rate" shall mean the "prime rate" or "base rate" announced by UMB Bank, N.A., or any successor thereto).

The District shall maintain records of all certifications of Improvement Costs and calculations of interest accrued on Improvement Costs and shall make such records available to the City upon request.

Section 4.9 Disbursement of District Revenue. District Revenue shall be disbursed from the Account by the District only for the payment of Eligible Costs. Revenue shall be disbursed in accordance with the following priorities, to the extent that the following constitute Eligible Costs:

1. costs of formation of the District (including legal fees and publication costs);
2. District Administrative Costs;
3. City Reimbursable Costs;
4. interest on Improvement Costs; and
5. Improvement Costs.

The District shall maintain records of all disbursements of District Revenues and their purposes and shall make such records available to the City upon request.

Section 4.10 Repeal of the Sales Tax. No proposal to abolish the District and to repeal the Sales Tax shall be made so long as the District's liabilities exceed its assets, there are outstanding claims or causes of action pending against the District, while there are outstanding City Reimbursable Costs which remain due and payable pursuant to this Agreement, or while the District is insolvent, in receivership or under the jurisdiction of a bankruptcy court; provided that, this section shall not extend either the term of the District's existence or the imposition of the Sales Tax. Upon payment of all Eligible Costs, the District and the City shall cooperate to terminate the District and the Sales Tax.

ARTICLE 5: SPECIAL COVENANTS

Section 5.1 Annual Budget, Annual Financial Report, and Annual Report.

A. The District's fiscal year shall begin on July 1 and end on June 30 in each year that the District remains in existence. Not earlier than 180 days and not later than 90 days before the first day of each fiscal year, the District shall prepare, or cause to be prepared, a budget for capital and operating expenses for the next succeeding fiscal year for submission to the City Finance Director. Each budget and any amendments thereto shall generally be prepared in accordance with all applicable state statutes, including specifically Section 67.010, RSMo, as amended. The City Finance Director may review and comment to the Board of Directors on the proposed budget no later than 60 days before the first day of the relevant fiscal year. The Parties acknowledge that the District may, but is not required to, accept any recommendations suggested by the City Finance Director. The Board of Directors shall hold an annual meeting and adopt an annual budget not later than 30 days before the first day of each fiscal year. The District shall provide a copy of the approved budget to the City Finance Director.

B. As required by Section 105.145, RSMo, the District shall prepare, or cause to be prepared, an annual financial report of the District's financial transactions during each fiscal year and submit a copy of the annual financial report to the State Auditor no later than six (6) months after the end of the District's fiscal year. The annual financial report may be either an un-audited report or an audited report prepared by a certified public accountant. The District shall provide a copy of the annual financial report to the City Finance Director.

C. Within 120 days after the end of each fiscal year, the District shall submit a report to the City Clerk and to the Missouri Department of Economic Development stating the services,

provided, revenues collected and expenditures made during such fiscal year, together with copies of written resolutions adopted by the Board of Directors during the fiscal year.

ARTICLE 6: DEFAULTS AND REMEDIES

Section 6.1 Events of Default. If either of the following events shall occur and be continuing following the expiration of any cure provisions herein, then such event shall constitute an Event of Default under this Agreement: (a) payment of costs from District Revenues that do not constitute Eligible Costs or (b) failure by any Party in the performance of any covenant, agreement or obligation imposed or created by this Agreement, and the continuance of such default for ninety (90) days after a non-defaulting Party has given written notice to the defaulting Party specifying such default.

Section 6.2 Remedies on Default. Except as otherwise provided in this Agreement, in the event of any default in or breach of any term or condition of this Agreement by either Party, or any successor, the defaulting or breaching Party (or successor) shall, upon written notice from the other Party (or successor), proceed promptly to cure or remedy such default or breach, and, shall, in any event, within ninety (90) days after receipt of notice, commence to cure or remedy such default; provided, however, that the Parties agree so long as the defaulting Party is diligently pursuing resolution of the default complained of beyond the ninety (90) days provided for above, such failure shall not constitute an Event of Default for as long as reasonably necessary for the defaulting Party to resolve such failure. If such cure or remedy is not taken or not diligently pursued, or the default or breach is not cured or remedied within a reasonable time, the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach. If any Event of Default has occurred and is continuing, then any non-defaulting Party may, upon its election or at any time after its election while such default continues, by mandamus or other suit, action or proceedings at law or in equity, enforce its rights against the defaulting Party and its officers, agents, and employees, and to require and compel duties and obligations required by the provisions of this Agreement. During the continuance of an Event of Default, the District shall not disburse District Revenues for any purpose other than payment of District Administrative Costs.

Section 6.3 Rights and Remedies Cumulative. The rights and remedies reserved by the Parties under this Agreement and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions.

Section 6.4 Waiver of Breach. No waiver of any breach of any covenant or agreement contained in this Agreement shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of an Event of Default, a non-defaulting Party may nevertheless accept from the defaulting Party, any payment or payments without in any way waiving the non-defaulting Party's right to exercise any of its rights and remedies as provided herein with respect to any such default or defaults in existence at the time when such payment or payments were accepted by the non-defaulting Party.

Section 6.5 Excusable Delays. No Party shall be deemed to be in default of this Agreement because of Excusable Delays. Excusable Delays shall extend the time of performance for the period of such excusable delay.

ARTICLE 7: MISCELLANEOUS

Section 7.1 Effective Date and Term. This Agreement shall become effective on the date this Agreement has been fully executed by the Parties. Upon termination of the District in accordance with Section 67.1481, RSMo, and the terms of this Agreement shall terminate.

Section 7.2 Immunities. No recourse shall be had for (1) the payment of any obligations of the District, or (2) any claim based upon any representation, obligation, covenant or agreement in this Agreement, against any past, present or future officer, member, employee, director, or agent of the City or the District, or of any successor thereto, as such, either directly or through the City, the District, or any successor thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, employees, directors, or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

Section 7.3 Modification. The terms, conditions, and provisions of this Agreement can be neither modified nor eliminated except in writing and by mutual agreement between the Parties. Any modification to this Agreement as approved shall be attached hereto and incorporated herein by reference.

Section 7.4 Notice. Any notice, demand, or other communication required by this Agreement to be given to either party hereto to the other shall be in writing and shall be deemed to be given if it is mailed by United States registered mail, postage prepaid, or sent by electronic mail and addressed as hereinafter specified.

Any notice to City shall be addressed to:

City Manager
City of Independence, Missouri
City Hall
111 E. Maple Avenue
Independence, Missouri 64050
zwalker@indepmo.org

City Clerk
City of Independence, Missouri
City Hall
111 E. Maple Avenue
Independence, Missouri 64050
sholland@indepmo.org

Any notice to the District shall be addressed to:

The Pavilions at Hartman Heritage Community Improvement District
73 White Bridge Road, Suite 103 #230
Nashville, Tennessee 37205
justin@highlandcpt.com
will@highlandcpt.com
wyatt@highlandcpt.com

With a copy to:

Polsinelli PC
Curtis J. Petersen and Vince Cuezze
900 W. 48th Place, Suite 900
Kansas City, MO 64112
cpetersen@polsinelli.com
vcuezze@polsinelli.com

Each party shall have the right to specify that notice be addressed to any other address by giving to the other party ten (10) days' written notice thereof.

Section 7.5 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri and all actions shall be heard in Jackson County Circuit Court.

Section 7.6 Representatives Not Personally Liable. No official, agent, employee, or representative of the City shall be personally liable to the District, and no director, official, agent, employee, or representative of the District shall be personally liable to the City, in the event of default or breach by any Party under this Agreement, or for any amount which may become due to any Party or on any obligations under the terms of this Agreement.

Section 7.7 Validity and Severability. It is the intention of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State of Missouri, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 7.8 Entire Agreement; Amendment. The Parties agree that this Agreement constitutes the entire agreement between the Parties and that no other agreements or representations other than those contained in this Agreement have been made by the Parties. No amendments, changes or modifications of this Agreement shall be made without obtaining the prior written approval of the Parties. The City and the District shall not be required to obtain the approval of the qualified voters for this Agreement or any such amendments, changes or modifications.

Section 7.9 Execution of Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 7.10 City Approvals. Unless specifically provided to the contrary herein, all approvals of the City hereunder may be given by the City Manager or his/her designee without

the necessity of any action by the City Council. The City Manager, at his/her discretion, may seek the advice or consent of the City Council for any requested approval.

Section 7.11 District Approvals. Unless specifically provided to the contrary herein, all approvals of the District hereunder may be given by the Chairman or his/her designee without the necessity of any action by the Board of Directors. The Chairman, at his/her discretion, may seek the advice or consent of the Board of Directors for any requested approval.

Section 7.12 Assignment. Neither party shall assign this Agreement without the prior written consent of the other Party.

Section 7.13 Priority of Documents. To the extent of any disagreement between this Agreement and any document entered into by the District with the Developer or another party relating to the District, the District Revenues, the Improvements or the Eligible Costs, the terms of this Agreement shall control.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the District and the City have caused this Agreement to be executed in their respective names and attested as to the date as set forth below.

CITY:

CITY OF INDEPENDENCE, MISSOURI

By: _____
Zachary Walker, City Manager

DISTRICT:

PAVILIONS AT HARTMAN HERITAGE
COMMUNITY IMPROVEMENT
DISTRICT

By: _____
_____, Chairman

ATTEST:

_____, Secretary

EXHIBIT A

LEGAL DESCRIPTION OF DISTRICT LAND

ALL OF LOTS 7 AND 8, HARTMAN HERITAGE CENTER SIXTH PLAT, LOTS 7 AND 8, A SUBDIVISION IN INDEPENDENCE, JACKSON COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.

EXHIBIT B

DISTRICT BOUNDARY MAP



EXHIBIT C

FORM OF CERTIFICATE OF COMPLETION

COMPLETION OF CERTIFICATE

TO: City of Independence, Missouri
Attention: City Manager

Re: Pavilions at Hartman Heritage Community Improvement District

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Intergovernmental Cooperative Agreement dated as of _____, 2025 (the “Agreement”) between the City of Independence, Missouri (the “City”) and the Pavilions at Hartman Heritage Community Improvement District. In connection with said Agreement, the undersigned hereby states and certifies that:

1. The Improvements which are described in the Agreement have been completed in accordance with the Agreement, and all required approvals, certificates or permits have been granted or issued by the appropriate governmental entity or agency to commence operation of all such improvements.

2. To the knowledge of the District, the District is not in default or breach of any term or condition of the Agreement, and no event has occurred, and no condition exists which constitutes an Event of Default on the part of the District under the Agreement.

3. All of the District's representations set forth in the Agreement remain true and correct as of the date hereof.

Dated this _____ day of _____, 20__.

HC INDEPENDENCE, LLC,
a Delaware limited liability company

PAVILIONS AT HARTMAN HERITAGE
COMMUNITY IMPROVEMENT DISTRICT

By: _____
Name:
Title:

By: _____
Name:
Title:

Bill No. 25.117

Ordinance No. 19764

AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO A
COOPERATIVE AGREEMENT RELATING TO THE PAVILIONS AT
HARTMAN HERITAGE COMMUNITY IMPROVEMENT DISTRICT.

WHEREAS, pursuant to Sections 67.1401 to 67.1571 RSMo, as amended, the City Council of the City of Independence, Missouri (the “City”) passed Ordinance No. 19691 (the “CID Creation Ordinance”) establishing the Pavilions at Hartman Heritage Community Improvement District (the “CID”);

WHEREAS, the CID Creation Ordinance conditions approval of the CID on the City and the CID later entering into a cooperative agreement to govern the relationship of the CID and the City;

WHEREAS, the City Council now desires to approve and enter into the Cooperative Agreement (defined herein).

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

SECTION 1. The Intergovernmental Cooperative Agreement (the “Cooperative Agreement”) between the City and the CID is hereby approved in substantially the form attached hereto as **Exhibit A**.

SECTION 2. The Mayor or (Interim) City Manager of the City is hereby authorized and directed to execute the Cooperative Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the Cooperative Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

SECTION 3. This Ordinance shall take effect and be in full force as provided by the City Charter.

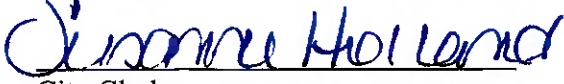
[remainder of page intentionally left blank]

PASSED THIS 15th DAY OF DECEMBER, 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:


Interim City Manager

Exhibit A

Cooperative Agreement

INTERGOVERNMENTAL COOPERATIVE AGREEMENT

THIS INTERGOVERNMENTAL COOPERATIVE AGREEMENT ("Agreement"), entered into as of this day of _____, 2025, between the CITY OF INDEPENDENCE, MISSOURI, a political subdivision of the State of Missouri ("City"), and the PAVILIONS AT HARTMAN HERITAGE COMMUNITY IMPROVEMENT DISTRICT, a Missouri political subdivision and community improvement district ("District") (the City and the District are collectively referred to herein as the "Parties" and individually as "Party", as the context so requires).

RECITALS

WHEREAS, on July 7, 2025, the City Council adopted Ordinance No. 19691 establishing the District as a political subdivision pursuant to the Act; and

WHEREAS, all of the real property within the District is legally described on the attached Exhibit A and shown on the map attached as Exhibit B; and

WHEREAS, the City declared the property within the District to be a blighted area pursuant to the Act; and

WHEREAS, the intended funding mechanism for the District is the Sales Tax (defined herein) imposed to pay or reimburse the Parties for: (a) costs of formation of the District, (b) costs of the Improvements, and (c) District Administrative Costs (defined herein); and

WHEREAS, on _____, 2025, the Board of Directors, the governing body of the District, adopted Resolution No. _____ imposing the Sales Tax subject to the approval of the Sales Tax by the qualified voters within the District in accordance with the Act; and

WHEREAS, on _____, 2025, pursuant to an election conducted by the Jackson County Board of Election Commissioners, qualified voters within the District approved the Sales Tax; and

WHEREAS, the District Sales Tax is expected to become effective on _____, 2025; and

WHEREAS, the Parties desire to set forth through this Agreement their respective rights and obligations with respect to the Improvements and the operation of the District.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants herein contained, the Parties agree as follows:

ARTICLE 1: DEFINITIONS, RECITALS, AND EXHIBITS

Section 1.1 Recitals and Exhibits. The representations, covenants, and recitations set forth in the foregoing recitals and the exhibits attached to this Agreement are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they

were fully set forth in this Section, and the appropriate exhibits are incorporated into each section of this Agreement that makes reference to an exhibit.

Section 1.2 Definitions. In addition to words and terms defined by the Act and elsewhere in this Agreement, the following words and terms shall have the meanings ascribed to them in this Section unless the context in which such words and terms are used clearly requires otherwise:

“Act” means the Missouri Community Improvement District Act, §§ 67.1401, *et seq.*, RSMo, as amended.

“Agreement” means this Intergovernmental Cooperative Agreement, as from time to time amended in accordance with its terms.

“Account” means the account established and held by the District at a bank selected by the District for the deposit of District Revenue and for the payment of Eligible Costs.

“Applicable Laws” means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, requirement, or decision of or agreement with or by any unit of government.

“Board of Directors” means the Board of Directors of the Pavilions at Hartman Heritage Community Improvement District.

“City” means the City of Independence, Missouri, a municipal corporation of the State of Missouri.

“City Administrative Services” means the services to be provided by the City to the District as specifically described in Section 4.5 of this Agreement.

“City Clerk” means the Clerk of the City.

“City Council” means the governing body of the City.

“City Finance Director” or “Director of Finance” means the Director of Finance for the City.

“City Hall” means the official office of the City located at 111 E. Maple, Independence, Missouri 64050.

“City Manager” means the City Manager of the City.

“City Reimbursable Costs” means those costs described in Section 4.7 of this Agreement.

“Developer” means HC Independence, LLC, a Delaware limited liability company.

“District Administrative Costs” means the amounts incurred by the District for overhead expenses of the District for administration, operation, implementation, collection, and

enforcement incurred in connection with the Improvements and the District Revenue. District Administrative Costs include, without limitation, the following: actual, reasonable expenses that are necessary or desirable for the operation of the District as permitted under the Act that shall include, but are not limited to, costs associated with elections, notices, publications, meetings, supplies, equipment, photocopying, the engagement of legal counsel, accounting, engineering, land use planning, financial auditing services, insurance, administration of the Sales Tax, enforcement and collection of the Sales Tax, and other professional consultants or services.

“District” means the Pavilions at Hartman Heritage Community Improvement District, a political subdivision of the State of Missouri and community improvement district established in accordance with the Act.

“District Revenue” means the Sales Tax revenue collected by DOR on behalf of the District and deposited in the Account and such other revenue earned or received by the District from other sources.

“District Land” means the real property within the District legally described in the attached Exhibit A.

“DOR” means the Missouri Department of Revenue.

“Eligible Costs” means all of the following: (a) costs of formation of the District (including legal fees and publication costs) up to a maximum of \$30,000, (b) Improvement Costs up to a maximum of \$9,193,735, (c) interest on Improvement Costs allowable under **Section 4.8**, (d) District Administrative Costs, and (e) City Reimbursable Costs.

“Event of Default” means any event specified in Section 6.1 of this Agreement.

“Excusable Delays” means delays due to acts of terrorism, acts of war or civil insurrection, strikes, riots, floods, earthquakes, fires, tornadoes, casualties, acts of God, labor disputes, governmental restrictions or priorities, embargoes, national or regional material shortages, failure to obtain regulatory approval from any Federal or State regulatory body, unforeseen site conditions, material litigation by parties other than a Party and not caused by any Party's failure to perform, or any other condition or circumstances beyond the reasonable or foreseeable control of the applicable Party using reasonable diligence to overcome which prevents such Party from performing its specific duties or obligation hereunder in a timely manner.

“Improvements” means the renovation of existing buildings on District Land, including but not limited to interior improvements and the replacement of exterior facades and parapets, HVAC systems and appurtenances, roofing systems, lighting systems and signage.

“Improvement Costs” means all actual and reasonable costs and expenses which are incurred by, at the direction of or otherwise with the consent of the District with respect to construction and performance of the Improvements, including the actual and reasonable cost of labor and materials payable to contractors, builders, suppliers, vendors, and materialmen for the Improvements that are constructed by or on behalf of the District, plus all actual and reasonable costs to plan, finance, develop, design, and acquire the Improvements.

“Mayor” means the Mayor of the City.

“Sales Tax” means a sales and use tax levied by the District on the receipts from the sale at retail of all eligible tangible personal property or taxable services at retail within its boundaries pursuant and subject to the Act at a rate not to exceed one percent (1.0%) for a period of up to twenty seven (27) years from the date of the Ordinance, unless otherwise extended by the mutual agreement of the Parties and in accordance with the Act.

ARTICLE 2: REPRESENTATIONS

Section 2.1 Representations by the District. The District represents that:

A. The District is a community improvement district and political subdivision, duly organized and existing under the laws of the State of Missouri, including particularly the Act.

B. The District has authority to enter into this Agreement and to carry out its obligations under this Agreement. By proper action of its Board of Directors, the District has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

C. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement and the performance of or compliance with the terms and conditions of this Agreement by the District will not conflict with or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, any mortgage, deed of trust, lease, or any other restriction or any agreement or instrument to which the District is a party or by which it or any of its property is bound, or any order, rule, or regulation of any court or governmental body applicable to the District or any of its property, or result in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the District under the terms of any instrument or agreements to which the District is a party.

D. Except as to the shared benefits among all property owners within the District that are anticipated to result from the Improvements, no member of the Board of Directors has any significant or conflicting interest, financial or otherwise, in the Improvements or in the transactions contemplated by this Agreement. Any member of the Board of Directors who has a significant or conflicting interest, financial or otherwise, in the Improvements or in the transactions contemplated by this Agreement shall disclose said interest to the Parties and refrain from voting and/or making any final approval decisions regarding the Improvements or other transactions contemplated by this Agreement, unless the Parties mutually agree that said member of the Board of Directors may otherwise participate in the voting and/or making decisions regarding the Improvements or other transactions contemplated by this Agreement.

E. There is no litigation or proceeding pending or threatened against the District affecting the right of the District to execute or deliver this Agreement or the ability of the District to comply with its obligations under this Agreement or which would materially adversely affect its financial condition.

F. The District acknowledges that the funding, construction and performance of the Improvements is of significant value to the City, the District, the District Land, and the general public.

Section 2.2 Representations by the City. The City represents that:

A. The City is duly organized and existing under the Constitution and laws of the State of Missouri, as a constitutional charter city and is a political subdivision in which the District is located.

B. The City has authority to enter into this Agreement and to carry out its obligations under this Agreement, and by proper action of its City Council, the City Manager or other designated City official has been duly authorized to execute and deliver this Agreement.

C. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the performance of or compliance with the terms and conditions of this Agreement by the City will not conflict with or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, any mortgage, deed of trust, lease, or any other restriction, agreement, or instrument to which the City is a party or by which it or any of its property is bound, or any order, rule, or regulation of any court or governmental body applicable to the City or any of its property, or result in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the City under the terms of any instrument or agreement to which the City is a party.

D. To the City's knowledge, no member or employee of the City has any significant or conflicting interest, financial or otherwise, in the Improvements or in the transactions contemplated by this Agreement. The City shall take reasonable steps to ensure that any member or employee of the City who has a significant or conflicting interest, financial or otherwise, in the Improvements or in the transactions contemplated by this Agreement shall disclose said interest to the Parties and refrain from voting and/or making any final approval decisions regarding the Improvements or other transactions contemplated by this Agreement, unless the Parties mutually agree that said member or employee of the City may otherwise participate in the voting and/or making decisions regarding the Improvements or other transactions contemplated by this Agreement.

E. There is no litigation or proceeding pending or threatened against the City affecting the right of the City to execute or deliver this Agreement or the ability of the City to comply with its obligations under this Agreement.

F. The City acknowledges that the funding, construction and performance of the Improvements is of significant value to the City, the District, the District Land, and the general public.

ARTICLE 3: MUTUAL COOPERATION

Section 3.1 Litter and Trash Cleanup, Walkability and Security. The Parties agree and acknowledge that the City has adopted Resolution No. 6337 requiring special taxing jurisdictions such as the District to adopt policies to address litter and trash cleanup, walkability

and security within the City. The Parties agree that the District has limited revenue with which to expend towards these issues. However, the District agrees to develop such policies which may be in the form of recommendations to property owners which address these issues, and will use commercially reasonable efforts to ensure that its activities are in conformance with these requirements.

Section 3.2 Financing Improvements.

A. Subject to the limits set forth in the Petition, the District may issue obligations to fund all or a portion of the Improvement Costs as permitted by Section 67.1491, RSMo.

B. The District shall be solely responsible for payment of Improvement Costs with the proceeds of obligations or other District Revenue.

Section 3.3 Completion of the Improvements. The Improvements shall be completed by December 31, 2030. No payment of District Revenues shall be made for Improvements completed after such time and such costs shall not constitute Eligible Costs.

Section 3.4 Certificate of Completion. Upon substantial completion of the Improvements, the District shall or shall cause the Developer to submit to the City a Certificate of Completion substantially in the form attached hereto as Exhibit C ("Completion Certificate"). The District or the Developer shall certify that the Improvements have been completed in accordance with the approved final plans and specifications and all Applicable Laws.

Section 3.5 Ownership and Maintenance of Improvements. The District's initial primary role is to fund and/or assist in the funding of the Improvements. It is not intended for the District to own title to the Improvements or to the property upon which the Improvements are undertaken. The Developer shall be responsible for maintenance of the Improvements after completion.

ARTICLE 4: COLLECTION OF FUNDS

Section 4.1 Imposition of the Sales Tax. The District has taken all actions necessary to impose the Sales Tax. DOR will collect the Sales Tax as provided in the Act. All District expenditures and payments from Sales Tax revenue shall be subject to annual appropriation of the District.

Section 4.2 Administration and Collection of the Sales Tax.

A. DOR will collect the Sales Tax as provided in the Act and deposit monthly collections into the Account pursuant to an agreement between the District and DOR.

B. The District shall: (i) perform or provide for the performance of all functions incident to the administration, enforcement, and operation of the Sales Tax, to the extent not performed by DOR, pursuant to the Act, and subject to this Agreement; (ii) maintain the Account for deposit of all District Revenue and pay any reasonable bank fees; (iii) maintain the District's checkbook, write checks, and arrange for check signatures by authorized District officers for payment of District-approved expenditures; and (iv) prepare or cause to be prepared financial

statements according to accounting principles generally accepted in the United States of America and the budgets and reports as set forth in Section 5.1 or such other documents as may be required under the Act or by the Applicable Laws.

At any time during the term of the Sales Tax, the District may: (i) enter into any contract required by DOR for the collection of the Sales Tax and disbursement thereof to the Account in accordance with the Act; and (ii) prescribe any required forms and administrative rules and regulations for reporting the Sales Tax.

Upon the expiration of the Sales Tax, all funds remaining in the Account shall continue to be used solely in accord with this Agreement and the Act.

C. The District shall notify the City in writing of each meeting of the Board of Directors by delivering a copy of such notice and an agenda for the noticed meeting by U.S. postal service or electronic mail to the City Clerk at the address provided in Section 7.4. All meeting notices shall be posted at the District's official office, as designated in the District's bylaws.

Section 4.3 Investment of District Revenue. District Revenue on deposit in the Account shall be funds of the District only and shall not be deemed to be City funds. The Board of Directors may invest the District Revenue on deposit in the Account in accordance with the Act and other Applicable Laws. All interest earned upon the balance in the Account shall be deposited to the credit thereof.

Section 4.4 District Administrative Costs. The District shall pay for the District Administrative Costs of the District from District Revenue. The District Administrative Costs shall be included in the District's annual budget, as provided in Section 5.1. In the course of performing the City Administrative Services set forth in this Agreement, the City shall not incur District Administrative Costs or other costs for the District or otherwise obligate the District without the express prior written approval of the District, which approval shall be given only in the District's sole discretion.

Section 4.5 City Administrative Services.

A. The Parties acknowledge that the administrative services to be performed by the City and the District under this Agreement are mutually beneficial and necessary to allow the District to undertake the Improvements for which it was created.

B. The City shall perform the City Administrative Services as described below at no cost to the District: The City shall keep accurate records of information and documents received or prepared by the City in connection with the District and such records shall be open to the inspection of officers of the District. Any District records which are confidential pursuant to Section 32.057, RSMo, shall be obtained by the District from the Missouri Department of Revenue.

Section 4.6 Enforcement of the Sales Tax. As provided in the Act and Applicable Laws, DOR will enforce the Sales Tax. To the extent that the Sales Tax is not enforced by DOR, the District shall be responsible to prosecute or defend all actions, lawsuits, or proceedings necessary for collection and enforcement of the Sales Tax.

Notwithstanding anything to the contrary in this Agreement, the District shall not be required to undertake any enforcement action if the cost of such enforcement is reasonably expected to exceed the amount of revenues sought to be collected or if the amount sought to be collected exceeds the expected enforcement costs and the difference, in the District's discretion, is not enough to justify an enforcement action. Any costs incurred by the District in an attempt to enforce and/or collect the Sales Tax pursuant to this Section shall be considered as a District Administrative Cost.

Section 4.7 City Reimbursable Costs. If the City incurs costs in the future in connection with the Improvements, the City Administrative Services, or any other action that the District requests the City to take, and such costs are authorized for payment or approved for payment in accordance with this Agreement, the District shall pay for such City Reimbursable Costs within a reasonable time of receipt of an invoice from the City. Any Improvement Costs to be incurred by the City must be approved by the District in writing before being incurred. If the City seeks reimbursement for future Improvement Costs that the District did not approve in writing before the City incurred such costs, the District, in its sole discretion, may, but is not obligated to, treat all or any portion of such costs as City Reimbursable Costs and pay the City in accordance with this Agreement. If the District elects not to reimburse the City for all or any portion of Improvement Costs incurred by the City without the District's prior approval, the District shall have no further obligation with respect to such costs. Notwithstanding the foregoing, all payments of City Reimbursable Costs are expressly subject to the District having sufficient unencumbered funds available to make any such payment. The Costs of City Administrative Services and the costs of any other actions that the District specifically requests the City to take shall automatically be treated as City Reimbursable Costs.

Section 4.8 Improvement Costs and Interest on Improvement Costs. The District shall pay such Improvement Costs as qualify as Eligible Costs and for which the District has received certificate(s) listing such Improvement Costs, explaining their qualification as Eligible Costs and certifying such Improvement Costs to be Eligible Costs, accompanied by itemized invoices, receipts or other information sufficient to demonstrate such eligibility.

Interest shall accrue to the party that has paid any certified Improvement Costs from the date of certification to the date of payment from District Revenue. The rate of interest shall be determined on each January 1 and shall be, for such year, equal to the prime rate reported in the most recently published "Money Rates" column or any successor column of *The Wall Street Journal*, currently defined therein as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks (if *The Wall Street Journal* ceases publication of the prime rate, then "prime rate" shall mean the "prime rate" or "base rate" announced by UMB Bank, N.A., or any successor thereto).

The District shall maintain records of all certifications of Improvement Costs and calculations of interest accrued on Improvement Costs and shall make such records available to the City upon request.

Section 4.9 Disbursement of District Revenue. District Revenue shall be disbursed from the Account by the District only for the payment of Eligible Costs. Revenue shall be disbursed in accordance with the following priorities, to the extent that the following constitute Eligible Costs:

1. costs of formation of the District (including legal fees and publication costs);
2. District Administrative Costs;
3. City Reimbursable Costs;
4. interest on Improvement Costs; and
5. Improvement Costs.

The District shall maintain records of all disbursements of District Revenues and their purposes and shall make such records available to the City upon request.

Section 4.10 Repeal of the Sales Tax. No proposal to abolish the District and to repeal the Sales Tax shall be made so long as the District's liabilities exceed its assets, there are outstanding claims or causes of action pending against the District, while there are outstanding City Reimbursable Costs which remain due and payable pursuant to this Agreement, or while the District is insolvent, in receivership or under the jurisdiction of a bankruptcy court; provided that, this section shall not extend either the term of the District's existence or the imposition of the Sales Tax. Upon payment of all Eligible Costs, the District and the City shall cooperate to terminate the District and the Sales Tax.

ARTICLE 5: SPECIAL COVENANTS

Section 5.1 Annual Budget, Annual Financial Report, and Annual Report.

A. The District's fiscal year shall begin on July 1 and end on June 30 in each year that the District remains in existence. Not earlier than 180 days and not later than 90 days before the first day of each fiscal year, the District shall prepare, or cause to be prepared, a budget for capital and operating expenses for the next succeeding fiscal year for submission to the City Finance Director. Each budget and any amendments thereto shall generally be prepared in accordance with all applicable state statutes, including specifically Section 67.010, RSMo, as amended. The City Finance Director may review and comment to the Board of Directors on the proposed budget no later than 60 days before the first day of the relevant fiscal year. The Parties acknowledge that the District may, but is not required to, accept any recommendations suggested by the City Finance Director. The Board of Directors shall hold an annual meeting and adopt an annual budget not later than 30 days before the first day of each fiscal year. The District shall provide a copy of the approved budget to the City Finance Director.

B. As required by Section 105.145, RSMo, the District shall prepare, or cause to be prepared, an annual financial report of the District's financial transactions during each fiscal year and submit a copy of the annual financial report to the State Auditor no later than six (6) months after the end of the District's fiscal year. The annual financial report may be either an un-audited report or an audited report prepared by a certified public accountant. The District shall provide a copy of the annual financial report to the City Finance Director.

C. Within 120 days after the end of each fiscal year, the District shall submit a report to the City Clerk and to the Missouri Department of Economic Development stating the services,

provided, revenues collected and expenditures made during such fiscal year, together with copies of written resolutions adopted by the Board of Directors during the fiscal year.

ARTICLE 6: DEFAULTS AND REMEDIES

Section 6.1 Events of Default. If either of the following events shall occur and be continuing following the expiration of any cure provisions herein, then such event shall constitute an Event of Default under this Agreement: (a) payment of costs from District Revenues that do not constitute Eligible Costs or (b) failure by any Party in the performance of any covenant, agreement or obligation imposed or created by this Agreement, and the continuance of such default for ninety (90) days after a non-defaulting Party has given written notice to the defaulting Party specifying such default.

Section 6.2 Remedies on Default. Except as otherwise provided in this Agreement, in the event of any default in or breach of any term or condition of this Agreement by either Party, or any successor, the defaulting or breaching Party (or successor) shall, upon written notice from the other Party (or successor), proceed promptly to cure or remedy such default or breach, and, shall, in any event, within ninety (90) days after receipt of notice, commence to cure or remedy such default; provided, however, that the Parties agree so long as the defaulting Party is diligently pursuing resolution of the default complained of beyond the ninety (90) days provided for above, such failure shall not constitute an Event of Default for as long as reasonably necessary for the defaulting Party to resolve such failure. If such cure or remedy is not taken or not diligently pursued, or the default or breach is not cured or remedied within a reasonable time, the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach. If any Event of Default has occurred and is continuing, then any non-defaulting Party may, upon its election or at any time after its election while such default continues, by mandamus or other suit, action or proceedings at law or in equity, enforce its rights against the defaulting Party and its officers, agents, and employees, and to require and compel duties and obligations required by the provisions of this Agreement. During the continuance of an Event of Default, the District shall not disburse District Revenues for any purpose other than payment of District Administrative Costs.

Section 6.3 Rights and Remedies Cumulative. The rights and remedies reserved by the Parties under this Agreement and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions.

Section 6.4 Waiver of Breach. No waiver of any breach of any covenant or agreement contained in this Agreement shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of an Event of Default, a non-defaulting Party may nevertheless accept from the defaulting Party, any payment or payments without in any way waiving the non-defaulting Party's right to exercise any of its rights and remedies as provided herein with respect to any such default or defaults in existence at the time when such payment or payments were accepted by the non-defaulting Party.

Section 6.5 Excusable Delays. No Party shall be deemed to be in default of this Agreement because of Excusable Delays. Excusable Delays shall extend the time of performance for the period of such excusable delay.

ARTICLE 7: MISCELLANEOUS

Section 7.1 Effective Date and Term. This Agreement shall become effective on the date this Agreement has been fully executed by the Parties. Upon termination of the District in accordance with Section 67.1481, RSMo, and the terms of this Agreement shall terminate.

Section 7.2 Immunities. No recourse shall be had for (1) the payment of any obligations of the District, or (2) any claim based upon any representation, obligation, covenant or agreement in this Agreement, against any past, present or future officer, member, employee, director, or agent of the City or the District, or of any successor thereto, as such, either directly or through the City, the District, or any successor thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, employees, directors, or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

Section 7.3 Modification. The terms, conditions, and provisions of this Agreement can be neither modified nor eliminated except in writing and by mutual agreement between the Parties. Any modification to this Agreement as approved shall be attached hereto and incorporated herein by reference.

Section 7.4 Notice. Any notice, demand, or other communication required by this Agreement to be given to either party hereto to the other shall be in writing and shall be deemed to be given if it is mailed by United States registered mail, postage prepaid, or sent by electronic mail and addressed as hereinafter specified.

Any notice to City shall be addressed to:

City Manager
City of Independence, Missouri
City Hall
111 E. Maple Avenue
Independence, Missouri 64050
zwalker@indepmo.org

City Clerk
City of Independence, Missouri
City Hall
111 E. Maple Avenue
Independence, Missouri 64050
sholland@indepmo.org

Any notice to the District shall be addressed to:

The Pavilions at Hartman Heritage Community Improvement District
73 White Bridge Road, Suite 103 #230
Nashville, Tennessee 37205
justin@highlandcpt.com
will@highlandcpt.com
wyatt@highlandcpt.com

With a copy to:

Polsinelli PC
Curtis J. Petersen and Vince Cuezze
900 W. 48th Place, Suite 900
Kansas City, MO 64112
cpetersen@polsinelli.com
vcuezze@polsinelli.com

Each party shall have the right to specify that notice be addressed to any other address by giving to the other party ten (10) days' written notice thereof.

Section 7.5 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri and all actions shall be heard in Jackson County Circuit Court.

Section 7.6 Representatives Not Personally Liable. No official, agent, employee, or representative of the City shall be personally liable to the District, and no director, official, agent, employee, or representative of the District shall be personally liable to the City, in the event of default or breach by any Party under this Agreement, or for any amount which may become due to any Party or on any obligations under the terms of this Agreement.

Section 7.7 Validity and Severability. It is the intention of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State of Missouri, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 7.8 Entire Agreement; Amendment. The Parties agree that this Agreement constitutes the entire agreement between the Parties and that no other agreements or representations other than those contained in this Agreement have been made by the Parties. No amendments, changes or modifications of this Agreement shall be made without obtaining the prior written approval of the Parties. The City and the District shall not be required to obtain the approval of the qualified voters for this Agreement or any such amendments, changes or modifications.

Section 7.9 Execution of Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 7.10 City Approvals. Unless specifically provided to the contrary herein, all approvals of the City hereunder may be given by the City Manager or his/her designee without

the necessity of any action by the City Council. The City Manager, at his/her discretion, may seek the advice or consent of the City Council for any requested approval.

Section 7.11 District Approvals. Unless specifically provided to the contrary herein, all approvals of the District hereunder may be given by the Chairman or his/her designee without the necessity of any action by the Board of Directors. The Chairman, at his/her discretion, may seek the advice or consent of the Board of Directors for any requested approval.

Section 7.12 Assignment. Neither party shall assign this Agreement without the prior written consent of the other Party.

Section 7.13 Priority of Documents. To the extent of any disagreement between this Agreement and any document entered into by the District with the Developer or another party relating to the District, the District Revenues, the Improvements or the Eligible Costs, the terms of this Agreement shall control.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the District and the City have caused this Agreement to be executed in their respective names and attested as to the date as set forth below.

CITY:

CITY OF INDEPENDENCE, MISSOURI

By: 
~~Zachary Walker, City Manager~~
Lisa Reynolds
Interim City Manager

DISTRICT:

PAVILIONS AT HARTMAN HERITAGE
COMMUNITY IMPROVEMENT
DISTRICT

By: _____
_____, Chairman

ATTEST:

_____, Secretary

EXHIBIT A

LEGAL DESCRIPTION OF DISTRICT LAND

ALL OF LOTS 7 AND 8, HARTMAN HERITAGE CENTER SIXTH PLAT, LOTS 7 AND 8,
A SUBDIVISION IN INDEPENDENCE, JACKSON COUNTY, MISSOURI, ACCORDING
TO THE RECORDED PLAT THEREOF.

EXHIBIT B

DISTRICT BOUNDARY MAP

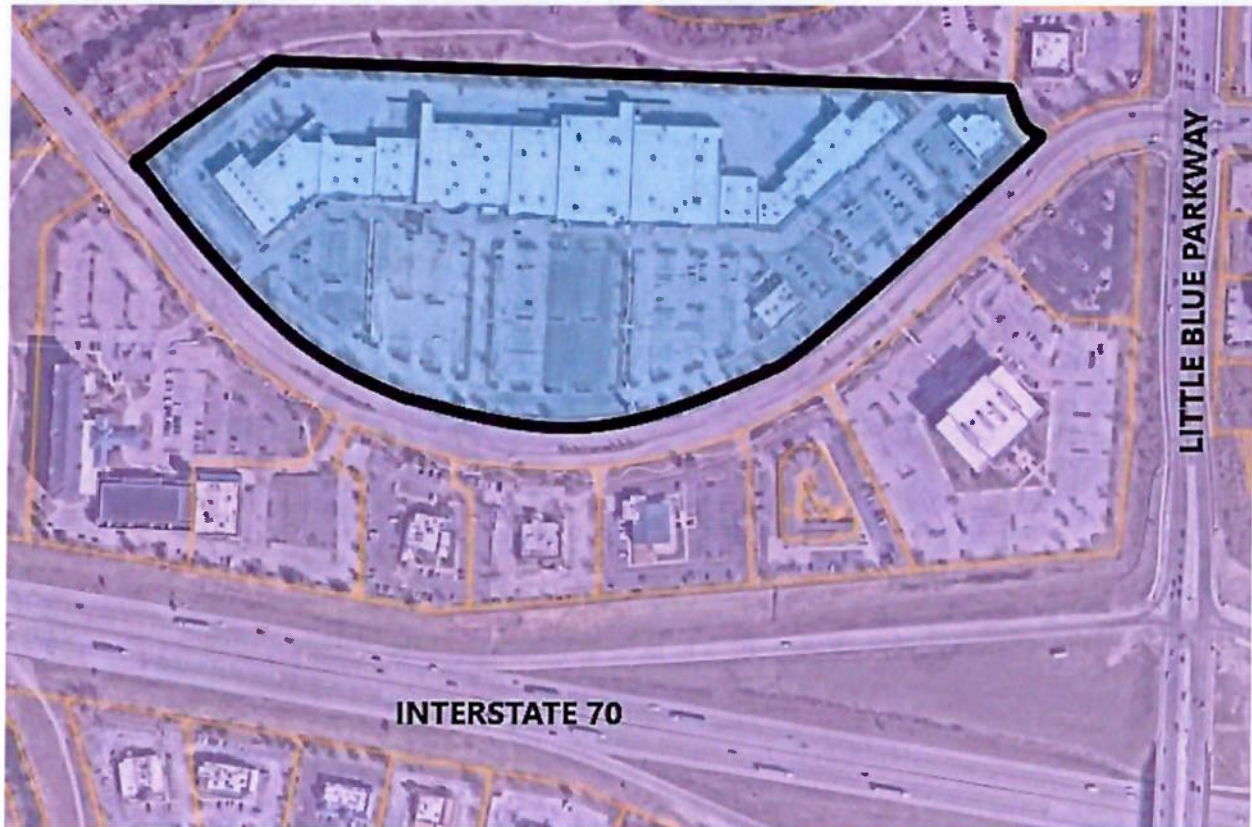


EXHIBIT C

FORM OF CERTIFICATE OF COMPLETION

COMPLETION OF CERTIFICATE

TO: City of Independence, Missouri
Attention: City Manager

Re: Pavilions at Hartman Heritage Community Improvement District

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Intergovernmental Cooperative Agreement dated as of _____, 2025 (the "Agreement") between the City of Independence, Missouri (the "City") and the Pavilions at Hartman Heritage Community Improvement District. In connection with said Agreement, the undersigned hereby states and certifies that:

1. The Improvements which are described in the Agreement have been completed in accordance with the Agreement, and all required approvals, certificates or permits have been granted or issued by the appropriate governmental entity or agency to commence operation of all such improvements.

2. To the knowledge of the District, the District is not in default or breach of any term or condition of the Agreement, and no event has occurred, and no condition exists which constitutes an Event of Default on the part of the District under the Agreement.

3. All of the District's representations set forth in the Agreement remain true and correct as of the date hereof.

Dated this ____ day of _____, 20__.

HC INDEPENDENCE, LLC,
a Delaware limited liability company

PAVILIONS AT HARTMAN HERITAGE
COMMUNITY IMPROVEMENT DISTRICT

By: _____
Name:
Title:

By: _____
Name:
Title:

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

25-118 **2R** An ordinance authorizing the City to enter into a Cooperative Agreement relating to the Eastgate Commerce Center Community Improvement District. **2R Item passes 7-0 Ord. No. 19765**

Recommendations:

Staff recommends approval.

Background:

The Eastgate Commerce Center Community Improvement District (the "CID") was formed on August 15, 2022 by Ordinance No. 19363. Formation of the CID was conditioned on the later execution of a cooperative agreement. The CID covers property located generally along Little Blue Parkway from Little Blue River (south of E. 39th Street) to a point north of Highway 78, along Necessary Road from E.R.D. Mize Road to Little Blue Parkway, along Highway 78 from a point southwest of Truman Road to Highway 7, and along Truman Road from Highway 78 to a point east of Little Blue Parkway, including various roadways. It imposes a special assessment of five cents per square foot on all constructed and occupiable buildings (2 currently) located within the CID and has been authorized to submit a sales tax to its qualified voters. At present, no sales tax generating facilities are located within the CID.

The CID was formed to fund a variety of public improvements, mostly transportation-related, and application of those funds is governed by an Amended and Restated Development Agreement dated as of August 30, 2023. The CID board is controlled by the City. The cooperative agreement places responsibility on the City to collect and distribute the CID revenues.

Emergency Justification:**Fiscal Impact:**

The City will be reimbursed for administrative services provided by the City.

Council Action:

Department / Contact	Community Development /
---------------------------------	-------------------------

REVIEWERS

Tom Scannell
Melissa Cabrera
Jeremy Cover
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. Ordinance - Approving Cooperative Agreement (Eastgate CID)
2. Cooperative Agreement (Eastgate CID)
3. Ord. No. 19765

Bill No. _____

Ordinance No. _____

AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO A
COOPERATIVE AGREEMENT RELATING TO THE EASTGATE
COMMERCE CENTER COMMUNITY IMPROVEMENT DISTRICT.

WHEREAS, pursuant to Sections 67.1401 to 67.1571 RSMo, as amended, the City Council of the City of Independence, Missouri (the “City”) passed Ordinance No. 19363 (the “CID Creation Ordinance”) establishing the Eastgate Commerce Center Community Improvement District (the “CID”);

WHEREAS, the CID Creation Ordinance conditions approval of the CID on the City and the CID later entering into a cooperative agreement to govern the relationship of the CID and the City;

WHEREAS, the City Council now desires to approve and enter into the Cooperative Agreement (defined herein).

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

SECTION 1. The Intergovernmental Cooperative Agreement (the “Cooperative Agreement”) among the City, the CID and Northpoint Development, LLC is hereby approved in substantially the form attached hereto as **Exhibit A**.

SECTION 2. The Mayor or (Interim) City Manager of the City is hereby authorized and directed to execute the Cooperative Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the Cooperative Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

SECTION 3. This Ordinance shall take effect and be in full force as provided by the City Charter.

[remainder of page intentionally left blank]

PASSED THIS ____ DAY OF DECEMBER, 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:

Interim City Manager

Exhibit A

Cooperative Agreement

INTERGOVERNMENTAL COOPERATIVE AGREEMENT

THIS INTERGOVERNMENTAL COOPERATIVE AGREEMENT (“Agreement”), entered into as of _____, 2025, among the CITY OF INDEPENDENCE, MISSOURI, a political subdivision of the State of Missouri (“City”), the EASTGATE COMMERCE CENTER COMMUNITY IMPROVEMENT DISTRICT, a Missouri political subdivision and community improvement district (“District”), and NORTHPOINT DEVELOPMENT, LLC, a Missouri limited liability company, and its successors and assigns and affiliated entities (the “Company”) (the City, the District and the Company are collectively referred to herein as the “Parties” and individually as “Party”, as the context so requires).

RECITALS

WHEREAS, on August 15, 2022, the City Council adopted Ordinance No. 19363 establishing the District as a political subdivision pursuant to the Act; and

WHEREAS, all of the real property within the District is legally described on the attached Exhibit A and shown on the map attached as Exhibit B; and

WHEREAS, the intended funding mechanism for the District is the Sales Tax (defined herein) and the Special Assessments (defined herein); and

WHEREAS, the Parties desire to set forth through this Agreement their respective rights and obligations with respect to the collection and disbursement of the Sales Tax and the Special Assessments and the operation of the District.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants herein contained, the Parties agree as follows:

ARTICLE 1: DEFINITIONS, RECITALS, AND EXHIBITS

Section 1.1 Recitals and Exhibits. The representations, covenants, and recitations set forth in the foregoing recitals and the exhibits attached to this Agreement are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section, and the appropriate exhibits are incorporated into each section of this Agreement that makes reference to an exhibit.

Section 1.2 Definitions. *Words and Terms used herein but not defined shall have the meanings given to such terms in the Development Agreement.* In addition to words and terms defined by the Act, the Development Agreement and elsewhere in this Agreement, the following words and terms shall have the meanings ascribed to them in this Section unless the context in which such words and terms are used clearly requires otherwise:

“Act” means the Missouri Community Improvement District Act, §§ 67.1401, *et seq.*, RSMo, as amended.

“Administrative Costs” means the amounts incurred by the District or the City for overhead expenses of the District for administration, operation, implementation, collection, and enforcement incurred in connection with the District Revenue. Administrative Costs include, without limitation, the following: actual, reasonable expenses that are necessary or desirable for the operation of the District as permitted under the Act that shall include, but are not limited to, costs associated with elections, notices,

publications, meetings, supplies, equipment, photocopying, the engagement of legal counsel, accounting, engineering, land use planning, financial auditing services, insurance, administration of the District Revenue sources, enforcement and collection of the District Revenue, and other professional consultants or services.

“Agreement” means this Intergovernmental Cooperative Agreement, as from time to time amended in accordance with its terms.

“Accounts” means the Sales Tax Account and the Special Assessments Account.

“Applicable Laws” means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, requirement, or decision of or agreement with or by any unit of government.

“Board of Directors” means the Board of Directors of the Eastgate Commerce Center Community Improvement District.

“City” means the City of Independence, Missouri, a municipal corporation of the State of Missouri.

“City Administrative Services” means the services to be provided by the City to the District as described in Article 4 of this Agreement.

“City Clerk” means the Clerk of the City.

“City Council” means the governing body of the City.

“City’s Director of Finance” or “Director of Finance” means the Director of Finance for the City.

“City Hall” means the official office of the City located at 111 E. Maple, Independence, Missouri 64050.

“City Manager” means the City Manager of the City.

“Company” means Northpoint Development, LLC, a Missouri limited liability company, and its successors and assigns and affiliated entities.

“Development Agreement” means the Amended and Restated Development Agreement dated as of August 30, 2023, between the City and the Company, as amended from time to time.

“District” means the Eastgate Commerce Center Community Improvement District, a political subdivision of the State of Missouri and community improvement district established in accordance with the Act.

“District Revenue” means the Sales Tax revenue collected by DOR on behalf of the District and deposited in the Sales Tax Account, the Special Assessments revenue received from Jackson County, Missouri and deposited in the Special Assessments Account and such other revenue earned or received by the District from other sources.

“District Land” means the real property within the District legally described in the attached Exhibit A.

“DOR” means the Missouri Department of Revenue.

“Eligible Costs” shall have the meaning given in Section 4.9.

“Event of Default” means any event specified in Section 6.1 of this Agreement.

“Excusable Delays” means delays due to acts of terrorism, acts of war or civil insurrection, strikes, riots, floods, earthquakes, fires, tornadoes, casualties, acts of God, labor disputes, governmental restrictions or priorities, embargoes, national or regional material shortages, failure to obtain regulatory approval from any Federal or State regulatory body, unforeseen site conditions, material litigation by parties other than a Party and not caused by any Party's failure to perform, or any other condition or circumstances beyond the reasonable or foreseeable control of the applicable Party using reasonable diligence to overcome which prevents such Party from performing its specific duties or obligation hereunder in a timely manner.

“Improvements” means the “Improvements” described in Exhibit C to the Petition, which are set out specifically on Exhibit C hereto, provided that any amendment to the Petition approved by ordinance of the City affecting such Improvements shall be deemed to automatically amend Exhibit C hereto.

“Mayor” means the Mayor of the City.

“Petition” means the Petition for the Creation of the Eastgate Commerce Center Community Improvement District approved by the City by Ordinance No. 19363, as the same may be amended by further ordinance of the City from time to time.

“Sales Tax” means a sales and use tax levied by the District on the receipts from the sale at retail of all eligible tangible personal property or taxable services at retail within its boundaries pursuant and subject to the Act at a rate not to exceed one percent (1.0%) for a period of up to 25 years from the date of the Ordinance, unless otherwise extended by the mutual agreement of the Parties and in accordance with the Act.

“Sales Tax Account” means the account established and held by the City for the deposit of revenues generated by the Sales Tax and for the payment of Eligible Costs.

“Services” means the “Services” described in Exhibit C to the Petition, provided that any amendment to the Petition approved by ordinance of the City affecting such Services shall be deemed to automatically amend this definition.

“Special Assessments” means the special assessments levied by the District at such rates as described in the Special Assessments Petition.

“Special Assessments Account” means the account established and held by the City for the deposit of revenues generated by the Special Assessments and for the payment of Eligible Costs.

“Special Assessments Petition” means the Petition for Special Assessments attached as Exhibit D to the District’s formation petition.

ARTICLE 2: REPRESENTATIONS

Section 2.1 Representations by the District. The District represents that:

A. The District is a community improvement district and political subdivision, duly organized and existing under the laws of the State of Missouri, including particularly the Act.

B. The District has authority to enter into this Agreement and to carry out its obligations under this Agreement. By proper action of its Board of Directors, the District has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

C. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement and the performance of or compliance with the terms and conditions of this Agreement by the District will not conflict with or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, any mortgage, deed of trust, lease, or any other restriction or any agreement or instrument to which the District is a party or by which it or any of its property is bound, or any order, rule, or regulation of any court or governmental body applicable to the District or any of its property, or result in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the District under the terms of any instrument or agreements to which the District is a party.

D. Except as to the shared benefits among all property owners within the District that are anticipated to result from the Improvements and Services, no member of the Board of Directors has any significant or conflicting interest, financial or otherwise, in the Improvements or Services or in the transactions contemplated by this Agreement. Any member of the Board of Directors who has a significant or conflicting interest, financial or otherwise, in the Improvements or Services or in the transactions contemplated by this Agreement shall disclose said interest to the Parties and refrain from voting and/or making any final approval decisions regarding the Improvements and Services or other transactions contemplated by this Agreement, unless the Parties mutually agree that said member of the Board of Directors may otherwise participate in the voting and/or making decisions regarding the Improvements or Services or other transactions contemplated by this Agreement.

E. There is no litigation or proceeding pending or threatened against the District affecting the right of the District to execute or deliver this Agreement or the ability of the District to comply with its obligations under this Agreement or which would materially adversely affect its financial condition.

F. The District acknowledges that the funding, construction and performance of the Improvements and Services is of significant value to the City, the District, the District Land, and the general public.

Section 2.2 Representations by the City. The City represents that:

A. The City is duly organized and existing under the Constitution and laws of the State of Missouri, as a constitutional charter city and is a political subdivision in which the District is located.

B. The City has authority to enter into this Agreement and to carry out its obligations under this Agreement, and by proper action of its City Council, the City Manager or other designated City official has been duly authorized to execute and deliver this Agreement.

C. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the performance of or compliance with the terms and conditions of this Agreement by the City will not conflict with or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, any mortgage, deed of trust, lease, or any other restriction, agreement, or instrument to which the City is a party or by which it or any of its property is bound, or any order, rule, or regulation of any court or governmental body applicable to the City or any of its property, or result in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the City under the terms of any instrument or agreement to which the City is a party.

D. To the City's knowledge, no member or employee of the City has any significant or conflicting interest, financial or otherwise, in the Improvements or Services or in the transactions contemplated by this Agreement. The City shall take reasonable steps to ensure that any member or employee of the City who has a significant or conflicting interest, financial or otherwise, in the Improvements or Services or in the transactions contemplated by this Agreement shall disclose said interest to the Parties and refrain from voting and/or making any final approval decisions regarding the Improvements or Services or other transactions contemplated by this Agreement, unless the Parties mutually agree that said member or employee of the City may otherwise participate in the voting and/or making decisions regarding the Improvements or Services or other transactions contemplated by this Agreement.

E. There is no litigation or proceeding pending or threatened against the City affecting the right of the City to execute or deliver this Agreement or the ability of the City to comply with its obligations under this Agreement.

F. The City acknowledges that the funding, construction and performance of the Improvements and Services is of significant value to the City, the District, the District Land, and the general public.

Section 2.3 Representations by the Company. The Company represents that:

A. The Company is a limited liability company existing under the laws of the State of Missouri, is authorized to do business in Missouri, has lawfully executed and delivered this Agreement acting by and through its manager, members or managing member, has received all approvals necessary for it to enter into this Agreement and to effectuate the purposes of this Agreement, and the person executing this Agreement on behalf of Company is authorized to execute and deliver the same.

B. There are no statutes, regulations or other laws which prevent Company from entering into this Agreement or to perform or observe its obligations or undertakings contained herein.

C. There are no agreements or other undertakings to which Company is a party, or for which it is bound, which prevent or impair Company's execution of this Agreement or to perform and observe its obligations contained herein.

D. There is no litigation or proceeding pending or threatened against the Company affecting the right of the Company to execute or deliver this Agreement or the ability of the Company to comply with its obligations under this Agreement.

ARTICLE 3: MUTUAL COOPERATION

Section 3.1 Litter and Trash Cleanup, Walkability and Security. The Parties agree and acknowledge that the City has adopted Resolution No. 6337 requiring special taxing jurisdictions such as the District to adopt policies to address litter and trash cleanup, walkability and security within the City. The Parties agree that the District has limited revenue with which to expend towards these issues. However, the District agrees to develop such policies which may be in the form of recommendations to property owners which address these issues, and will use commercially reasonable efforts to ensure that its activities are in conformance with these requirements.

Section 3.2 Financing Improvements. Subject to the prior, written consent of the City, the District may issue obligations (or may borrow from a conduit issuer) to fund all or a portion of the costs

of the Improvements, as permitted by Section 67.1491, RSMo. In no case will the City be obligated to make any payment on such obligations except from District Revenue.

Section 3.3 Completion of the Improvements. The Improvements shall be completed at the times and by such Parties as are set out in the Development Agreement.

Section 3.4 Ownership and Maintenance of Improvements. The District's initial primary role is to fund and/or assist in the funding of the Improvements and Services. It is not intended for the District to own title to the Improvements or to the property upon which the Improvements are undertaken. Responsibility for maintenance of the Improvements shall be as set out in the Development Agreement.

ARTICLE 4: COLLECTION OF FUNDS

Section 4.1 Imposition of the Sales Tax. The District, the City and the Company will cooperate to take the actions necessary to impose the Sales Tax, subject to approval by the qualified voters of the District. DOR will collect the Sales Tax, once imposed, as provided in the Act. All District expenditures and payments from Sales Tax revenue shall be subject to annual appropriation of the District.

Section 4.2 Administration and Collection of the Sales Tax.

A. DOR will collect the Sales Tax as provided in the Act and remit the proceeds to the City for deposit into the Sales Tax Account.

B. The City shall perform or provide for the performance of all functions incident to the administration, enforcement, and operation of the Sales Tax, to the extent not performed by DOR, pursuant to the Act, and subject to this Agreement.

C. At any time during the term of the Sales Tax, the City and/or District may: (i) enter into any contract required by DOR for the collection of the Sales Tax and deposit thereof to the Sales Tax Account in accordance with the Act; and (ii) prescribe any required forms and administrative rules and regulations for reporting the Sales Tax.

D. The City shall keep accurate records of the amount of Sales Tax revenues on deposit in the Sales Tax Account and such records shall be open to the inspection of the District and the Company at reasonable times and upon written request.

E. Upon the expiration of the Sales Tax, all funds remaining in the Sales Tax Account shall continue to be used solely in accord with this Agreement and the Act.

Section 4.3 Imposition of the Special Assessments.

A. The District is currently imposing the Special Assessments pursuant to the Special Assessments Petition. The District will annually assess the Special Assessments against each tax parcel that is part of the District Land and notify the Jackson County Collection Department (or other appropriate county official, the "County Collector") to include the Special Assessments on the annual real property tax bill for each such tax parcel. The District shall direct the County Collector to deposit the Special Assessments revenue with the City, for deposit into the Special Assessments Account. All District expenditures and payments from Special Assessments revenue shall be subject to annual appropriation of the District.

B. The Special Assessments shall be levied for such period and at such rates as are set out in the Special Assessments Petition and the Development Agreement.

Section 4.4 Administration and Collection of the Special Assessments.

A. The Special Assessments will be collected by the County Collector as provided in the Act.

B. The City and the District shall cooperate to perform or provide for the performance of all functions incident to the administration, enforcement, and operation of the Special Assessments, to the extent not performed by the County Collector, pursuant to the Act, and subject to this Agreement. The Special Assessments, as they become due and owing, shall constitute a perpetual lien against each affected tax parcel that is part of the District Land from which it is derived and such lien may be foreclosed as provided in the Act and Applicable Laws.

C. The City and/or the District shall enter into any contract required by the County Collector for the collection of the Special Assessments and deposit thereof to the Special Assessments Account in accordance with the Act. The City shall deposit all proceeds of the Special Assessments received by it into the CID Revenue Account.

D. The City shall keep accurate records of the amount of Special Assessments revenue on deposit in the Special Assessments Account and such records shall be open to the inspection of the District and the Company at reasonable times and upon written request.

E. Upon the expiration of the Special Assessments, all funds remaining in the Special Assessments Account shall continue to be used solely in accord with this Agreement and the Act.

Section 4.5 Investment of District Revenue. District Revenue on deposit in the Accounts shall constitute funds of the District only and shall not be deemed to be City funds. The Board of Directors may direct the City to invest the District Revenue on deposit in the Accounts in accordance with the Act and other Applicable Laws. All interest earned upon the balance in the Accounts shall be deposited to the credit thereof.

Section 4.6 Administrative Costs. The City shall pay or reimburse itself for the Administrative Costs of the District from District Revenue in accordance with the priorities set out in Section 3.4 of the Development Agreement. The District shall include estimated Administrative Costs in the District's annual budget.

Section 4.7 City Administrative Services.

A. The Parties acknowledge that the administrative services to be performed by the City under this Agreement are beneficial and necessary to allow the District to undertake the Improvements **and Services** for which it was created. In addition to the duties of the City set out elsewhere in this Article 4, the City shall (i) maintain the Accounts for deposit and application of District Revenue and pay any reasonable bank fees from amounts available in the Accounts; and (ii) maintain the District's checkbook, write checks, and arrange for check signatures by authorized officers for payment of District-approved expenditures. The City may prepare or cause to be prepared financial statements according to accounting principles generally accepted in the United States of America and the budgets and reports as set forth in Article 5 or such other documents as may be required under the Act or by the Applicable Laws on behalf of the District.

B. The City shall perform the City Administrative Services and shall be reimbursed for the actual costs of such City Administrative Services (including a reasonable rate established by the City for staff time dedicated) in the priority set out for "costs of administration of the CID" in Section 3.4 of the Development Agreement.

Section 4.8 Enforcement of the District Revenues. As provided in the Act and Applicable Laws, DOR will enforce the Sales Tax and the County Collector will enforce the Special Assessments. To the extent that the same are not enforced by DOR or the County Collector, as appropriate, the District shall be responsible to prosecute or defend all actions, lawsuits, or proceedings necessary for collection and enforcement of the District Revenues at the expense of the Accounts (using revenues from the appropriate account).

Notwithstanding anything to the contrary in this Agreement, the District shall not be required to undertake any enforcement action if the cost of such enforcement is reasonably expected to exceed the amount of revenues sought to be collected or if the amount sought to be collected exceeds the expected enforcement costs and the difference, in the District's discretion, is not enough to justify an enforcement action.

Section 4.9 Eligible Costs. The costs described in Section 3.4 of the Development Agreement for reimbursement from District Revenues (which includes but is not limited to the costs of the City Administrative Services and the Administrative Costs) are herein referred to as "Eligible Costs". In order to be reimbursable under this Agreement, Eligible Costs must be certified to the City pursuant to a certificate(s) listing such Eligible Costs, explaining their qualification as Eligible Costs and certifying the same to be Eligible Costs, accompanied by itemized invoices, receipts or other information sufficient to demonstrate such eligibility. The City and the Company may each certify Eligible Costs for amounts eligible for reimbursement under Section 3.4 of the Development Agreement.

Interest shall accrue to the party that has paid any certified Eligible Costs from the date of certification to the date of payment from District Revenue. The rate of interest shall be determined on each January 1 and shall be, for such year, equal to the prime rate reported in the most recently published "Money Rates" column or any successor column of *The Wall Street Journal*, currently defined therein as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks (if *The Wall Street Journal* ceases publication of the prime rate, then "prime rate" shall mean the "prime rate" or "base rate" announced by UMB Bank, N.A., or any successor thereto).

The City shall maintain records of all certifications of Eligible Costs and calculations of interest accrued on Eligible Costs and shall make such records available to the District and the Company upon request.

Section 4.10 Disbursement of District Revenue. District Revenue shall be disbursed from the Accounts by the City only for the payment of Eligible Costs. Revenue shall be disbursed in accordance with the priorities set forth in Section 3.4 of the Development Agreement.

The City shall maintain records of all disbursements of District Revenue and shall make such records available to the District and Company upon request.

Section 4.11 Repeal of the District Revenues. No proposal to abolish the District and to repeal the District Revenues shall be made so long as the District's liabilities exceed its assets, there are outstanding claims or causes of action pending against the District, while there are outstanding certified Eligible Costs which remain due and payable pursuant to this Agreement, or while the District is insolvent, in receivership or under the jurisdiction of a bankruptcy court; provided that, this section shall not extend either the term of the District's existence or the imposition of the District Revenues. Upon payment of all Eligible Costs, the District, the Company and the City shall cooperate to terminate the District and the District Revenues.

ARTICLE 5: SPECIAL COVENANTS

Section 5.1 Annual Budget, Annual Financial Report, and Annual Report.

A. The District's fiscal year shall begin on July 1 and end on June 30 in each year that the District remains in existence. Not earlier than 180 days and not later than 90 days before the first day of each fiscal year, the District shall prepare, or cause to be prepared, a budget for capital and operating expenses for the next succeeding fiscal year for submission to the City's Director of Finance. Each budget and any amendments thereto shall generally be prepared in accordance with all applicable state statutes, including specifically Section 67.010, RSMo, as amended. The City's Director of Finance may review and comment to the Board of Directors on the proposed budget no later than 60 days before the first day of the relevant fiscal year. The Parties acknowledge that the District may, but is not required to, accept any recommendations suggested by the City's Director of Finance. The Board of Directors shall hold an annual meeting and adopt an annual budget not later than 30 days before the first day of each fiscal year. The District shall provide a copy of the approved budget to the City's Director of Finance.

B. As required by Section 105.145, RSMo, the District shall prepare, or cause to be prepared, an annual financial report of the District's financial transactions during each fiscal year and submit a copy of the annual financial report to the State Auditor no later than six (6) months after the end of the District's fiscal year. The annual financial report may be either an un-audited report or an audited report prepared by a certified public accountant. The District shall provide a copy of the annual financial report to the City's Director of Finance.

C. Within 120 days after the end of each fiscal year, the District shall submit a report to the City Clerk and to the Missouri Department of Economic Development stating the services, provided, revenues collected and expenditures made during such fiscal year, together with copies of written resolutions adopted by the Board of Directors during the fiscal year.

ARTICLE 6: DEFAULTS AND REMEDIES

Section 6.1 Events of Default. If either of the following events shall occur and be continuing following the expiration of any cure provisions herein, then such event shall constitute an Event of Default under this Agreement: (a) payment of costs from District Revenues that do not constitute Eligible Costs or (b) failure by any Party in the performance of any covenant, agreement or obligation imposed or created by this Agreement, and the continuance of such default for ninety (90) days after a non-defaulting Party has given written notice to the defaulting Party specifying such default.

Section 6.2 Remedies on Default. Except as otherwise provided in this Agreement, in the event of any default in or breach of any term or condition of this Agreement by either Party, or any successor, the defaulting or breaching Party (or successor) shall, upon written notice from the other Party (or successor), proceed promptly to cure or remedy such default or breach, and, shall, in any event, within ninety (90) days after receipt of notice, commence to cure or remedy such default; provided, however, that the Parties agree so long as the defaulting Party is diligently pursuing resolution of the default complained of beyond the ninety (90) days provided for above, such failure shall not constitute an Event of Default for as long as reasonably necessary for the defaulting Party to resolve such failure. If such cure or remedy is not taken or not diligently pursued, or the default or breach is not cured or remedied within a reasonable time, the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach. If any Event of Default has occurred and is continuing, then any non-defaulting Party may, upon its election or at any time after its election while such default continues, by mandamus or other suit, action or proceedings at law or in equity, enforce its rights against the defaulting Party and its officers, agents, and employees, and to require and compel duties and obligations required by the provisions of this Agreement. During the continuance of an Event of Default, District Revenues shall not be disbursed to the defaulting Party for any purpose other than payment of the Administrative Costs, the costs of City Services and the costs of enforcing the District Revenues.

Section 6.3 Rights and Remedies Cumulative. The rights and remedies reserved by the Parties under this Agreement and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions.

Section 6.4 Waiver of Breach. No waiver of any breach of any covenant or agreement contained in this Agreement shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of an Event of Default, a non-defaulting Party may nevertheless accept from the defaulting Party, any payment or payments without in any way waiving the non-defaulting Party's right to exercise any of its rights and remedies as provided herein with respect to any such default or defaults in existence at the time when such payment or payments were accepted by the non-defaulting Party.

Section 6.5 Excusable Delays. No Party shall be deemed to be in default of this Agreement because of Excusable Delays. Excusable Delays shall extend the time of performance for the period of such excusable delay.

ARTICLE 7: MISCELLANEOUS

Section 7.1 Effective Date and Term. This Agreement shall become effective on the date set forth on the first page hereof. Upon termination of the District in accordance with Section 67.1481, RSMo, and the terms of this Agreement shall terminate.

Section 7.2 Immunities. No recourse shall be had for (1) the payment of any obligations of the District, or (2) any claim based upon any representation, obligation, covenant or agreement in this Agreement, against any past, present or future officer, member, employee, director, or agent of a Party, or of any successor thereto, as such, either directly or through the Party, or any successor thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, employees, directors, or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

Section 7.3 Modification. The terms, conditions, and provisions of this Agreement can be neither modified nor eliminated except in writing and by mutual agreement between the Parties. Any modification to this Agreement as approved shall be attached hereto and incorporated herein by reference.

Section 7.4 Notice. Any notice, demand, or other communication required by this Agreement to be given to either party hereto to the other shall be in writing and shall be deemed to be given if it is mailed by United States registered mail, postage prepaid, or sent by electronic mail and addressed as hereinafter specified.

Any notice to City shall be addressed to:

City Manager
City of Independence, Missouri
City Hall
111 E. Maple Avenue
Independence, Missouri 64050

City Clerk
City of Independence, Missouri
City Hall
111 E. Maple Avenue
Independence, Missouri 64050

Any notice to the District shall be addressed to:

The Eastgate Commerce Center Community Improvement District
c/o City Clerk
City of Independence, Missouri
City Hall
111 E. Maple Avenue
Independence, Missouri 64050

Any notice to the Company shall be addressed to:

NorthPoint Development, LLC
Attn: Brent Miles
3315 North Oak Trafficway
Kansas City, Missouri 64116

With a copy to:

Levy Craig Law Firm
Attn: Andrew Lonard
4520 Main Street, Suite 400
Kansas City, Missouri 64111

Each party shall have the right to specify that notice be addressed to any other address by giving to the other party ten (10) days' written notice thereof.

Section 7.5 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri and all actions shall be heard in Jackson County Circuit Court.

Section 7.6 Representatives Not Personally Liable. No official, director, agent, employee, or representative of a Party shall be personally liable to another Party in the event of default or breach by

any Party under this Agreement, or for any amount which may become due to any Party or on any obligations under the terms of this Agreement.

Section 7.7 Validity and Severability. It is the intention of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State of Missouri, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 7.8 Entire Agreement; Amendment. The Parties agree that this Agreement, together with the Development Agreement, constitutes the entire agreement between the Parties and that no other agreements or representations other than those contained in this Agreement and the Development Agreement have been made by the Parties. No amendments, changes or modifications of this Agreement shall be made without obtaining the prior written approval of the Parties. The City and the District shall not be required to obtain the approval of the qualified voters for this Agreement or any such amendments, changes or modifications.

Section 7.9 Execution of Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 7.10 City Approvals. Unless specifically provided to the contrary herein, all approvals of the City hereunder may be given by the City Manager or his/her designee without the necessity of any action by the City Council. The City Manager, at his/her discretion, may seek the advice or consent of the City Council for any requested approval.

Section 7.11 District Approvals. Unless specifically provided to the contrary herein, all approvals of the District hereunder may be given by the Chairman or his/her designee without the necessity of any action by the Board of Directors. The Chairman, at his/her discretion, may seek the advice or consent of the Board of Directors for any requested approval.

Section 7.12 Assignment. No Party shall assign this Agreement without the prior written consent of the other Parties.

Section 7.13 Anti-Discrimination. The Company 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 City in connection with the District (including this Agreement and the Development Agreement), the Company 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.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names and attested as to the date as set forth below.

CITY:

CITY OF INDEPENDENCE, MISSOURI

By: _____
City Manager

Intergovernmental Cooperative Agreement
Eastgate Commerce Center Community Improvement District

DISTRICT:

EASTGATE COMMERCE CENTER
COMMUNITY IMPROVEMENT DISTRICT

By: _____
Chairman

ATTEST:

Secretary

Intergovernmental Cooperative Agreement
Eastgate Commerce Center Community Improvement District

COMPANY:

NORTHPOINT DEVELOPMENT, LLC,
a Missouri limited liability company

By: _____

Name:

Title:

EXHIBIT A
LEGAL DESCRIPTION OF DISTRICT LAND

See Exhibit A to the Petition.

EXHIBIT B

DISTRICT BOUNDARY MAP

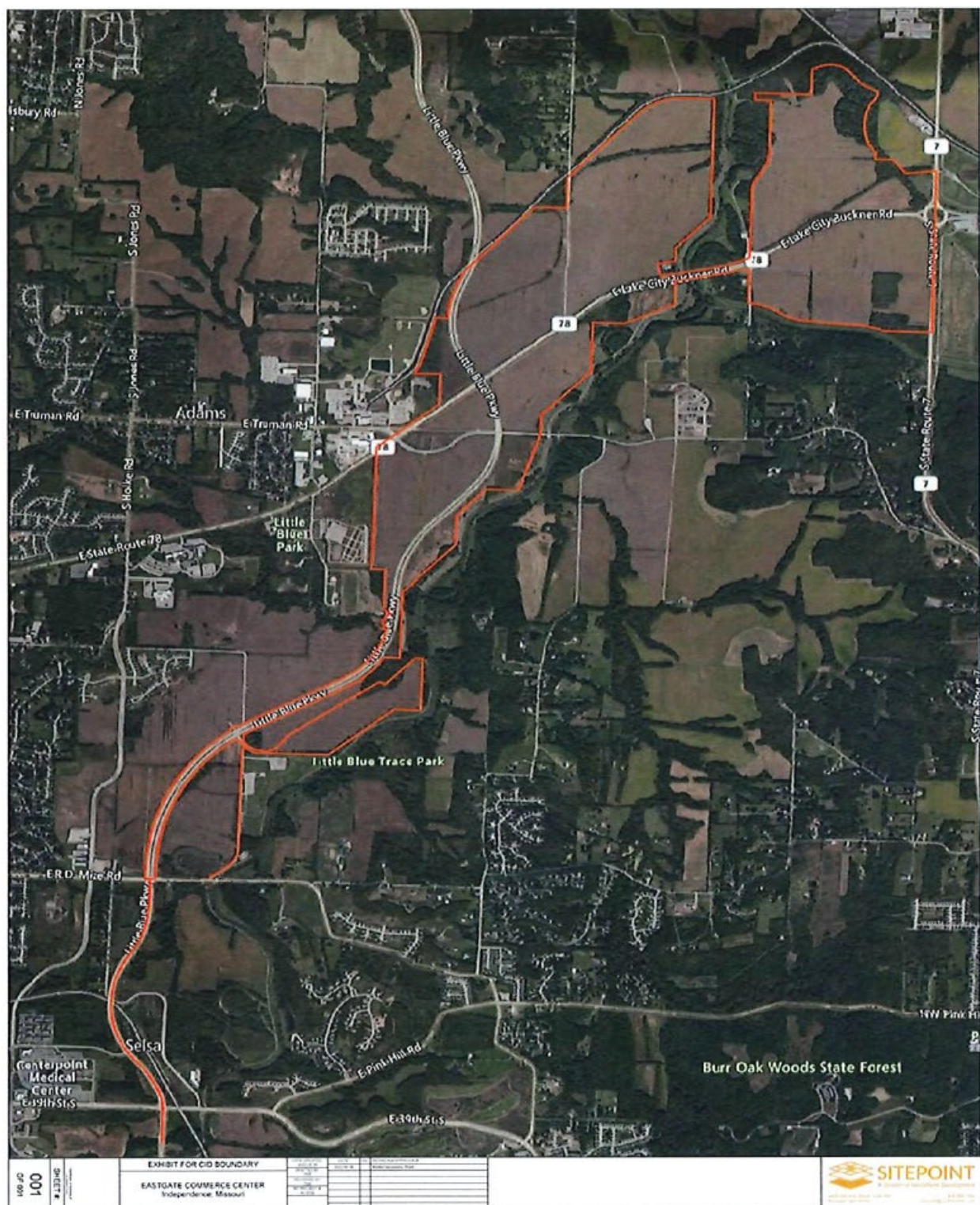


EXHIBIT C

IMPROVEMENTS

EXHIBIT 1 TO FIVE YEAR PLAN OF THE EASTGATE COMMERCE CENTER COMMUNITY IMPROVEMENT DISTRICT

The "Improvements" provided for in this Budget are those improvements that are eligible to be funded as "CID Costs", as estimated below, in accordance with the CID Act and all Applicable Laws and Requirements. Please note these are estimates only, and dollar amounts may fluctuate based on actual costs incurred for purposes permitted under the CID.

EastGate Commerce Center Development Budget			
<u>Exhibit 2 Reference</u>	<u>Item</u>	<u>Estimated Costs</u>	<u>Anticipated Source</u>
1A	Little Blue Parkway Full Access Intersection	\$660,000	Developer
1B	Truman Road-Driveway Entrance Improvement	\$88,000	Developer
2A	Bly Road Reconstruction	\$2,200,000	Developer
2B	M78 and Bly Road Full Access Intersection Improvement	\$660,000	Developer
2C	Little Blue Parkway Full Access Intersection	\$660,000	Developer
2D	M78 and Little Blue Parkway Intersection Improvements	\$33,000	Developer
2E	M78 Full Access Intersection Improvement	\$165,000	Developer
2F	Dog park, parking lot and related facilities	\$175,000	Developer
2G	Trailhead for Little Blue Trace Trail	\$220,000	Developer
2G (cont.)	Multi-Use Trail Construction	\$550,000	Developer
3A	M78 Full Access Intersection Improvement	\$495,000	Developer
3B	12" Water Main Extension	\$1,100,000	Developer
BP1A	Necessary Road and Little Blue Parkway Intersection Improvements	\$88,000	Developer
BP1B	Little Blue Parkway Right Turn Lane	\$88,000	Developer
BP1C	Necessary Road Overlay and stripping	\$165,000	Developer
BP2A	Truman Road Improvements	\$1,760,000	Developer
BP2B	Truman Road and M78 Highway Improvements	\$495,000	Developer
BP2C	Water main relocation	\$595,000	Developer
BP2D	Widening of Truman Road	\$900,000	Developer
n/a	Little Blue Parkway mill and overlay	\$2,970,000	CID / City / Developer
n/a	Power substation and related improvements and equipment	\$8,700,000	City
	Legal Costs (Start-Up)	\$20,000	Developer
	District Operation Costs (5 years)	\$25,000	CID / Developer
	Miscellaneous/Contingency (5%)	\$125,000	Developer
	Total:	\$22,937,000	

Notes:

1. Certain Improvements are described in further detail on Exhibit 2.
2. The initial sources of payment for costs anticipated are as set out above, from funds available to the entity named.
3. The terms of sources to pay costs are funds available to the entity named above, with reimbursement to that entity over the term of the District, as funds become available.

EXHIBIT C

IMPROVEMENTS

EXHIBIT 2 TO FIVE YEAR PLAN OF THE EASTGATE COMMERCE CENTER COMMUNITY IMPROVEMENT DISTRICT

1A - Full access intersection on Little Blue Parkway with permanent traffic signal per MoDOT EPG Section 902 and right and left turn lanes per MoDOT EPG 940.9.9 and 940.9.6 respectively. Materials per City of Independence specifications, geometrics per MoDOT EPG 200 and AASHTO Geometric Design.

1B – Right and left turn lanes on Truman Road at main entrance to Phase 1 per MoDOT EPG 940.9.9 and 940.9.6 Respectively. Materials per City of Independence specifications, geometrics per MoDOT EPG 200 and AASHTO Geometric Design.

2A – Reconstruction of Bly Road to a 36 ft. wide collector street to align perpendicular to M78 Hwy per City of Independence standard details. Materials per City of Independence specifications, geometrics per MoDOT EPG 200 and AASHTO Geometric Design.

2B – Per MoDOT approval, Full access intersection on M78. Permanent signal type per MoDOT EPG section 902. Right and left turn lanes per MoDOT EPG 940.9.9 and 940.9.6 respectively.

2C – Full access intersection to be included and warranted in the Eastgate Commerce Center Traffic Impact Analysis. Permanent signal type per MoDOT EPG Section 902 and right and left turn lanes per MoDOT EPG 940.9.9 and 940.9.6 respectively. All existing nearby access points shall be removed. Materials per City of Independence specifications, geometrics per MoDOT EPG 200 and AASHTO Geometric Design.

2D – Per MoDOT approval, restripe M78 Hwy to accommodate dual west bound left turn lanes and modify traffic signal per MoDOT EPG 900. Material per MoDOT EPG 1000, 400, and 500.

2E – Per MoDOT approval, permanent full access intersection on M78 Hwy per MoDOT EPG Section 902 with right and left turn lanes per MoDOT EPG 940.9.9 and 940.9.6 respectively.

2F – Construction of a dog park with associated parking lot with necessary facilities such as water, power, lighting and fencing meeting applicable City of Independence Code. Full access points shall be aligned on both sides of roadway with no offsets or with MoDOT approved distance from full access point.

2G – Construction of a multi-use trail from Little Blue Trace Trail to Little Blue Parkway built per Jackson County Little Blue Trace specifications. Trail crossing at Bly Road shall have flashing warnings with Type 2 crosswalk per AASHTO Guide for the Planning, Design, and Operation of Pedestrian Facilities.

3A - Per MoDOT approval, permanent full access intersection on M78 Hwy per MoDOT EPG Section 902 with right and left turn lanes per MoDOT EPG 940.9.9 and 940.9.6 respectively.

3B – Extension of a 12” water main from Little Blue River to M7 Hwy per City of Independence Water Department Standard Drawings.

BP2A – Widening of Truman Road to five (5) 12 ft lanes with curb and gutter and match the surrounding pedestrian facilities with a 10-foot multi-use trail on the north and 5-foot sidewalk on the south. Materials per City of Independence specifications, geometrics per MoDOT EPG 200 and AASHTO Geometric Design.

BP2B – Per MoDOT approval, permanent traffic signal installation per MoDOT EPG Section 902 at M78

EXHIBIT C

IMPROVEMENTS

Hwy and Truman Road. Materials per MoDOT EPG 1000, geometrics per MoDOT EPG 200 and AASHTO Geometric Design.

BP2C – Relocation of existing 20" water main from Little Blue Parkway to M78 Hwy. To be located along Truman Road. Per City of Independence Water Department Standard Drawings.

BP2D - Widening of Truman Road from Little Blue Parkway to Truman Road bridge to five (5) 12 ft lanes with curb and gutter and match the surrounding pedestrian facilities with a 10-foot multi-use trail on the north and 5-foot sidewalk on the south. Materials per City of Independence specifications, geometrics per MoDOT EPG 200 and AASHTO Geometric Design.

BP1A – Right turn lane added at Necessary Road and Little Blue Parkway intersection per MoDOT EPG 940.9.9 with materials per City of Independence specifications, geometrics per MoDOT EPG 200 and AASHTO Geometric Design.

BP1B – Right turn lane Per MoDOT EPG 940.9.9 with material per City of Independence specifications, geometrics per MoDOT EPG 200 and AASHTO Geometric Design.

BP1C – Necessary Road Overlay and stripping, materials per City of Independence specifications.

Bill No. 25.118

Ordinance No. 19765

AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO A
COOPERATIVE AGREEMENT RELATING TO THE EASTGATE
COMMERCE CENTER COMMUNITY IMPROVEMENT DISTRICT.

WHEREAS, pursuant to Sections 67.1401 to 67.1571 RSMo, as amended, the City Council of the City of Independence, Missouri (the "City") passed Ordinance No. 19363 (the "CID Creation Ordinance") establishing the Eastgate Commerce Center Community Improvement District (the "CID");

WHEREAS, the CID Creation Ordinance conditions approval of the CID on the City and the CID later entering into a cooperative agreement to govern the relationship of the CID and the City;

WHEREAS, the City Council now desires to approve and enter into the Cooperative Agreement (defined herein).

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

SECTION 1. The Intergovernmental Cooperative Agreement (the "Cooperative Agreement") among the City, the CID and Northpoint Development, LLC is hereby approved in substantially the form attached hereto as **Exhibit A**.

SECTION 2. The Mayor or (Interim) City Manager of the City is hereby authorized and directed to execute the Cooperative Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the Cooperative Agreement and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

SECTION 3. This Ordinance shall take effect and be in full force as provided by the City Charter.

[remainder of page intentionally left blank]

PASSED THIS 15th DAY OF DECEMBER, 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:



Interim City Manager

Exhibit A

Cooperative Agreement

INTERGOVERNMENTAL COOPERATIVE AGREEMENT

THIS INTERGOVERNMENTAL COOPERATIVE AGREEMENT ("Agreement"), entered into as of _____, 2025, among the CITY OF INDEPENDENCE, MISSOURI, a political subdivision of the State of Missouri ("City"), the EASTGATE COMMERCE CENTER COMMUNITY IMPROVEMENT DISTRICT, a Missouri political subdivision and community improvement district ("District"), and NORTHPOINT DEVELOPMENT, LLC, a Missouri limited liability company, and its successors and assigns and affiliated entities (the "Company") (the City, the District and the Company are collectively referred to herein as the "Parties" and individually as "Party", as the context so requires).

RECITALS

WHEREAS, on August 15, 2022, the City Council adopted Ordinance No. 19363 establishing the District as a political subdivision pursuant to the Act; and

WHEREAS, all of the real property within the District is legally described on the attached Exhibit A and shown on the map attached as Exhibit B; and

WHEREAS, the intended funding mechanism for the District is the Sales Tax (defined herein) and the Special Assessments (defined herein); and

WHEREAS, the Parties desire to set forth through this Agreement their respective rights and obligations with respect to the collection and disbursement of the Sales Tax and the Special Assessments and the operation of the District.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants herein contained, the Parties agree as follows:

ARTICLE 1: DEFINITIONS, RECITALS, AND EXHIBITS

Section 1.1 Recitals and Exhibits. The representations, covenants, and recitations set forth in the foregoing recitals and the exhibits attached to this Agreement are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section, and the appropriate exhibits are incorporated into each section of this Agreement that makes reference to an exhibit.

Section 1.2 Definitions. *Words and Terms used herein but not defined shall have the meanings given to such terms in the Development Agreement.* In addition to words and terms defined by the Act, the Development Agreement and elsewhere in this Agreement, the following words and terms shall have the meanings ascribed to them in this Section unless the context in which such words and terms are used clearly requires otherwise:

"Act" means the Missouri Community Improvement District Act, §§ 67.1401, *et seq.*, RSMo, as amended.

"Administrative Costs" means the amounts incurred by the District or the City for overhead expenses of the District for administration, operation, implementation, collection, and enforcement incurred in connection with the District Revenue. Administrative Costs include, without limitation, the following: actual, reasonable expenses that are necessary or desirable for the operation of the District as permitted under the Act that shall include, but are not limited to, costs associated with elections, notices,

publications, meetings, supplies, equipment, photocopying, the engagement of legal counsel, accounting, engineering, land use planning, financial auditing services, insurance, administration of the District Revenue sources, enforcement and collection of the District Revenue, and other professional consultants or services.

“Agreement” means this Intergovernmental Cooperative Agreement, as from time to time amended in accordance with its terms.

“Accounts” means the Sales Tax Account and the Special Assessments Account.

“Applicable Laws” means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, requirement, or decision of or agreement with or by any unit of government.

“Board of Directors” means the Board of Directors of the Eastgate Commerce Center Community Improvement District.

“City” means the City of Independence, Missouri, a municipal corporation of the State of Missouri.

“City Administrative Services” means the services to be provided by the City to the District as described in Article 4 of this Agreement.

“City Clerk” means the Clerk of the City.

“City Council” means the governing body of the City.

“City’s Director of Finance” or “Director of Finance” means the Director of Finance for the City.

“City Hall” means the official office of the City located at 111 E. Maple, Independence, Missouri 64050.

“City Manager” means the City Manager of the City.

“Company” means Northpoint Development, LLC, a Missouri limited liability company, and its successors and assigns and affiliated entities.

“Development Agreement” means the Amended and Restated Development Agreement dated as of August 30, 2023, between the City and the Company, as amended from time to time.

“District” means the Eastgate Commerce Center Community Improvement District, a political subdivision of the State of Missouri and community improvement district established in accordance with the Act.

“District Revenue” means the Sales Tax revenue collected by DOR on behalf of the District and deposited in the Sales Tax Account, the Special Assessments revenue received from Jackson County, Missouri and deposited in the Special Assessments Account and such other revenue earned or received by the District from other sources.

“District Land” means the real property within the District legally described in the attached Exhibit A.

“DOR” means the Missouri Department of Revenue.

“Eligible Costs” shall have the meaning given in Section 4.9.

“Event of Default” means any event specified in Section 6.1 of this Agreement.

“Excusable Delays” means delays due to acts of terrorism, acts of war or civil insurrection, strikes, riots, floods, earthquakes, fires, tornadoes, casualties, acts of God, labor disputes, governmental restrictions or priorities, embargoes, national or regional material shortages, failure to obtain regulatory approval from any Federal or State regulatory body, unforeseen site conditions, material litigation by parties other than a Party and not caused by any Party's failure to perform, or any other condition or circumstances beyond the reasonable or foreseeable control of the applicable Party using reasonable diligence to overcome which prevents such Party from performing its specific duties or obligation hereunder in a timely manner.

“Improvements” means the “Improvements” described in Exhibit C to the Petition, which are set out specifically on Exhibit C hereto, provided that any amendment to the Petition approved by ordinance of the City affecting such Improvements shall be deemed to automatically amend Exhibit C hereto.

“Mayor” means the Mayor of the City.

“Petition” means the Petition for the Creation of the Eastgate Commerce Center Community Improvement District approved by the City by Ordinance No. 19363, as the same may be amended by further ordinance of the City from time to time.

“Sales Tax” means a sales and use tax levied by the District on the receipts from the sale at retail of all eligible tangible personal property or taxable services at retail within its boundaries pursuant and subject to the Act at a rate not to exceed one percent (1.0%) for a period of up to 25 years from the date of the Ordinance, unless otherwise extended by the mutual agreement of the Parties and in accordance with the Act.

“Sales Tax Account” means the account established and held by the City for the deposit of revenues generated by the Sales Tax and for the payment of Eligible Costs.

“Services” means the “Services” described in Exhibit C to the Petition, provided that any amendment to the Petition approved by ordinance of the City affecting such Services shall be deemed to automatically amend this definition.

“Special Assessments” means the special assessments levied by the District at such rates as described in the Special Assessments Petition.

“Special Assessments Account” means the account established and held by the City for the deposit of revenues generated by the Special Assessments and for the payment of Eligible Costs.

“Special Assessments Petition” means the Petition for Special Assessments attached as Exhibit D to the District's formation petition.

ARTICLE 2: REPRESENTATIONS

Section 2.1 Representations by the District. The District represents that:

A. The District is a community improvement district and political subdivision, duly organized and existing under the laws of the State of Missouri, including particularly the Act.

B. The District has authority to enter into this Agreement and to carry out its obligations under this Agreement. By proper action of its Board of Directors, the District has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

C. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement and the performance of or compliance with the terms and conditions of this Agreement by the District will not conflict with or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, any mortgage, deed of trust, lease, or any other restriction or any agreement or instrument to which the District is a party or by which it or any of its property is bound, or any order, rule, or regulation of any court or governmental body applicable to the District or any of its property, or result in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the District under the terms of any instrument or agreements to which the District is a party.

D. Except as to the shared benefits among all property owners within the District that are anticipated to result from the Improvements and Services, no member of the Board of Directors has any significant or conflicting interest, financial or otherwise, in the Improvements or Services or in the transactions contemplated by this Agreement. Any member of the Board of Directors who has a significant or conflicting interest, financial or otherwise, in the Improvements or Services or in the transactions contemplated by this Agreement shall disclose said interest to the Parties and refrain from voting and/or making any final approval decisions regarding the Improvements and Services or other transactions contemplated by this Agreement, unless the Parties mutually agree that said member of the Board of Directors may otherwise participate in the voting and/or making decisions regarding the Improvements or Services or other transactions contemplated by this Agreement.

E. There is no litigation or proceeding pending or threatened against the District affecting the right of the District to execute or deliver this Agreement or the ability of the District to comply with its obligations under this Agreement or which would materially adversely affect its financial condition.

F. The District acknowledges that the funding, construction and performance of the Improvements and Services is of significant value to the City, the District, the District Land, and the general public.

Section 2.2 Representations by the City. The City represents that:

A. The City is duly organized and existing under the Constitution and laws of the State of Missouri, as a constitutional charter city and is a political subdivision in which the District is located.

B. The City has authority to enter into this Agreement and to carry out its obligations under this Agreement, and by proper action of its City Council, the City Manager or other designated City official has been duly authorized to execute and deliver this Agreement.

C. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the performance of or compliance with the terms and conditions of this Agreement by the City will not conflict with or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, any mortgage, deed of trust, lease, or any other restriction, agreement, or instrument to which the City is a party or by which it or any of its property is bound, or any order, rule, or regulation of any court or governmental body applicable to the City or any of its property, or result in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the City under the terms of any instrument or agreement to which the City is a party.

D. To the City's knowledge, no member or employee of the City has any significant or conflicting interest, financial or otherwise, in the Improvements or Services or in the transactions contemplated by this Agreement. The City shall take reasonable steps to ensure that any member or employee of the City who has a significant or conflicting interest, financial or otherwise, in the Improvements or Services or in the transactions contemplated by this Agreement shall disclose said interest to the Parties and refrain from voting and/or making any final approval decisions regarding the Improvements or Services or other transactions contemplated by this Agreement, unless the Parties mutually agree that said member or employee of the City may otherwise participate in the voting and/or making decisions regarding the Improvements or Services or other transactions contemplated by this Agreement.

E. There is no litigation or proceeding pending or threatened against the City affecting the right of the City to execute or deliver this Agreement or the ability of the City to comply with its obligations under this Agreement.

F. The City acknowledges that the funding, construction and performance of the Improvements and Services is of significant value to the City, the District, the District Land, and the general public.

Section 2.3 Representations by the Company. The Company represents that:

A. The Company is a limited liability company existing under the laws of the State of Missouri, is authorized to do business in Missouri, has lawfully executed and delivered this Agreement acting by and through its manager, members or managing member, has received all approvals necessary for it to enter into this Agreement and to effectuate the purposes of this Agreement, and the person executing this Agreement on behalf of Company is authorized to execute and deliver the same.

B. There are no statutes, regulations or other laws which prevent Company from entering into this Agreement or to perform or observe its obligations or undertakings contained herein.

C. There are no agreements or other undertakings to which Company is a party, or for which it is bound, which prevent or impair Company's execution of this Agreement or to perform and observe its obligations contained herein.

D. There is no litigation or proceeding pending or threatened against the Company affecting the right of the Company to execute or deliver this Agreement or the ability of the Company to comply with its obligations under this Agreement.

ARTICLE 3: MUTUAL COOPERATION

Section 3.1 Litter and Trash Cleanup, Walkability and Security. The Parties agree and acknowledge that the City has adopted Resolution No. 6337 requiring special taxing jurisdictions such as the District to adopt policies to address litter and trash cleanup, walkability and security within the City. The Parties agree that the District has limited revenue with which to expend towards these issues. However, the District agrees to develop such policies which may be in the form of recommendations to property owners which address these issues, and will use commercially reasonable efforts to ensure that its activities are in conformance with these requirements.

Section 3.2 Financing Improvements. Subject to the prior, written consent of the City, the District may issue obligations (or may borrow from a conduit issuer) to fund all or a portion of the costs

of the Improvements, as permitted by Section 67.1491, RSMo. In no case will the City be obligated to make any payment on such obligations except from District Revenue.

Section 3.3 Completion of the Improvements. The Improvements shall be completed at the times and by such Parties as are set out in the Development Agreement.

Section 3.4 Ownership and Maintenance of Improvements. The District's initial primary role is to fund and/or assist in the funding of the Improvements and Services. It is not intended for the District to own title to the Improvements or to the property upon which the Improvements are undertaken. Responsibility for maintenance of the Improvements shall be as set out in the Development Agreement.

ARTICLE 4: COLLECTION OF FUNDS

Section 4.1 Imposition of the Sales Tax. The District, the City and the Company will cooperate to take the actions necessary to impose the Sales Tax, subject to approval by the qualified voters of the District. DOR will collect the Sales Tax, once imposed, as provided in the Act. All District expenditures and payments from Sales Tax revenue shall be subject to annual appropriation of the District.

Section 4.2 Administration and Collection of the Sales Tax.

A. DOR will collect the Sales Tax as provided in the Act and remit the proceeds to the City for deposit into the Sales Tax Account.

B. The City shall perform or provide for the performance of all functions incident to the administration, enforcement, and operation of the Sales Tax, to the extent not performed by DOR, pursuant to the Act, and subject to this Agreement.

C. At any time during the term of the Sales Tax, the City and/or District may: (i) enter into any contract required by DOR for the collection of the Sales Tax and deposit thereof to the Sales Tax Account in accordance with the Act; and (ii) prescribe any required forms and administrative rules and regulations for reporting the Sales Tax.

D. The City shall keep accurate records of the amount of Sales Tax revenues on deposit in the Sales Tax Account and such records shall be open to the inspection of the District and the Company at reasonable times and upon written request.

E. Upon the expiration of the Sales Tax, all funds remaining in the Sales Tax Account shall continue to be used solely in accord with this Agreement and the Act.

Section 4.3 Imposition of the Special Assessments.

A. The District is currently imposing the Special Assessments pursuant to the Special Assessments Petition. The District will annually assess the Special Assessments against each tax parcel that is part of the District Land and notify the Jackson County Collection Department (or other appropriate county official, the "County Collector") to include the Special Assessments on the annual real property tax bill for each such tax parcel. The District shall direct the County Collector to deposit the Special Assessments revenue with the City, for deposit into the Special Assessments Account. All District expenditures and payments from Special Assessments revenue shall be subject to annual appropriation of the District.

B. The Special Assessments shall be levied for such period and at such rates as are set out in the Special Assessments Petition and the Development Agreement.

Section 4.4 Administration and Collection of the Special Assessments.

A. The Special Assessments will be collected by the County Collector as provided in the Act.

B. The City and the District shall cooperate to perform or provide for the performance of all functions incident to the administration, enforcement, and operation of the Special Assessments, to the extent not performed by the County Collector, pursuant to the Act, and subject to this Agreement. The Special Assessments, as they become due and owing, shall constitute a perpetual lien against each affected tax parcel that is part of the District Land from which it is derived and such lien may be foreclosed as provided in the Act and Applicable Laws.

C. The City and/or the District shall enter into any contract required by the County Collector for the collection of the Special Assessments and deposit thereof to the Special Assessments Account in accordance with the Act. The City shall deposit all proceeds of the Special Assessments received by it into the CID Revenue Account.

D. The City shall keep accurate records of the amount of Special Assessments revenue on deposit in the Special Assessments Account and such records shall be open to the inspection of the District and the Company at reasonable times and upon written request.

E. Upon the expiration of the Special Assessments, all funds remaining in the Special Assessments Account shall continue to be used solely in accord with this Agreement and the Act.

Section 4.5 Investment of District Revenue. District Revenue on deposit in the Accounts shall constitute funds of the District only and shall not be deemed to be City funds. The Board of Directors may direct the City to invest the District Revenue on deposit in the Accounts in accordance with the Act and other Applicable Laws. All interest earned upon the balance in the Accounts shall be deposited to the credit thereof.

Section 4.6 Administrative Costs. The City shall pay or reimburse itself for the Administrative Costs of the District from District Revenue in accordance with the priorities set out in Section 3.4 of the Development Agreement. The District shall include estimated Administrative Costs in the District's annual budget.

Section 4.7 City Administrative Services.

A. The Parties acknowledge that the administrative services to be performed by the City under this Agreement are beneficial and necessary to allow the District to undertake the Improvements and Services for which it was created. In addition to the duties of the City set out elsewhere in this Article 4, the City shall (i) maintain the Accounts for deposit and application of District Revenue and pay any reasonable bank fees from amounts available in the Accounts; and (ii) maintain the District's checkbook, write checks, and arrange for check signatures by authorized officers for payment of District-approved expenditures. The City may prepare or cause to be prepared financial statements according to accounting principles generally accepted in the United States of America and the budgets and reports as set forth in Article 5 or such other documents as may be required under the Act or by the Applicable Laws on behalf of the District.

B. The City shall perform the City Administrative Services and shall be reimbursed for the actual costs of such City Administrative Services (including a reasonable rate established by the City for staff time dedicated) in the priority set out for "costs of administration of the CID" in Section 3.4 of the Development Agreement.

Section 4.8 Enforcement of the District Revenues. As provided in the Act and Applicable Laws, DOR will enforce the Sales Tax and the County Collector will enforce the Special Assessments. To the extent that the same are not enforced by DOR or the County Collector, as appropriate, the District shall be responsible to prosecute or defend all actions, lawsuits, or proceedings necessary for collection and enforcement of the District Revenues at the expense of the Accounts (using revenues from the appropriate account).

Notwithstanding anything to the contrary in this Agreement, the District shall not be required to undertake any enforcement action if the cost of such enforcement is reasonably expected to exceed the amount of revenues sought to be collected or if the amount sought to be collected exceeds the expected enforcement costs and the difference, in the District's discretion, is not enough to justify an enforcement action.

Section 4.9 Eligible Costs. The costs described in Section 3.4 of the Development Agreement for reimbursement from District Revenues (which includes but is not limited to the costs of the City Administrative Services and the Administrative Costs) are herein referred to as "Eligible Costs". In order to be reimbursable under this Agreement, Eligible Costs must be certified to the City pursuant to a certificate(s) listing such Eligible Costs, explaining their qualification as Eligible Costs and certifying the same to be Eligible Costs, accompanied by itemized invoices, receipts or other information sufficient to demonstrate such eligibility. The City and the Company may each certify Eligible Costs for amounts eligible for reimbursement under Section 3.4 of the Development Agreement.

Interest shall accrue to the party that has paid any certified Eligible Costs from the date of certification to the date of payment from District Revenue. The rate of interest shall be determined on each January 1 and shall be, for such year, equal to the prime rate reported in the most recently published "Money Rates" column or any successor column of *The Wall Street Journal*, currently defined therein as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks (if *The Wall Street Journal* ceases publication of the prime rate, then "prime rate" shall mean the "prime rate" or "base rate" announced by UMB Bank, N.A., or any successor thereto).

The City shall maintain records of all certifications of Eligible Costs and calculations of interest accrued on Eligible Costs and shall make such records available to the District and the Company upon request.

Section 4.10 Disbursement of District Revenue. District Revenue shall be disbursed from the Accounts by the City only for the payment of Eligible Costs. Revenue shall be disbursed in accordance with the priorities set forth in Section 3.4 of the Development Agreement.

The City shall maintain records of all disbursements of District Revenue and shall make such records available to the District and Company upon request.

Section 4.11 Repeal of the District Revenues. No proposal to abolish the District and to repeal the District Revenues shall be made so long as the District's liabilities exceed its assets, there are outstanding claims or causes of action pending against the District, while there are outstanding certified Eligible Costs which remain due and payable pursuant to this Agreement, or while the District is insolvent, in receivership or under the jurisdiction of a bankruptcy court; provided that, this section shall not extend either the term of the District's existence or the imposition of the District Revenues. Upon payment of all Eligible Costs, the District, the Company and the City shall cooperate to terminate the District and the District Revenues.

ARTICLE 5: SPECIAL COVENANTS

Section 5.1 Annual Budget, Annual Financial Report, and Annual Report.

A. The District's fiscal year shall begin on July 1 and end on June 30 in each year that the District remains in existence. Not earlier than 180 days and not later than 90 days before the first day of each fiscal year, the District shall prepare, or cause to be prepared, a budget for capital and operating expenses for the next succeeding fiscal year for submission to the City's Director of Finance. Each budget and any amendments thereto shall generally be prepared in accordance with all applicable state statutes, including specifically Section 67.010, RSMo, as amended. The City's Director of Finance may review and comment to the Board of Directors on the proposed budget no later than 60 days before the first day of the relevant fiscal year. The Parties acknowledge that the District may, but is not required to, accept any recommendations suggested by the City's Director of Finance. The Board of Directors shall hold an annual meeting and adopt an annual budget not later than 30 days before the first day of each fiscal year. The District shall provide a copy of the approved budget to the City's Director of Finance.

B. As required by Section 105.145, RSMo, the District shall prepare, or cause to be prepared, an annual financial report of the District's financial transactions during each fiscal year and submit a copy of the annual financial report to the State Auditor no later than six (6) months after the end of the District's fiscal year. The annual financial report may be either an un-audited report or an audited report prepared by a certified public accountant. The District shall provide a copy of the annual financial report to the City's Director of Finance.

C. Within 120 days after the end of each fiscal year, the District shall submit a report to the City Clerk and to the Missouri Department of Economic Development stating the services, provided, revenues collected and expenditures made during such fiscal year, together with copies of written resolutions adopted by the Board of Directors during the fiscal year.

ARTICLE 6: DEFAULTS AND REMEDIES

Section 6.1 Events of Default. If either of the following events shall occur and be continuing following the expiration of any cure provisions herein, then such event shall constitute an Event of Default under this Agreement: (a) payment of costs from District Revenues that do not constitute Eligible Costs or (b) failure by any Party in the performance of any covenant, agreement or obligation imposed or created by this Agreement, and the continuance of such default for ninety (90) days after a non-defaulting Party has given written notice to the defaulting Party specifying such default.

Section 6.2 Remedies on Default. Except as otherwise provided in this Agreement, in the event of any default in or breach of any term or condition of this Agreement by either Party, or any successor, the defaulting or breaching Party (or successor) shall, upon written notice from the other Party (or successor), proceed promptly to cure or remedy such default or breach, and, shall, in any event, within ninety (90) days after receipt of notice, commence to cure or remedy such default; provided, however, that the Parties agree so long as the defaulting Party is diligently pursuing resolution of the default complained of beyond the ninety (90) days provided for above, such failure shall not constitute an Event of Default for as long as reasonably necessary for the defaulting Party to resolve such failure. If such cure or remedy is not taken or not diligently pursued, or the default or breach is not cured or remedied within a reasonable time, the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach. If any Event of Default has occurred and is continuing, then any non-defaulting Party may, upon its election or at any time after its election while such default continues, by mandamus or other suit, action or proceedings at law or in equity, enforce its rights against the defaulting Party and its officers, agents, and employees, and to require and compel duties and obligations required by the provisions of this Agreement. During the continuance of an Event of Default, District Revenues shall not be disbursed to the defaulting Party for any purpose other than payment of the Administrative Costs, the costs of City Services and the costs of enforcing the District Revenues.

Section 6.3 Rights and Remedies Cumulative. The rights and remedies reserved by the Parties under this Agreement and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions.

Section 6.4 Waiver of Breach. No waiver of any breach of any covenant or agreement contained in this Agreement shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of an Event of Default, a non-defaulting Party may nevertheless accept from the defaulting Party, any payment or payments without in any way waiving the non-defaulting Party's right to exercise any of its rights and remedies as provided herein with respect to any such default or defaults in existence at the time when such payment or payments were accepted by the non-defaulting Party.

Section 6.5 Excusable Delays. No Party shall be deemed to be in default of this Agreement because of Excusable Delays. Excusable Delays shall extend the time of performance for the period of such excusable delay.

ARTICLE 7: MISCELLANEOUS

Section 7.1 Effective Date and Term. This Agreement shall become effective on the date set forth on the first page hereof. Upon termination of the District in accordance with Section 67.1481, RSMo, and the terms of this Agreement shall terminate.

Section 7.2 Immunities. No recourse shall be had for (1) the payment of any obligations of the District, or (2) any claim based upon any representation, obligation, covenant or agreement in this Agreement, against any past, present or future officer, member, employee, director, or agent of a Party, or of any successor thereto, as such, either directly or through the Party, or any successor thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, employees, directors, or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

Section 7.3 Modification. The terms, conditions, and provisions of this Agreement can be neither modified nor eliminated except in writing and by mutual agreement between the Parties. Any modification to this Agreement as approved shall be attached hereto and incorporated herein by reference.

Section 7.4 Notice. Any notice, demand, or other communication required by this Agreement to be given to either party hereto to the other shall be in writing and shall be deemed to be given if it is mailed by United States registered mail, postage prepaid, or sent by electronic mail and addressed as hereinafter specified.

Any notice to City shall be addressed to:

City Manager
City of Independence, Missouri
City Hall
111 E. Maple Avenue
Independence, Missouri 64050

City Clerk
City of Independence, Missouri
City Hall
111 E. Maple Avenue
Independence, Missouri 64050

Any notice to the District shall be addressed to:

The Eastgate Commerce Center Community Improvement District
c/o City Clerk
City of Independence, Missouri
City Hall
111 E. Maple Avenue
Independence, Missouri 64050

Any notice to the Company shall be addressed to:

NorthPoint Development, LLC
Attn: Brent Miles
3315 North Oak Trafficway
Kansas City, Missouri 64116

With a copy to:

Levy Craig Law Firm
Attn: Andrew Lonard
4520 Main Street, Suite 400
Kansas City, Missouri 64111

Each party shall have the right to specify that notice be addressed to any other address by giving to the other party ten (10) days' written notice thereof.

Section 7.5 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri and all actions shall be heard in Jackson County Circuit Court.

Section 7.6 Representatives Not Personally Liable. No official, director, agent, employee, or representative of a Party shall be personally liable to another Party in the event of default or breach by

any Party under this Agreement, or for any amount which may become due to any Party or on any obligations under the terms of this Agreement.

Section 7.7 Validity and Severability. It is the intention of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State of Missouri, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

Section 7.8 Entire Agreement; Amendment. The Parties agree that this Agreement, together with the Development Agreement, constitutes the entire agreement between the Parties and that no other agreements or representations other than those contained in this Agreement and the Development Agreement have been made by the Parties. No amendments, changes or modifications of this Agreement shall be made without obtaining the prior written approval of the Parties. The City and the District shall not be required to obtain the approval of the qualified voters for this Agreement or any such amendments, changes or modifications.

Section 7.9 Execution of Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

Section 7.10 City Approvals. Unless specifically provided to the contrary herein, all approvals of the City hereunder may be given by the City Manager or his/her designee without the necessity of any action by the City Council. The City Manager, at his/her discretion, may seek the advice or consent of the City Council for any requested approval.

Section 7.11 District Approvals. Unless specifically provided to the contrary herein, all approvals of the District hereunder may be given by the Chairman or his/her designee without the necessity of any action by the Board of Directors. The Chairman, at his/her discretion, may seek the advice or consent of the Board of Directors for any requested approval.

Section 7.12 Assignment. No Party shall assign this Agreement without the prior written consent of the other Parties.

Section 7.13 Anti-Discrimination. The Company 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 City in connection with the District (including this Agreement and the Development Agreement), the Company 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.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names and attested as to the date as set forth below.

CITY:

CITY OF INDEPENDENCE, MISSOURI

By: 
City Manager

Intergovernmental Cooperative Agreement
Eastgate Commerce Center Community Improvement District

DISTRICT:

EASTGATE COMMERCE CENTER
COMMUNITY IMPROVEMENT DISTRICT

By: _____
Chairman

ATTEST:

Secretary

Intergovernmental Cooperative Agreement
Eastgate Commerce Center Community Improvement District

COMPANY:

NORTHPOINT DEVELOPMENT, LLC,
a Missouri limited liability company

By: _____
Name:
Title:

EXHIBIT A

LEGAL DESCRIPTION OF DISTRICT LAND

See Exhibit A to the Petition.

EXHIBIT B

DISTRICT BOUNDARY MAP

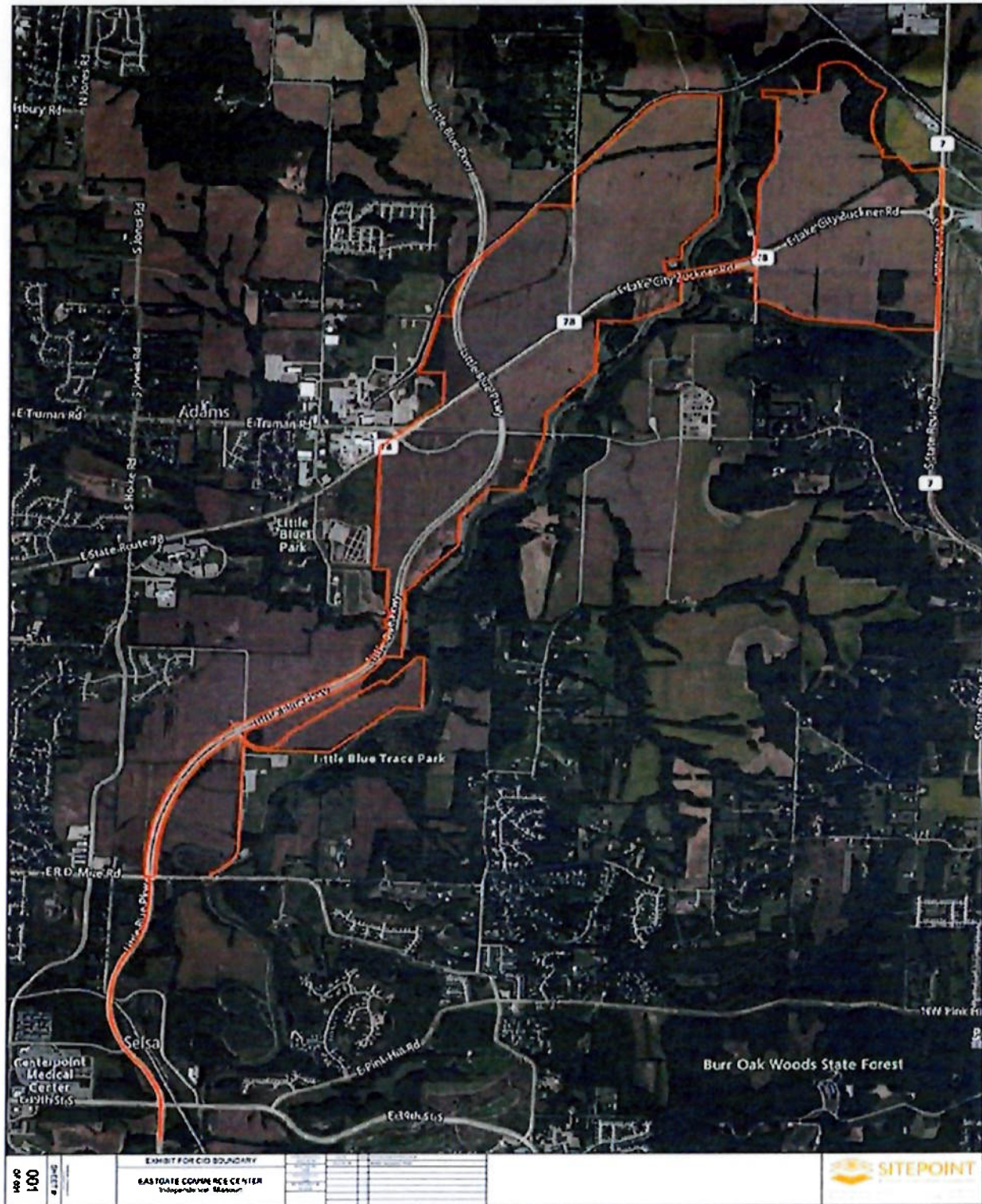


EXHIBIT C

IMPROVEMENTS

EXHIBIT I TO FIVE YEAR PLAN OF THE EASTGATE COMMERCE CENTER COMMUNITY IMPROVEMENT DISTRICT

The "Improvements" provided for in this Budget are those improvements that are eligible to be funded as "CID Costs", as estimated below, in accordance with the CID Act and all Applicable Laws and Requirements. Please note these are estimates only, and dollar amounts may fluctuate based on actual costs incurred for purposes permitted under the CID.

EastGate Commerce Center Development Budget			
Exhibit 2 Reference	Item	Estimated Costs	Anticipated Source
1A	Little Blue Parkway Full Access Intersection	\$660,000	Developer
1B	Truman Road-Driveway Entrance Improvement	\$88,000	Developer
2A	Bly Road Reconstruction	\$2,200,000	Developer
2B	M78 and Bly Road Full Access Intersection Improvement	\$660,000	Developer
2C	Little Blue Parkway Full Access Intersection	\$660,000	Developer
2D	M78 and Little Blue Parkway Intersection Improvements	\$33,000	Developer
2E	M78 Full Access Intersection Improvement	\$165,000	Developer
2F	Dog park, parking lot and related facilities	\$175,000	Developer
2G	Trailhead for Little Blue Trace Trail	\$220,000	Developer
2G (cont.)	Multi-Use Trail Construction	\$550,000	Developer
3A	M78 Full Access Intersection Improvement	\$495,000	Developer
3B	12" Water Main Extension	\$1,100,000	Developer
BP1A	Necessary Road and Little Blue Parkway Intersection Improvements	\$88,000	Developer
BP1B	Little Blue Parkway Right Turn Lane	\$88,000	Developer
BP1C	Necessary Road Overlay and stripping	\$165,000	Developer
BP2A	Truman Road Improvements	\$1,760,000	Developer
BP2B	Truman Road and M78 Highway Improvements	\$495,000	Developer
BP2C	Water main relocation	\$595,000	Developer
BP2D	Widening of Truman Road	\$900,000	Developer
n/a	Little Blue Parkway mill and overlay	\$2,970,000	CID / City / Developer
n/a	Power substation and related improvements and equipment	\$8,700,000	City
	Legal Costs (Start-Up)	\$20,000	Developer
	District Operation Costs (5 years)	\$25,000	CID / Developer
	Miscellaneous/Contingency (5%)	\$125,000	Developer
	Total:	\$22,937,000	

Notes:

1. Certain Improvements are described in further detail on Exhibit 2.
2. The initial sources of payment for costs anticipated are as set out above, from funds available to the entity named.
3. The terms of sources to pay costs are funds available to the entity named above, with reimbursement to that entity over the term of the District, as funds become available.

EXHIBIT C

IMPROVEMENTS

EXHIBIT 2 TO FIVE YEAR PLAN OF THE EASTGATE COMMERCE CENTER COMMUNITY IMPROVEMENT DISTRICT

1A - Full access intersection on Little Blue Parkway with permanent traffic signal per MoDOT EPG Section 902 and right and left turn lanes per MoDOT EPG 940.9.9 and 940.9.6 respectively. Materials per City of Independence specifications, geometrics per MoDOT EPG 200 and AASHTO Geometric Design.

1B - Right and left turn lanes on Truman Road at main entrance to Phase 1 per MoDOT EPG 940.9.9 and 940.9.6 Respectively. Materials per City of Independence specifications, geometrics per MoDOT EPG 200 and AASHTO Geometric Design.

2A - Reconstruction of Bly Road to a 36 ft. wide collector street to align perpendicular to M78 Hwy per City of Independence standard details. Materials per City of Independence specifications, geometrics per MoDOT EPG 200 and AASHTO Geometric Design.

2B - Per MoDOT approval, Full access intersection on M78. Permanent signal type per MoDOT EPG section 902. Right and left turn lanes per MoDOT EPG 940.9.9 and 940.9.6 respectively.

2C - Full access intersection to be included and warranted in the Eastgate Commerce Center Traffic Impact Analysis. Permanent signal type per MoDOT EPG Section 902 and right and left turn lanes per MoDOT EPG 940.9.9 and 940.9.6 respectively. All existing nearby access points shall be removed. Materials per City of Independence specifications, geometrics per MoDOT EPG 200 and AASHTO Geometric Design.

2D - Per MoDOT approval, restripe M78 Hwy to accommodate dual west bound left turn lanes and modify traffic signal per MoDOT EPG 900. Material per MoDOT EPG 1000, 400, and 500.

2E - Per MoDOT approval, permanent full access intersection on M78 Hwy per MoDOT EPG Section 902 with right and left turn lanes per MoDOT EPG 940.9.9 and 940.9.6 respectively.

2F - Construction of a dog park with associated parking lot with necessary facilities such as water, power, lighting and fencing meeting applicable City of Independence Code. Full access points shall be aligned on both sides of roadway with no offsets or with MoDOT approved distance from full access point.

2G - Construction of a multi-use trail from Little Blue Trace Trail to Little Blue Parkway built per Jackson County Little Blue Trace specifications. Trail crossing at Bly Road shall have flashing warnings with Type 2 crosswalk per AASHTO Guide for the Planning, Design, and Operation of Pedestrian Facilities.

3A - Per MoDOT approval, permanent full access intersection on M78 Hwy per MoDOT EPG Section 902 with right and left turn lanes per MoDOT EPG 940.9.9 and 940.9.6 respectively.

3B - Extension of a 12" water main from Little Blue River to M7 Hwy per City of Independence Water Department Standard Drawings.

BP2A - Widening of Truman Road to five (5) 12 ft lanes with curb and gutter and match the surrounding pedestrian facilities with a 10-foot multi-use trail on the north and 5-foot sidewalk on the south. Materials per City of Independence specifications, geometrics per MoDOT EPG 200 and AASHTO Geometric Design.

BP2B - Per MoDOT approval, permanent traffic signal installation per MoDOT EPG Section 902 at M78

EXHIBIT C

IMPROVEMENTS

Hwy and Truman Road. Materials per MoDOT EPG 1000, geometrics per MoDOT EPG 200 and AASHTO Geometric Design.

BP2C – Relocation of existing 20" water main from Little Blue Parkway to M78 Hwy. To be located along Truman Road. Per City of Independence Water Department Standard Drawings.

BP2D - Widening of Truman Road from Little Blue Parkway to Truman Road bridge to five (5) 12 ft lanes with curb and gutter and match the surrounding pedestrian facilities with a 10-foot multi-use trail on the north and 5-foot sidewalk on the south. Materials per City of Independence specifications, geometrics per MoDOT EPG 200 and AASHTO Geometric Design.

BP1A – Right turn lane added at Necessary Road and Little Blue Parkway intersection per MoDOT EPG 940.9.9 with materials per City of Independence specifications, geometrics per MoDOT EPG 200 and AASHTO Geometric Design.

BP1B – Right turn lane Per MoDOT EPG 940.9.9 with material per City of Independence specifications, geometrics per MoDOT EPG 200 and AASHTO Geometric Design.

BP1C – Necessary Road Overlay and stripping, materials per City of Independence specifications.

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

25-119 **2R** An ordinance declaring the vacant lot at 320 E. Elm St, as surplus property; and authorizing the disposition of said property in accordance with Chapter 20 of the City Code. **2R Item passes 7-0 Ord. No. 19766**

Recommendations:

Council approval is recommended.

Background:

Approval of this ordinance will declare the vacant lot at 320 E. Elm St. as surplus property and authorize the City Manager to direct staff to dispose of said property in accordance with City Code.

The minimum sale price is set at \$2,500.

Emergency Justification:**Fiscal Impact:**

The minimum fiscal impact to the City is \$2,500. Income from the sale of this property will be deposited into account number 002-3431.

Council Action:

Department / Contact	Municipal Services /
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REVIEWERS

Mike Jackson
Melissa Cabrera
Jeremy Cover
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. 320 E Elm St Surplus Ordinance LEK 10.14.25

2. 320 E Elm St
3. Ord. No. 19766

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE DECLARING THE VACANT LOT AT 320 E ELM ST, AS SURPLUS PROPERTY; AND AUTHORIZING THE DISPOSITION OF SAID PROPERTY IN ACCORDANCE WITH CHAPTER 20 OF THE CITY CODE

WHEREAS, Vortex Properties LLC deeded 320 E Elm Street to the City of Independence, Missouri via Quit Claim Deed, document #2021E0018789 filed with the Jackson County Recorder of Deeds on 2/22/21, hereinafter described; and,

WHEREAS, it has been determined by the City Council that this parcel is not needed for municipal purposes, nor does it appear to be needed within the foreseeable future for any municipal purpose; and,

WHEREAS, the City Council deems the proper disposition and sale of this surplus real estate to be in the best interest of the City;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

SECTION 1. That the following described tract is hereby declared to be surplus property of the City and are more fully described as follows:

320 E Elm St –Lot 17, Nichol Place, a Subdivision in Independence, Jackson County, Missouri,

SECTION 2. That the City Manager is hereby authorized and directed to dispose of said surplus property in accordance with Chapter 20 of the City Code. The minimum sale price is hereby established as Two Thousand Five Hundred Dollars (\$2,500.00).

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:

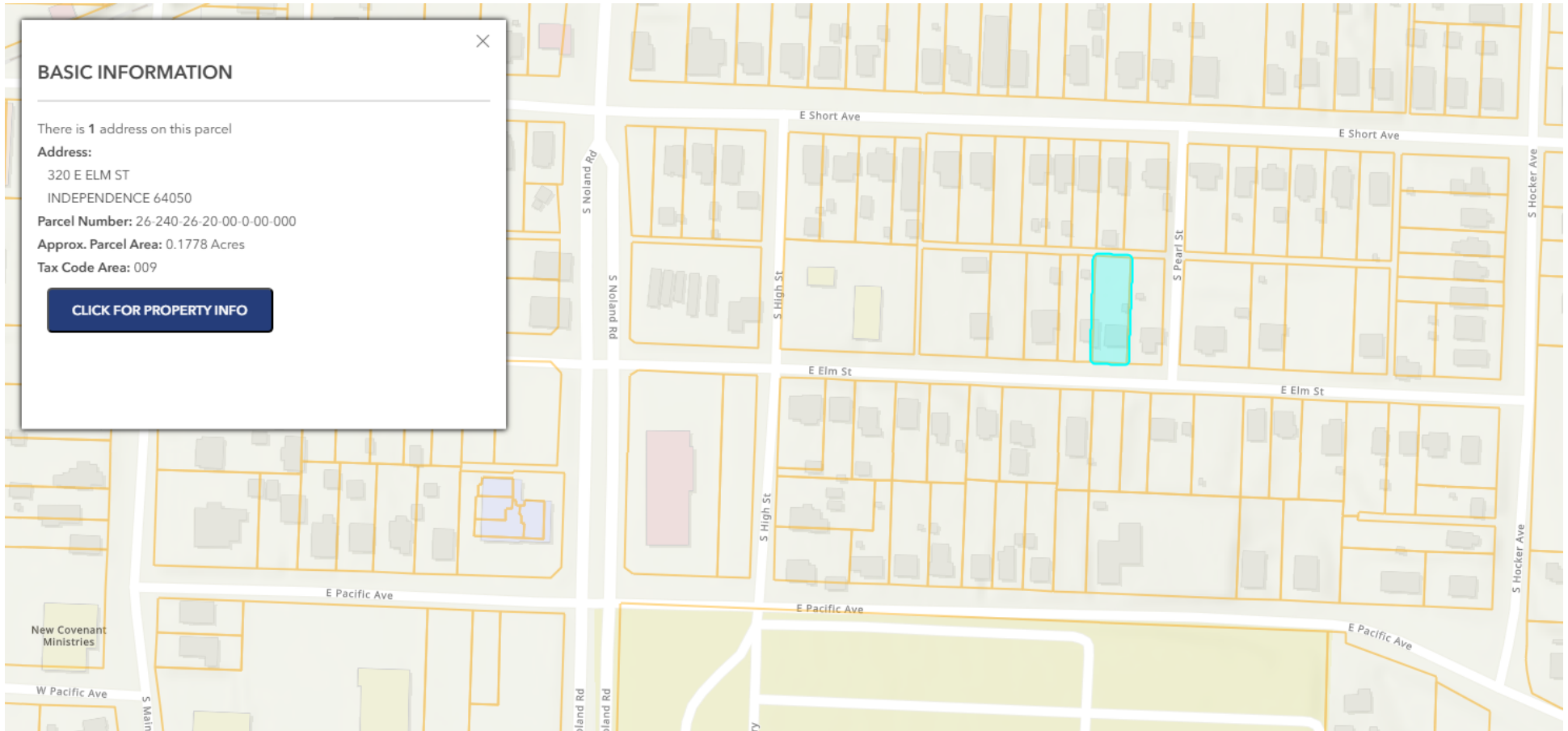
City Clerk

APPROVED - FORM AND LEGALITY:

REVIEWED BY:

City Counselor

City Manager



×

BASIC INFORMATION

There is **1** address on this parcel

Address:
320 E ELM ST
INDEPENDENCE 64050

Parcel Number: 26-240-26-20-00-0-00-000

Approx. Parcel Area: 0.1778 Acres

Tax Code Area: 009

CLICK FOR PROPERTY INFO

BILL NO. 25.119

ORDINANCE NO. 19766

AN ORDINANCE DECLARING THE VACANT LOT AT 320 E ELM ST, AS SURPLUS PROPERTY; AND AUTHORIZING THE DISPOSITION OF SAID PROPERTY IN ACCORDANCE WITH CHAPTER 20 OF THE CITY CODE

WHEREAS, Vortex Properties LLC deeded 320 E Elm Street to the City of Independence, Missouri via Quit Claim Deed, document #2021E0018789 filed with the Jackson County Recorder of Deeds on 2/22/21, hereinafter described; and,

WHEREAS, it has been determined by the City Council that this parcel is not needed for municipal purposes, nor does it appear to be needed within the foreseeable future for any municipal purpose; and,

WHEREAS, the City Council deems the proper disposition and sale of this surplus real estate to be in the best interest of the City;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

SECTION 1. That the following described tract is hereby declared to be surplus property of the City and are more fully described as follows:

320 E Elm St –Lot 17, Nichol Place, a Subdivision in Independence, Jackson County, Missouri,

SECTION 2. That the City Manager is hereby authorized and directed to dispose of said surplus property in accordance with Chapter 20 of the City Code. The minimum sale price is hereby established as Two Thousand Five Hundred Dollars (\$2,500.00).

PASSED THIS 15th DAY OF December, 2025, BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI.



ATTEST:

Joanne Henderson
City Clerk

APPROVED - FORM AND LEGALITY:

J. H. C.
City Counselor

A large, stylized blue ink signature of the Presiding Officer of the City Council.

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

REVIEWED BY:

C. Reynolds
City Manager

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

25-120 **2R** An ordinance adopting amendments to the Fiscal Year 2024-2025 Budget, which was approved by Ordinance No. 19561. **2R Item passes 7-0 Ord. No. 19767**

Recommendations:**Background:**

The Marijuana Sales Tax Fund received over \$21,000 in unbudgeted revenue due to the investment of available funds. The City utilizes PFM Asset Management to manage investments, including those from the Marijuana Sales Tax Fund. The supplemental appropriation is the proportionate allocation to the fund for investment advisor fees in the 2025 Fiscal Year. The amount is entirely offset by the increased revenues.

The initial budget for the Justice Center project allocated \$900,000 from the Marijuana Sales Tax and total expenditures in the fiscal year were \$975,562. The remaining amount was intended to be paid from the Police Use Tax Fund (018). During the course of the project, the City initially recorded certain capital-related expenditures directly in the operating budget. Midway through the project, we changed the accounting treatment so that these costs would instead be handled through a transfer from the operating fund to the capital projects fund, where all capital expenditures would be recorded. Because the original budget anticipated these costs differently, this change in classification affects the adopted budget. This budget amendment now transfers the dollars from the Police Use Tax Fund to the Police Improvements Fund. This amendment does not increase the total cost of the project, nor does it allow for additional expenditure.

Emergency Justification:**Fiscal Impact:**

A breakdown by budgetary impact by fund and department is listed below:

Department	Fund	Expense	Revenue	Net Budgetary Impact
Finance	065	\$140	\$140	-
Police	018	75,562	-	75,562
		\$75,702	\$140	\$75,562

Council Action:

Department / Contact	Finance /
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REVIEWERS

Melissa Cabrera
Melissa Cabrera
Jeremy Cover
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. Appropriations Ord. - December
2. Appropriations Background - December

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE ADOPTING AMENDMENTS TO THE FISCAL YEAR 2024-2025
BUDGET, WHICH WAS APPROVED BY ORDINANCE NO. 19561.

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 appropriations in the Marijuana Sales Tax Fund (065) in the amount of \$140 for investment advisor fees.

SECTION 2. Increased appropriations in the Police Use Tax Fund (018) in the amount of \$75,562 for transfers out to the Police Improvements Fund (052).

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:

Interim City Manager

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

Director of Finance
City of Independence, Missouri

City of Independence, Missouri
Supplemental Appropriation Ordinance
Fiscal Year 2024-25

Section 1:

Fund: Marijuana Sales Tax Fund

Department: Finance

Source: Increased Revenues

Description: Increased investment revenues in the amount of \$21,063.19 in the Marijuana Sales Tax Fund (065) are sufficient to cover the cost of investor advisement fees in the amount of \$140.
0654401-5240

Section 2:

Fund: Police Use Tax Fund

Department: Police

Source: Increased Revenues

Description: Increased Public Safety expenditures related to the Justice Center Project. \$900,000 was budgeted in the Marijuana Sales Tax Fund for design-related costs, with the remainder to be paid from the Police Use Tax Fund. This appropriation does not increase the budget for the project, only allows for the transfer out for the amount over \$900,000 in the fiscal year to the Police Improvement Fund.

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

25-126 **2R** An ordinance approving the Wally's Tax Increment Financing Plan, establishing a redevelopment area, designating the redevelopment as a blighted area, making other required findings for the redevelopment plan, designating a developer, approving a redevelopment agreement with that developer, and directing staff to implement the redevelopment plan. **2R Item passes 7-0 Ord. No. 19768**

Recommendations:

Staff recommends approval.

Background:

The Wally's Tax Increment Financing Plan (the "Redevelopment Plan") was submitted for consideration by Wally's Independence MO Owner LLC (the "Developer"). A public hearing was opened before the TIF Commission on November 12, 2025, and continued on November 24, 2025, after which the TIF Commission voted to recommend approval of the Redevelopment Plan, the designation of the proposed redevelopment area (the "Redevelopment Area"), and the adoption of the redevelopment project described in the Redevelopment Plan (the "Redevelopment Project").

The proposed Redevelopment Area, which contains approximately 20.9 acres, is generally bounded by E. 39th Street and E. 39th Terrace to the north, S. Dodgion Avenue and S. Hocker Avenue to the east, Interstate Highway 70 to the south, and S. Noland Road to the west.

The Redevelopment Plan calls for one Redevelopment Project which seeks to remove blighted buildings and redevelop the Redevelopment Area into an approximately 54,000 square foot travel center, including fuel pumps, landscaping, parking and other amenities and public and private infrastructure. Under the Redevelopment Plan, tax increment financing revenues (including incremental property and sales taxes) will be collected to fund reimbursable project costs associated with certain of the improvements.

The Redevelopment Plan requires a 50% surplus of payments in lieu of taxes for distribution to the taxing districts in each year.

The total development costs are estimated at approximately \$52,950,000 and the portion requested to be reimbursable from TIF revenues is \$8,605,401 plus financing and administration expenses, although approximately \$1,258,702 of such amount is anticipated to be reimbursed from non-captured revenues of a transportation development district to be formed that will impose a 1.0% sales tax on the Redevelopment Area.

Emergency Justification:

Fiscal Impact:

Council Action:

Department / Contact	Community Development /
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REVIEWERS

Tom Scannell
Melissa Cabrera
Jeremy Cover
Charlie Dissell
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. 1. TIF Ordinance - Plan, Area and Developer Approval
2. TIF Support Documents - City Council Public Hearing Exhibits (12-8-25)
3. TIF Support Documents - Revised TIF Plan
4. TIF Support Documents - Redevelopment Agreement
5. Ord. No. 19768

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE APPROVING THE WALLY'S TAX INCREMENT FINANCING PLAN, ESTABLISHING A REDEVELOPMENT AREA, DESIGNATING THE REDEVELOPMENT AREA AS A BLIGHTED AREA, MAKING OTHER REQUIRED FINDINGS FOR THE REDEVELOPMENT PLAN, DESIGNATING A DEVELOPER, APPROVING A REDEVELOPMENT AGREEMENT WITH THE DEVELOPER AND DIRECTING STAFF TO IMPLEMENT THE REDEVELOPMENT PLAN.

WHEREAS, City staff has worked with Wally's Independence MO Owner LLC, the proposed developer ("Developer") to prepare the Wally's Tax Increment Financing Plan (as attached hereto, the "TIF Plan") pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri (the "TIF Act"), for the redevelopment of a 20.9-acre area located in Independence, Missouri, and generally bounded by E. 39th Street and E. 39th Terrace to the north, S. Dodgion Avenue and S. Hocker Avenue to the east, Interstate Highway 70 to the south, and S. Noland Road to the west (the "Redevelopment Area") that is proposed to be developed in a single redevelopment project described under the TIF Plan (the "Redevelopment Project"); and

WHEREAS, pursuant to the provisions of the Act, the Tax Increment Financing Commission of Independence, Missouri (the "TIF Commission") was composed of representatives from the City and from the affected taxing jurisdictions for the purpose of conducting a public hearing and making recommendations with respect to the TIF Plan, the Redevelopment Area and the Redevelopment Project to the City Council of the City of Independence, Missouri ("City Council"); and

WHEREAS, in accordance with the written procedures relating to bids and proposals for implementation of redevelopment projects as adopted by the City, the City published in *The Examiner* on October 25, 2025, a notice of request for proposals for the implementation of redevelopment projects for the TIF Plan, which provided reasonable opportunity for any person to submit proposals for redevelopment projects in compliance with Section 99.820.1(3) of the Revised Statutes of Missouri; and

WHEREAS, the City received no additional proposals in response to the published request for proposals; and

WHEREAS, on November 12, 2025, after due notice in accordance with the Act, the TIF Commission opened a public hearing, at which all interested persons and taxing districts affected by the TIF Plan were afforded an opportunity to make comments, file written objections, protests, and be heard orally regarding adoption of the TIF Plan; and

WHEREAS, the public hearing was continued on motion of a commissioner to November 24, 2025 in order to allow for certain changes to be made to the TIF Plan (further references to the TIF Plan shall mean the TIF Plan, as so amended); and

WHEREAS, on November 24, 2025, the TIF Commission having heard and considered the objections, protests, comments, and other evidence adduced at the public hearing, voted to approve Resolution No. 2025-01 which recommended that the City Council make certain required findings and approve the TIF Plan, the Redevelopment Area and the Redevelopment Project; and

WHEREAS, on December 8, 2025, at a special meeting, the City Council considered the TIF Plan, the recommendations of the TIF Commission, the recommendations of City staff, and provided parties in interest and citizens an opportunity to be heard regarding the TIF Plan, the Redevelopment Area and the Redevelopment Project; and

WHEREAS, having heard and considered the objections, protests, comments, and other evidence adduced at the meetings, the evidence and testimony submitted at the TIF Commission public hearing, the recommendations of the TIF Commission, the recommendations of City staff, and the input of interested persons and citizens, the City Council desires to approve the TIF Plan, designate the Redevelopment Area, declare the Redevelopment Area as a blighted area, designate the Developer as the developer of record for the TIF Plan, and approve a redevelopment agreement with the Developer (the “Redevelopment Agreement”) and;

WHEREAS, the City Council desires to enter into the Redevelopment Agreement with the Developer to establish the rights, duties and obligations of the City and the Developer, to implement the TIF Plan and establish certain related matters.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, AS FOLLOWS:

SECTION 1. The City Council hereby makes the following findings for approval of the TIF Plan:

A. The TIF Plan sets forth in writing a general description of the program to be undertaken to accomplish its objectives, including the estimated redevelopment project costs, the anticipated sources of funds to pay the costs, evidence of the commitments to finance the project costs, the anticipated type and term of the sources of funds to pay costs, the anticipated type and terms of the obligations to be issued, the most recent equalized assessed valuation of the property within the Redevelopment Area which is to be subjected to payments in lieu of taxes and economic activity taxes pursuant to Section 99.845, RSMo, an estimate as to the equalized assessed valuation after redevelopment, and the general land uses to apply in the Redevelopment Area.

B. The Redevelopment Area on the whole is a blighted area, as such term is defined in Section 99.805(1), RSMo, due to the presence of blighting factors as set forth in Exhibit 6 to the TIF Plan performed by a licensed attorney, which is incorporated herein by reference, including that the Redevelopment Area is characterized by insanitary and unsafe conditions, deterioration of site improvements, and conditions which endanger life and property, and that the area is an economic and social liability for the City in its present condition and use. The TIF Plan is also accompanied by an affidavit, signed by the Developer and set forth in Exhibit 11 to the TIF Plan, attesting to the blighting conditions of the Redevelopment Area.

C. The proposed redevelopment satisfies the “but for” test set forth in Section 99.810, RSMo, in that the Redevelopment Area has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of tax increment financing. The TIF Plan is accompanied by an affidavit, signed by the Developer and set forth in Exhibit 11, attesting to this finding.

D. The TIF Plan is in conformance with the Comprehensive Plan for the development of the City as a whole.

E. The TIF Plan contains estimated dates of completion of the Redevelopment Project and estimated dates for the retirement of obligations incurred to finance redevelopment project costs, and said dates are not more than twenty-three (23) years from the adoption of an ordinance approving a Redevelopment Project within the Redevelopment Area.

F. A Relocation Plan has been developed for relocation assistance for businesses and residences, and the relocation of any business or residents in the Redevelopment Area, if necessary, will take place in accordance with the Relocation Plan attached to the TIF Plan as Exhibit 9.

G. The TIF Plan is accompanied by a Cost-Benefit Analysis showing the economic impact of the TIF Plan on each taxing district and political subdivision within the Redevelopment Area if the proposed Redevelopment Project is built pursuant to the TIF Plan or is not built, and the Commission received evidence that the proposed Redevelopment Project is financially feasible to undertake with TIF assistance in the form of the Developer's return on investment calculations included in Exhibit 11 to the TIF Plan.

H. The Plan does not include the initial development or redevelopment of any gambling establishment.

I. The area selected for the Redevelopment Project includes only those parcels of real property and improvements thereon which will be directly and substantially benefited by the Redevelopment Project improvements.

SECTION 2. The TIF Plan, with attached Cost-Benefit Analysis, which is attached to this ordinance as Exhibit A and incorporated herein by reference is hereby approved.

SECTION 3. Wally's Independence MO Owner LLC is hereby designated as the developer of record for the TIF Plan and the Redevelopment Project.

SECTION 4. The land legally described in Exhibit 1 of the TIF Plan is hereby designated as the Redevelopment Area for the TIF Plan.

SECTION 5. There is hereby created and ordered to be established within the treasury of the City a separate fund to be known as the "*Wally's Special Allocation Fund*" which shall contain separate segregated accounts into which payments in lieu of taxes, economic activity taxes and other revenues shall be deposited, as collected by the City pursuant to the TIF Plan.

SECTION 6. The Redevelopment Agreement, in substantially the form attached hereto as Exhibit B (the "Agreement"), is hereby approved and the Mayor, City Clerk, and/or (Interim) City Manager are authorized to execute and deliver the Agreement with such changes therein as shall be approved by the officials of the City executing the Agreement, such officials' signatures thereon being conclusive evidence of their approval thereof.

SECTION 7. The Mayor, City Clerk, (Interim) City Manager, City staff, the City's special legal counsel, and other appropriate City officials are hereby authorized to take any and all actions as may be deemed necessary or convenient to carry out and comply with the intent of this Ordinance, to create those funds and accounts required by the Act to implement the TIF Plan, and to execute and deliver for and on

behalf of the City all certificates, instruments, and agreements or other documents as may be necessary, desirable, convenient, or proper to perform all matters authorized herein.

SECTION 8. It is hereby declared to be the intention of the City Council that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the City Council intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

SECTION 9. This ordinance shall take effect and be in full force as set forth in the City Charter.

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PASSED ON 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:

Interim City Manager

EXHIBIT A

WALLY'S TAX INCREMENT FINANCING PLAN

EXHIBIT B

REDEVELOPMENT AGREEMENT

EXHIBIT LIST

**WALLY’S TAX INCREMENT FINANCING PLAN
TIF Commission Hearing opened on November 12, 2025
TIF Commission Hearing closed on November 24, 2025
City Council Hearing opened on December 8, 2025**

1. Amended Wally’s Tax Increment Financing Plan with Cost-Benefit Analysis
2. Roster of the Tax Increment Financing Commission for the Wally’s Tax Increment Financing Plan
3. Notice of TIF Commission public hearing sent to Taxing Districts on September 26, 2025, and return receipts
4. Affidavit of Publication of First Published Notice of Public Hearing relating to the Wally’s Tax Increment Financing Plan and Notice of Request for Redevelopment Project Proposals, published in *The Examiner* on October 25, 2025
5. Notice of TIF Commission public hearing sent to property owners and taxpayers on October 28, 2025, and return receipts
6. Affidavit of Publication for Second Published Notice of Public Hearing relating to the Wally’s Tax Increment Financing Plan, published in *The Examiner* on November 5, 2025
7. Sunshine Law Notice of First TIF Commission Meeting (November 12, 2025) posted on November 3, 2025
8. Notice of Changes to TIF Plan delivered to Taxing Districts on November 14, 2025, with proof of delivery
9. Sunshine Law Notice of Second TIF Commission Meeting (November 24, 2025) posted on November 14, 2025
10. Resolution of TIF Commission

**WALLY'S
TAX INCREMENT FINANCING PLAN
INDEPENDENCE, MISSOURI**

PREPARED BY:

Polsinelli PC
900 West 48th Place, Suite 900
Kansas City, Missouri 64112

ON BEHALF OF PLAN PROPONENT:

WALLY'S INDEPENDENCE MO OWNER LLC,
a Missouri limited liability company

1400 S Highway Drive, Suite 403
Fenton, Missouri 63026

SUBMITTED SEPTEMBER 25, 2025.

AMENDED NOVEMBER 13, 2025.

RECIEVED ON
NOV. 13, 2025
J. Holland

TABLE OF CONTENTS

I.	<u>INTRODUCTION</u>	1
II.	<u>DEFINITIONS</u>	3
III.	<u>TAX INCREMENT FINANCING</u>	9
IV.	<u>EXISTING CONDITIONS IN THE REDEVELOPMENT PROJECT AREA & "BUT FOR" TEST ANALYSIS</u>	9
V.	<u>REDEVELOPMENT PLAN OBJECTIVES</u>	10
VI.	<u>DEVELOPER</u>	11
VII.	<u>PLAN IMPLEMENTATION</u>	11
VIII.	<u>FINANCING PLAN</u>	13
IX.	<u>DISBURSEMENTS FROM SPECIAL ALLOCATION FUND</u>	16
X.	<u>COST-BENEFIT ANALYSIS</u>	16
XI.	<u>PROVISIONS FOR AMENDING THE TAX INCREMENT PLAN</u>	16
XII.	<u>TERMINATION OF TAX INCREMENT FINANCING</u>	16
XIII.	<u>REQUIRED STATUTORY FINDINGS</u>	16
XIV.	<u>REPORTING ECONOMIC ACTIVITY TAXES</u>	18

EXHIBITS

EXHIBIT 1	Legal Description of Redevelopment Area and Redevelopment Project Area
EXHIBIT 2	Depiction of Redevelopment Area and Redevelopment Project Areas
EXHIBIT 3	 Preliminary Site Plan
<u>AMENDED</u> EXHIBIT 4	 Estimated Amounts of Redevelopment and Reimbursable Project Costs
<u>AMENDED</u> EXHIBIT 5	Projected TIF, CID , & TDD Revenue
EXHIBIT 6	 Blight Study
<u>AMENDED</u> EXHIBIT 7	Debt Service Schedules
EXHIBIT 8	Evidence of Commitments to Finance
EXHIBIT 9	Relocation Plan
<u>AMENDED</u> EXHIBIT 10	Cost Benefit Analysis
<u>AMENDED</u> EXHIBIT 11	Developer Affidavit

I. INTRODUCTION

This Plan provides for the redevelopment of the Redevelopment Area, which consists of blighted land generally located in the northeast quadrant of the intersection of Interstate 70 and S Noland Road in the City of Independence, Missouri. The Redevelopment Area contains approximately 20.96 acres. The Redevelopment Area is legally described on Exhibit 1.

The Redevelopment Area is a blighted area and, as evidenced by the Blight Study attached as Exhibit 6, the Redevelopment Area is not developed to its highest and best use. Moreover, the redevelopment of the Redevelopment Area will positively impact the City's economy. However, the Redevelopment Area cannot be reasonably anticipated to be developed without the assistance of tax increment financing ("TIF") to help defray, among other things, the costs of ameliorating the blighted conditions.

The Redevelopment Area is anticipated to be redeveloped through one (1) Redevelopment Project. The Redevelopment Project will consist of land acquisition, engineering, site preparation, and the marketing, design and construction of an approximately 54,000 square foot travel center, including fuel pumps, landscaping, parking and other amenities and public and private infrastructure. The legal description of the Redevelopment Project Area is the same as the legal description of the Redevelopment Area, which is set forth on Exhibit 1. A Preliminary Site Plan for the Redevelopment Area is attached as Exhibit 3.

Upon completion of the Redevelopment Project, it is estimated that approximately 200 permanent workers will be employed in the Redevelopment Area. Moreover, it is also anticipated that the construction of the Redevelopment Project will create approximately 163 one-year employment equivalent construction related jobs during the construction of the Redevelopment Project. The combined annual salaries of the construction and permanent employees are estimated to exceed \$5,000,000 annually.

The aggregate Redevelopment Costs for the Redevelopment Project are estimated to be approximately \$52,950,000, including pre-development professional service costs anticipated to be incurred by the Developer as initial expenses for the Redevelopment Project and \$1,000,000 to be directed by the City to the Noland Road Corridor Project (as defined herein). This Plan will make Payments in Lieu of Taxes and Economic Activity Taxes, together with ~~CID Revenues and~~ TDD Revenues, available to reimburse the portion of those Redevelopment Project Costs that constitute Reimbursable Project Costs under this Plan.

The most recent equalized assessed valuation of the real estate within the Redevelopment Area was \$1,708,045. It is estimated that the total assessed value of real estate within the Redevelopment Area will be approximately \$9,324,000 when the Redevelopment Project is completed.

The total amount of Payments in Lieu of Taxes anticipated to be generated by the Redevelopment Project is shown on Exhibit 5 and is estimated to be approximately \$6,560,197.

The total Economic Activity Taxes (exclusive of those attributable to utility taxes, if any) anticipated to be generated by the Redevelopment Project is shown on Exhibit 5 and is estimated to be approximately \$12,273,695, which does not include the captured portions of the TDD Sales Tax. ~~No portion of the CID Sales Tax will be captured as Economic Activity Taxes.~~

~~It is anticipated that a Community Improvement District encompassing the Redevelopment Project Area will be formed pursuant to the CID Act (defined herein) when the Redevelopment Plan is adopted by the City for the purpose of providing additional revenue to finance Reimbursable Project Costs through the imposition of a sales tax ("CID Sales Tax"). No portion of such CID Sales Tax will be captured as Economic Activity Taxes, and one hundred percent (100%) of such CID Sales Tax ("CID Revenues") is anticipated to be made available by the CID pursuant to an intergovernmental cooperation agreement with the City, for the purposes of repaying Reimbursable Project Costs. The estimated amount of CID Revenues is shown on Exhibit 5.~~

It is anticipated that a Transportation Development District encompassing the Redevelopment Project Area will be formed pursuant to the TDD Act (defined herein) when the Redevelopment Plan is adopted by the City for the purpose of providing additional revenue to finance Reimbursable Project Costs through the imposition of a sales tax (the "TDD Sales Tax"). One half (½) of such TDD Sales Tax will be captured as Economic Activity Taxes. One half (½) of such TDD Sales Tax (the "TDD Revenues") is anticipated to be made available by the TDD pursuant to an intergovernmental cooperation agreement with the City, for the purposes of repaying Reimbursable Project Costs. The estimated amount of TDD Revenues is shown on Exhibit 5.

Payments in Lieu of Taxes and Economic Activity Taxes generated by the Redevelopment Project Area will be made available to pay Reimbursable Project Costs, subject to any contractual agreements with regard to relative priority of pledges as collateral for Obligations, Private Loans or Developer Advances. It is projected that the Reimbursable Project Costs will be fully reimbursed in the 14th year after approval of the Redevelopment Project. After all Reimbursable Project Costs, Reimbursable Interest (defined herein), Financing Costs (defined herein) and Debt Service (defined

herein) for the Redevelopment Project are repaid, TIF for the Redevelopment Area will be terminated and the Taxing Districts will receive all tax revenues generated by the Redevelopment Project.

II. DEFINITIONS

As used in this Plan, the following terms shall mean:

- A. Approved Site Plan: The actual site plan as approved by the City for the Redevelopment Project Area.
- B. Blighted Area: An area which, by reason of the predominance of insanitary or unsafe conditions, deterioration of site improvements, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, or welfare in its present condition and use.
- C. ~~CID: The Community Improvement District anticipated to be formed for the purpose of providing revenue to finance Redevelopment Project Costs for the Redevelopment Project.~~
- D. ~~CID Act: The Community Improvement District Act, Sections 67.1401, et seq., Revised Statutes of Missouri, as amended.~~
- E. ~~CID Revenues: One hundred percent (100%) of the revenue derived from CID Sales Tax.~~
- F. ~~CID Revenues Fund: The separate segregated account established by or on behalf of the CID into which CID Revenues are to be deposited.~~
- G. ~~CID Sales Tax: A sales and use tax of 1.0% anticipated to be imposed by the CID on taxable retail sales within the Redevelopment Project Area.~~
- H. City: City of Independence, Missouri.
- I. City Council: The governing body of the City of Independence, Missouri.
- J. City Director of Finance: The Director of Finance or other chief financial officer of the City of Independence, Missouri.

- K. County: Jackson County, Missouri.
- L. County Assessor: The Assessor of Jackson County, Missouri.
- M. County Collector: The Collector of Jackson County, Missouri.
- N. Debt Service: The amount required for the payment of interest and principal on Obligations as they come due, for the payment of mandatory or optional redemption payments, and for payments to reserve funds required by the terms of Obligations.
- O. Developer: The business organization or other entity selected by the City to implement the Plan or Redevelopment Project.
- P. Developer Advance: Funds, other than TIF Revenue, ~~CID Revenue~~, TDD Revenue, the proceeds of Obligations, or the proceeds of Private Loans, used by the Developer or an affiliate of the Developer to pay Reimbursable Project Costs or to obtain or repay, wholly or partially, Private Loans that financed or refinanced Reimbursable Project Costs.
- Q. Development Agreement: An agreement to be executed by the City and the Developer relating to the Redevelopment Project and the reimbursement of Reimbursable Project Costs, which may include, at the discretion of the City, the ~~CID and/or~~ TDD as ~~parties~~ a party.
- R. Distribution Date: March 1, June 1, September 1 and December 1 of each calendar year while this Plan remains in effect.
- S. Economic Activity Account: The separate segregated account within the Special Allocation Fund into which Economic Activity Taxes are to be deposited.
- T. Economic Activity Taxes: Fifty percent (50%) of the total additional revenue from taxes, penalties and interest which are imposed by the City or other Taxing Districts, and which are generated by economic activities within the Redevelopment Project Area, over the amount of such taxes generated by economic activities within the Redevelopment Project Area in the calendar year prior to the adoption of the Redevelopment Project for the Redevelopment Project Area by Ordinance, while TIF remains in effect, but excluding personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500, RSMo,

taxes levied for the purpose of public transportation pursuant to Section 94.660, RSMo, licenses, fees or special assessments other than Payments In Lieu of Taxes and penalties and interest thereon, and any other taxes excluded from tax increment financing by Missouri law at the time of approval of this Plan. If a retail establishment relocates within one (1) year from one facility to another facility within the County and the City Council finds that the relocation is a direct beneficiary of tax increment financing, then for purposes of this definition the Economic Activity Taxes generated by the retail establishment shall equal the total additional revenues from Economic Activity Taxes which are imposed by the City, County or other Taxing Districts over the amount of Economic Activity Taxes generated by the retail establishment in the calendar year prior to its relocation to the Redevelopment Area.

- U. Financing Costs: Those costs incurred by the TIF Commission or the City as a result of issuing or obtaining one or more series of Obligations to finance all or any portion of Reimbursable Project Costs incurred or estimated to be incurred, including but not limited to interest, loan fees, capitalized interest, financial advisor fees, legal fees, broker fees or discounts, original purchaser's discount, printing and other costs related to such financing.
- V. Obligations: Bonds, loans, debentures, notes, special certificates, or other evidences of indebtedness issued by the Independence Industrial Development Authority, Missouri Development Finance Board, or similar issuer, to pay or reimburse all or any portion of Reimbursable Project Costs incurred or estimated to be incurred, to finance the cost of issuing such Obligations, to establish reserves to refund or secure such Obligations, to finance the interest costs associated with such Obligations or to refund, redeem or defease outstanding Obligations.
- W. Ordinance: An ordinance enacted by the City Council.
- X. Payments in Lieu of Taxes: Revenues from real property taxes in the Redevelopment Project Area selected for the Redevelopment Project which are to be used to reimburse the Reimbursable Project Costs, which Taxing Districts would have received had the City not adopted tax increment allocation financing, and which result from levies made after the time of the adoption of tax increment allocation financing within the Redevelopment Project Area, and during the time the current equalized value of real property in the

Redevelopment Project Area exceeds the Total Initial Equalized Assessed Value of real property in the Redevelopment Project Area, until the designation is terminated pursuant to this Plan which shall not be later than twenty-three (23) years after the Redevelopment Project is approved, excluding, however, the blind pension fund tax levied under the authority of Article III, Section 38(b) of the Missouri Constitution, the merchant's and manufacturer's inventory replacement tax levied under the authority of Article X, Section 6(2) of the Missouri Constitution, taxes levied under Section 205.971, RSMo, for the purpose of establishing and maintaining a county sheltered workshop, residence, facility and/or related services, and any other taxes excluded from tax increment financing by Missouri law at the time of approval of this Plan.

- Y. PILOT Account: The separate segregated account within the Special Allocation Fund into which Payments in Lieu of Taxes are to be deposited.
- Z. Plan: This Tax Increment Financing Plan.
- AA. Preliminary Site Plan: The preliminary site plan for the Redevelopment Project Area, attached as Exhibit 3.
- BB. Private Loans: Loans made to or for the benefit of the Developer or an affiliate of the Developer by a third party not affiliated with the Developer, the proceeds of which are used to finance or refinance Reimbursable Project Costs.
- CC. Redevelopment Area: The real property legally described in Exhibit 1 and outlined in Exhibit 2.
- DD. Redevelopment Project: The approximately 54,000 square foot travel center, including fuel pumps, landscaping, parking and other amenities and public and private infrastructure to be constructed in the Redevelopment Project Area in accordance with this Plan and the Approved Site Plan, as further described in Exhibit 4 hereto, and/or any other redevelopment project described and designated as such under any amendment to this Plan.
- EE. Redevelopment Project Area: The area selected for the Redevelopment Project, which is legally described on Exhibit 1 and outlined on Exhibit 2, and/or any other redevelopment project area described and designated as such under any amendment to this Plan.

FF. Redevelopment Project Costs: The sum of all reasonable or necessary costs incurred, or estimated to be incurred, and any such costs incidental to this Plan or the Redevelopment Project, as applicable. Such costs include, but are not limited to, the following:

1. Costs of studies, surveys, plans and specifications;
2. Professional service costs, including, but not limited to, architectural, engineering, legal, marketing, financial, planning or special services (except for reasonable administrative costs of the Commission, such costs shall be allowed only as an initial expense, and are included in the costs set forth in this Plan for the Redevelopment Project);
3. Costs of preparing land for construction of buildings, including but not limited to, cost of clearing, grading, filling land, constructing adequate stormwater facilities, mitigating environmental impacts, and the costs of design, engineering and construction of such buildings;
4. Costs of landscaping, parking lot and access drive construction;
5. Costs of utility relocation and service provision;
6. Costs of construction of public works or improvements;
7. Financing Costs, including, but not limited to, all necessary and incidental expenses related to the issuance of Obligations, and which may include payment of interest on any Obligations issued hereunder accruing during the estimated period of construction of the Redevelopment Project for which such Obligations are issued and for not more than eighteen months thereafter, and including reasonable reserves related thereto;
8. All or a portion of a Taxing District's capital costs resulting from the Redevelopment Project necessarily incurred or to be incurred in furtherance of the objectives of this Plan and such Redevelopment Project, to the extent the City by written agreement accepts and approves such costs;
9. Relocation costs to the extent that the City determines that relocation costs shall be paid or are required to be paid by federal or state law; and
10. Payments in lieu of taxes.

GG. Reimbursable Interest: Interest payable to the Developer or an affiliate of the Developer, at the rate set forth in the Development Agreement on any Reimbursable Project Cost paid by the Developer from a Developer Advance or Private Loan.

HH. Reimbursable Project Costs: The sum of all reasonable or necessary costs incurred or estimated to be incurred in the design and construction of the Redevelopment Project, as shown on Exhibit 4. The amounts shown on Exhibit 4 are estimates only, and the reimbursable amount shown on Exhibit 4 with respect to any category are not maximum reimbursable amounts for such category. All costs shown under the "Total

Reimbursement” column on Exhibit 4 are reimbursable from TIF Revenues even if anticipated to be reimbursed from other sources shown on Exhibit 4.

- II. Special Allocation Fund: The fund maintained by the City into which, as required by the TIF Act, all Payments in Lieu of Taxes and Economic Activity Taxes are to be deposited.
- JJ. Taxing District: Any political subdivision of the State of Missouri located wholly or partially within the Redevelopment Area having the power to levy taxes.
- KK. TDD: The Transportation Development District anticipated to be formed for the purpose of providing revenue to finance Redevelopment Project Costs for the Redevelopment Project.
- LL. TDD Act: The Transportation Development District Act, Section 238.236, et. seq., Revised Statutes of Missouri, as amended.
- MM. TDD Revenues: That portion of the revenue derived from TDD Sales Tax that does not constitute an Economic Activity Tax.
- NN. TDD Revenues Fund: The separate, segregated account established by or on behalf of the TDD into which TDD Revenues are to be deposited.
- OO. TDD Sales Tax: A sales and use tax of 1.0% to be imposed by the TDD on taxable retail sales within the Redevelopment Project Area.
- PP. TIF Act: The Real Property Tax Increment Allocation Redevelopment Act, Section 99.800, et seq., Revised Statutes of Missouri, as amended.
- QQ. TIF Commission: The Tax Increment Financing Commission of Independence, Missouri.
- RR. TIF Revenues: Payments in Lieu of Taxes and Economic Activity Taxes.
- SS. Total Initial Equalized Assessed Value: That amount certified by the County Assessor which equals the most recently ascertained equalized assessed value of each taxable lot, block, tract, or parcel of real property within the Redevelopment Project Area immediately after tax increment financing for the Redevelopment Project Area has been approved by the City Council by an Ordinance.

III. TAX INCREMENT FINANCING

This Plan is adopted pursuant to the TIF Act. The TIF Act enables municipalities to finance Redevelopment Project Costs with the revenue generated from Payments in Lieu of Taxes resulting from increased assessed valuation on real property and, subject to annual appropriations, from Economic Activity Taxes resulting from increased economic activities in the Redevelopment Area. Under the TIF Act, the TIF Commission or the City may issue Obligations to finance Redevelopment Project Costs.

Immediately after the City Council approves a Redevelopment Project and adopts tax increment financing for the respective Redevelopment Project Area, the County Assessor shall certify the Total Initial Equalized Assessed Value of the Redevelopment Project Area. Real estate taxes (including penalties and interest thereon) resulting from: (1) all taxes levied on the Total Initial Equalized Assessed Value for the Redevelopment Project Area; and (2) all taxes excluded from Payment in Lieu of Taxes as set out in the definition thereof in this Plan, will be payable to Taxing Districts as if tax increment financing were not adopted. Payments in Lieu of Taxes (including applicable penalties and interest) collected from owners of property within the Redevelopment Project Area will be paid by the County Collector to the City Treasurer and deposited in the PILOT Account within the Special Allocation Fund. In addition, the Economic Activity Taxes generated within the Redevelopment Project Area shall be paid by the collecting Taxing Districts to the City Treasurer who shall deposit such funds in the Economic Activity Account within the Special Allocation Fund, subject to annual appropriation by the City.

IV. EXISTING CONDITIONS IN THE REDEVELOPMENT PROJECT AREA – “BUT FOR” TEST ANALYSIS

The Redevelopment Area is a “blighted area” within the meaning the TIF Act. The blight study attached as Exhibit 6 details the condition of the Redevelopment Area.

Without tax increment financing, revitalization of the Redevelopment Area will not occur due to its blighted condition and other challenges to redevelopment. The aggregate redevelopment costs for the Redevelopment Project are estimated to be approximately \$52,950,000, including \$1,000,000 to be directed by the City to the Noland Road Corridor Project (as defined herein) and pre-development professional service costs anticipated to be incurred by the Developer as initial expenses for the Redevelopment Project and exclusive of permanent financing costs. The Developer will require reimbursement of Reimbursable Project Costs in the amount of ~~\$10,795,652~~ **\$8,605,401** (plus Reimbursable Interest) via reimbursement on a pay-as-you-go basis, from proceeds of the issuance of Obligations, or a combination of both, to bridge the gap between the amount the Developer is willing to

invest in private funds and the total dollars necessary to complete the Redevelopment Project. \$1,000,000 of such amount will be directed to the Noland Road Corridor Project (as defined herein). Reimbursement of Developer in the amount stated above is estimated to provide the Developer with a ~~+12.87%~~ **11.52%** internal rate of return. By contrast, absent any reimbursement of Developer's Reimbursable Project Costs, Developer's internal rate of return would be *negative* 5.35%, demonstrating that, without TIF, the Redevelopment Project is not financially feasible.

When the blight study is read in conjunction with the Preliminary Site Plan and the categories and estimates of Reimbursable Project Costs, it's clear that the TIF Revenues, or proceeds from the Obligations, are critical to the elimination of blight in, and the redevelopment of, the Redevelopment Project Area.

Given the risks involved in making the substantial investment necessary to remove the Redevelopment Project Area's blight and to develop and deliver a high-quality development project to the City, the Developer would not pursue the Redevelopment Project but for the availability of funds from TIF. Moreover, the same factors suggest that no other developer would bring a project of similar quality to the site without substantial public incentives. Thus, without reimbursement of the Reimbursable Project Costs in the amount of ~~\$10,795,652~~ **\$8,605,401** (plus Reimbursable Interest) with TIF Revenues, ~~CID Revenues~~, and TDD Revenues, the Redevelopment Project is not economically viable.

V. REDEVELOPMENT PLAN OBJECTIVES

The Redevelopment Project will be implemented by a Developer, who shall be responsible for the design and construction of the Redevelopment Project with respect to which such party has been selected as Developer. The objectives of this Plan are outlined below.

A. General Plan Objectives. The general objectives of this Plan are:

1. To eliminate the blighted condition of the Redevelopment Area.
2. To enhance the tax base of the City and other Taxing Districts by development of the Redevelopment Area to its highest and best use and encouraging private investment in the Redevelopment Area and surrounding areas.
3. To encourage commerce and industry to locate in the City.
4. To encourage retention and expansion of retail sales in the City.
5. To increase employment in the City.

6. To provide for improved public infrastructure in and around the Redevelopment Area.
7. To enhance the aesthetics of the Redevelopment Area.

B. Specific Plan Objectives. Specific objectives of this Plan are:

1. To cause the Redevelopment Area to be redeveloped through the design, engineering and construction of an approximately 54,000 square foot travel center in the Redevelopment Project Area, together with fuel pumps, landscaping, parking and other amenities and public and private infrastructure.
2. To construct public infrastructure to serve the Redevelopment Area.
3. To expand the tax base of the City by encouraging private investment in the Redevelopment Area and retaining retail sales dollars of residents and visitors.
4. To increase the employment opportunities for the City's residents.
5. To increase the quality, convenience and variety of retail offerings in the City.

VI. DEVELOPER

A. Developer Selection. The City has issued a request for proposals from prospective developers for the Redevelopment Project and will designate the Developer by ordinance at the time of approval of this Plan.

VII. PLAN IMPLEMENTATION

A. Site Acquisition. The proposed Developer is the owner of the Redevelopment Project Area.

B. General Land Use. The general land uses to apply in the Redevelopment Area are commercial and/or retail, which is in conformity with the City's Comprehensive Plan. The Redevelopment Area is currently zoned C-2, which should be adequate for the proposed uses following redevelopment.

The Redevelopment Area shall be subject to the applicable provisions of Ordinances as well as other applicable codes. All requirements for landscaping, storm water detention, parking, lighting and off-site traffic improvements which are imposed pursuant to the zoning process will automatically

become part of the requirements of this Plan. All public improvements which are to be dedicated to the City or any other municipality shall comply with City or appropriate municipal street and road construction standards.

C. Schedule of Development. The anticipated dates for the commencement and completion of construction of the Redevelopment Projects are set forth as follows:

REDEVELOPMENT PROJECT	ANTICIPATED COMMENCEMENT*	ANTICIPATED COMPLETION*
1	2025	2027

*The exact commencement and completion dates of construction of the Redevelopment Project will be dependent on many factors, including market conditions, weather, availability of materials and other events beyond the control of the Developer, and may be earlier or later than the anticipated dates.

C. Private Development. The Developer will design and construct the Redevelopment Project substantially in accordance with the Approved Site Plan. It is anticipated that the Redevelopment Project will consist of an approximately 54,000 square foot travel center, together with fuel pumps, landscaping, parking and other amenities and public and private infrastructure.

Prior to the commencement of construction of the Redevelopment Project, the Developer shall obtain approval by the City of an Approved Site Plan for the Redevelopment Project Area.

D. Public Infrastructure. Public infrastructure improvements associated with the applicable Redevelopment Project Area will be constructed by the Developer in accordance with the applicable Approved Site Plan. The costs of the design and construction of the public infrastructure improvements are Reimbursable Project Costs as shown on Exhibit 4.

E. Additional Redevelopment Projects. This Plan may be amended from time to time to identify additional Redevelopment Projects and to designate additional Redevelopment Project Areas, provided, however, that no Ordinance approving a Redevelopment Project will be adopted later than ten (10) years from the adoption of this Plan.

F. Relocation Plan. A Relocation Plan to aid persons or entities in the Redevelopment Area who may be entitled to relocation assistance pursuant to applicable law is attached as Exhibit 9. The Relocation Plan complies with the requirements of Section 523.200 et seq., RSMo.

VIII. FINANCING PLAN

A. Projected Redevelopment Project Costs. The total Redevelopment Project Cost for the Redevelopment Project is estimated to be approximately \$52,950,000, as shown on Exhibit 4 including pre-development professional service costs anticipated to be incurred by the Developer as initial expenses for the Redevelopment Project. The total aggregate amount of reimbursement paid to the Developer hereunder shall not exceed ~~\$9,795,652~~ **\$7,605,401**, plus Reimbursable Interest. \$1,000,000 shall be directed to the Noland Road Corridor Project. The amounts shown on Exhibit 4 are estimates only, and the reimbursable amount shown on Exhibit 4 with respect to any category are not maximum reimbursable amounts for such category.

The actual costs for the Redevelopment Project may vary from that estimated in this Plan due to many factors, including but not limited to the actual configuration of the Redevelopment Project, unforeseen site conditions, final determinations as to engineering, land acquisition costs, and construction and fluctuation in the cost of labor and materials. The total amounts to be paid from TIF Revenues, ~~CID Revenues~~ **Revenues** and TDD Revenues may include Reimbursable Project Costs, Reimbursable Interest, Financing Costs and Debt Service on Obligations issued to provide reimbursement of Reimbursable Project Costs.

B. Source of Funds. It is anticipated that the amounts necessary to pay Redevelopment Project Costs may be derived through a combination of proceeds from Obligations, Private Loans and Developer Advances. The Developer shall be entitled to payment of Reimbursable Interest. The TIF Revenues, ~~CID Revenues~~ and/or TDD Revenues, or right to repayment therefrom, may be pledged as security for the repayment of Obligations, Private Loans and Developer Advances, as agreed to by the City and the Developer.

D. Financing Schedule. It is anticipated that TIF Revenues, ~~CID Revenues~~, and TDD Revenues generated by the completed Redevelopment Project will be sufficient to repay the Reimbursable Project Costs. The Projected Debt Service Schedule for Reimbursable Project Costs for the Redevelopment Project is attached as Exhibit 7. These schedules project that the Reimbursable Project Costs for the Redevelopment Project will likely be repaid in the 14th year after approval of the Redevelopment Project.

E. Evidence of Commitments to Finance. Evidence of commitments to finance Redevelopment Project Costs is attached as Exhibit 8.

F. Issuance, Nature and Term of Obligations. Without excluding other methods of financing, this Plan anticipates that Obligations will be issued pursuant to this Plan. Any such Obligations would be issued on terms and at an interest rate determined by market conditions at the time of issuance. The proceeds of any Obligations issued would be used to finance all or some portion of Reimbursable Project Costs. The proceeds of the Obligations may also be used to fund capitalized interest accounts, debt service reserve funds, and Financing Costs, as may be required to issue such Obligations.

Such Obligations would be payable from TIF Revenues and/or TDD Revenues. Developer Reimbursable Project Costs not financed by such Obligations may be financed by the Developer through Private Loans or Developer Advances, subject to reimbursement in accordance with this Plan.

Obligations may be sold in one or more series to implement this Plan. Each Obligation issued must be retired not later than 23 years after the adoption of tax increment financing for the Redevelopment Project Area. It is anticipated that such Obligations will be retired within such 23-year period as illustrated on the Debt Service Schedule attached as Exhibit 7.

G. Projected TIF, ~~CID~~, and TDD Revenues. The total amount of Payments in Lieu of Taxes anticipated to be generated by the Redevelopment Project and available to pay Reimbursable Project Costs is shown on Exhibit 5 and is estimated to be approximately \$6,560,197. The total Economic Activity Taxes (exclusive of those attributable to utility taxes, if any) anticipated to be generated by the Redevelopment Project is shown on Exhibit 5 and is estimated to be approximately \$12,273,695. ~~The total CID Revenues anticipated to be generated by the Redevelopment Project from the creation of the Community Improvement District through 23 years of operation of the Redevelopment Project is shown on Exhibit 5 and is estimated to be approximately \$6,824,746.~~ The total TDD Revenues anticipated to be generated by the Redevelopment Project from the creation of the Transportation Development District through 23 years of operation of the Redevelopment Project is shown on Exhibit 5 and is estimated to be approximately \$3,865,247.

H. Payments in Lieu of Taxes. Calculation of anticipated Payments in Lieu of Taxes are based on current and projected future real property assessed valuations and the best available information concerning future property tax levy rates, both of which are subject to change due to many factors, including statewide reassessment, the effects of real property classification for real property tax purposes, and the rollback in tax levies resulting from reassessment or reclassification. The anticipated Payments in Lieu of Taxes available to pay Reimbursable Project Costs under this Plan are limited to fifty percent (50%) of the Payments in Lieu of Taxes (the "PILOTs Reimbursement Portion"). Any Payments in Lieu of Taxes that exceed the PILOTs Reimbursement Portion shall be declared a surplus by the City and

made available for distribution to the Taxing Districts located wholly or partially within the Redevelopment Area in accordance with the Act.

1. Equalized Assessed Valuations. According to the records of the County Assessor, the Total Equalized Assessed Value of the Redevelopment Area in 2024 was \$3,152,000, which Total Equalized Assessed Value included value attributable to a building which has since been demolished. The 2025 Total Equalized Assessed Value of the Redevelopment Area is \$3,518,230; provided, however, the 2025 Total Equalized Assessed Value of the Redevelopment Area is currently under appeal. The cost-benefit analysis attached as Exhibit 10 assumes a Total Equalized Assessed Value of the Redevelopment Area of \$1,708,045, as the same is believed to be a more accurate representation of what the Total Equalized Assessed Value of the Redevelopment Area will be upon activation of the TIF as said assumed value considers the demolition of the building.
2. Anticipated Assessed Valuation. It is estimated that the total assessed value of real estate within the Redevelopment Area will be approximately \$9,324,000 when the Redevelopment Project is completed.

I. Economic Activity Taxes. Economic Activity Taxes to be generated in the Redevelopment Area consist of sales taxes generated by operation of the Redevelopment Project. The current sales tax rate for the Redevelopment Area and the captured rate for purposes of tax increment financing are shown on Exhibit 5. Additionally, ~~a CID Sales Tax of 1.0% and a TDD Sales Tax of 1.0%~~ are is proposed. Sales subject to sales taxes in the Redevelopment Area in 2024, the year prior to the year in which this Plan was adopted, were \$4,117,040.

J. Special Allocation Fund. The City shall establish and maintain the Special Allocation Fund, which shall contain two separate segregated accounts. Payments in Lieu of Taxes shall be deposited into the PILOT Account within the Special Allocation Fund, and Economic Activity Taxes shall be deposited into the Economic Activity Account within the Special Allocation Fund. TIF Revenues so deposited, and any interest earned on such deposits, will be used for and are pledged, to the extent allowable by law, for the payment of Reimbursable Project Costs. TIF Revenues shall also be available for distribution to the Taxing Districts, in the manner set forth in Article IX of this Plan. ~~CID Revenues shall be deposited in the CID Revenues Fund and applied in accordance with the Development Agreement.~~ TDD Revenues shall be deposited in the TDD Revenues Fund and applied in accordance with the Development Agreement. Notwithstanding anything to the contrary herein, an amount equal to

\$1,000,000 shall be applied as directed by the City for the installation and improvement of sidewalks, curbs, gutters, and other transportation-related corridor improvements along Noland Road (the “Noland Road Corridor Project”).

IX. DISBURSEMENTS FROM SPECIAL ALLOCATION FUND

All disbursements from the Special Allocation Fund will be made by the City out of the aforementioned separate segregated accounts maintained within the Special Allocation Fund. On each Distribution Date, Disbursements shall be made by the City from the Special Allocation Fund in the order of preference set out in the Development Agreement.

X. COST-BENEFIT ANALYSIS

The amount of all revenues estimated to be received by the Taxing Districts directly from the Redevelopment Project during the 23 years of tax increment financing collections is estimated in the cost-benefit analysis attached as Exhibit 10. The cost-benefit analysis shows the impact on the economy if the Redevelopment Project is built and if the Redevelopment Project is not built pursuant to this Plan. The cost-benefit analysis illustrates the fiscal impact on every Taxing District.

XI. PROVISIONS FOR AMENDING THE TAX INCREMENT PLAN

This Plan may be amended only pursuant to the provisions of the TIF Act.

XII. TERMINATION OF TAX INCREMENT FINANCING

Tax increment financing shall remain in effect until all Reimbursable Project Costs, Reimbursable Interest, Financing Costs and Debt Service on Obligations have been paid, except that tax increment financing for the Redevelopment Project Area shall be terminated no later than 23 years after the adoption of tax increment financing for the Redevelopment Project Area by Ordinance. At that time, tax increment financing shall be terminated for the Redevelopment Project Area by the adoption of an Ordinance of the City Council which terminates the designation of the Redevelopment Project Area under the TIF Act or by any other method authorized by the TIF Act. It is anticipated that all Reimbursable Project Costs will be reimbursed and that tax increment financing for the Redevelopment Project Area will be terminated by Ordinance in the 14th year after approval of the Redevelopment Project.

XIII. REQUIRED STATUTORY FINDINGS

With the approval of this Plan, the TIF Commission and the City Council have, as required by the TIF Act, made the findings set forth below, based upon the record of the public hearing on the Plan, including but not limited to the information in this Plan concerning blight, the impact of development on taxing jurisdictions, and the affidavit of the Developer attached as Exhibit 11.

1. Blighted Area. The Redevelopment Area as a whole is a Blighted Area within the meaning of the TIF Act.
2. Expectations for Development – “But For Test”. The Redevelopment Area, on the whole, has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of tax increment financing due to the substantial cost to ameliorate the blighted condition of the Redevelopment Area.
3. Conforms to Comprehensive Plan of City. This Plan conforms to the City’s Comprehensive Plan, as the City’s Comprehensive Plan indicates that the Redevelopment Area should be developed for commercial use.
4. Date to Adopt Redevelopment Project Area. The Ordinance approving the Redevelopment Project will not be adopted later than ten years from the adoption of this Plan.
5. Date to Complete Redevelopment. The estimated date to complete the Redevelopment Project has been stated and such date is not more than 23 years from the adoption of the Ordinance approving the Redevelopment Project.
6. Date to Retire Obligations. In the event Obligations are issued to finance Redevelopment Project Costs, it is anticipated that such Obligations will be retired in the 14th year after adoption of the Redevelopment Project, which is less than 23 years from the adoption of the Ordinance approving the Redevelopment Project.
7. Relocation Assistance. A Relocation Plan meeting the requirements of Section 523.205, RSMo, is attached as Exhibit 9.
8. Cost-Benefit Analysis. The cost-benefit analysis attached as Exhibit 10, shows the economic impact of this Plan on each Taxing District. The analyses show the impact on the economy if the Redevelopment Project is built and if the Redevelopment Project is not built pursuant to this Plan.
9. Gambling Establishment. This Plan does not include the initial development or redevelopment of any gambling establishment as defined in the TIF Act.
10. Reporting Requirements. The Commission shall report to the Director of the Department of Economic Development for the State of Missouri by the last day of February of each year the name, address, phone number and primary line of business of any business that

relocates to the Redevelopment Area. Pursuant to the TIF Act, the Director for the Department of Economic Development is required to compile and report the same to the governor, the speaker of the house and the president pro tempore of the Senate on the last day of April of each year.

11. Redevelopment Project Area. The Redevelopment Project Area includes only those parcels of real property and improvements directly and substantially benefited by the proposed Redevelopment Project. Construction activity may take place, and improvements may be constructed, on land in the vicinity of, but not included within, the Redevelopment Area which benefits the Redevelopment Area, and the costs associated therewith will be Reimbursable Project Area Costs if within a category shown as reimbursable on Exhibit 4.

XIV. REPORTING ECONOMIC ACTIVITY TAXES

Any person or entity which generates economic activity taxes within the Redevelopment Area will be asked to submit to the City, no less frequently than quarterly and no more frequently than monthly, evidence of payment of Economic Activity Taxes. Each such person or entity which generates sales taxes within the Redevelopment Area shall also be asked to authorize the Missouri Department of Revenue to release to the City the aggregate sales tax figures for all such persons' or entities' businesses within the Redevelopment Area.

EXHIBIT 1 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.

**LEGAL DESCRIPTION OF
REDEVELOPMENT AREA AND REDEVELOPMENT PROJECT AREA**

ALL THAT PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23, TOWNSHIP 49, RANGE 32, IN THE CITY OF INDEPENDENCE, JACKSON COUNTY, MISSOURI, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHEAST 1/4; THENCE SOUTH 90° 00' 00" EAST, ALONG THE NORTH LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 272.31 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 40.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF 39TH STREET, AS ESTABLISHED BY DOCUMENT NO. 1456433, RECORDED IN BOOK 11078, PAGE 1452, SAID POINT BEING THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE HEREIN DESCRIBED; THENCE SOUTH 0° 00' 00" WEST, AT RIGHT ANGLES TO SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 343.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 18.45 FEET; THENCE SOUTH 1° 15' 00" EAST, PARALLEL TO THE EAST RIGHT-OF-WAY LINE OF NOLAND ROAD, AS NOW ESTABLISHED, A DISTANCE OF 130.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 5.00 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 200.00 FEET; THENCE SOUTH 90° 00' 00" WEST, A DISTANCE OF 152.81 FEET (DEED = 152.98 FEET), TO A POINT ON THE AFORESAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST (DEED = SOUTH 11° 02' 39" EAST), ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 65.40 FEET; THENCE NORTH 90° 00' 00" EAST, A DISTANCE OF 201.39 FEET; THENCE SOUTH 1° 02' 25" EAST, A DISTANCE OF 355.00 FEET; THENCE NORTH 85° 50' 55" WEST, A DISTANCE OF 140.49 FEET (DEED = 140.92 FEET), TO A POINT ON SAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 7.64 FEET (DEED = SOUTH 11° 02' 39" EAST, A DISTANCE OF 8.29 FEET), TO A POINT THAT IS OPPOSITE AND 155.00 FEET EAST OF STATION 18+50 ON THE CENTERLINE OF NOLAND ROAD; THENCE SOUTH 88° 41' 51" WEST, (DEED = SOUTH 88° 45' 00" WEST), CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 25.00 FEET TO A POINT THAT IS OPPOSITE AND 130 FEET EAST OF STATION 18+50 ON SAID NOLAND ROAD CENTERLINE; THENCE SOUTH 2° 02' 11" EAST CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 124.30 FEET (DEED = SOUTH 1° 15' 00" EAST, A DISTANCE OF 124.24 FEET), TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE ROUTE NO. 1-70, AS NOW ESTABLISHED THAT IS OPPOSITE AND 228.80 FEET NORTHERLY OF STATION 545+60 ON THE CENTERLINE OF SAID 1-70, THENCE SOUTH 84° 21' 11" EAST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 643.04 FEET (DEED = SOUTH 84° 17' 39" EAST, A DISTANCE OF 644.64 FEET) TO A POINT THAT IS OPPOSITE AND 166.30 FEET NORTHERLY OF STATION 552+00 ON THE CENTERLINE OF SAID 1-70; THENCE SOUTH 89° 55' 50" EAST, CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 546.03 FEET (DEED = SOUTH 89° 51' 16" EAST, A DISTANCE OF 545.61 FEET), TO A POINT ON THE WEST LINE OF "BROOKWOOD NO. 2", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE NORTH 1° 15' 58" WEST, ALONG THE WEST LINE OF SAID SUBDIVISION, A DISTANCE OF 785.43 FEET (DEED = NORTH 1° 12' 00" WEST, A

DISTANCE OF 786.12 FEET), TO THE SOUTHEAST CORNER OF LOT 19, "WOODRIDGE", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE SOUTH 89° 51' 43" WEST, ALONG THE SOUTH LINE OF SAID "WOODRIDGE", A DISTANCE OF 251.04 FEET (DEED = NORTH 90° 00' 00" WEST, A DISTANCE OF 250.63 FEET), TO AN ANGLE POINT THEREIN; THENCE NORTH 80° 01' 00" WEST, CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 288.30 FEET TO AN ANGLE POINT THEREIN; THENCE SOUTH 89° 47' 57" WEST (DEED = NORTH 90° 00' 00" WEST), CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 286.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF DODGION STREET, AS NOW ESTABLISHED; THENCE NORTH 0° 12' 03" WEST (DEED = NORTH 0° 00' 00" WEST), ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 5.00 FEET TO THE SOUTHEAST CORNER OF LOT 34, SAID "WOODRIDGE"; THENCE SOUTH 89° 47' 57" WEST ALONG THE SOUTH LINE OF SAID LOT 34, A DISTANCE OF 135.40 FEET (DEED = 90° 00' 00" WEST, A DISTANCE OF 135.00 FEET), TO THE SOUTHWEST CORNER OF SAID LOT 34; THENCE NORTH 0° 00' 00" EAST, ALONG THE WEST LINE OF SAID "WOODRIDGE" SUBDIVISION, A DISTANCE OF 440.00 FEET TO THE AFORESAID SOUTH RIGHT-OF-WAY LINE OF 39TH STREET; THENCE NORTH 90° 00' 00" WEST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT 2 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.

**DEPICTION OF
REDEVELOPMENT AREA AND REDEVELOPMENT PROJECT AREA**

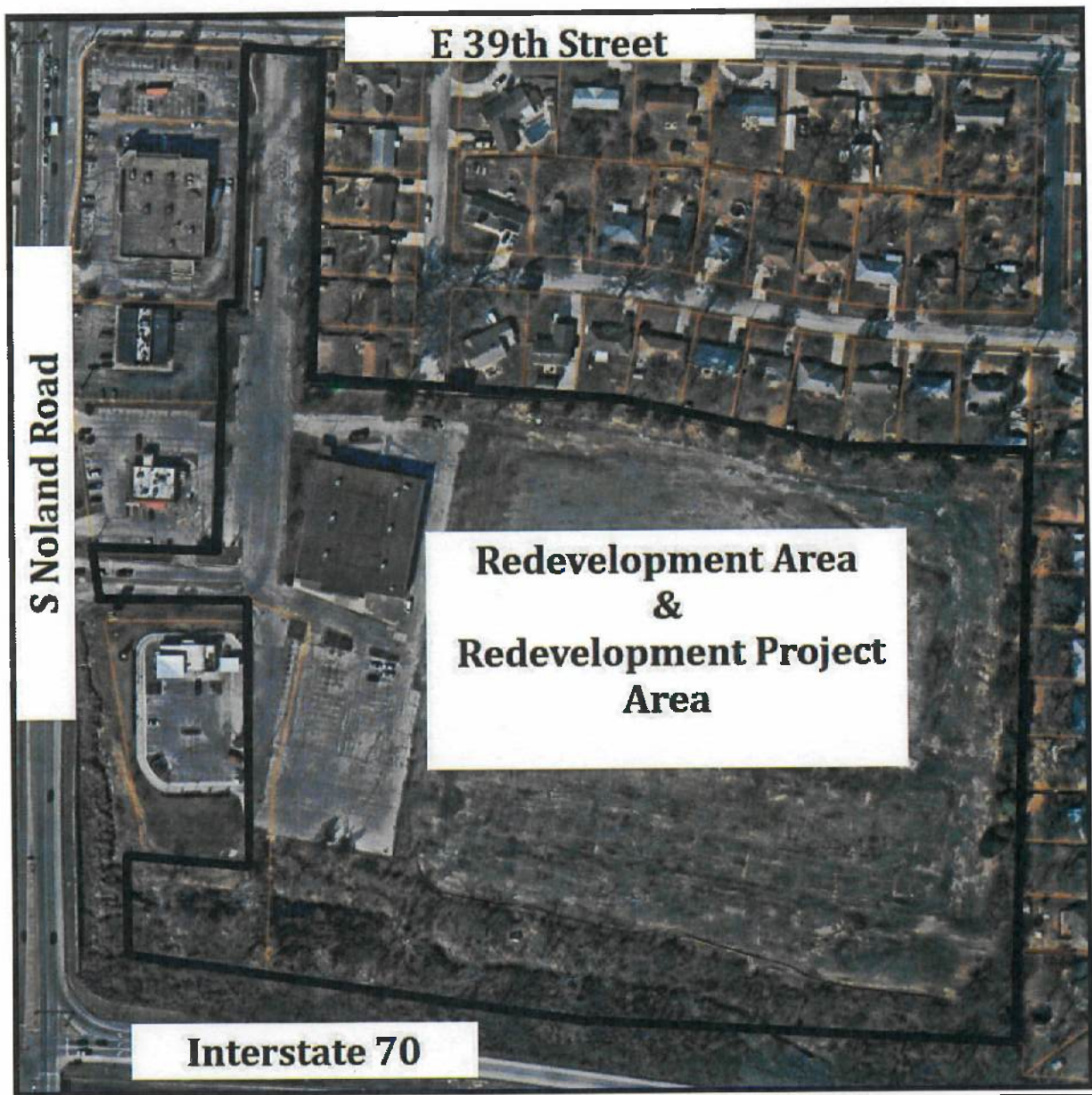
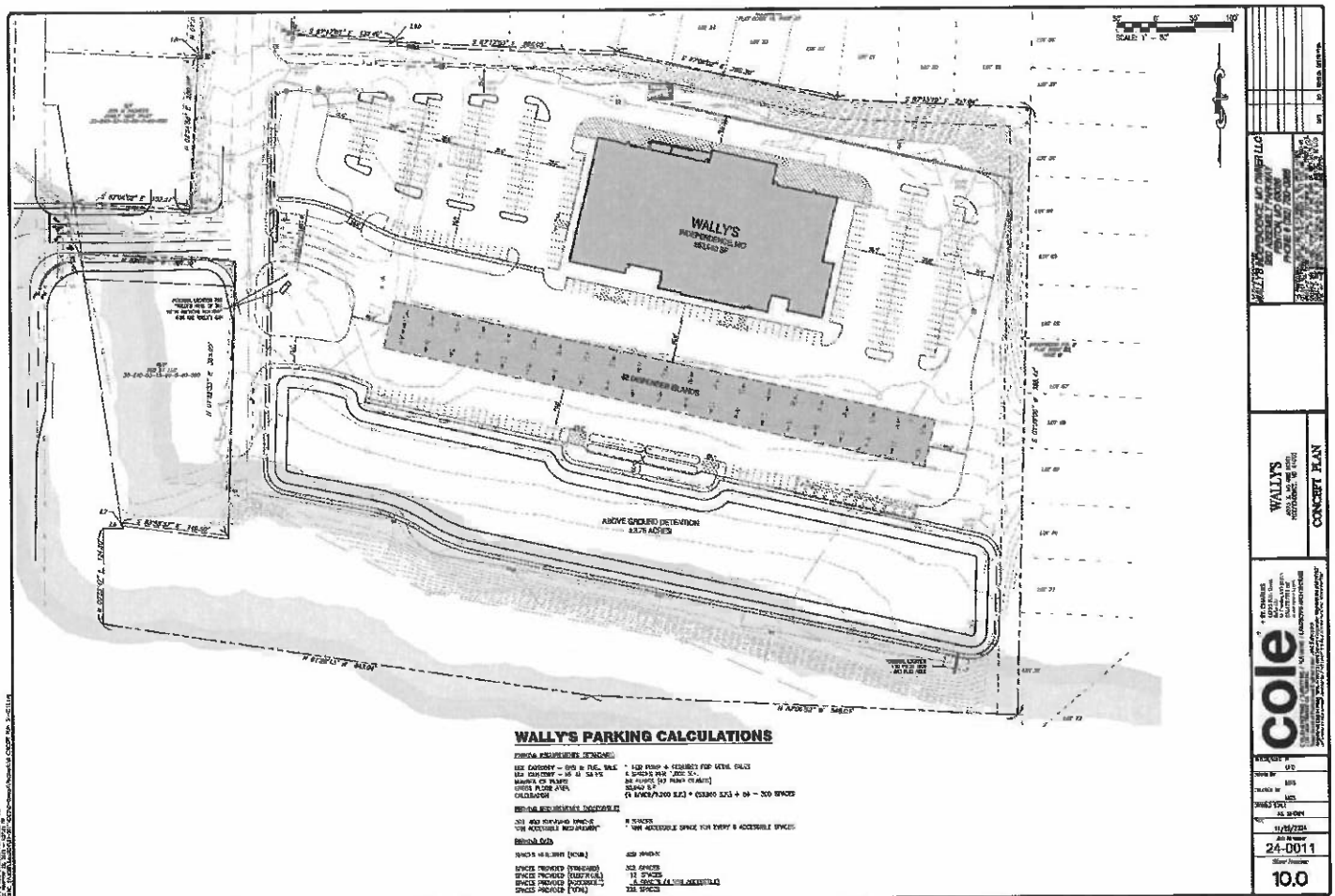


EXHIBIT 3 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.

PRELIMINARY SITE PLAN



AMENDED
EXHIBIT 4 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.

*Project Cost	Total	TIF Reimbursement	Non-TIF Captured TDD Reimbursement	**Total Reimbursement	Developer Private Costs
Acquisition Costs	\$ 10,300,000	\$ -	\$ -	\$ -	\$ 10,300,000
Site Construction Costs	\$ 17,750,000	\$ 7,546,699	\$ 1,258,702	\$ 8,805,401	\$ 9,144,599
I-70 Westbound Off Ramp Improvements					
I-70 Westbound On Ramp Improvements					
I-70 Eastbound Off Ramp Improvements					
I-70 Eastbound On Ramp Improvements					
Noland Road Improvements					
Lynn, Canterbury, and 38th Street Improvements					
Intersection Signalization and Retiming					
Utilities					
Removals, Resets & Adjustments					
Drainage / Erosion Control					
Landscaping					
Signage / Striping					
Traffic Control, Mobilization, Etc.					
Earthwork					
Paving					
Soft Costs					
**Noland Road Corridor Project	\$ 1,000,000		\$ 1,000,000	\$ 1,000,000	
Building Costs	\$ 20,100,000	\$ -	\$ -	\$ -	\$ 20,100,000
Underground Piping					
Tanks					
Dispensers					
Installation of Piping, Tanks, Dispensers					
Canopy					
Low Voltage Electric					
Cabling					
Security Monitoring					
Paging					
Communications					
Casework					
Coolers					
Kitchen Equipment					
Signage					
Hard Cost Contingency	\$ 1,000,000	\$ -	\$ -	\$ -	\$ 1,000,000
Soft Costs	\$ 2,800,000	\$ -	\$ -	\$ -	\$ 2,800,000
TOTAL PROJECT COSTS	\$ 52,850,000	\$ 7,546,699	\$ 1,258,702	\$ 8,805,401	\$ 43,344,599

*Developer Incentives to Total Project Cost Percentage: 14.35%

*All Project Costs assume and incorporate Chapter 100 sales tax exemption.

**\$1,000,000 will be directed to the Noland Road Corridor Project, with the remainder to be reimbursed to Developer.

AMENDED
EXHIBIT 5 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.

Walt's - Independence, MO
I-70 Noland Road

Combined Incentives Projections (TIF/TDD)

TIF / TDD REVENUE PROJECTIONS

Calendar Year	Project / Incentives Year	Assessed Value	Taxable Sales	PILOTs	EATs	TIF Revenue*	TDD Revenue	Total Incentives Revenue
2026	1	\$ 2,331,000	\$ -	\$ 21,259	\$ -	\$ 21,259	\$ -	\$ 21,259
2027	2	\$ 9,324,000	\$ 25,000,000	\$ 259,898	\$ 469,867	\$ 834,180	\$ 145,585	\$ 979,765
2028	3	\$ 9,510,480	\$ 25,500,000	\$ 266,262	\$ 481,117	\$ 854,293	\$ 148,085	\$ 1,002,379
2029	4	\$ 9,510,480	\$ 26,010,000	\$ 266,262	\$ 492,592	\$ 868,318	\$ 150,635	\$ 1,018,954
2030	5	\$ 9,700,690	\$ 26,530,200	\$ 272,753	\$ 504,296	\$ 889,115	\$ 153,236	\$ 1,042,351
2031	6	\$ 9,700,690	\$ 27,060,804	\$ 272,753	\$ 516,235	\$ 903,707	\$ 155,889	\$ 1,059,596
2032	7	\$ 9,894,703	\$ 27,602,020	\$ 279,374	\$ 528,412	\$ 925,211	\$ 158,595	\$ 1,083,806
2033	8	\$ 9,894,703	\$ 28,154,060	\$ 279,374	\$ 540,833	\$ 940,392	\$ 161,356	\$ 1,101,747
2034	9	\$ 10,092,597	\$ 28,717,142	\$ 286,127	\$ 553,502	\$ 962,630	\$ 164,171	\$ 1,126,801
2035	10	\$ 10,092,597	\$ 29,291,485	\$ 286,127	\$ 566,425	\$ 978,424	\$ 167,043	\$ 1,145,467
2036	11	\$ 10,294,449	\$ 29,877,314	\$ 293,015	\$ 579,606	\$ 1,001,423	\$ 169,972	\$ 1,171,395
2037	12	\$ 10,294,449	\$ 30,474,860	\$ 293,015	\$ 593,051	\$ 1,017,855	\$ 172,960	\$ 1,190,815
2038	13	\$ 10,500,338	\$ 31,084,358	\$ 300,041	\$ 606,765	\$ 1,041,643	\$ 176,007	\$ 1,217,650
2039	14	\$ 10,500,338	\$ 31,706,045	\$ 300,041	\$ 620,753	\$ 1,058,739	\$ 179,115	\$ 1,237,854
2040	15	\$ 10,710,345	\$ 32,340,166	\$ 307,208	\$ 629,184	\$ 977,507	\$ 182,286	\$ 1,159,793
2041	16	\$ 10,710,345	\$ 32,986,969	\$ 307,208	\$ 641,311	\$ 992,869	\$ 185,520	\$ 1,178,389
2042	17	\$ 10,924,552	\$ 33,646,708	\$ 314,518	\$ 653,681	\$ 1,015,848	\$ 188,819	\$ 1,204,666
2043	18	\$ 10,924,552	\$ 34,319,643	\$ 314,518	\$ 666,299	\$ 1,031,830	\$ 192,183	\$ 1,224,013
2044	19	\$ 11,143,043	\$ 35,006,036	\$ 321,974	\$ 679,169	\$ 1,055,588	\$ 195,615	\$ 1,251,203
2045	20	\$ 11,143,043	\$ 35,706,156	\$ 321,974	\$ 692,296	\$ 1,072,216	\$ 199,116	\$ 1,271,332
2046	21	\$ 11,365,904	\$ 36,420,279	\$ 329,579	\$ 705,686	\$ 1,096,781	\$ 202,687	\$ 1,299,468
2047	22	\$ 11,365,904	\$ 37,148,685	\$ 329,579	\$ 719,343	\$ 1,114,081	\$ 206,329	\$ 1,320,409
2048	23	\$ 11,593,222	\$ 37,891,659	\$ 337,337	\$ 733,274	\$ 1,139,484	\$ 210,043	\$ 1,349,527
2049	24	\$ 11,593,222	\$ 38,649,492				\$ 386,495	\$ 386,495
2050	25	\$ 11,825,086	\$ 39,422,482				\$ 394,225	\$ 394,225
2051	26	\$ 11,825,086	\$ 40,210,931				\$ 402,109	\$ 402,109
2052	27	\$ 12,061,588	\$ 41,015,150				\$ 410,151	\$ 410,151
2053	28	\$ 12,061,588	\$ 41,835,453				\$ 418,355	\$ 418,355
2054	29	\$ 12,302,820	\$ 42,672,162				\$ 426,722	\$ 426,722
2055	30	\$ 12,302,820	\$ 43,525,605				\$ 435,256	\$ 435,256
2056	31	\$ 12,548,876	\$ 44,396,117				\$ 443,961	\$ 443,961
2057	32	\$ 12,548,876	\$ 45,284,040				\$ 452,840	\$ 452,840
2058	33	\$ 12,799,854	\$ 46,189,720				\$ 461,897	\$ 461,897
2059	34	\$ 12,799,854	\$ 47,113,515				\$ 471,135	\$ 471,135
2060	35	\$ 13,055,851	\$ 48,055,785				\$ 480,558	\$ 480,558
2061	36	\$ 13,055,851	\$ 49,016,901				\$ 490,169	\$ 490,169
2062	37	\$ 13,316,968	\$ 49,997,239				\$ 499,972	\$ 499,972
2063	38	\$ 13,316,968	\$ 50,997,184				\$ 509,972	\$ 509,972
2064	39	\$ 13,583,307	\$ 52,017,127				\$ 520,171	\$ 520,171
2065	40	\$ 13,583,307	\$ 53,057,470				\$ 530,575	\$ 530,575
TOTAL		\$ 1,455,930,960	\$ 1,455,930,960	\$ 6,560,197	\$ 12,273,695	\$ 21,793,391	\$ 11,599,811	\$ 33,393,202
NPV @ 6%				\$ 3,305,132	\$ 6,176,666	\$ 10,931,272	\$ 3,131,369	\$ 14,062,642

*Includes PILOTs, EATs, and TIF Captured TDD Revenue.

Walt's - Independence, MO
I-70 Noland Road
Assumptions

GENERAL ASSUMPTIONS	
Biennial Real Property Growth Rate:	2.00%
Annual Retail Sales Growth Rate:	2.00%
Net Present Value:	6.00%
TDD Sales Tax Rate:	1.00%
Commercial Assessment Rate:	32.00%

PROPERTY TAX RATES		
Taxing Jurisdiction	Rate	TIF Captured Rate
Board of Disabled Services	0.0732	0.0000
City of Independence	0.4892	0.2446
Independence School #30	5.2371	2.6186
Jackson County	0.5056	0.2528
Mental Health	0.0974	0.0487
Metro Junior College	0.1806	0.0903
Mid-Continent Library	0.3152	0.1576
Replacement Tax	1.4370	0.0000
State Blind Pension	0.0300	0.0000
TOTAL	8.3663	3.41255

SALES TAX RATES		
Taxing Jurisdiction	Rate	TIF Captured Rate
State	4.2250%	0.0000%
Jackson County	1.5000%	0.4375%
General	0.5000%	0.2500%
Sports Complex	0.3750%	0.0000%
Anti-Drug	0.2500%	0.1250%
Zoo	0.1250%	0.0625%
Community Children Services	0.2500%	0.0000%
City of Independence	2.8750%	1.4375%
General	1.0000%	0.5000%
Capital Improvement (Police)	0.1250%	0.0625%
Proposition PD	0.2500%	0.1250%
Fire Protection	0.5000%	0.2500%
Streets	0.5000%	0.2500%
Parks	0.2500%	0.1250%
Stormwater	0.2500%	0.1250%
Noland Road CID	0.7500%	0.3750%
TOTAL	9.350%	2.250%

EXHIBIT 6 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.

Blight Study

for the

I-70 & Noland Road TIF Redevelopment Area

**Independence,
Missouri**

December 2024

Prepared by:

**Polsinelli PC,
Development Analysis Department**

BLIGHT STUDY

I-70 & Noland Road TIF Redevelopment Area, Lee's Summit, Missouri

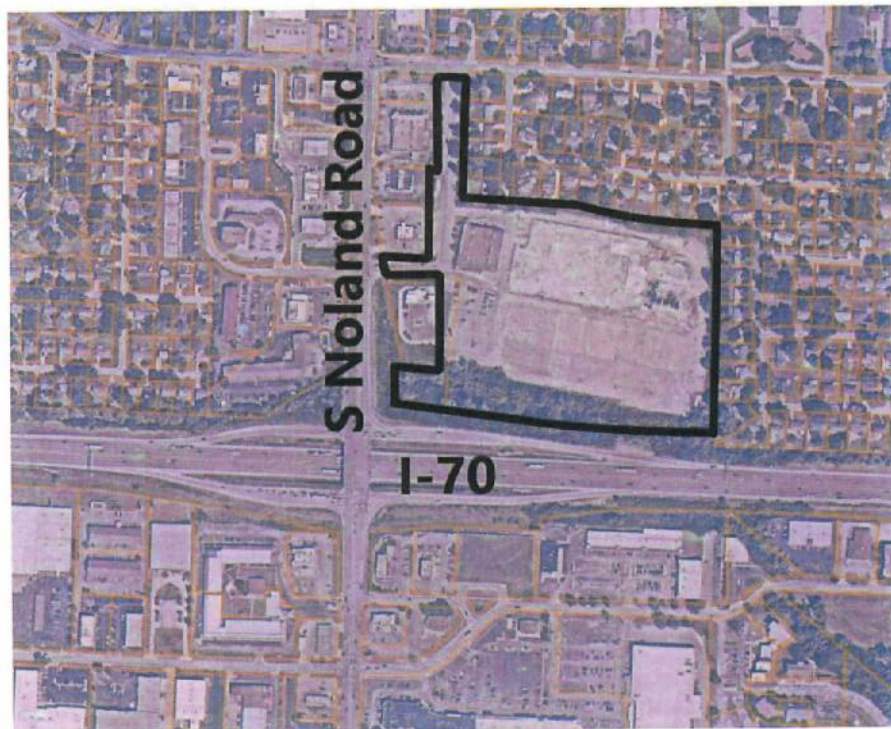
I. Introduction

Purpose

This analysis has been prepared to determine whether the property at the northeast corner of the intersection of Interstate 70 and S Noland Road in Independence, Missouri is “blighted” according to § 99.805(1) of the Missouri Real Property Tax Increment Allocation Redevelopment Act (the “TIF Act”). The property evaluated by this study is generally described as follows: the property generally located east of S Noland Road, north of Interstate 70, south of E 39th Street, and west of S Hocker Avenue, all located in the City of Independence, Missouri (the “Study Area”).

Study Area

The Study Area is comprised of 2 parcels of land located in the City of Independence, Jackson County, Missouri. The Study Area consists of approximately 20.96 acres and contains one existing building, which is occupied by Northern Tool + Equipment and Office Depot. A legal description and aerial depiction of the Study Area are attached as **Exhibit A** and **Exhibit B**, respectively. The boundaries of the Study Area are generally depicted below:



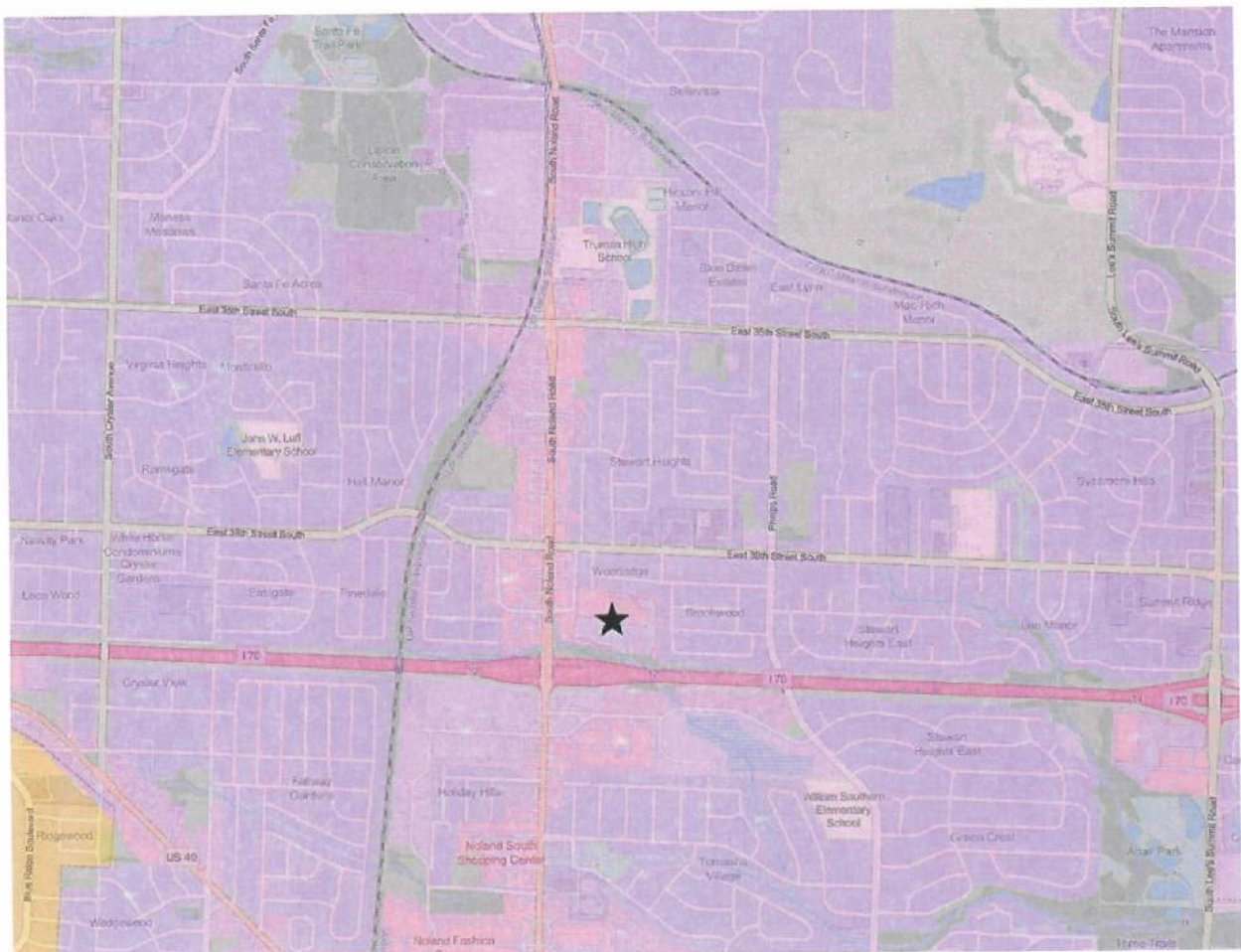
Statutory Analysis

Section 99.805(1) of the Missouri Revised Statutes defines a “Blighted Area” as “an area which, by reason of the predominance of insanitary or unsafe conditions, deterioration of site improvements, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, or welfare in its present condition and use.”

An exploration of the presence of these factors within the Study Area is included below.

II. Study Area Data

The Study Area is generally located in the southern area of Independence, Missouri and is immediately northerly adjacent to Interstate 70. The general location of the Study Area is denoted by the star below:



Property Data

Land Area

According to Jackson County records, the 2 parcels that constitute the Study Area are as follows:

Jackson County, MO Parcel #	Acreage
33-240-03-16-00-0-00-000	0.99
33-240-03-12-00-0-00-000	19.97
TOTAL	20.96

Ownership and Current Use

According to Jackson County land records, the land parcels within the Study Area are owned by the following parties and are used in the described manner:

Parcel ID	Owner	Description/Use
33-240-03-16-00-0-00-000	WALLY'S INDEPENDENCE MO OWNER LLC	Vacant/Parking Lot
33-240-03-12-00-0-00-000	WALLY'S INDEPENDENCE MO OWNER LLC	Parking Lot/Retail/Vacant

III. Blight Analysis

Section 99.805(1) of the Missouri Revised Statutes defines a “Blighted Area” as “an area which, by reason of the predominance of insanitary or unsafe conditions, deterioration of site improvements, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, or welfare in its present condition and use.

We have prepared the following study pursuant to the statutory factors described above and, accordingly, determined that the Study Area is a blighted area within the meaning of the TIF Act.

FACTOR #1: INSANITARY OR UNSAFE CONDITIONS

The Study Area is plagued with significant trash and debris from illegal dumping. Additionally, the vast majority of the Study Area lacks adequate lighting, as no lights are installed around the perimeter of the Study Area.

Trespassers have repeatedly established squatter camps within the Study Area. Squatter camps present dangerous biohazards to the Study Area as they are often times accompanied by drug paraphernalia, human excrement, and other insanitary items.

See Exhibits 1 – 6 below.

EXHIBIT 1

Trash and Debris Littering the Study Area

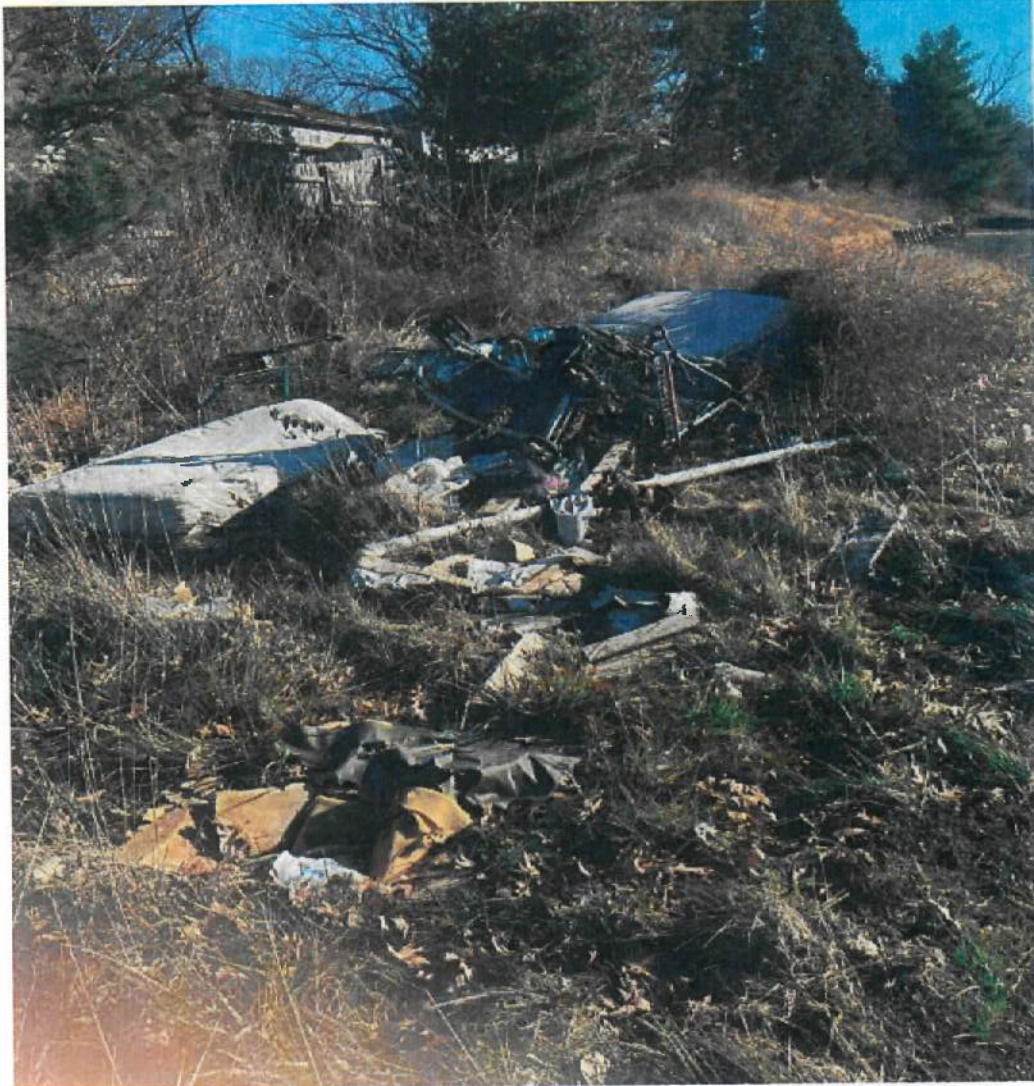


EXHIBIT 2

Trash and Debris Littering the Study Area

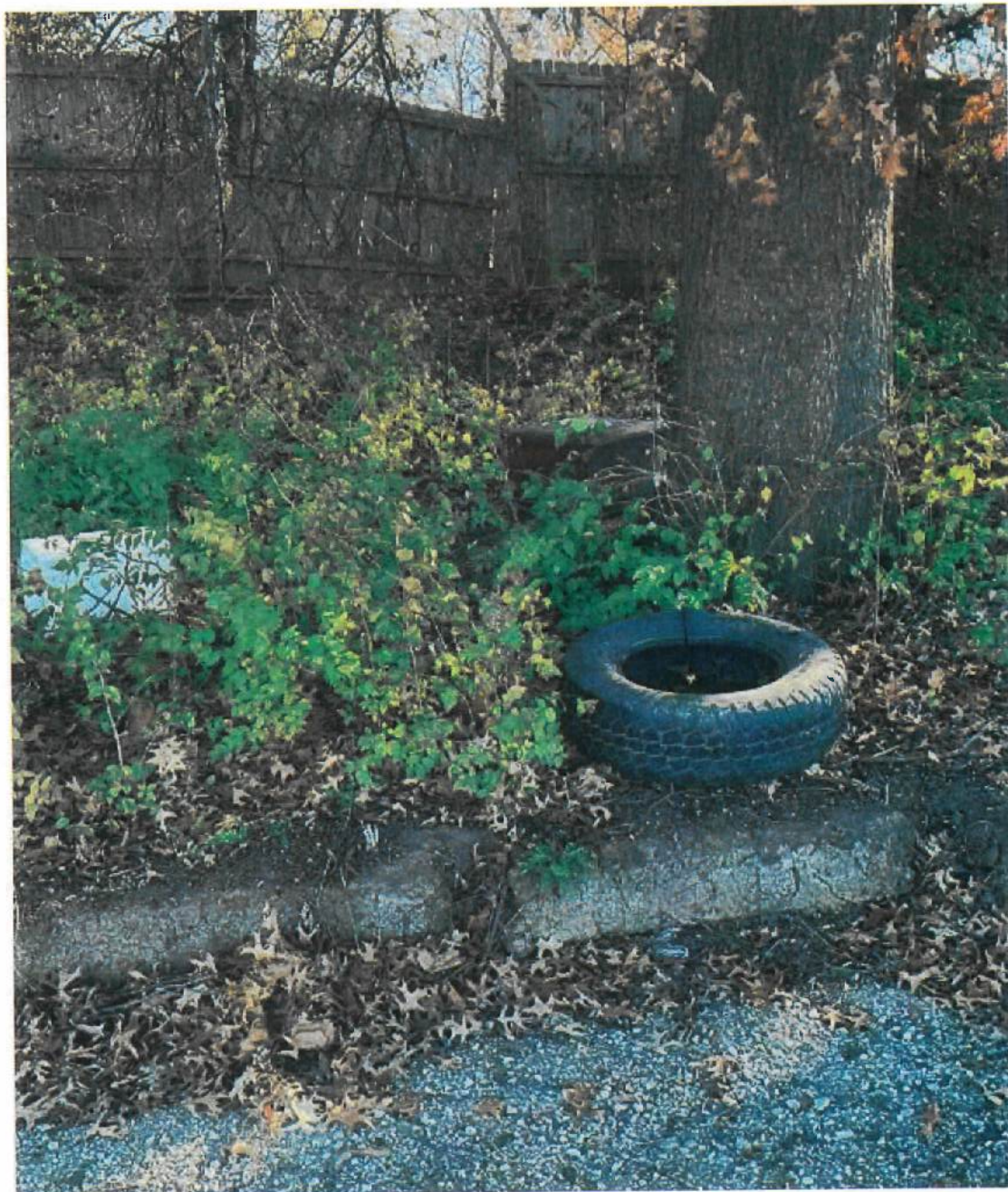


EXHIBIT 3

Trash and Debris Littering the Study Area



EXHIBIT 4

Trash and Debris Littering the Study Area

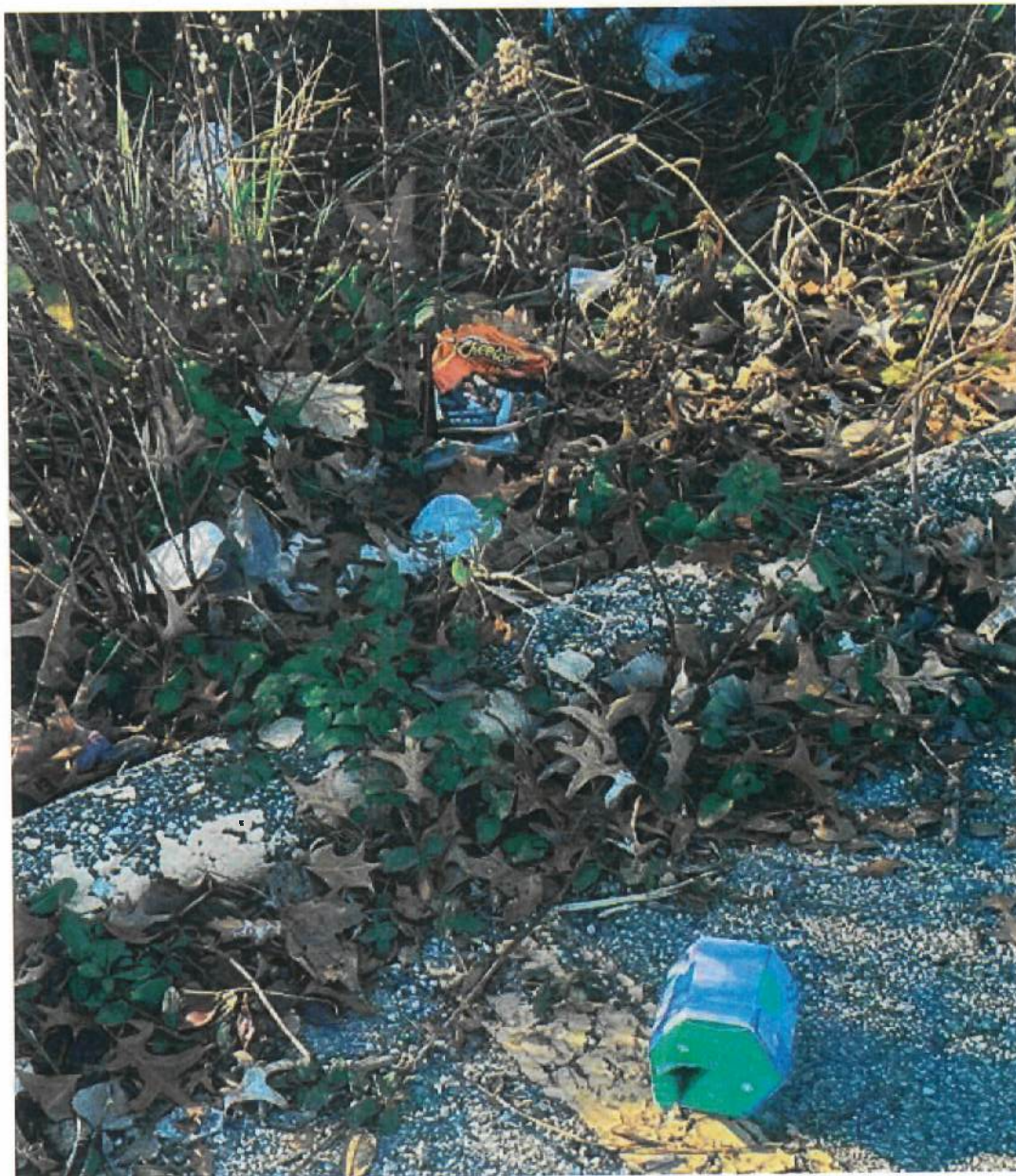


EXHIBIT 5

Squatter Camp in Study Area



EXHIBIT 6

Lack of Security and Lighting at Study Area



Unsecured and unlit southern boundary line of Study Area.

FACTOR #2: DETERIORATION OF SITE IMPROVEMENTS

Certain site improvements, most notably the sidewalks and the stormwater system, within the Study Area are in a deteriorated state.

See Exhibits 7 - 12 below.

EXHIBIT 7

Deteriorated Sidewalk



EXHIBIT 8

Deteriorated Sidewalk

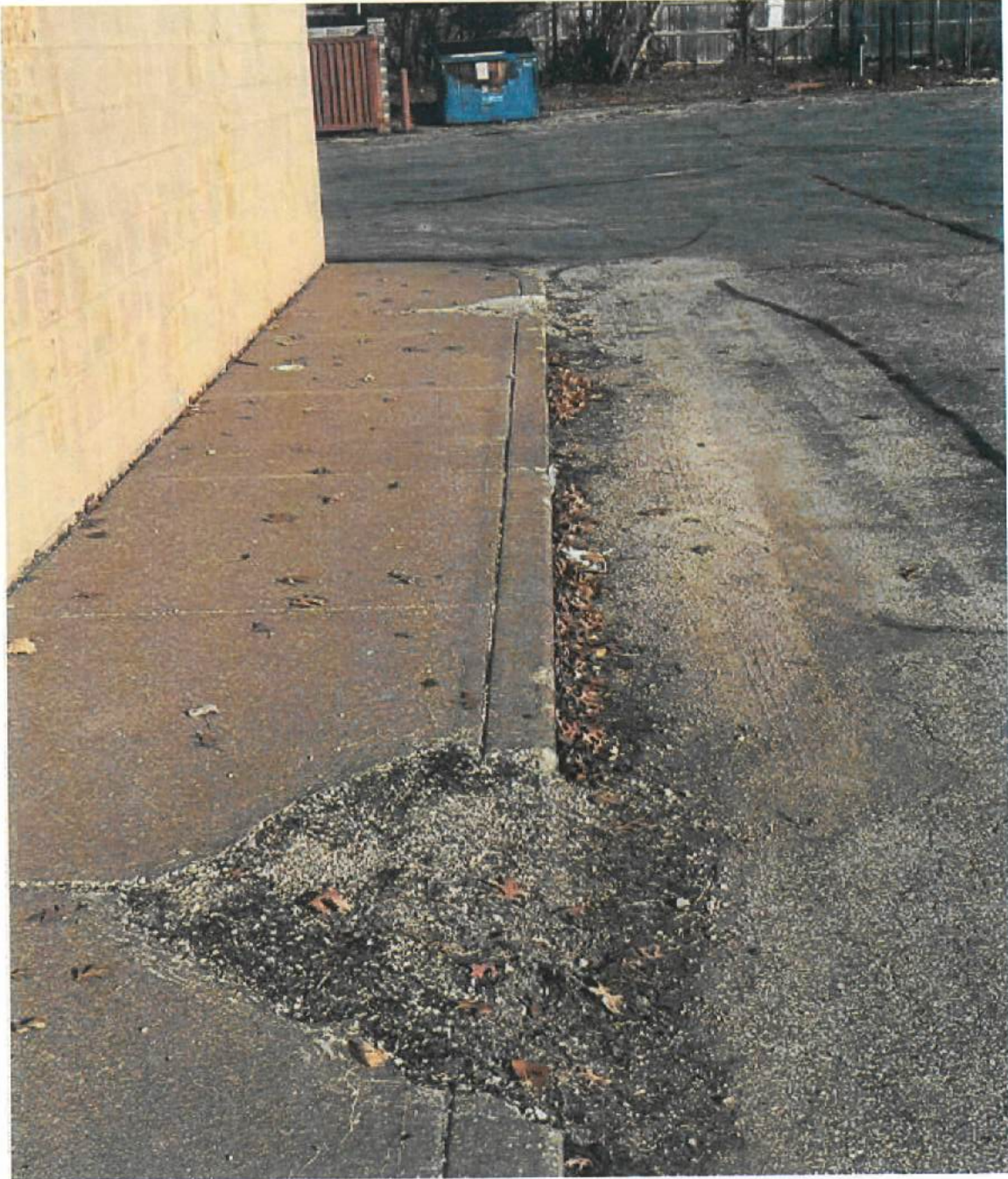


EXHIBIT 9

Deteriorated Light Pole



EXHIBIT 10

Deteriorated Stormwater System



EXHIBIT 11

Deteriorated Stormwater System



EXHIBIT 12

Deteriorated Parking Lot



FACTOR #3: EXISTENCE OF CONDITIONS WHICH ENDANGER LIFE OR PROPERTY BY FIRE AND OTHER CAUSES

Unauthorized burning by trespassers occurs within the Study Area, which pose a significant danger to both life and property given the risk of spreading.

See Exhibit 13 below.

EXHIBIT 13

Burn Pile



Conclusion

The above analysis indicates that all three defined conditions of blight – a clear predominance – are present in the Study Area and, as such, the Study Area constitutes an economic and social liability in its present condition and use.

The concept of an economic liability and the economic underutilization of property as a basis for blight has been addressed by the Missouri Supreme Court. The Court has determined that “the concept of urban redevelopment has gone far beyond ‘slum clearance’ and the concept of economic underutilization is a valid one.” *Tierney v. Planned Industrial Expansion Authority of Kansas City*, 742 S.W.2d 146, 151 (Mo. banc 1987). If vacant land “no longer meets the economic and social needs of modern city life and progress,” the land can be considered blighted. *State ex. rel. Atkinson v. Planned Industrial Expansion Authority*, 517 S.W.2d 36, 46 (Mo. banc 1975). Blight may also be found if the redevelopment of an area “could promote a higher level of economic activity, increased employment, and greater services to the public.” *Tierney*, 742 S.W.2d at 151. Further, the Court determined that an otherwise viable use of a property may be considered blighted if it is an economic underutilization of the property. *Cestwood Commons Redevelopment Corporation v. 66 Drive-In. Inc.*, 812 S.W. 2d 903, 910 (MO. App. E.D.1991). The Court determined that blight exists to the extent an area is being utilized for less than its potential from an economic standpoint.

Presently, the Study Area generates approximately \$275,000 in annual property taxes. However, if the redevelopment plan submitted to the City is fully implemented, annual property taxes in the year following completion of the project are estimated to increase by almost one hundred percent. Additionally, the Study Area may produce more than \$1,000,000 per year in local sales tax revenues.

The stagnate nature of the Study Area’s property taxes and sales taxes, coupled with the presence of the blighting factors discussed above, are clear indicators that the Study Area is not being utilized for its highest and best use. The result is less tax revenue for the taxing jurisdictions to provide services to the public, a clear economic liability to taxpayers. Clearly, the Study Area “could promote a higher level of economic activity, increased employment, and greater services to the public”, thus falling within the definition of a blighted area.

To achieve the Study Area’s highest, best, and most productive use, a developer must make significant financial investment to remove the Study Area’s blight.

Accordingly, because of the factors detailed in this report, as of December 2024, the Study Area constitutes an economic and social liability in its present condition and use, thus being a “blighted area” as defined in Section 99.805(1) of the Missouri Revised Statutes.

Accordingly, the Study Area does not meet Independence’s high priority economic and social needs and is being underutilized from an economic perspective.

EXHIBIT A

LEGAL DESCRIPTION OF STUDY AREA

ALL THAT PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23, TOWNSHIP 49, RANGE 32, IN THE CITY OF INDEPENDENCE, JACKSON COUNTY, MISSOURI, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHEAST 1/4; THENCE SOUTH 90° 00' 00" EAST, ALONG THE NORTH LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 272.31 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 40.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF 39TH STREET, AS ESTABLISHED BY DOCUMENT NO. 1456433, RECORDED IN BOOK 11078, PAGE 1452, SAID POINT BEING THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE HEREIN DESCRIBED; THENCE SOUTH 0° 00' 00" WEST, AT RIGHT ANGLES TO SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 343.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 18.45 FEET; THENCE SOUTH 1° 15' 00" EAST, PARALLEL TO THE EAST RIGHT-OF-WAY LINE OF NOLAND ROAD, AS NOW ESTABLISHED, A DISTANCE OF 130.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 5.00 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 200.00 FEET; THENCE SOUTH 90° 00' 00" WEST, A DISTANCE OF 152.81 FEET (DEED = 152.98 FEET), TO A POINT ON THE AFORESAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST (DEED = SOUTH 11° 02' 39" EAST), ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 65.40 FEET; THENCE NORTH 90° 00' 00" EAST, A DISTANCE OF 201.39 FEET; THENCE SOUTH 1° 02' 25" EAST, A DISTANCE OF 355.00 FEET; THENCE NORTH 85° 50' 55" WEST, A DISTANCE OF 140.49 FEET (DEED = 140.92 FEET), TO A POINT ON SAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 7.64 FEET (DEED = SOUTH 11° 02' 39" EAST, A DISTANCE OF 8.29 FEET), TO A POINT THAT IS OPPOSITE AND 155.00 FEET EAST OF STATION 18+50 ON THE CENTERLINE OF NOLAND ROAD; THENCE SOUTH 88° 41' 51" WEST, (DEED = SOUTH 88° 45' 00" WEST), CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 25.00 FEET TO A POINT THAT IS OPPOSITE AND 130 FEET EAST OF STATION 18+50 ON SAID NOLAND ROAD CENTERLINE; THENCE SOUTH 2° 02' 11" EAST CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 124.30 FEET (DEED = SOUTH 1° 15' 00" EAST, A DISTANCE OF 124.24 FEET), TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE ROUTE NO. 1-70, AS NOW ESTABLISHED THAT IS OPPOSITE AND 228.80 FEET NORTHERLY OF STATION 545+60 ON THE CENTERLINE OF SAID 1-70, THENCE SOUTH 84° 21' 11" EAST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 643.04 FEET (DEED = SOUTH 84° 17' 39" EAST, A DISTANCE OF 644.64 FEET) TO A POINT THAT IS OPPOSITE AND 166.30 FEET NORTHERLY OF STATION 552+00 ON THE CENTERLINE OF SAID 1-70; THENCE SOUTH 89° 55' 50" EAST, CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 546.03 FEET (DEED = SOUTH 89° 51' 16" EAST, A DISTANCE OF 545.61 FEET), TO A POINT ON THE WEST LINE OF "BROOKWOOD NO. 2", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE NORTH 1° 15' 58" WEST, ALONG THE WEST LINE OF SAID SUBDIVISION, A DISTANCE OF 785.43 FEET (DEED = NORTH 1° 12' 00" WEST, A

DISTANCE OF 786.12 FEET), TO THE SOUTHEAST CORNER OF LOT 19, "WOODRIDGE", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE SOUTH 89° 51' 43" WEST, ALONG THE SOUTH LINE OF SAID "WOODRIDGE", A DISTANCE OF 251.04 FEET (DEED = NORTH 90° 00' 00" WEST, A DISTANCE OF 250.63 FEET), TO AN ANGLE POINT THEREIN; THENCE NORTH 80° 01' 00" WEST, CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 288.30 FEET TO AN ANGLE POINT THEREIN; THENCE SOUTH 89° 47' 57" WEST (DEED = NORTH 90° 00' 00" WEST), CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 286.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF DODGION STREET, AS NOW ESTABLISHED; THENCE NORTH 0° 12' 03" WEST (DEED = NORTH 0° 00' 00" WEST), ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 5.00 FEET TO THE SOUTHEAST CORNER OF LOT 34, SAID "WOODRIDGE"; THENCE SOUTH 89° 47' 57" WEST ALONG THE SOUTH LINE OF SAID LOT 34, A DISTANCE OF 135.40 FEET (DEED = 90° 00' 00" WEST, A DISTANCE OF 135.00 FEET), TO THE SOUTHWEST CORNER OF SAID LOT 34; THENCE NORTH 0° 00' 00" EAST, ALONG THE WEST LINE OF SAID "WOODRIDGE" SUBDIVISION, A DISTANCE OF 440.00 FEET TO THE AFORESAID SOUTH RIGHT-OF-WAY LINE OF 39TH STREET; THENCE NORTH 90° 00' 00" WEST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT B
MAP OF STUDY AREA



AMENDED
EXHIBIT 7 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.

Watty's - Independence, MO
I-70 Noland Road
Reimbursement Amortization

CALENDAR YEAR	TIF YEAR	TIF/TDD REIMBURSABLE COST BALANCE BEFORE PMT FROM TIF/TDD REVENUE	INTEREST ON BALANCE DURING YEAR	PAYMENT FROM TIF REVENUE	PAYMENT FROM TDD REVENUE	TOTAL PAYMENT (ALL REVENUE SOURCES)	YEAR END REIMBURSABLE COST BALANCE	EXCESS TIF/TDD REVENUE
2025	0	\$ 8,605,401	\$ 129,081	\$ -	\$ -	\$ -	\$ 8,734,482	\$ -
2026	1	\$ 8,734,482	\$ 524,069	\$ 21,259	\$ -	\$ 21,259	\$ 9,237,292	\$ -
2027	2	\$ 9,237,292	\$ 554,238	\$ 834,180	\$ 145,585	\$ 979,765	\$ 8,811,765	\$ -
2028	3	\$ 8,811,765	\$ 524,706	\$ 854,293	\$ 148,085	\$ 1,002,379	\$ 8,338,092	\$ -
2029	4	\$ 8,338,092	\$ 500,286	\$ 888,318	\$ 150,635	\$ 1,018,954	\$ 7,819,424	\$ -
2030	5	\$ 7,819,424	\$ 469,165	\$ 889,115	\$ 153,236	\$ 1,042,351	\$ 7,246,239	\$ -
2031	6	\$ 7,246,239	\$ 434,774	\$ 903,707	\$ 155,889	\$ 1,059,596	\$ 6,621,417	\$ -
2032	7	\$ 6,621,417	\$ 397,285	\$ 925,211	\$ 158,595	\$ 1,083,806	\$ 5,934,896	\$ -
2033	8	\$ 5,934,896	\$ 356,094	\$ 940,392	\$ 161,356	\$ 1,101,747	\$ 5,185,242	\$ -
2034	9	\$ 5,185,242	\$ 311,355	\$ 962,630	\$ 164,171	\$ 1,126,801	\$ 4,373,796	\$ -
2035	10	\$ 4,373,796	\$ 262,428	\$ 978,424	\$ 167,043	\$ 1,145,467	\$ 3,490,757	\$ -
2036	11	\$ 3,490,757	\$ 209,445	\$ 1,007,423	\$ 168,972	\$ 1,171,395	\$ 2,528,008	\$ -
2037	12	\$ 2,528,008	\$ 151,728	\$ 1,017,855	\$ 172,960	\$ 1,190,815	\$ 1,489,721	\$ -
2038	13	\$ 1,488,721	\$ 89,383	\$ 1,041,643	\$ 176,007	\$ 1,217,650	\$ 361,455	\$ -
2039	14	\$ 361,455	\$ 21,587	\$ 1,058,739	\$ 174,115	\$ 1,237,854	\$ (854,712)	\$ 675,597
2040	15	\$ (854,712)	\$ (51,283)	\$ 977,507	\$ 182,286	\$ 1,159,793	\$ (2,065,789)	\$ 1,853,502
2041	16	\$ (2,065,789)	\$ (123,947)	\$ 992,869	\$ 185,520	\$ 1,178,389	\$ (3,368,124)	\$ 3,152,804
2042	17	\$ (3,368,124)	\$ (202,087)	\$ 1,015,848	\$ 188,819	\$ 1,204,666	\$ (4,774,878)	\$ 4,586,059
2043	18	\$ (4,774,878)	\$ (286,493)	\$ 1,031,630	\$ 192,183	\$ 1,224,013	\$ (6,295,384)	\$ 6,093,200
2044	19	\$ (6,295,384)	\$ (377,123)	\$ 1,055,568	\$ 195,615	\$ 1,251,203	\$ (7,913,710)	\$ 7,718,095
2045	20	\$ (7,913,710)	\$ (474,833)	\$ 1,072,216	\$ 199,116	\$ 1,271,332	\$ (9,659,864)	\$ 9,460,748
2046	21	\$ (9,659,864)	\$ (579,592)	\$ 1,096,781	\$ 202,687	\$ 1,299,468	\$ (11,538,924)	\$ 11,336,237
2047	22	\$ (11,538,924)	\$ (692,335)	\$ 1,114,081	\$ 206,329	\$ 1,320,409	\$ (13,551,669)	\$ 13,345,340
2048	23	\$ (13,551,669)	\$ (813,100)	\$ 1,138,484	\$ 210,043	\$ 1,349,527	\$ (15,714,296)	\$ 15,504,252

EXHIBIT 8 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.



June 9th, 2025

Mr. Curtis J Petersen
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112

Dear Mr. Petersen:

Wally's Parent Holdco LLC (and its affiliates, and Michael Rubenstein and Wally's Independence MO Holdings LLC) has a longstanding relationship with Commerce Bank, which has included financing for numerous substantial projects spanning more than the past five years.

We are familiar with Tax Increment Financing, Community Improvement District financing, and how those interact with the Construction Loans we have provided to projects relying on such financing. We are also familiar with Wally's proposed redevelopments plan located at 4023 South Nolan Road, Independence Missouri 64055, as generally depicted on Exhibit A attached hereto, and the approximately \$40 million cost estimate to design and construct the project, including the public improvements.

The Bank would be willing to finance this project, subject to the usual caveats, underwriting, Loan Committee and Board approval. Should there be any questions or need for additional information, please do not hesitate to contact me at 314-746-3914.

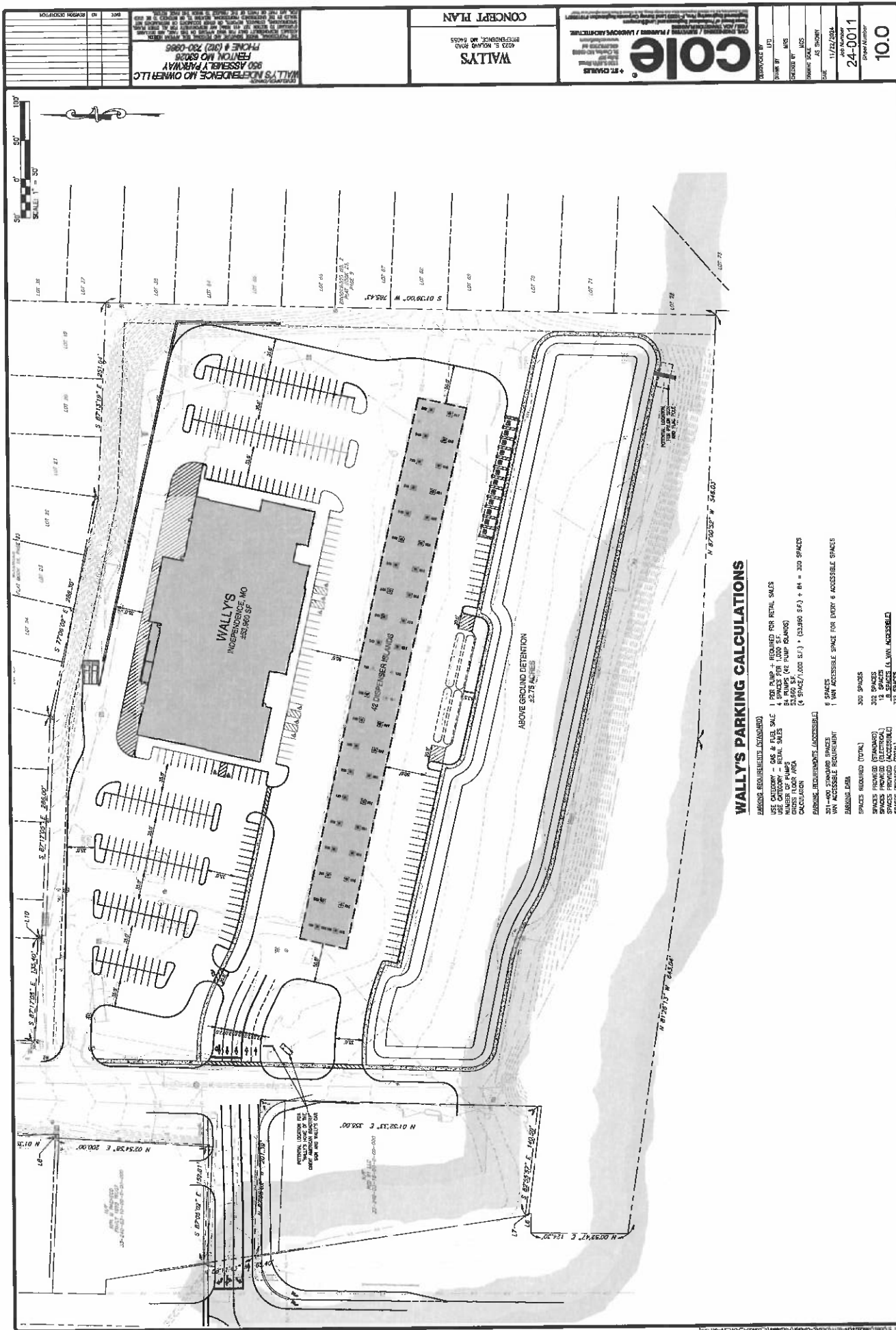
Respectfully,

Jason Scott
Vice President

EXHIBIT A

PROJECT PLANS

SEE ATTACHED



WALLY'S PARKING CALCULATIONS

PARKING REQUIREMENTS (ASSUMED)	
USE CATEGORY - GAS & FUEL SALE	1 500 PUMP + REQUIRED FOR RETAIL SALES
USE CATEGORY - RETAIL SALES	4 SPACES PER 1,000 S.F.
NUMBER OF PUMPS	54 PUMPS (48 PUMP PLANS)
NUMBER OF PUMPS	54 PUMPS (48 PUMP PLANS)
CALCULATION	(4 SPACES/1,000 S.F.) * (33,100 S.F.) + 84 = 210 SPACES
PARKING REQUIREMENTS (ACCESSIBLE)	
TOTAL AVAILABLE SPACES	210 SPACES
MIN ACCESSIBLE REQUIREMENT	1 VAN ACCESSIBLE SPACE FOR EVERY 6 ACCESSIBLE SPACES
PARKING DATA	300 SPACES
SPACES REQUIRED (TOTAL)	302 SPACES
SPACES PROVIDED (STANDARD)	18 SPACES (6 VAN ACCESSIBLE)
SPACES PROVIDED (ACCESSIBLE)	18 SPACES (6 VAN ACCESSIBLE)
SPACES PROVIDED (TOTAL)	322 SPACES

WALLY'S
INDEPENDENCE, MO 64035
4023 E. HOLLAND ROAD

cole
ARCHITECTS
1000 N. 10TH ST.
SUITE 100
LINCOLN, NE 68502
(402) 441-1111
www.coledesign.com

DATE: 11/22/2024
JOB NUMBER: 24-0011
SHEET NUMBER: 10.0

EXHIBIT 9 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.

RELOCATION ASSISTANCE PLAN

Section 99.810.1, RSMo, requires that a TIF Plan include a relocation plan for “relocation assistance for businesses and residences” within the Redevelopment Area. The Redevelopment Area does contain buildings, but no current business or residences. In the event relocation of any occupant or business is necessary, it will be carried out in accordance with Section 523.200-215 RSMo. (the “Relocation Statute”). This Relocation Assistance Plan adopts the minimum statutory requirements of the Relocation Statute which is incorporated herein.

AMENDED
EXHIBIT 10 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.

Wally's - Independence, MO
I-70 Noland Road
Cost Benefit Analysis - Summary

Taxing Jurisdiction	New Real Property Tax Revenue	New Sales Tax Revenue	Total Benefit	[1] Net Present Value of Benefit
Board of Disabled Services	\$ 137,187	\$ -	\$ 137,187	\$ 69,431
City of Independence	\$ 653,322	\$ 15,114,772	\$ 15,768,094	\$ 7,133,966
Independence School #30	\$ 6,994,101	\$ -	\$ 6,994,101	\$ 3,167,660
Jackson County	\$ 675,224	\$ 8,865,614	\$ 9,540,839	\$ 4,491,117
Mental Health	\$ 130,077	\$ -	\$ 130,077	\$ 58,912
Metro Junior College	\$ 241,190	\$ -	\$ 241,190	\$ 109,236
Mid-Continent Library	\$ 420,947	\$ -	\$ 420,947	\$ 190,649
Replacement Tax	\$ 2,693,133	\$ -	\$ 2,693,133	\$ 1,363,004
State Blind Pension	\$ 54,381	\$ -	\$ 54,381	\$ 27,688
Zoo	\$ -	\$ 657,164	\$ 657,164	\$ 297,308
State of Missouri	\$ -	\$ 30,467,492	\$ 30,467,492	\$ 15,505,013
Noland Road CID	\$ -	\$ 1,576,987	\$ 1,576,987	\$ 999,016
TOTAL	\$ 11,999,562	\$ 56,682,030	\$ 68,681,591	\$ 33,413,000

[1] Net Present Value Discount Rate:

6%

Wally's - Independence, MO
I-70 Noland Road
Cost Benefit Analysis - Disabled Services

CALENDAR YEAR	TIF YEAR	*AD VALOREM TAXES - WITH REDEVELOPMENT	AD VALOREM TAXES - WITHOUT REDEVELOPMENT	DEVELOPER		
				PILOTS	EATs	TOTAL TIF REVENUE
2025	0	\$ 1,250	\$ 1,250	\$ -	\$ -	\$ -
2026	1	\$ 1,706	\$ 1,250	\$ -	\$ -	\$ -
2027	2	\$ 6,825	\$ 1,275	\$ -	\$ -	\$ -
2028	3	\$ 6,962	\$ 1,275	\$ -	\$ -	\$ -
2029	4	\$ 6,962	\$ 1,301	\$ -	\$ -	\$ -
2030	5	\$ 7,101	\$ 1,301	\$ -	\$ -	\$ -
2031	6	\$ 7,101	\$ 1,327	\$ -	\$ -	\$ -
2032	7	\$ 7,243	\$ 1,327	\$ -	\$ -	\$ -
2033	8	\$ 7,243	\$ 1,353	\$ -	\$ -	\$ -
2034	9	\$ 7,388	\$ 1,353	\$ -	\$ -	\$ -
2035	10	\$ 7,388	\$ 1,380	\$ -	\$ -	\$ -
2036	11	\$ 7,536	\$ 1,380	\$ -	\$ -	\$ -
2037	12	\$ 7,536	\$ 1,408	\$ -	\$ -	\$ -
2038	13	\$ 7,686	\$ 1,408	\$ -	\$ -	\$ -
2039	14	\$ 7,686	\$ 1,436	\$ -	\$ -	\$ -
2040	15	\$ 7,840	\$ 1,436	\$ -	\$ -	\$ -
2041	16	\$ 7,840	\$ 1,465	\$ -	\$ -	\$ -
2042	17	\$ 7,997	\$ 1,465	\$ -	\$ -	\$ -
2043	18	\$ 7,997	\$ 1,494	\$ -	\$ -	\$ -
2044	19	\$ 8,157	\$ 1,494	\$ -	\$ -	\$ -
2045	20	\$ 8,157	\$ 1,524	\$ -	\$ -	\$ -
2046	21	\$ 8,320	\$ 1,524	\$ -	\$ -	\$ -
2047	22	\$ 8,320	\$ 1,555	\$ -	\$ -	\$ -
2048	23	\$ 8,486	\$ 1,555	\$ -	\$ -	\$ -
TOTAL		\$ 189,474	\$ 32,288	\$ -	\$ -	\$ -
NPV		\$ 86,279	\$ 16,848	\$ -	\$ -	\$ -

TOTAL BENEFIT TO TAXING JURISDICTION	\$ 137,187
NPV OF BENEFIT TO TAXING JURISDICTION	\$ 69,431
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$ -

*Amounts shown herein include jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (ii) the PILOTs generated by the redevelopment project.

Watty's - Independence, MO
1-70 Noland Road
Cost Benefit Analysis - City of Independence

CALENDAR YEAR	TIF YEAR	AD VALOREM TAXES			SALES TAXES		DEVELOPER		
		*WITH REDEVELOPMENT	WITHOUT REDEVELOPMENT		WITH REDEVELOPMENT	WITHOUT REDEVELOPMENT	PILOTS	EATS	TOTAL TIF REVENUE
2025	0	\$ 8,356	\$ 8,356	\$	\$	\$	\$	\$	\$
2026	1	\$ 9,880	\$ 8,356	\$	\$	\$	1,524	\$	\$ 1,524
2027	2	\$ 26,984	\$ 8,523	\$	\$ 418,557	\$	\$ 18,629	\$ 300,193	\$ 318,821
2028	3	\$ 27,441	\$ 8,523	\$	\$ 425,745	\$	\$ 19,085	\$ 307,380	\$ 326,465
2029	4	\$ 27,441	\$ 8,693	\$	\$ 433,076	\$	\$ 19,085	\$ 314,711	\$ 333,796
2030	5	\$ 27,906	\$ 8,693	\$	\$ 440,554	\$	\$ 19,550	\$ 322,189	\$ 341,739
2031	6	\$ 27,906	\$ 8,867	\$	\$ 448,182	\$	\$ 19,550	\$ 329,817	\$ 349,367
2032	7	\$ 28,380	\$ 8,867	\$	\$ 455,961	\$	\$ 20,025	\$ 337,597	\$ 357,621
2033	8	\$ 28,380	\$ 9,045	\$	\$ 463,897	\$	\$ 20,025	\$ 345,532	\$ 365,557
2034	9	\$ 28,864	\$ 9,045	\$	\$ 471,991	\$	\$ 20,509	\$ 353,626	\$ 374,136
2035	10	\$ 28,864	\$ 9,225	\$	\$ 480,248	\$	\$ 20,509	\$ 361,883	\$ 382,391
2036	11	\$ 29,358	\$ 9,225	\$	\$ 488,669	\$	\$ 21,002	\$ 370,304	\$ 391,306
2037	12	\$ 29,358	\$ 9,410	\$	\$ 497,259	\$	\$ 21,002	\$ 378,894	\$ 399,896
2038	13	\$ 29,862	\$ 9,410	\$	\$ 506,020	\$	\$ 21,506	\$ 387,855	\$ 409,161
2039	14	\$ 29,862	\$ 9,598	\$	\$ 514,957	\$	\$ 21,506	\$ 396,592	\$ 418,098
2040	15	\$ 52,395	\$ 9,598	\$	\$ 929,780	\$	\$	\$	\$
2041	16	\$ 52,395	\$ 9,790	\$	\$ 948,375	\$	\$	\$	\$
2042	17	\$ 53,443	\$ 9,790	\$	\$ 967,343	\$	\$	\$	\$
2043	18	\$ 53,443	\$ 9,986	\$	\$ 986,690	\$	\$	\$	\$
2044	19	\$ 54,512	\$ 9,986	\$	\$ 1,006,424	\$	\$	\$	\$
2045	20	\$ 54,512	\$ 10,186	\$	\$ 1,026,552	\$	\$	\$	\$
2046	21	\$ 55,602	\$ 10,186	\$	\$ 1,047,083	\$	\$	\$	\$
2047	22	\$ 55,602	\$ 10,389	\$	\$ 1,068,025	\$	\$	\$	\$
2048	23	\$ 56,714	\$ 10,389	\$	\$ 1,089,385	\$	\$	\$	\$
TOTAL		\$ 869,103	\$ 215,781	\$	\$ 15,114,772	\$	\$ 263,505	\$ 4,506,372	\$ 4,769,877
NPV		\$ 408,488	\$ 112,596	\$	\$ 6,838,074	\$	\$ 168,117	\$ 2,841,027	\$ 3,009,144

	AD VALOREM TAXES			SALES TAXES		ALL TAXES
TOTAL BENEFIT TO TAXING JURISDICTION	\$	653,322	\$	15,114,772	\$	15,768,094
NPV OF BENEFIT TO TAXING JURISDICTION	\$	295,893	\$	6,838,074	\$	7,133,966
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$	3,009,144				

*Amounts shown herein include jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (ii) the PILOTs generated by the redevelopment project.
 **Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

Wally's - Independence, MO
1-70 Noland Road
Cost Benefit Analysis - Independence School District #30

CALENDAR YEAR	TIF YEAR	*AD VALOREM TAXES - WITH REDEVELOPMENT	AD VALOREM TAXES - WITHOUT REDEVELOPMENT	DEVELOPER		
				PILOTS	EATS	TOTAL TIF REVENUE
2025	0	\$ 89,452	\$ 89,452	\$ -	\$ -	\$ -
2026	1	\$ 105,764	\$ 89,452	\$ 16,312	\$ -	\$ 16,312
2027	2	\$ 288,880	\$ 91,241	\$ 199,428	\$ -	\$ 199,428
2028	3	\$ 293,763	\$ 91,241	\$ 204,311	\$ -	\$ 204,311
2029	4	\$ 293,763	\$ 93,066	\$ 204,311	\$ -	\$ 204,311
2030	5	\$ 298,743	\$ 93,066	\$ 209,291	\$ -	\$ 209,291
2031	6	\$ 298,743	\$ 94,927	\$ 209,291	\$ -	\$ 209,291
2032	7	\$ 303,824	\$ 94,927	\$ 214,372	\$ -	\$ 214,372
2033	8	\$ 303,824	\$ 96,826	\$ 214,372	\$ -	\$ 214,372
2034	9	\$ 309,006	\$ 96,826	\$ 219,554	\$ -	\$ 219,554
2035	10	\$ 309,006	\$ 98,762	\$ 219,554	\$ -	\$ 219,554
2036	11	\$ 314,291	\$ 98,762	\$ 224,839	\$ -	\$ 224,839
2037	12	\$ 314,291	\$ 100,737	\$ 224,839	\$ -	\$ 224,839
2038	13	\$ 319,683	\$ 100,737	\$ 230,231	\$ -	\$ 230,231
2039	14	\$ 319,683	\$ 102,752	\$ 230,231	\$ -	\$ 230,231
2040	15	\$ 560,911	\$ 102,752	\$ -	\$ -	\$ -
2041	16	\$ 560,911	\$ 104,807	\$ -	\$ -	\$ -
2042	17	\$ 572,130	\$ 104,807	\$ -	\$ -	\$ -
2043	18	\$ 572,130	\$ 106,903	\$ -	\$ -	\$ -
2044	19	\$ 583,572	\$ 106,903	\$ -	\$ -	\$ -
2045	20	\$ 583,572	\$ 109,042	\$ -	\$ -	\$ -
2046	21	\$ 595,244	\$ 109,042	\$ -	\$ -	\$ -
2047	22	\$ 595,244	\$ 111,222	\$ -	\$ -	\$ -
2048	23	\$ 607,149	\$ 111,222	\$ -	\$ -	\$ -
TOTAL		\$ 9,304,126	\$ 2,310,025	\$ 2,820,935	\$ -	\$ 2,820,935
NPV		\$ 4,373,047	\$ 1,205,387	\$ 1,799,765	\$ -	\$ 1,799,765

TOTAL BENEFIT TO TAXING JURISDICTION	\$ 6,994,101
NPV OF BENEFIT TO TAXING JURISDICTION	\$ 3,167,660
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$ 1,799,765

*Amounts shown herein include jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (ii) the PILOTs generated by the redevelopment project.
 **Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

Wally's - Independence, MO
I-70 Noland Road
Cost Benefit Analysis - Jackson County

CALENDAR YEAR	TIF YEAR	AD VALOREM TAXES			SALES TAXES		DEVELOPER			
		*WITH REDEVELOPMENT	WITHOUT REDEVELOPMENT	WITH REDEVELOPMENT	WITHOUT REDEVELOPMENT		PILOTs	EATs	TOTAL TIF REVENUE	
2025	0	\$ 8,636	\$ 8,636	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2026	1	\$ 10,211	\$ 8,636	\$ -	\$ -	\$ 1,575	\$ 1,575	\$ -	\$ 1,575	\$ 1,575
2027	2	\$ 27,889	\$ 8,809	\$ 283,637	\$ -	\$ 19,253	\$ 19,253	\$ 91,363	\$ 110,616	\$ 110,616
2028	3	\$ 28,360	\$ 8,809	\$ 288,950	\$ -	\$ 19,725	\$ 19,725	\$ 93,550	\$ 113,275	\$ 113,275
2029	4	\$ 28,360	\$ 8,985	\$ 294,368	\$ -	\$ 19,725	\$ 19,725	\$ 95,782	\$ 115,506	\$ 115,506
2030	5	\$ 28,841	\$ 8,985	\$ 299,895	\$ -	\$ 20,205	\$ 20,205	\$ 98,058	\$ 118,263	\$ 118,263
2031	6	\$ 28,841	\$ 9,164	\$ 305,533	\$ -	\$ 20,205	\$ 20,205	\$ 100,379	\$ 120,584	\$ 120,584
2032	7	\$ 29,332	\$ 9,164	\$ 311,284	\$ -	\$ 20,696	\$ 20,696	\$ 102,747	\$ 123,443	\$ 123,443
2033	8	\$ 29,332	\$ 9,348	\$ 317,149	\$ -	\$ 20,696	\$ 20,696	\$ 105,162	\$ 125,858	\$ 125,858
2034	9	\$ 29,832	\$ 9,348	\$ 323,132	\$ -	\$ 21,196	\$ 21,196	\$ 107,625	\$ 128,822	\$ 128,822
2035	10	\$ 29,832	\$ 9,535	\$ 329,234	\$ -	\$ 21,196	\$ 21,196	\$ 110,138	\$ 131,334	\$ 131,334
2036	11	\$ 30,342	\$ 9,535	\$ 335,459	\$ -	\$ 21,706	\$ 21,706	\$ 112,701	\$ 134,408	\$ 134,408
2037	12	\$ 30,342	\$ 9,725	\$ 341,807	\$ -	\$ 21,706	\$ 21,706	\$ 115,315	\$ 137,022	\$ 137,022
2038	13	\$ 30,863	\$ 9,725	\$ 348,283	\$ -	\$ 22,227	\$ 22,227	\$ 117,982	\$ 140,209	\$ 140,209
2039	14	\$ 30,863	\$ 9,920	\$ 354,889	\$ -	\$ 22,227	\$ 22,227	\$ 120,702	\$ 142,929	\$ 142,929
2040	15	\$ 54,152	\$ 9,920	\$ 485,102	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2041	16	\$ 54,152	\$ 10,118	\$ 494,805	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2042	17	\$ 55,235	\$ 10,118	\$ 504,701	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2043	18	\$ 55,235	\$ 10,321	\$ 514,795	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2044	19	\$ 56,339	\$ 10,321	\$ 525,091	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2045	20	\$ 56,339	\$ 10,527	\$ 535,892	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2046	21	\$ 57,466	\$ 10,527	\$ 546,304	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2047	22	\$ 57,466	\$ 10,738	\$ 557,230	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2048	23	\$ 58,615	\$ 10,738	\$ 568,375	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL		\$ 898,239	\$ 223,014	\$ 8,865,614	\$ -	\$ 272,339	\$ 272,339	\$ 1,371,505	\$ 1,643,843	\$ 1,643,843
NPV		\$ 422,183	\$ 116,370	\$ 4,185,305	\$ -	\$ 173,753	\$ 173,753	\$ 916,540	\$ 1,038,413	\$ 1,038,413

	AD VALOREM TAXES	SALES TAXES	ALL TAXES
TOTAL BENEFIT TO TAXING JURISDICTION	\$ 675,224	\$ 8,865,614	\$ 9,540,839
NPV OF BENEFIT TO TAXING JURISDICTION	\$ 305,812	\$ 4,185,305	\$ 4,491,117
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$ 1,038,413		

*Amounts shown herein include jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (ii) the PILOTs generated by the redevelopment project.
 **Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

Wally's - Independence, MO
1-70 Noland Road
Cost Benefit Analysis - Mental Health

CALENDAR YEAR	TIF YEAR	*AD VALOREM TAXES - WITH REDEVELOPMENT	AD VALOREM TAXES - WITHOUT REDEVELOPMENT	DEVELOPER		
				PILOTS	EATS	TOTAL TIF REVENUE
2025	0	\$ 1,664	\$ 1,664	\$ -	\$ -	\$ -
2026	1	\$ 1,967	\$ 1,664	\$ 303	\$ -	\$ 303
2027	2	\$ 5,373	\$ 1,697	\$ 3,709	\$ -	\$ 3,709
2028	3	\$ 5,463	\$ 1,697	\$ 3,800	\$ -	\$ 3,800
2029	4	\$ 5,463	\$ 1,731	\$ 3,800	\$ -	\$ 3,800
2030	5	\$ 5,556	\$ 1,731	\$ 3,892	\$ -	\$ 3,892
2031	6	\$ 5,556	\$ 1,765	\$ 3,892	\$ -	\$ 3,892
2032	7	\$ 5,651	\$ 1,765	\$ 3,987	\$ -	\$ 3,987
2033	8	\$ 5,651	\$ 1,801	\$ 3,987	\$ -	\$ 3,987
2034	9	\$ 5,747	\$ 1,801	\$ 4,083	\$ -	\$ 4,083
2035	10	\$ 5,747	\$ 1,837	\$ 4,083	\$ -	\$ 4,083
2036	11	\$ 5,845	\$ 1,837	\$ 4,182	\$ -	\$ 4,182
2037	12	\$ 5,845	\$ 1,874	\$ 4,182	\$ -	\$ 4,182
2038	13	\$ 5,945	\$ 1,874	\$ 4,282	\$ -	\$ 4,282
2039	14	\$ 5,945	\$ 1,911	\$ 4,282	\$ -	\$ 4,282
2040	15	\$ 10,432	\$ 1,911	\$ -	\$ -	\$ -
2041	16	\$ 10,432	\$ 1,949	\$ -	\$ -	\$ -
2042	17	\$ 10,641	\$ 1,949	\$ -	\$ -	\$ -
2043	18	\$ 10,641	\$ 1,988	\$ -	\$ -	\$ -
2044	19	\$ 10,853	\$ 1,988	\$ -	\$ -	\$ -
2045	20	\$ 10,853	\$ 2,028	\$ -	\$ -	\$ -
2046	21	\$ 11,070	\$ 2,028	\$ -	\$ -	\$ -
2047	22	\$ 11,070	\$ 2,069	\$ -	\$ -	\$ -
2048	23	\$ 11,292	\$ 2,069	\$ -	\$ -	\$ -
TOTAL		\$ 173,039	\$ 42,962	\$ 52,464	\$ -	\$ 52,464
NPV		\$ 81,330	\$ 22,418	\$ 33,472	\$ -	\$ 33,472

TOTAL BENEFIT TO TAXING JURISDICTION	\$ 130,077
NPV OF BENEFIT TO TAXING JURISDICTION	\$ 58,912
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$ 33,472

*Amounts shown herein include Jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (ii) the PILOTs generated by the redevelopment project.
 **Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

Wally's - Independence, MO
1-70 Noland Road
Cost Benefit Analysis - Metro Junior College

CALENDAR YEAR	TIF YEAR	*AD VALOREM TAXES - WITH REDEVELOPMENT	AD VALOREM TAXES - WITHOUT REDEVELOPMENT	DEVELOPER		
				PILOTS	EATS	TOTAL TIF REVENUE
2025	0	\$ 3,085	\$ 3,085	\$ -	\$ -	\$ -
2026	1	\$ 3,647	\$ 3,085	\$ 563	\$ -	\$ 563
2027	2	\$ 9,962	\$ 3,146	\$ 6,877	\$ -	\$ 6,877
2028	3	\$ 10,130	\$ 3,146	\$ 7,046	\$ -	\$ 7,046
2029	4	\$ 10,130	\$ 3,209	\$ 7,046	\$ -	\$ 7,046
2030	5	\$ 10,302	\$ 3,209	\$ 7,217	\$ -	\$ 7,217
2031	6	\$ 10,302	\$ 3,274	\$ 7,217	\$ -	\$ 7,217
2032	7	\$ 10,477	\$ 3,274	\$ 7,393	\$ -	\$ 7,393
2033	8	\$ 10,477	\$ 3,339	\$ 7,393	\$ -	\$ 7,393
2034	9	\$ 10,656	\$ 3,339	\$ 7,571	\$ -	\$ 7,571
2035	10	\$ 10,656	\$ 3,406	\$ 7,571	\$ -	\$ 7,571
2036	11	\$ 10,838	\$ 3,406	\$ 7,754	\$ -	\$ 7,754
2037	12	\$ 10,838	\$ 3,474	\$ 7,754	\$ -	\$ 7,754
2038	13	\$ 11,024	\$ 3,474	\$ 7,939	\$ -	\$ 7,939
2039	14	\$ 11,024	\$ 3,543	\$ 7,939	\$ -	\$ 7,939
2040	15	\$ 19,343	\$ 3,543	\$ -	\$ -	\$ -
2041	16	\$ 19,343	\$ 3,614	\$ -	\$ -	\$ -
2042	17	\$ 19,730	\$ 3,614	\$ -	\$ -	\$ -
2043	18	\$ 19,730	\$ 3,687	\$ -	\$ -	\$ -
2044	19	\$ 20,124	\$ 3,687	\$ -	\$ -	\$ -
2045	20	\$ 20,124	\$ 3,760	\$ -	\$ -	\$ -
2046	21	\$ 20,527	\$ 3,760	\$ -	\$ -	\$ -
2047	22	\$ 20,527	\$ 3,835	\$ -	\$ -	\$ -
2048	23	\$ 20,937	\$ 3,835	\$ -	\$ -	\$ -
TOTAL		\$ 320,850	\$ 79,661	\$ 97,279	\$ -	\$ 97,279
NPV		\$ 150,803	\$ 41,567	\$ 62,064	\$ -	\$ 62,064

TOTAL BENEFIT TO TAXING JURISDICTION	\$ 241,190
NPV OF BENEFIT TO TAXING JURISDICTION	\$ 109,236
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$ 62,064

*Amounts shown herein include jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (ii) the PILOTs generated by the redevelopment project.
**Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

Wally's - Independence, MO
1-70 Noland Road
Cost Benefit Analysis - Mid-Continent Library

CALENDAR YEAR	TIF YEAR	*AD VALOREM TAXES - WITH REDEVELOPMENT	AD VALOREM TAXES - WITHOUT REDEVELOPMENT	DEVELOPER		
				PILOTS	EATS	TOTAL TIF REVENUE
2025	0	\$ 5,384	\$ 5,384	\$ -	\$ -	\$ -
2026	1	\$ 6,366	\$ 5,384	\$ 982	\$ -	\$ 982
2027	2	\$ 17,387	\$ 5,491	\$ 12,003	\$ -	\$ 12,003
2028	3	\$ 17,680	\$ 5,491	\$ 12,297	\$ -	\$ 12,297
2029	4	\$ 17,680	\$ 5,601	\$ 12,297	\$ -	\$ 12,297
2030	5	\$ 17,980	\$ 5,601	\$ 12,596	\$ -	\$ 12,596
2031	6	\$ 17,980	\$ 5,713	\$ 12,596	\$ -	\$ 12,596
2032	7	\$ 18,286	\$ 5,713	\$ 12,902	\$ -	\$ 12,902
2033	8	\$ 18,286	\$ 5,828	\$ 12,902	\$ -	\$ 12,902
2034	9	\$ 18,598	\$ 5,828	\$ 13,214	\$ -	\$ 13,214
2035	10	\$ 18,598	\$ 5,944	\$ 13,214	\$ -	\$ 13,214
2036	11	\$ 18,916	\$ 5,944	\$ 13,532	\$ -	\$ 13,532
2037	12	\$ 18,916	\$ 6,063	\$ 13,532	\$ -	\$ 13,532
2038	13	\$ 19,240	\$ 6,063	\$ 13,857	\$ -	\$ 13,857
2039	14	\$ 19,240	\$ 6,184	\$ 13,857	\$ -	\$ 13,857
2040	15	\$ 33,759	\$ 6,184	\$ -	\$ -	\$ -
2041	16	\$ 33,759	\$ 6,308	\$ -	\$ -	\$ -
2042	17	\$ 34,434	\$ 6,308	\$ -	\$ -	\$ -
2043	18	\$ 34,434	\$ 6,434	\$ -	\$ -	\$ -
2044	19	\$ 35,123	\$ 6,434	\$ -	\$ -	\$ -
2045	20	\$ 35,123	\$ 6,563	\$ -	\$ -	\$ -
2046	21	\$ 35,825	\$ 6,563	\$ -	\$ -	\$ -
2047	22	\$ 35,825	\$ 6,694	\$ -	\$ -	\$ -
2048	23	\$ 36,542	\$ 6,694	\$ -	\$ -	\$ -
TOTAL		\$ 559,978	\$ 139,031	\$ 169,781	\$ -	\$ 169,781
NPV		\$ 263,196	\$ 72,547	\$ 108,321	\$ -	\$ 108,321

TOTAL BENEFIT TO TAXING JURISDICTION	\$ 420,947
NPV OF BENEFIT TO TAXING JURISDICTION	\$ 190,649
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$ 108,321

*Amounts shown herein include Jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (ii) the PILOTs generated by the redevelopment project.
 **Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

Watty's - Independence, MO
I-70 Noland Road
Cost Benefit Analysis - Replacement Tax

CALENDAR YEAR	TIF YEAR	*AD VALOREM TAXES - WITH REDEVELOPMENT	AD VALOREM TAXES - WITHOUT REDEVELOPMENT	DEVELOPER		
				PILOTS	EATS	TOTAL TIF REVENUE
2025	0	\$ 24,545	\$ 24,545	\$ -	\$ -	\$ -
2026	1	\$ 33,496	\$ 24,545	\$ -	\$ -	\$ -
2027	2	\$ 133,986	\$ 25,035	\$ -	\$ -	\$ -
2028	3	\$ 136,666	\$ 25,035	\$ -	\$ -	\$ -
2029	4	\$ 136,666	\$ 25,536	\$ -	\$ -	\$ -
2030	5	\$ 139,399	\$ 25,536	\$ -	\$ -	\$ -
2031	6	\$ 139,399	\$ 26,047	\$ -	\$ -	\$ -
2032	7	\$ 142,187	\$ 26,047	\$ -	\$ -	\$ -
2033	8	\$ 142,187	\$ 26,568	\$ -	\$ -	\$ -
2034	9	\$ 145,031	\$ 26,568	\$ -	\$ -	\$ -
2035	10	\$ 145,031	\$ 27,089	\$ -	\$ -	\$ -
2036	11	\$ 147,931	\$ 27,089	\$ -	\$ -	\$ -
2037	12	\$ 147,931	\$ 27,641	\$ -	\$ -	\$ -
2038	13	\$ 150,890	\$ 27,641	\$ -	\$ -	\$ -
2039	14	\$ 150,890	\$ 28,194	\$ -	\$ -	\$ -
2040	15	\$ 153,908	\$ 28,194	\$ -	\$ -	\$ -
2041	16	\$ 153,908	\$ 28,758	\$ -	\$ -	\$ -
2042	17	\$ 156,986	\$ 28,758	\$ -	\$ -	\$ -
2043	18	\$ 156,986	\$ 29,333	\$ -	\$ -	\$ -
2044	19	\$ 160,126	\$ 29,333	\$ -	\$ -	\$ -
2045	20	\$ 160,126	\$ 29,920	\$ -	\$ -	\$ -
2046	21	\$ 163,328	\$ 29,920	\$ -	\$ -	\$ -
2047	22	\$ 163,328	\$ 30,518	\$ -	\$ -	\$ -
2048	23	\$ 166,595	\$ 30,518	\$ -	\$ -	\$ -
TOTAL		\$ 3,326,977	\$ 633,844	\$ -	\$ -	\$ -
NPV		\$ 1,693,749	\$ 330,744	\$ -	\$ -	\$ -

TOTAL BENEFIT TO TAXING JURISDICTION	\$ 2,693,133
NPV OF BENEFIT TO TAXING JURISDICTION	\$ 1,363,004
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$ -

*Amounts shown herein include jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (ii) the PILOTs generated by the redevelopment project.
 **Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

Wally's - Independence, MO
1-70 Noland Road
Cost Benefit Analysis - Blind Pension

CALENDAR YEAR	TIF YEAR	*AD VALOREM TAXES - WITH REDEVELOPMENT	AD VALOREM TAXES - WITHOUT REDEVELOPMENT	DEVELOPER		
				PILOTS	EATs	TOTAL TIF REVENUE
2025	0	\$ 512	\$ 512	-	\$ -	\$ -
2026	1	\$ 699	\$ 523	-	\$ -	\$ -
2027	2	\$ 2,797	\$ 533	-	\$ -	\$ -
2028	3	\$ 2,853	\$ 544	-	\$ -	\$ -
2029	4	\$ 2,853	\$ 555	-	\$ -	\$ -
2030	5	\$ 2,910	\$ 566	-	\$ -	\$ -
2031	6	\$ 2,910	\$ 577	-	\$ -	\$ -
2032	7	\$ 2,968	\$ 589	-	\$ -	\$ -
2033	8	\$ 2,968	\$ 600	-	\$ -	\$ -
2034	9	\$ 3,028	\$ 612	-	\$ -	\$ -
2035	10	\$ 3,028	\$ 625	-	\$ -	\$ -
2036	11	\$ 3,088	\$ 637	-	\$ -	\$ -
2037	12	\$ 3,088	\$ 650	-	\$ -	\$ -
2038	13	\$ 3,150	\$ 663	-	\$ -	\$ -
2039	14	\$ 3,150	\$ 676	-	\$ -	\$ -
2040	15	\$ 3,213	\$ 690	-	\$ -	\$ -
2041	16	\$ 3,213	\$ 703	-	\$ -	\$ -
2042	17	\$ 3,277	\$ 718	-	\$ -	\$ -
2043	18	\$ 3,277	\$ 732	-	\$ -	\$ -
2044	19	\$ 3,343	\$ 746	-	\$ -	\$ -
2045	20	\$ 3,343	\$ 761	-	\$ -	\$ -
2046	21	\$ 3,410	\$ 777	-	\$ -	\$ -
2047	22	\$ 3,410	\$ 792	-	\$ -	\$ -
2048	23	\$ 3,478	\$ 808	-	\$ -	\$ -
TOTAL		\$ 69,457	\$ 15,076	-	\$ -	\$ -
NPV		\$ 35,360	\$ 7,672	-	\$ -	\$ -

TOTAL BENEFIT TO TAXING JURISDICTION	\$ 54,381
NPV OF BENEFIT TO TAXING JURISDICTION	\$ 27,688
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$ -

*Amounts shown herein include jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (ii) the PILOTs generated by the redevelopment project.
 **Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

Wally's - Independence, MO
I-70 Noland Road
Cost Benefit Analysis - Zoo

CALENDAR YEAR	TIF YEAR	SALES TAXES		DEVELOPER		
		WITH REDEVELOPMENT	WITHOUT REDEVELOPMENT	PILOTS	EATS	TOTAL TIF REVENUE
2025	0	\$ -	\$ -	\$ -	\$ -	\$ -
2026	1	\$ -	\$ -	\$ -	\$ -	\$ -
2027	2	\$ 18,198	\$ -	\$ -	\$ 13,052	\$ 13,052
2028	3	\$ 18,511	\$ -	\$ -	\$ 13,364	\$ 13,364
2029	4	\$ 18,829	\$ -	\$ -	\$ 13,683	\$ 13,683
2030	5	\$ 19,155	\$ -	\$ -	\$ 14,008	\$ 14,008
2031	6	\$ 19,486	\$ -	\$ -	\$ 14,340	\$ 14,340
2032	7	\$ 19,824	\$ -	\$ -	\$ 14,678	\$ 14,678
2033	8	\$ 20,169	\$ -	\$ -	\$ 15,023	\$ 15,023
2034	9	\$ 20,521	\$ -	\$ -	\$ 15,375	\$ 15,375
2035	10	\$ 20,880	\$ -	\$ -	\$ 15,734	\$ 15,734
2036	11	\$ 21,246	\$ -	\$ -	\$ 16,100	\$ 16,100
2037	12	\$ 21,620	\$ -	\$ -	\$ 16,474	\$ 16,474
2038	13	\$ 22,001	\$ -	\$ -	\$ 16,855	\$ 16,855
2039	14	\$ 22,389	\$ -	\$ -	\$ 17,243	\$ 17,243
2040	15	\$ 40,425	\$ -	\$ -	\$ -	\$ -
2041	16	\$ 41,234	\$ -	\$ -	\$ -	\$ -
2042	17	\$ 42,058	\$ -	\$ -	\$ -	\$ -
2043	18	\$ 42,900	\$ -	\$ -	\$ -	\$ -
2044	19	\$ 43,758	\$ -	\$ -	\$ -	\$ -
2045	20	\$ 44,633	\$ -	\$ -	\$ -	\$ -
2046	21	\$ 45,525	\$ -	\$ -	\$ -	\$ -
2047	22	\$ 46,436	\$ -	\$ -	\$ -	\$ -
2048	23	\$ 47,365	\$ -	\$ -	\$ -	\$ -
TOTAL		\$ 657,164	\$ -	\$ -	\$ 195,929	\$ 195,929
NPV		\$ 297,308	\$ -	\$ -	\$ 123,523	\$ 123,523

TOTAL BENEFIT TO TAXING JURISDICTION	\$ 657,164
NPV OF BENEFIT TO TAXING JURISDICTION	\$ 297,308
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$ 123,523

*Amounts shown herein include jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (ii) the PILOTs generated by the redevelopment project.
 ** Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

Wally's - Independence, MO
I-70 Noland Road
Cost Benefit Analysis - Noland Road CID

CALENDAR YEAR	TIF YEAR	SALES TAXES			DEVELOPER		
		WITH REDEVELOPMENT	WITHOUT REDEVELOPMENT	PILOTS	EATS	TOTAL TIF REVENUE	
2025	0	\$ -	\$ -	\$ -	\$ -	\$ -	
2026	1	\$ -	\$ -	\$ -	\$ -	\$ -	
2027	2	\$ 109,189	\$ -	\$ -	\$ 78,311	\$ 78,311	
2028	3	\$ 111,064	\$ -	\$ -	\$ 80,186	\$ 80,186	
2029	4	\$ 112,976	\$ -	\$ -	\$ 82,099	\$ 82,099	
2030	5	\$ 114,927	\$ -	\$ -	\$ 84,049	\$ 84,049	
2031	6	\$ 116,917	\$ -	\$ -	\$ 86,039	\$ 86,039	
2032	7	\$ 118,946	\$ -	\$ -	\$ 88,069	\$ 88,069	
2033	8	\$ 121,017	\$ -	\$ -	\$ 90,139	\$ 90,139	
2034	9	\$ 123,128	\$ -	\$ -	\$ 92,250	\$ 92,250	
2035	10	\$ 125,282	\$ -	\$ -	\$ 94,404	\$ 94,404	
2036	11	\$ 127,479	\$ -	\$ -	\$ 96,601	\$ 96,601	
2037	12	\$ 129,720	\$ -	\$ -	\$ 98,842	\$ 98,842	
2038	13	\$ 132,005	\$ -	\$ -	\$ 101,127	\$ 101,127	
2039	14	\$ 134,337	\$ -	\$ -	\$ 103,459	\$ 103,459	
TOTAL		\$ 1,576,987	\$ -	\$ -	\$ 1,175,575	\$ 1,175,575	
NPV		\$ 999,016	\$ -	\$ -	\$ 741,137	\$ 741,137	

TOTAL BENEFIT TO TAXING JURISDICTION	\$ 1,576,987
NPV OF BENEFIT TO TAXING JURISDICTION	\$ 999,016
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$ 741,137

*Amounts shown herein include jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (ii) the PILOTs generated by the redevelopment project.
**Assumes NRCID terminates at end of calendar year 2039.
***Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

Wally's - Independence, MO
1-70 Noland Road
Cost Benefit Analysis - State Sales Tax

CALENDAR YEAR	TIF YEAR	SALES TAXES - WITH REDEVELOPMENT	SALES TAXES - WITHOUT REDEVELOPMENT	DEVELOPER		
				PILOTS	EATs	TOTAL TIF REVENUE
2025	0	\$ -	\$ -	\$ -	-	\$ -
2026	1	\$ 1,056,250	\$ -	\$ -	-	\$ -
2027	2	\$ 1,077,375	\$ -	\$ -	-	\$ -
2028	3	\$ 1,098,923	\$ -	\$ -	-	\$ -
2029	4	\$ 1,120,901	\$ -	\$ -	-	\$ -
2030	5	\$ 1,143,319	\$ -	\$ -	-	\$ -
2031	6	\$ 1,166,185	\$ -	\$ -	-	\$ -
2032	7	\$ 1,189,509	\$ -	\$ -	-	\$ -
2033	8	\$ 1,213,299	\$ -	\$ -	-	\$ -
2034	9	\$ 1,237,565	\$ -	\$ -	-	\$ -
2035	10	\$ 1,262,317	\$ -	\$ -	-	\$ -
2036	11	\$ 1,287,563	\$ -	\$ -	-	\$ -
2037	12	\$ 1,313,314	\$ -	\$ -	-	\$ -
2038	13	\$ 1,339,580	\$ -	\$ -	-	\$ -
2039	14	\$ 1,366,372	\$ -	\$ -	-	\$ -
2040	15	\$ 1,393,699	\$ -	\$ -	-	\$ -
2041	16	\$ 1,421,573	\$ -	\$ -	-	\$ -
2042	17	\$ 1,450,005	\$ -	\$ -	-	\$ -
2043	18	\$ 1,479,005	\$ -	\$ -	-	\$ -
2044	19	\$ 1,508,585	\$ -	\$ -	-	\$ -
2045	20	\$ 1,538,757	\$ -	\$ -	-	\$ -
2046	21	\$ 1,569,532	\$ -	\$ -	-	\$ -
2047	22	\$ 1,600,923	\$ -	\$ -	-	\$ -
2048	23	\$ 1,632,941	\$ -	\$ -	-	\$ -
TOTAL		\$ 30,467,492	\$ -	\$ -	-	\$ -
NPV		\$ 15,505,013	\$ -	\$ -	-	\$ -

TOTAL BENEFIT TO TAXING JURISDICTION	\$ 30,467,492
NPV OF BENEFIT TO TAXING JURISDICTION	\$ 15,505,013
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$ -

*Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

AMENDED
EXHIBIT 11 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.

AFFIDAVIT

STATE OF TEXAS)

) SS

COUNTY OF HARRIS)

COMES NOW, Michael Rubenstein, and being first duly sworn, on his oath states:

1. I am over the age of eighteen (18) and competent to testify to the following matters of my own knowledge and belief and am duly authorized to testify on behalf of WALLY'S INDEPENDENCE MO OWNER LLC, a Missouri limited liability company.
2. I am an agent for, and Manager of, WALLY'S INDEPENDENCE MO OWNER LLC, and am providing this Affidavit on behalf of WALLY'S INDEPENDENCE MO OWNER LLC.
3. WALLY'S INDEPENDENCE MO OWNER LLC is the proposed developer for the redevelopment project described in the Tax Increment Financing Plan ("TIF Plan") relating to the development of real property generally located in the northeast quadrant of the intersection of Interstate 70 and South Noland Road in Independence, Missouri. The conditions, which evidence the Redevelopment Project Area (as legally described in the TIF Plan) is a blighted area, are detailed in the TIF Plan.
4. In my opinion, the Redevelopment Project Area on a whole is a "blighted area" as that term is defined in the TIF Plan and has not recently been subject to growth and development through investment by private enterprise.
5. The Redevelopment Project Area would not reasonably be anticipated to be further developed without the adoption of tax increment financing due to the substantial cost to ameliorate the conditions which make such real property a blighted area.
6. The cost benefit analysis included in the TIF Plan shows the anticipated economic impact of the TIF Plan on each affected taxing jurisdiction.
7. WALLY'S INDEPENDENCE MO OWNER LLC will not, and cannot reasonably be expected to, develop the subject property as proposed without the adoption of the proposed TIF Plan.
8. As demonstrated in the calculations of return on investment attached to this affidavit, the Redevelopment Project described in the TIF Plan is not economically viable without such assistance.
9. As demonstrated in the calculations of return on investment attached to this affidavit, the Redevelopment Project described in the TIF Plan is financially feasible with the assistance described in the TIF Plan.
10. To my knowledge the TIF Plan meets the requirements of Section 99.810 of the Real Property Tax Increment Allocation Redevelopment Act, Revised Statutes of Missouri.

11. The information submitted to the tax increment financing commission, and the statements and averments in this affidavit are, to the best of my knowledge and belief, true, accurate and complete in all material respects.

[No further text on this page]

WALLY'S INDEPENDENCE MO OWNER
LLC

By:


Michael Rubenstein, Manager

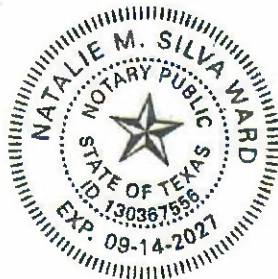
Subscribed and sworn to before me, a Notary Public, in and for said County and State this 25th day
of September, 2025.

My Commission Expires:

sept 14, 2027


Notary Public
Printed Name: Natalie M Silva Ward

SEAL



**Wally's - Independence, MO
I-70 Noland Road
Pro Forma Without Incentives**

[illegible]

Tax Increment Financing Commission of Independence, Missouri

TIF COMMISSION ROSTER
for the Wally's Tax Increment Financing Plan
Public Hearing Opened November 12, 2025

City Appointees

Ron Bruch
James Conley
Grant Watkins Davis
Amanda McIntyre
John Szturo
Allie Zaroor

County Appointees

Chris Whiting
Charlie Franklin

Independence School District Appointees

Wendy Baird
Denise Fears

Other Taxing Jurisdictions Appointee (from Mid Continent Public Library)

Aaron Mason

Tax Increment Financing Commission of Independence, Missouri
111 E. Maple Ave.
Independence, MO 64050

**Notice of Public Hearing relating to the
Wally's Tax Increment Financing Plan and Project**

To: Taxing Districts (Distribution List attached)
Date: September 26, 2025

Pursuant to Section 99.830 of the Revised Statutes of Missouri, you are hereby notified that the Tax Increment Financing Commission of Independence, Missouri (the "Commission"), will hold a public hearing at 2:00 p.m. on November 12, 2025, at the Independence Utilities Center, 17221 E. 23rd Street, Conference Room 117 (1st Floor), Independence, MO 64057, to consider the Wally's Tax Increment Financing Plan (the "Redevelopment Plan"), the designation of the proposed redevelopment area (the "Redevelopment Area"), and the adoption of the redevelopment project described in the Redevelopment Plan (the "Redevelopment Project").

The proposed Redevelopment Area, which contains approximately 20.9 acres, is located at the intersection of East 23rd Street and Hub Drive in Independence, Missouri. The Redevelopment Area is generally bounded by E. 39th Street and E. 39th Terrace to the north, S. Dodgion Avenue and S. Hocker Avenue to the east, Interstate Highway 70 to the south, and S. Noland Road to the west.

The Redevelopment Plan calls for one Redevelopment Project which seeks to eliminate blight, implement certain private improvements and public infrastructure improvements, increase property values, create economic stability and implement the Comprehensive Plan of the City. The primary purpose of the Redevelopment Project is to remove blighted buildings and redevelop the Redevelopment Area into an approximately 54,000 square foot travel center, including fuel pumps, landscaping, parking and other amenities and public and private infrastructure. Under the Redevelopment Plan, tax increment financing revenues will be collected to fund reimbursable project costs associated with certain of the improvements. The Redevelopment Plan requires a 50% surplus of payments in lieu of taxes for distribution to the taxing districts in each year.

A copy of the Redevelopment Plan, including a legal description and a map of the proposed Redevelopment Area and the Redevelopment Project, is on file with the office of the City Clerk at Independence City Hall, 111 E. Maple Ave., Independence, MO 64050, and may be reviewed by any interested party during business hours. A cost-benefit analysis, showing the effects of the Redevelopment Plan on each taxing jurisdiction, is on file with the Redevelopment Plan. Copies of the Redevelopment Plan and cost-benefit analysis may also be obtained by emailing a request to Tom Scannell, Community Development Director at tscannell@indepmo.org. All taxing districts receiving this notice are invited to attend the hearing and/or to submit comments to the Commission (at the office of the City Clerk) prior to the date of the hearing. **ALL INTERESTED PARTIES SHALL BE GIVEN AN OPPORTUNITY TO BE HEARD AT THE PUBLIC HEARING.**

DISTRIBUTION LIST

City Manager
City of Independence
111 E. Maple Ave.
Independence, MO 64050

Assessment Department
Director
Truman Courthouse
112 W. Lexington
1st Floor
Independence, MO 64050

Independence School District
Superintendent
201 N. Forest Ave
Independence, MO 64050

Metropolitan Community College
Chancellor
3200 Broadway
Kansas City, MO 64111

The Kansas City Zoological District
Chair of the Board of Directors
6800 Zoo Drive
Kansas City, MO 64132

Missouri Department of Economic Development
Director
P.O. Box 1157
Jefferson City, MO 65102-1157

Missouri Director of Revenue
County Tax Section
Merchants/Manufacturers Replacement Tax Fund
P.O. Box 453
Jefferson City, MO 65102-0453

Missouri Department of Revenue
Tax Administration Bureau
P.O. Box 475
Jefferson City, MO 65105-0475

Noland Road Community Improvement District
4315 South Noland Road, Suite B
Independence, MO 64055

Jackson County
County Executive
415 E. 12th Street
Kansas City, MO 64106

Collection Department
Director
Truman Courthouse
112 W. Lexington
Suite 114
Independence, MO 64050

Mid Continent Public Library
Director
15616 E. Highway 24
Independence, MO 64050-2057

Jackson County Community Mental Health
Executive Director
1627 Main Street, Suite 500
Kansas City, MO 64108

Jackson County Board of Disabled Services
Executive Director
8511 Hillcrest Road, Suite 300
Kansas City, MO 64138

State Tax Commission of Missouri
P.O. Box 146
Jefferson City, MO 65102-0146

Missouri Director of Revenue
County Tax Section
State Blind Pension Fund
P.O. Box 453
Jefferson City, MO 65102-0453

USPS Manifest Mailing System

Page 1

Mailer's Name & Address Giltmore & Bell, P.C. 2405 Grand Blvd., Suite 1100 Kansas City, MO 64108-2521	Permit Number	MAC Ver. Number Transtream
	Sequence Number 7-8418	Class of Mail Mixed

Article #/ Piece ID Shipper Ref#	Addressee Name Delivery Address	ES Type	Postage	ES Fee	Insurance Amount	Due/ Sender	Total Charge
9414814902829730028436 19682 INDEPWALLYS TIF	Metropolitan Community College 3200 Broadway, Kansas City, MO 64111	ERR C	0.740	2.82 5.30			8.86
9414814902829730028443 19683 INDEPWALLYS TIF	Mid-Continent Public Library 15616 E. 24 Highway, Independence, MO 64050	ERR C	0.740	2.82 5.30			8.86
9414814902829730028460 19684 INDEPWALLYS TIF	Jackson County Community Mental Health 1627 Main Street, Suite 500 Kansas City, MO 64108	ERR C	0.740	2.82 5.30			8.86
9414814902829730028467 19685 INDEPWALLYS TIF	Jackson County Board of Disabled Services 8511 Hillcrest Rd., Suite 300 Kansas City, MO 64138	ERR C	0.740	2.82 5.30			8.86
9414814902829730028474 19686 INDEPWALLYS TIF	Missouri Director of Revenue P.O. Box 452, Jefferson City MO 65102	ERR C	0.740	2.82 5.30			8.86
9414814902829730028481 19687 INDEPWALLYS TIF	The Kansas City Zoological District 5800 Zoo Drive, Kansas City, MO 64132	ERR C	0.740	2.82 5.30			8.86
9414814902829730028498 19688 INDEPWALLYS TIF	Independence School District 201 N. Forest Ave., Independence, MO 64050	ERR C	0.740	2.82 5.30			8.86
9414814902829730028504 19689 INDEPWALLYS TIF	Jackson County 415 E. 13th Street, Kansas City, MO 64106	ERR C	0.740	2.82 5.30			8.86
9414814902829730028511 19690 INDEPWALLYS TIF	City of Independence 111 E. Maple Ave., Independence, MO 64050	ERR C	0.740	2.82 5.30			8.86
Page Totals	9		6.66	73.08			79.74
Cumulative Totals	9		6.66	73.08			79.74



USPS Manifest Mailing System

Page 2

Mailer's Name & Address Gilmore & Bell, P.C. 2405 Grand Blvd., Suite 1100 Kansas City, MO 64108-2521	Permit Number	MAC Ver. Number
	Sequence Number	Class of Mail
	7-8418	Transtream Mixed

Article #/ Piece ID Shipper Ref#	Addressee Name Delivery Address	ES Type	Postage	ES Fee	Insurance Amount	Due/ Sender	Total Charge
9414814902829730028528 19691 INDEPWALLYS TIF	Jackson County Assessment Department 112 W. Lexington, 1st Floor Independence, MO 64050	ERR C	0.740	2.82 5.30			8.86
9414814902829730028535 19692 INDEPWALLYS TIF	Missouri Department of Revenue (County Tax Section) P.O. Box 453 Jefferson City, MO 65102	ERR C	0.740	2.82 5.30			8.86
9414814902829730028542 19693 INDEPWALLYS TIF	State Tax Commission of Missouri P.O. Box 148 Jefferson City, MO 65102	ERR C	0.740	2.82 5.30			8.86
9414814902829730028559 19694 INDEPWALLYS TIF	Jackson County Collections Department 112 W. Lexington, Suite 114 Independence, MO 64050	ERR C	0.740	2.82 5.30			8.86
9414814902829730028566 19695 INDEPWALLYS TIF	Missouri Department of Economic Development P.O. Box 1157 Jefferson City, MO 65102	ERR C	0.740	2.82 5.30			8.86
9414814902829730028573 19696 INDEPWALLYS TIF	Missouri Department of Revenue P.O. Box 475 Jefferson City, MO 65105	ERR C	0.740	2.82 5.30			8.86
9414814902829730028580 19697 INDEPWALLYS TIF	Noland Road Community Improvement District 4315 South Noland Road, Suite B Independence, MO 64055	ERR C	0.740	2.82 5.30			8.86

Page Totals	7	5.18	56.84	62.02
Cumulative Totals	16	11.84	129.92	141.76

USPS CERTIFICATION

Total Number Of Pieces Received _____

Round Stamp _____

Signature of Receiving Employee _____

PS Form 3877 (Facsimile)

Extra Service Codes:

C	Certified
ERR	Return Receipt
CMRD	Certified Mail Restricted Delivery



USPS CERTIFIED MAIL

Mailroom
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, MO 64108-2521



9414 8149 0282 9730 0284 36

Chancellor
Metropolitan Community College
3200 Broadway
Kansas City, MO 64111

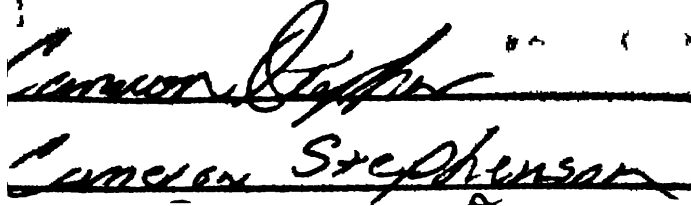
Shipper Ref: INDEP WALLYS TIF
Reference 1: 600325.20583

Date Produced: 10/06/2025

Gilmore&BellPCMailroom:

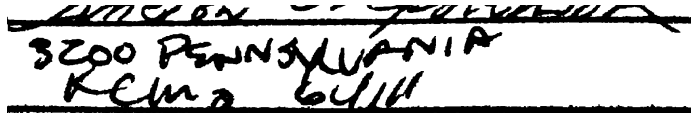
The following is the delivery information for Certified Mail™/RRE item number 9414 8149 0282 9730 0284 36. Our records indicate that this item was delivered on 09/29/2025 at 11:22 a.m. in KANSAS CITY, MO 64111. The scanned image of the recipient information is provided below.

Signature of Recipient :



Cameron Stephenson

Address of Recipient :



3200 PENNSYLVANIA
KCMO 64111

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: INDEP WALLYS TIF

USPS CERTIFIED MAIL

Mailroom
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, MO 64108-2521



9414 8149 0282 9730 0284 43

Director
Mid-Continent Public Library
15616 E. 24 Highway
Independence, MO 64050

Shipper Ref: INDEP WALLYS TIF
Reference 1: 600325.20583

Date Produced: 10/06/2025

Gilmore&BellPCMailroom:

The following is the delivery information for Certified Mail™/RRE item number 9414 8149 0282 9730 0284 43. Our records indicate that this item was delivered on 09/29/2025 at 01:01 p.m. in INDEPENDENCE, MO 64050. The scanned image of the recipient information is provided below.

Signature of Recipient :

→ 125 CT 100
OX TIL 26

Address of Recipient :

1501 E
04 THY 24

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: INDEP WALLYS TIF

USPS CERTIFIED MAIL

Mailroom
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, MO 64108-2521



9414 8149 0282 9730 0284 50

Executive Director
Jackson County Community Mental Health
1627 Main Street
Suite 500
Kansas City, MO 64108

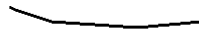
Shipper Ref: INDEP WALLYS TIF
Reference 1: 600325.20583

Date Produced: 10/06/2025

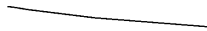
Gilmore&BellPCMailroom:

The following is the delivery information for Certified Mail™/RRE item number 9414 8149 0282 9730 0284 50. Our records indicate that this item was delivered on 09/29/2025 at 02:14 p.m. in KANSAS CITY, MO 64108. The scanned image of the recipient information is provided below.

Signature of Recipient :



Address of Recipient :



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: INDEP WALLYS TIF

USPS CERTIFIED MAIL

Mailroom
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, MO 64108-2521



9414 8149 0282 9730 0284 67

Executive Director
Jackson County Board of Disabled Services
8511 Hillcrest Rd.
Suite 300
Kansas City, MO 64138

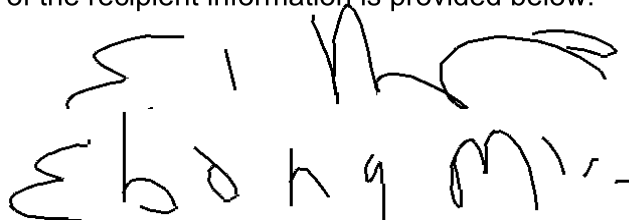
Shipper Ref: INDEP WALLYS TIF
Reference 1: 600325.20583

Date Produced: 10/06/2025

Gilmore&BellPCMailroom:

The following is the delivery information for Certified Mail™/RRE item number 9414 8149 0282 9730 0284 67. Our records indicate that this item was delivered on 09/29/2025 at 03:21 p.m. in KANSAS CITY, MO 64138. The scanned image of the recipient information is provided below.

Signature of Recipient :



Address of Recipient :

**8511 HILLCREST RD STE 300,
KANSAS CITY, MO 64138**

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: INDEP WALLYS TIF

USPS CERTIFIED MAIL

Mailroom
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, MO 64108-2521



9414 8149 0282 9730 0284 74

County Tax Section/State Blind Pension Fund
Missouri Director of Revenue
P.O. Box 453
Jefferson City, MO 65102

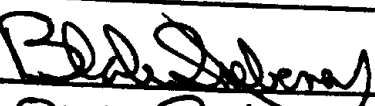
Shipper Ref: INDEP WALLYS TIF
Reference 1: 600325.20583

Date Produced: 10/06/2025

Gilmore&BellPCMailroom:

The following is the delivery information for Certified Mail™/RRE item number 9414 8149 0282 9730 0284 74. Our records indicate that this item was delivered on 09/29/2025 at 11:54 a.m. in JEFFERSON CITY, MO 65105. The scanned image of the recipient information is provided below.

Signature of Recipient :

Delivery Section	
Signature	
X	
Printed Name	Blake Siebenick

Address of Recipient :

Delivery Point	Revenue Bulk
----------------	--------------

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: INDEP WALLYS TIF

USPS CERTIFIED MAIL

Mailroom
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, MO 64108-2521



9414 8149 0282 9730 0284 81

Chair of the Board of Directors
The Kansas City Zoological District
6800 Zoo Drive
Kansas City, MO 64132

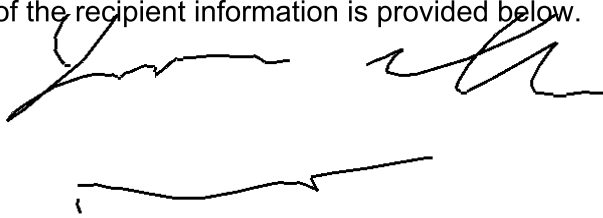
Shipper Ref: INDEP WALLYS TIF
Reference 1: 600325.20583

Date Produced: 10/06/2025

Gilmore&BellPCMailroom:

The following is the delivery information for Certified Mail™/RRE item number 9414 8149 0282 9730 0284 81. Our records indicate that this item was delivered on 09/29/2025 at 10:50 a.m. in KANSAS CITY, MO 64132. The scanned image of the recipient information is provided below.

Signature of Recipient :



Address of Recipient :

**6800 ZOO DR, KANSAS CITY,
MO 64132**

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: INDEP WALLYS TIF

USPS CERTIFIED MAIL

Mailroom
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, MO 64108-2521



9414 8149 0282 9730 0284 98

Superintendent
Independence School District
201 N. Forest Ave.
Independence, MO 64050

Shipper Ref: INDEP WALLYS TIF
Reference 1: 600325.20583

Date Produced: 10/06/2025

Gilmore&BellPCMailroom:

The following is the delivery information for Certified Mail™/RRE item number 9414 8149 0282 9730 0284 98. Our records indicate that this item was delivered on 09/29/2025 at 03:09 p.m. in INDEPENDENCE, MO 64050. The scanned image of the recipient information is provided below.

Signature of Recipient :

~ J N I L
P e r r a N I L e

Address of Recipient :

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: INDEP WALLYS TIF

USPS CERTIFIED MAIL

Mailroom
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, MO 64108-2521



9414 8149 0282 9730 0285 04

County Executive
Jackson County
415 E. 12th Street
Kansas City, MO 64106

Shipper Ref: INDEP WALLYS TIF
Reference 1: 600325.20583

USPS CERTIFIED MAIL

Mailroom
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, MO 64108-2521



9414 8149 0282 9730 0285 11

City Manager
City of Independence
111 E. Maple Ave.
Independence, MO 64050

Shipper Ref: INDEP WALLYS TIF
Reference 1: 600325.20583

Date Produced: 10/06/2025

Gilmore&BellPCMailroom:

The following is the delivery information for Certified Mail™/RRE item number 9414 8149 0282 9730 0285 11. Our records indicate that this item was delivered on 09/29/2025 at 09:20 a.m. in INDEPENDENCE, MO 64050. The scanned image of the recipient information is provided below.

Signature of Recipient :

Delivery Section	
Signature X	Kenny James
Printed Name	Kenny James

Address of Recipient :

Delivery Address	111 E Maple Ave
---------------------	-----------------

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: INDEP WALLYS TIF

USPS CERTIFIED MAIL

Mailroom
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, MO 64108-2521



9414 8149 0282 9730 0285 28

Director
Jackson County Assessment Department
112 W. Lexington
1st Floor
Independence, MO 64050

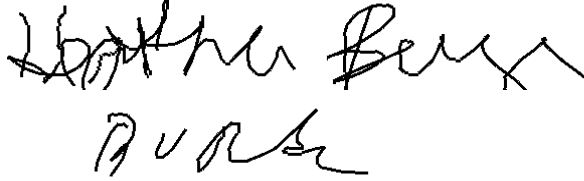
Shipper Ref: INDEP WALLYS TIF
Reference 1: 600325.20583

Date Produced: 10/06/2025

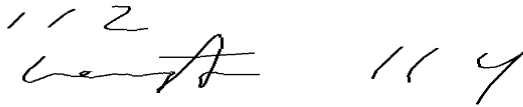
Gilmore&BellPCMailroom:

The following is the delivery information for Certified Mail™/RRE item number 9414 8149 0282 9730 0285 28. Our records indicate that this item was delivered on 09/29/2025 at 12:20 p.m. in INDEPENDENCE, MO 64050. The scanned image of the recipient information is provided below.

Signature of Recipient :



Address of Recipient :



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: INDEP WALLYS TIF

USPS CERTIFIED MAIL

Mailroom
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, MO 64108-2521



9414 8149 0282 9730 0285 35

Merchants/Manufacturers Replacement Tax Fund
Missouri Department of Revenue / County Tax
Section
P.O. Box 453
Jefferson City, MO 65102

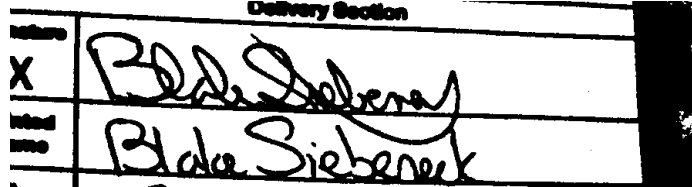
Shipper Ref: INDEP WALLYS TIF
Reference 1: 600325.20583

Date Produced: 10/06/2025

Gilmore&BellPCMailroom:

The following is the delivery information for Certified Mail™/RRE item number 9414 8149 0282 9730 0285 35. Our records indicate that this item was delivered on 09/29/2025 at 11:54 a.m. in JEFFERSON CITY, MO 65105. The scanned image of the recipient information is provided below.

Signature of Recipient :



Address of Recipient :



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: INDEP WALLYS TIF

USPS CERTIFIED MAIL

Mailroom
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, MO 64108-2521



9414 8149 0282 9730 0285 42

State Tax Commission of Missouri
P.O. Box 146
Jefferson City, MO 65102

Shipper Ref: INDEP WALLYS TIF
Reference 1: 600325.20583

Date Produced: 10/06/2025

Gilmore&BellPCMailroom:

The following is the delivery information for Certified Mail™/RRE item number 9414 8149 0282 9730 0285 42. Our records indicate that this item was delivered on 09/29/2025 at 05:33 a.m. in JEFFERSON CITY, MO 65102. The scanned image of the recipient information is provided below.

Signature of Recipient :

Delivery Section	
Signature X	Jeffrey Lohr
Printed Name	Jeffrey Lohr

Address of Recipient :

Delivery Address	236,1370,146,370 REG
---------------------	----------------------

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: INDEP WALLYS TIF

USPS CERTIFIED MAIL

Mailroom
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, MO 64108-2521



9414 8149 0282 9730 0285 59

Director
Jackson County Collections Department
112 W. Lexington
Suite 114
Independence, MO 64050

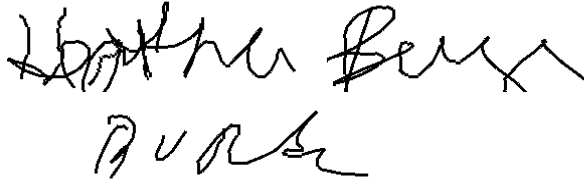
Shipper Ref: INDEP WALLYS TIF
Reference 1: 600325.20583

Date Produced: 10/06/2025

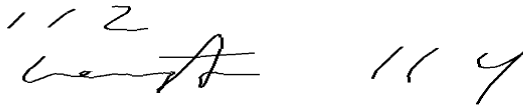
Gilmore&BellPCMailroom:

The following is the delivery information for Certified Mail™/RRE item number 9414 8149 0282 9730 0285 59. Our records indicate that this item was delivered on 09/29/2025 at 12:20 p.m. in INDEPENDENCE, MO 64050. The scanned image of the recipient information is provided below.

Signature of Recipient :



Address of Recipient :



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: INDEP WALLYS TIF

USPS CERTIFIED MAIL

Mailroom
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, MO 64108-2521



9414 8149 0282 9730 0285 66

Director
Missouri Department of Economic Development
P.O. Box 1157
Jefferson City, MO 65102

Shipper Ref: INDEP WALLYS TIF
Reference 1: 600325.20583

Date Produced: 10/06/2025

Gilmore&BellPCMailroom:

The following is the delivery information for Certified Mail™/RRE item number 9414 8149 0282 9730 0285 66. Our records indicate that this item was delivered on 09/29/2025 at 05:19 a.m. in JEFFERSON CITY, MO 65102. The scanned image of the recipient information is provided below.

Signature of Recipient :

Delivery Section	
Signature	Doug Platter
X	
Printed Name	Doug Platter

Address of Recipient :

Delivery Address	360, 118, 690, 809
------------------	--------------------

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: INDEP WALLYS TIF

USPS CERTIFIED MAIL

Mailroom
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, MO 64108-2521



9414 8149 0282 9730 0285 73

Tax Administration Bureau
Missouri Department of Revenue
P.O. Box 475
Jefferson City, MO 65105

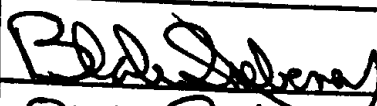
Shipper Ref: INDEP WALLYS TIF
Reference 1: 600325.20583

Date Produced: 10/06/2025

Gilmore&BellPCMailroom:

The following is the delivery information for Certified Mail™/RRE item number 9414 8149 0282 9730 0285 73. Our records indicate that this item was delivered on 09/29/2025 at 11:54 a.m. in JEFFERSON CITY, MO 65105. The scanned image of the recipient information is provided below.

Signature of Recipient :

Delivery Section	
Signature	
X	
Printed Name	

Address of Recipient :

Delivery Point	
----------------	--

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: INDEP WALLYS TIF

USPS CERTIFIED MAIL

Mailroom
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, MO 64108-2521



9414 8149 0282 9730 0285 80

Noland Road Community Improvement District
4315 South Noland Road
Suite B
Independence, MO 64055

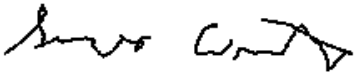
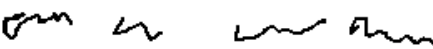
Shipper Ref: INDEP WALLYS TIF
Reference 1: 600325.20583

Date Produced: 10/06/2025

Gilmore&BellPCMailroom:

The following is the delivery information for Certified Mail™/RRE item number 9414 8149 0282 9730 0285 80. Our records indicate that this item was delivered on 10/01/2025 at 01:47 p.m. in INDEPENDENCE, MO 64055. The scanned image of the recipient information is provided below.

Signature of Recipient :

Address of Recipient :

4315 S NOLAND RD STE B
INDEPENDENCE, MO 64055-4788

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: INDEP WALLYS TIF

AFFIDAVIT OF PUBLICATION

State of New Jersey, County of Camden, ss:

I, Laquansay Nickson Watkins, of lawful age, being duly sworn upon oath depose and say that I am an agent of Column Software, PBC, duly appointed and authorized agent of the Publisher of Examiner, a publication that is a "legal newspaper" as that phrase is defined for the city of Independence, for the County of Jackson, in the state of Missouri, that this affidavit is Page 1 of 2 with the full text of the sworn-to notice set forth on the pages that follow, and that the attachment hereto contains the correct copy of what was published in said legal newspaper in consecutive issues on the following dates:

Publication Dates:

- Oct 25, 2025

Printer's Fee: \$373.97

Laquansay Nickson Watkins

Agent

SHARONN E THOMAS-POPE
NOTARY PUBLIC
STATE OF NEW JERSEY
My Commission Expires January 23, 2027

VERIFICATION

State of New Jersey
County of Camden

Signed or attested before me on this: 10/27/2025

SM S. & Poe

Notary Public

Notarized remotely online using communication technology via Proof.

Tax Increment Financing
Commission of Independence, Missouri

Notice of Public Hearing
relating to the Wally's Tax
Increment Financing Plan and
Project and Notice of Request
for Redevelopment Project
Proposals

Pursuant to Section 99.830 of the Revised Statutes of Missouri, you are hereby notified that the Tax Increment Financing Commission of Independence, Missouri (the "Commission") will hold a public hearing at 2:00 p.m. on November 12, 2025, at the Independence Utilities Center, 17221 E. 23rd Street, Conference Room 117 (1st Floor), Independence, MO 64057, to consider the Wally's Tax Increment Financing Plan (the "Redevelopment Plan"), the designation of the proposed redevelopment area (the "Redevelopment Area"), and the adoption of the redevelopment project described in the Redevelopment Plan (the "Redevelopment Project"). All taxing districts and interested parties will be given the opportunity to attend the hearing and/or to submit comments to the Commission prior to the date of the hearing.

The proposed Redevelopment Area, which contains approximately 20.9 acres, is located in Independence, Missouri. The Redevelopment Area is generally bounded by E. 39th Street and E. 39th Terrace to the north, S. Dodgion Avenue and S. Hocker Avenue to the east, Interstate Highway 70 to the south, and S. Noland Road to the west.

The Redevelopment Plan calls for one Redevelopment Project which seeks to eliminate blight, implement certain private improvements and public infrastructure improvements, increase property values, create economic stability and implement the Comprehensive Plan of the City. The primary purpose of the Redevelopment Project is to remove blighted buildings and redevelop the Redevelopment Area into an approximately 54,000 square foot travel center, including fuel pumps, landscaping, parking and other amenities and public and private infrastructure. Under the Redevelopment

Plan, tax increment financing revenues will be collected to fund reimbursable project costs associated with certain of the improvements. The Redevelopment Plan requires a 50% surplus of payments in lieu of taxes for distribution to the taxing districts in each year.

A copy of the Redevelopment Plan, including a legal description and a map of the proposed Redevelopment Area and the Redevelopment Project, is on file with the office of the City Clerk at Independence City Hall, 111 E. Maple Ave., Independence, MO 64050, and may be reviewed by any interested party during business hours. A cost-benefit analysis, showing the effects of the Redevelopment Plan on each taxing jurisdiction, is on file with the Redevelopment Plan. The public is invited to submit comments to the Commission prior to the date of the hearing at the office of the City Clerk and to appear at the hearing and provide evidence and testimony.

ALL INTERESTED PARTIES SHALL BE GIVEN AN OPPORTUNITY TO BE HEARD AT THE PUBLIC HEARING.

The Commission is soliciting alternative proposals for redevelopment of the Redevelopment Area. The Commission seeks only alternative redevelopment plans and redevelopment projects that comply with the Missouri Real Property Tax Increment Allocation Redevelopment Act (the "TIF Act").

All proposed redevelopment plans and/or redevelopment projects must include details regarding the redevelopment project costs including, as appropriate: land acquisition; building design, engineering and construction; site preparation; design, engineering and construction of public infrastructure improvements, including internal streets, parking, grading, utilities, lighting, improvements to public streets and highways; and legal, engineering, accounting, land use planners, architects, feasibility experts costs and fees and other soft costs associated with plan preparation, approval and implementation. All submissions must include a valid and complete redevelopment plan under the TIF Act, including classification of expenses sufficiently detailed to allow analysis in comparison

with other submissions, and be in a form that is ready for consideration by the Commission and City Council. Submissions must also include information about the proposed developer, including detail regarding prior development projects and other relevant business experience. If the person or entity submitting the proposal does not own or otherwise control the property in the Redevelopment Area, the submission must include the proposed method of acquiring such ownership or control.

All proposals must be submitted to Tom Scannell, Community Development Director, at City Hall and must be received no later than 10:00 a.m. on November 10, 2025, after which time proposals will not be accepted. Proposals that are submitted, including the proposed Redevelopment Plan, will be available for review through the office of the City Clerk.

All submissions shall be judged on: (i) the qualifications of the applicant; (ii) the merit and viability of the proposal for redevelopment described in the submission, including the ability of the applicant to obtain ownership or control of property in the Redevelopment Area; (iii) the quality and detail of the submission, including compliance with the TIF Act; (iv) the ability of the submission to aid in eliminating blight from the Redevelopment Area; and (v) the ability of the proposal to accomplish any other goals that it may identify.

The Commission and City reserve the right to reject all proposals and publish any additional requests for proposals as may be necessary, and to extend the time period to submit responses to this Notice. All proposals will be considered by the Commission at a meeting to be held at the same time and location as the hearing.

Tax Increment Financing Commission of Independence, Missouri

111 E. Maple Ave.
Independence, MO 64050

Published in the Examiner, Oct 25, 2025

3968220

Tax Increment Financing Commission of Independence, Missouri
111 E. Maple Ave.
Independence, MO 64050

**Notice of Public Hearing relating to the
Wally's Tax Increment Financing Plan and Project**

To: Property Owners (listed below)
Date: October 28, 2025

Pursuant to Section 99.830 of the Revised Statutes of Missouri, you are hereby notified that the Tax Increment Financing Commission of Independence, Missouri (the "Commission"), will hold a public hearing at 2:00 p.m. on November 12, 2025, at the Independence Utilities Center, 17221 E. 23rd Street, Conference Room 117 (1st Floor), Independence, MO 64057, to consider the Wally's Tax Increment Financing Plan (the "Redevelopment Plan"), the designation of the proposed redevelopment area (the "Redevelopment Area"), and the adoption of the redevelopment project described in the Redevelopment Plan (the "Redevelopment Project").

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A copy of the Redevelopment Plan, including a legal description and a map of the proposed Redevelopment Area and the Redevelopment Project, is on file with the office of the City Clerk at Independence City Hall, 111 E. Maple Ave., Independence, MO 64050, and may be reviewed by any interested party during business hours. A cost-benefit analysis, showing the effects of the Redevelopment Plan on each taxing jurisdiction, is on file with the Redevelopment Plan. Copies of the Redevelopment Plan and cost-benefit analysis may also be obtained by emailing a request to Tom Scannell, Community Development Director at tscannell@indepmo.org. All persons receiving this notice are invited to attend the hearing and/or to submit comments to the Commission (at the office of the City Clerk) prior to the date of the hearing. **ALL INTERESTED PARTIES SHALL BE GIVEN AN OPPORTUNITY TO BE HEARD AT THE PUBLIC HEARING.**

Property Owner List:

33-240-03-12-00-0-00-000
33-240-03-16-00-0-00-000

Wally's Independence MO Owner LLC
950 Assembly Parkway
Fenton, MO 63026

USPS CERTIFIED MAIL

Mailroom
Gilmore & Bell, P.C.
2405 Grand Blvd., Suite 1100
Kansas City, MO 64108-2521



9414 8149 0282 9730 0291 81

Wally's Independence MO Owner LLC
950 Assembly Parkway
Fenton, MO 63026



Shipper Ref:
Reference 1:

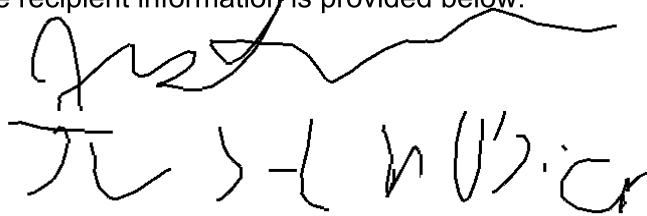
INDEP MO WALLYS TIF PO
600325.20583

Date Produced: 11/03/2025

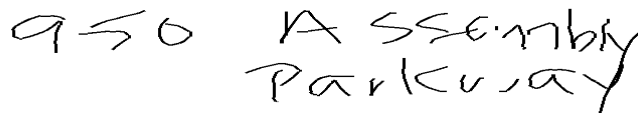
Gilmore&BellPCMailroom:

The following is the delivery information for Certified Mail™/RRE item number 9414 8149 0282 9730 0291 81. Our records indicate that this item was delivered on 10/31/2025 at 02:44 p.m. in FENTON, MO 63026. The scanned image of the recipient information is provided below.

Signature of Recipient :



Address of Recipient :



Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local post office or Postal Service representative.

Sincerely,
United States Postal Service

The customer reference number shown below is not validated or endorsed by the United States Postal Service. It is solely for customer use.

Customer Reference Number: INDEP MO WALLYS TIF PO

AFFIDAVIT OF PUBLICATION

State of Florida, County of Orange, ss:

I, Edmar Corachia, of lawful age, being duly sworn upon oath depose and say that I am an agent of Column Software, PBC, duly appointed and authorized agent of the Publisher of Examiner, a publication that is a "legal newspaper" as that phrase is defined for the city of Independence, for the County of Jackson, in the state of Missouri, that this affidavit is Page 1 of 2 with the full text of the sworn-to notice set forth on the pages that follow, and that the attachment hereto contains the correct copy of what was published in said legal newspaper in consecutive issues on the following dates:

Publication Dates:

- Nov 5, 2025

Printer's Fee: \$201.10

Edmar Corachia

Agent

VERIFICATION

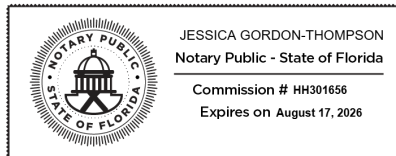
State of Florida
County of Orange

Signed or attested before me on this: 11/05/2025

J. Ra

Notary Public

Notarized remotely online using communication technology via Proof.



Tax Increment Financing
Commission of Independence,
Missouri

Notice of Public Hearing
relating to the Wally's Tax
Increment Financing Plan and
Project

Pursuant to Section 99.830 of the Revised Statutes of Missouri, you are hereby notified that the Tax Increment Financing Commission of Independence, Missouri (the "Commission") will hold a public hearing at 2:00 p.m. on November 12, 2025, at the Independence Utilities Center, 17221 E. 23rd Street, Conference Room 117 (1st Floor), Independence, MO 64057, to consider the Wally's Tax Increment Financing Plan (the "Redevelopment Plan"), the designation of the proposed redevelopment area (the "Redevelopment Area"), and the adoption of the redevelopment project described in the Redevelopment Plan (the "Redevelopment Project"). All taxing districts and interested parties will be given the opportunity to attend the hearing and/or to submit comments to the Commission prior to the date of the hearing.

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fund reimbursable project costs associated with certain of the improvements. The Redevelopment Plan requires a 50% surplus of payments in lieu of taxes for distribution to the taxing districts in each year.

A copy of the Redevelopment Plan, including a legal description and a map of the proposed Redevelopment Area and the Redevelopment Project, is on file with the office of the City Clerk at Independence City Hall, 111 E. Maple Ave., Independence, MO 64050, and may be reviewed by any interested party during business hours. A cost-benefit analysis, showing the effects of the Redevelopment Plan on each taxing jurisdiction, is on file with the Redevelopment Plan. The public is invited to submit comments to the Commission prior to the date of the hearing at the office of the City Clerk and to appear at the hearing and provide evidence and testimony.

ALL INTERESTED PARTIES SHALL BE GIVEN AN OPPORTUNITY TO BE HEARD AT THE PUBLIC HEARING.

Tax Increment Financing Commission of Independence, Missouri
111 E. Maple Ave.
Independence, MO 64050

Published in the Examiner, Nov 5, 2025

3995540



Tax Increment Financing Commission

November 12, 2025 2:00 PM,

IUC, 17221 E. 23rd Street, Conference Room 117, Independence, MO 64057

WELCOME & INTRODUCTIONS

ELECTION OF OFFICERS

APPROVAL OF MEETING MINUTES

1. October 23, 2024

PUBLIC HEARING FOR WALLY'S TAX INCREMENT FINANCING PLAN

- a. Submission of Exhibits
- b. Presentations regarding the Plan
- c. Public Comments
- d. TIF Commission Questions and Discussion

RESOLUTION

1. Consider Resolution Recommending Approval of TIF Plan, Approval of the Redevelopment Area, Designation of Blight within the Redevelopment Area, Approval of the Redevelopment Project and Approval of the Developer of Record to the City Council

OTHER BUSINESS

ADJOURNMENT

I HEREBY CERTIFY THAT THIS NOTICE WAS POSTED ON NOVEMBER 3, 2025.

Susanne Holland Signature: *Susanne Holland*

ADDITIONAL EXHIBIT LIST

**TAX INCREMENT FINANCING COMMISSION OF INDEPENDENCE, MISSOURI
PUBLIC HEARING**

**Wally's Tax Increment Financing Plan
Hearing opened November 12, 2025
Hearing continued to November 24, 2025**

Additional Exhibits

1. Amended Wally's Tax Increment Financing Plan with Cost-Benefit Analysis
2. Notice of Changes to TIF Plan delivered to Taxing Districts on November 14, 2025, with proof of delivery
3. Sunshine Law Notice of TIF Commission Meeting posted on November 14, 2025

Tax Increment Financing Commission of Independence, Missouri

111 E. Maple Ave.
Independence, MO 64050

**Notice of Changes
to the
Wally's Tax Increment Financing Plan**

To: Taxing Districts (Distribution List attached)

Date: November 13, 2025

You have been previously notified that the Tax Increment Financing Commission of Independence, Missouri (the "Commission"), would hold a public hearing at 2:00 p.m. on November 12, 2025, to consider the Wally's Tax Increment Financing Plan (the "Redevelopment Plan"), the designation of the proposed redevelopment area (the "Redevelopment Area"), and the adoption of the redevelopment project described in the Redevelopment Plan (the "Redevelopment Project"). The Commission opened the public hearing on such date and continued the hearing for the purpose of allowing time for certain changes to be made to the Redevelopment Plan.

The Commission will continue the public hearing at 10:00 a.m. on November 24, 2025, at the Independence Utilities Center, 17221 E. 23rd Street, Conference Room 117 (1st Floor).

The purpose of this letter is to provide notice of changes being made to the Redevelopment Plan. The changes include (1) eliminating the formation of a new community improvement district from the Redevelopment Plan and reducing the reimbursement to the developer in proportion to the reduction in projected revenues resulting from such elimination, and (2) correcting the cost benefit analysis to accurately reflect the anticipated costs and benefits shown for each taxing jurisdiction.

A copy of the amended Redevelopment Plan, including a legal description and a map of the proposed Redevelopment Area and the Redevelopment Project, is on file with the office of the City Clerk at Independence City Hall, 111 E. Maple Ave., Independence, MO 64050, and may be reviewed by any interested party during business hours. A revised cost-benefit analysis, showing the effects of the Redevelopment Plan on each taxing jurisdiction, is on file with the Redevelopment Plan. Copies of the amended Redevelopment Plan and revised cost-benefit analysis may also be obtained by emailing a request to Tom Scannell, Community Development Director at tscannell@indepmo.org. All taxing districts receiving this notice are invited to attend the continued hearing and/or to submit comments to the Commission (at the office of the City Clerk) prior to November 24, 2025. **ALL INTERESTED PARTIES SHALL BE GIVEN AN OPPORTUNITY TO BE HEARD AT THE CONTINUED PUBLIC HEARING.**

DISTRIBUTION LIST

City Manager
City of Independence
111 E. Maple Ave.
Independence, MO 64050

Assessment Department
Director
Truman Courthouse
112 W. Lexington
1st Floor
Independence, MO 64050

Independence School District
Superintendent
201 N. Forest Ave
Independence, MO 64050

Metropolitan Community College
Chancellor
3200 Broadway
Kansas City, MO 64111

The Kansas City Zoological District
Chair of the Board of Directors
6800 Zoo Drive
Kansas City, MO 64132

Missouri Department of Economic Development
Director
301 West High Street
Jefferson City, MO 65102

Missouri Director of Revenue
County Tax Section
Merchants/Manufacturers Replacement Tax Fund
301 West High Street
Jefferson City, MO 65102

Missouri Department of Revenue
Tax Administration Bureau
301 West High Street
Jefferson City, MO 65102

Noland Road Community Improvement District
4315 South Noland Road, Suite B
Independence, MO 64055

Jackson County
County Executive
415 E. 12th Street
Kansas City, MO 64106

Collection Department
Director
Truman Courthouse
112 W. Lexington
Suite 114
Independence, MO 64050

Mid Continent Public Library
Director
15616 E. Highway 24
Independence, MO 64050-2057

Jackson County Community Mental Health
Executive Director
1627 Main Street, Suite 500
Kansas City, MO 64108

Jackson County Board of Disabled Services
Executive Director
8511 Hillcrest Road, Suite 300
Kansas City, MO 64138

State Tax Commission of Missouri
3705 Missouri Blvd., Suite 100
Jefferson City, MO 65109

Missouri Director of Revenue
County Tax Section
State Blind Pension Fund
301 West High Street
Jefferson City, MO 65102

MAILROOM

8162211000
GILMORE & BELL, P.C.
2405 GRAND BLVD., SUITE 1100
KANSAS CITY MO 64108-2521

0.1 LBS LTR

1 OF 1

SHIP TO:

CHANCELLOR

8162211000

METROPOLITAN COMMUNITY COLLEGE

3200 BROADWAY

KANSAS CITY MO 64111



KS 641 9-04



UPS NEXT DAY AIR SAVER 1P

TRACKING #: 1Z 676 794 13 9343 6541



BILLING: P/P

Reference No.1: 600325.20583

XOL 25.10.20 NV45 46.0A 11/2025*



TM

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1Z6767941393436541

Service

UPS Next Day Air Saver®

Shipped / Billed On

11/13/2025

Delivered On

11/14/2025 10:01 A.M.

Delivered To

KANSAS CITY, MO, US

Received By

CHINN

Please print for your records as photo and details are only available for a limited time.

Sincerely,

UPS

Tracking results provided by UPS: 11/14/2025 12:11 P.M. EST

MAILROOM
8162211000
GILMORE & BELL, P.C.
2405 GRAND BLVD., SUITE 1100
KANSAS CITY MO 64108-2521

0.1 LBS LTR

1 OF 1

SHIP TO:
DIRECTOR
8162211000
MID-CONTINENT PUBLIC LIBRARY
15616 E. 24 HIGHWAY
INDEPENDENCE MO 64050



KS 641 9-01



UPS NEXT DAY AIR SAVER 1P
TRACKING #: 1Z 676 794 13 9625 5900



BILLING: P/P

Reference No.1: 600325.20583

XOL 25.10.20 NV45 46.0A 11/2025*



Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1Z6767941396255900

Service

UPS Next Day Air Saver®

Shipped / Billed On

11/13/2025

Delivered On

11/14/2025 10:47 A.M.

Delivered To

INDEPENDENCE, MO, US

Received By

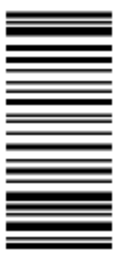
BROWN

Please print for your records as photo and details are only available for a limited time.

Sincerely,

UPS

Tracking results provided by UPS: 11/14/2025 12:13 P.M. EST

MAILROOM 8162211000 GILMORE & BELL, P.C. 2405 GRAND BLVD., SUITE 1100 KANSAS CITY MO 64108-2521		0.1 LBS LTR	1 OF 1
SHIP TO: EXECUTIVE DIRECTOR 8162211000 JACKSON COUNTY COMMUNITY MENTAL HEA 1627 MAIN STREET SUITE 500 KANSAS CITY MO 64108			
		KS 641 9-04 	
UPS NEXT DAY AIR SAVER 1P TRACKING #: 1Z 676 794 13 9551 4711			
			
BILLING: P/P			
Reference No.1: 600325.20583			
XOL 25.10.20		NV45 46.0A 11/2025*	

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1Z6767941395514711

Service

UPS Next Day Air Saver®

Shipped / Billed On

11/13/2025

Delivered On

11/14/2025 11:47 A.M.

Delivered To

KANSAS CITY, MO, US

Received By

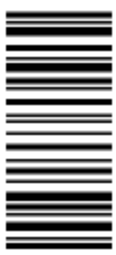
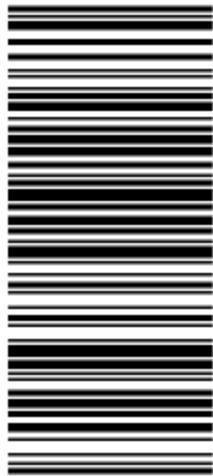
CUMMINGS

Please print for your records as photo and details are only available for a limited time.

Sincerely,

UPS

Tracking results provided by UPS: 11/14/2025 12:53 P.M. EST

MAILROOM 8162211000 GILMORE & BELL, P.C. 2405 GRAND BLVD., SUITE 1100 KANSAS CITY MO 64108-2521		0.1 LBS LTR	1 OF 1
SHIP TO: EXECUTIVE DIRECTOR 8162211000 JACKSON COUNTY BOARD OF DISABLED SE 8511 HILLCREST RD. SUITE 300 KANSAS CITY MO 64138			
		KS 662 9-63 	
UPS NEXT DAY AIR SAVER 1P TRACKING #: 1Z 676 794 13 9014 2757			
			
BILLING: P/P			
Reference No.1: 600325.20583			
XOL 25.10.20		NV45 46.0A 11/2025*	

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1Z6767941390142757

Service

UPS Next Day Air Saver®

Shipped / Billed On

11/13/2025

Delivered On

11/14/2025 11:13 A.M.

Delivered To

RAYTOWN, MO, US

Received By

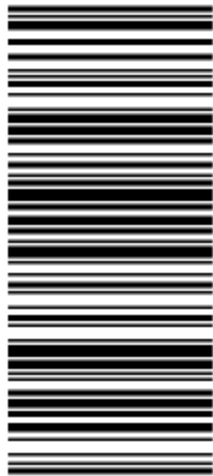
ROSALIND

Please print for your records as photo and details are only available for a limited time.

Sincerely,

UPS

Tracking results provided by UPS: 11/14/2025 12:22 P.M. EST

MAILROOM 8162211000 GILMORE & BELL, P.C. 2405 GRAND BLVD., SUITE 1100 KANSAS CITY MO 64108-2521		0.1 LBS LTR	1 OF 1
SHIP TO: COUNTY TAX SECTION/STATE BLIND PENS 8162211000 MISSOURI DIRECTOR OF REVENUE 301 WEST HIGH STREET JEFFERSON CITY MO 65102			
		MO 651 0-01 	
UPS NEXT DAY AIR SAVER 1P TRACKING #: 1Z 676 794 13 9006 5368			
			
BILLING: P/P			
Reference No.1: 600325.20583			
XOL 25.10.20		NV45 46.0A 11/2025*	

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1Z6767941390065368

Service

UPS Next Day Air Saver®

Shipped / Billed On

11/13/2025

Delivered On

11/14/2025 9:07 A.M.

Delivered To

JEFFERSON CITY, MO, US

Received By

PETREE

Delivery Location

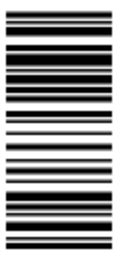
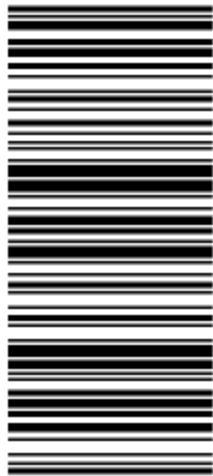
Mail Room

Please print for your records as photo and details are only available for a limited time.

Sincerely,

UPS

Tracking results provided by UPS: 11/14/2025 10:43 A.M. EST

MAILROOM 8162211000 GILMORE & BELL, P.C. 2405 GRAND BLVD., SUITE 1100 KANSAS CITY MO 64108-2521		0.1 LBS LTR	1 OF 1
SHIP TO: CHAIR OF THE BOARD OF DIRECTORS 8162211000 THE KANSAS CITY ZOOLOGICAL DISTRICT 6800 ZOO DRIVE KANSAS CITY MO 64132			
		KS 662 9-62 	
UPS NEXT DAY AIR SAVER 1P TRACKING #: 1Z 676 794 13 9498 0371			
			
BILLING: P/P			
Reference No.1: 600325.20583			
XOL 25.10.20		NV45 46.0A 11/2025*	

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1Z6767941394980371

Service

UPS Next Day Air Saver®

Shipped / Billed On

11/13/2025

Delivered On

11/14/2025 11:35 A.M.

Delivered To

KANSAS CITY, MO, US

Received By

MICHAEL

Please print for your records as photo and details are only available for a limited time.

Sincerely,

UPS

Tracking results provided by UPS: 11/14/2025 12:52 P.M. EST

MAILROOM 8162211000 GILMORE & BELL, P.C. 2405 GRAND BLVD., SUITE 1100 KANSAS CITY MO 64108-2521		0.1 LBS LTR	1 OF 1
SHIP TO: SUPERINTENDENT 8162211000 INDEPENDENCE SCHOOL DISTRICT 201 N. FOREST AVE. INDEPENDENCE MO 64050			
	KS 641 9-01 		
UPS NEXT DAY AIR SAVER 1P TRACKING #: 1Z 676 794 13 9611 6720			
			
BILLING: P/P			
Reference No.1: 600325.20583			
XOL 25.10.20		NV45 46.0A 11/2025*	
		 ™	

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1Z6767941396116720

Service

UPS Next Day Air Saver®

Shipped / Billed On

11/13/2025

Delivered On

11/14/2025 10:04 A.M.

Delivered To

INDEPENDENCE, MO, US

Received By

LISA

Please print for your records as photo and details are only available for a limited time.

Sincerely,

UPS

Tracking results provided by UPS: 11/14/2025 12:11 P.M. EST

MAILROOM
8162211000
GILMORE & BELL, P.C.
2405 GRAND BLVD., SUITE 1100
KANSAS CITY MO 64108-2521

0.1 LBS LTR

1 OF 1

SHIP TO:

COUNTY EXECUTIVE
8162211000
JACKSON COUNTY
415 E. 12TH STREET
KANSAS CITY MO 64106



KS 641 9-01



UPS NEXT DAY AIR SAVER 1P

TRACKING #: 1Z 676 794 13 9350 3781



BILLING: P/P

Reference No.1: 600325.20583

XOL 25.10.20 NV45 46.0A 11/2025*



TM

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1Z6767941393503781

Service

UPS Next Day Air Saver®

Shipped / Billed On

11/13/2025

Delivered On

11/14/2025 10:34 A.M.

Delivered To

KANSAS CITY, MO, US

Received By

DOBBS

Please print for your records as photo and details are only available for a limited time.

Sincerely,

UPS

Tracking results provided by UPS: 11/14/2025 12:12 P.M. EST

MAILROOM
8162211000
GILMORE & BELL, P.C.
2405 GRAND BLVD., SUITE 1100
KANSAS CITY MO 64108-2521

0.1 LBS LTR

1 OF 1

SHIP TO:

CITY MANAGER

8162211000

CITY OF INDEPENDENCE

111 E. MAPLE AVE.

INDEPENDENCE MO 64050



KS 641 9-01



UPS NEXT DAY AIR SAVER 1P

TRACKING #: 1Z 676 794 13 9516 5938



BILLING: P/P

Reference No.1: 600325.20583

XOL 25.10.20 NV45 46.0A 11/2025*



TM

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1Z6767941395165938

Service

UPS Next Day Air Saver®

Shipped / Billed On

11/13/2025

Delivered On

11/14/2025 12:30 P.M.

Delivered To

INDEPENDENCE, MO, US

Received By

DANUM

Delivery Location

Front Desk

Please print for your records as photo and details are only available for a limited time.

Sincerely,

UPS

Tracking results provided by UPS: 11/14/2025 3:22 P.M. EST

MAILROOM
8162211000
GILMORE & BELL, P.C.
2405 GRAND BLVD., SUITE 1100
KANSAS CITY MO 64108-2521

0.1 LBS LTR

1 OF 1

SHIP TO:

DIRECTOR

8162211000

JACKSON COUNTY ASSESSMENT DEPARTMEN

112 W. LEXINGTON

1ST FLOOR

INDEPENDENCE MO 64050



KS 641 9-01



UPS NEXT DAY AIR SAVER 1P

TRACKING #: 1Z 676 794 13 9964 6349



BILLING: P/P

Reference No.1: 600325.20583

XOL 25.10.20 NV45 46.0A 11/2025*



TM

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1Z6767941399646349

Service

UPS Next Day Air Saver®

Shipped / Billed On

11/13/2025

Delivered On

11/14/2025 10:12 A.M.

Delivered To

INDEPENDENCE, MO, US

Received By

SWANSON

Please print for your records as photo and details are only available for a limited time.

Sincerely,

UPS

Tracking results provided by UPS: 11/14/2025 12:12 P.M. EST

MAILROOM
8162211000
GILMORE & BELL, P.C.
2405 GRAND BLVD., SUITE 1100
KANSAS CITY MO 64108-2521

0.1 LBS LTR

1 OF 1

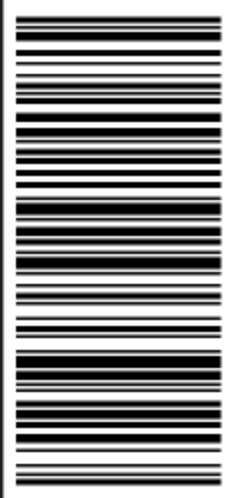
SHIP TO:
MERCHANTS/MANUFACTURERS REPLACEMENT
8162211000
MISSOURI DEPARTMENT OF REVENUE / CO
301 WEST HIGH STREET
JEFFERSON CITY MO 65102



MO 651 0-01



UPS NEXT DAY AIR SAVER 1P
TRACKING #: 1Z 676 794 13 9502 1959



BILLING: P/P

Reference No.1: 600325.20583

XOL 25.10.20 NV45 46.0A 11/2025*



Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1Z6767941395021959

Service

UPS Next Day Air Saver®

Shipped / Billed On

11/13/2025

Delivered On

11/14/2025 9:07 A.M.

Delivered To

JEFFERSON CITY, MO, US

Received By

PETREE

Delivery Location

Mail Room

Please print for your records as photo and details are only available for a limited time.

Sincerely,

UPS

Tracking results provided by UPS: 11/14/2025 10:43 A.M. EST

MAILROOM
8162211000
GILMORE & BELL, P.C.
2405 GRAND BLVD., SUITE 1100
KANSAS CITY MO 64108-2521

0.1 LBS LTR 1 OF 1

SHIP TO:

8162211000
STATE TAX COMMISSION OF MISSOURI
3705 MISSOURI BLVD.
SUITE 100
JEFFERSON CITY MO 65109



MO 651 0-01



UPS NEXT DAY AIR SAVER 1P

TRACKING #: 1Z 676 794 13 9583 6767



BILLING: P/P

Reference No.1: 600325.20583

XOL 25.10.20 NV45 46.0A 11/2025*  TM

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1Z6767941395836767

Service

UPS Next Day Air Saver®

Shipped / Billed On

11/13/2025

Delivered On

11/14/2025 12:30 P.M.

Delivered To

JEFFERSON CITY, MO, US

Received By

OF

Please print for your records as photo and details are only available for a limited time.

Sincerely,

UPS

Tracking results provided by UPS: 11/14/2025 3:22 P.M. EST

MAILROOM
8162211000
GILMORE & BELL, P.C.
2405 GRAND BLVD., SUITE 1100
KANSAS CITY MO 64108-2521

0.1 LBS LTR

1 OF 1

SHIP TO:

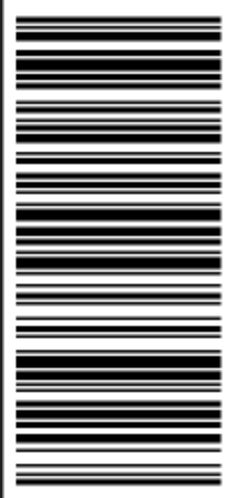
DIRECTOR
8162211000
JACKSON COUNTY COLLECTIONS DEPARTME
112 W. LEXINGTON
SUITE 114
INDEPENDENCE MO 64050



KS 641 9-01



UPS NEXT DAY AIR SAVER 1P
TRACKING #: 1Z 676 794 13 9831 4771



BILLING: P/P

Reference No.1: 600325.20583

XOL 25.10.20 NV45 46.0A 11/2025*



Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1Z6767941398314771

Service

UPS Next Day Air Saver®

Shipped / Billed On

11/13/2025

Delivered On

11/14/2025 10:12 A.M.

Delivered To

INDEPENDENCE, MO, US

Received By

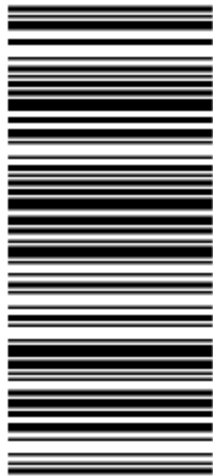
SWANSON

Please print for your records as photo and details are only available for a limited time.

Sincerely,

UPS

Tracking results provided by UPS: 11/14/2025 12:12 P.M. EST

MAILROOM 8162211000 GILMORE & BELL, P.C. 2405 GRAND BLVD., SUITE 1100 KANSAS CITY MO 64108-2521		0.1 LBS LTR	1 OF 1
SHIP TO: DIRECTOR 8162211000 MISSOURI DEPARTMENT OF ECONOMIC DEV 301 WEST HIGH STREET JEFFERSON CITY MO 65102			
		MO 651 0-01 	
UPS NEXT DAY AIR SAVER 1P TRACKING #: 1Z 676 794 13 9169 1591			
			
BILLING: P/P			
Reference No.1: 600325.20583			
XOL 25.10.20		NV45 46.0A 11/2025*	

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1Z6767941391691591

Service

UPS Next Day Air Saver®

Shipped / Billed On

11/13/2025

Delivered On

11/14/2025 9:15 A.M.

Delivered To

JEFFERSON CITY, MO, US

Received By

GREG

Please print for your records as photo and details are only available for a limited time.

Sincerely,

UPS

Tracking results provided by UPS: 11/14/2025 10:45 A.M. EST

MAILROOM
8162211000
GILMORE & BELL, P.C.
2405 GRAND BLVD., SUITE 1100
KANSAS CITY MO 64108-2521

0.1 LBS LTR

1 OF 1

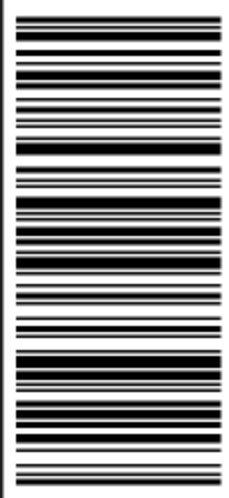
SHIP TO:
TAX ADMINISTRATION BUREAU
8162211000
MISSOURI DEPARTMENT OF REVENUE
301 WEST HIGH STREET
JEFFERSON CITY MO 65102



MO 651 0-01



UPS NEXT DAY AIR SAVER 1P
TRACKING #: 1Z 676 794 13 9263 9806



BILLING: P/P

Reference No.1: 600325.20583

XOL 25.10.20 NV45 46.0A 11/2025*



Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1Z6767941392639806

Service

UPS Next Day Air Saver®

Shipped / Billed On

11/13/2025

Delivered On

11/14/2025 9:07 A.M.

Delivered To

JEFFERSON CITY, MO, US

Received By

PETREE

Delivery Location

Mail Room

Please print for your records as photo and details are only available for a limited time.

Sincerely,

UPS

Tracking results provided by UPS: 11/14/2025 1:24 P.M. EST

MAILROOM
8162211000
GILMORE & BELL, P.C.
2405 GRAND BLVD., SUITE 1100
KANSAS CITY MO 64108-2521

0.1 LBS LTR

1 OF 1

SHIP TO:

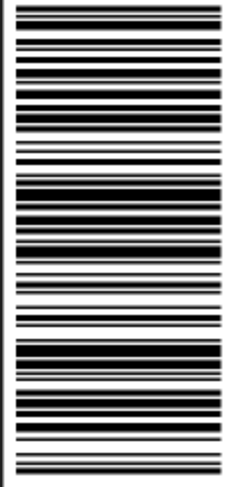
8162211000
NOLAND ROAD COMMUNITY IMPROVEMENT D
4315 SOUTH NOLAND ROAD
SUITE B
INDEPENDENCE MO 64055



KS 641 9-01



UPS NEXT DAY AIR SAVER 1P
TRACKING #: 1Z 676 794 13 9008 4418



BILLING: P/P

Reference No.1: 600325.20583



XOL 25.10.20 NV45 46.0A 11/2025*

Proof of Delivery

Dear Customer,

This notice serves as proof of delivery for the shipment listed below.

Tracking Number

1Z6767941390084418

Service

UPS Next Day Air Saver®

Shipped / Billed On

11/13/2025

Delivered On

11/14/2025 10:28 A.M.

Delivered To

INDEPENDENCE, MO, US

Received By

WINSHIP

Please print for your records as photo and details are only available for a limited time.

Sincerely,

UPS

Tracking results provided by UPS: 11/14/2025 12:12 P.M. EST



Tax Increment Financing Commission

November 24, 2025 10:00 AM,

IUC, 17221 E. 23rd Street, Conference Room 117, Independence, MO 64057

WELCOME & INTRODUCTIONS

APPROVAL OF MEETING MINUTES

1. November 12, 2025

CONTINUED PUBLIC HEARING FOR WALLY'S TAX INCREMENT FINANCING PLAN

1. Submission of Additional Exhibits
2. Additional Presentations regarding the Plan
3. Additional Public Comments
4. TIF Commission Questions and Discussion

RESOLUTION

1. Consider Resolution Recommending Approval of TIF Plan, Approval of the Redevelopment Area, Designation of Blight within the Redevelopment Area, Approval of the Redevelopment Project and Approval of the Developer of Record to the City Council.

OTHER BUSINESS

ADJOURNMENT

I HEREBY CERTIFY THAT THIS NOTICE WAS POSTED ON NOVEMBER 14, 2025.

Susanne Holland Signature: 

RESOLUTION NO. 2025-01

A RESOLUTION OF THE TAX INCREMENT FINANCING COMMISSION OF INDEPENDENCE, MISSOURI RECOMMENDING APPROVAL OF THE WALLY'S TAX INCREMENT FINANCING PLAN, APPROVAL OF THE REDEVELOPMENT AREA, THE DESIGNATION OF BLIGHT WITHIN THE REDEVELOPMENT AREA, APPROVAL OF THE REDEVELOPMENT PROJECT AND APPROVAL OF THE DEVELOPER OF RECORD TO THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI.

WHEREAS, the Tax Increment Financing Commission of Independence, Missouri (the "TIF Commission") has been duly formed by the City Council pursuant to Section 99.820.2 of the Revised Statutes of Missouri;

WHEREAS, WALLY'S INDEPENDENCE MO OWNER LLC (the "Developer") submitted a proposal for approval of the Wally's Tax Increment Financing Plan (the "TIF Plan") on September 25, 2025;

WHEREAS, on September 26, 2025, the City mailed written notices of a scheduled TIF Commission public hearing to all taxing districts from which taxable property is included in the proposed Redevelopment Area, in compliance with Section 99.825 and 99.830 of the Revised Statutes of Missouri;

WHEREAS, in accordance with its written procedures relating to bids and proposals for implementation of redevelopment projects, on October 25, 2025, the City published in *The Examiner* a notice of request for proposals and bids, which provided reasonable opportunity for any person to submit proposals and bids for implementation of the Redevelopment Project as proposed in the TIF Plan, in compliance with Section 99.820.1(3) of the Revised Statutes of Missouri;

WHEREAS, on October 25, 2025, the City also published notice in *The Examiner* of the scheduled TIF Commission public hearing to consider the merits of the proposed TIF Plan, in compliance with Section 99.830 of the Revised Statutes of Missouri;

WHEREAS, on October 28, 2025, the City mailed written notices of the scheduled TIF Commission public hearing to all persons in whose name the general taxes for the last preceding year were paid on each lot, block, tract, or parcel of land lying within the Redevelopment Area, in compliance with Section 99.830 of the Revised Statutes of Missouri;

WHEREAS, on November 5, 2025, the City again published notice in *The Examiner* of the scheduled TIF Commission public hearing, in compliance with Section 99.830 of the Revised Statutes of Missouri;

WHEREAS, a copy of the notice of the public hearing has been submitted to the Director of the Department of Economic Development and to the Missouri Department of Revenue, in compliance with Section 99.825 and 99.830 of the Revised Statutes of Missouri;

WHEREAS, on November 12, 2025, at 2:00 p.m., the TIF Commission opened the public hearing to consider the proposed TIF Plan;

WHEREAS, after the TIF Commission heard testimony and evidence, the public hearing was continued on motion of a commissioner to 10:00 a.m. on November 24, 2025 at the same location in order to allow for certain changes to be made to the TIF Plan (further references to the TIF Plan shall mean the TIF Plan, as so amended);

WHEREAS, on November 14, 2025, the City delivered notice of such changes to each affected taxing district in compliance with Section 99.825 of the Revised Statutes of Missouri;

WHEREAS, on each day of the public hearing, the TIF Commission accepted written and oral testimony and evidence regarding the proposed TIF Plan from all interested persons, including the Developer and its representatives and City staff;

WHEREAS, the public hearing conducted by the TIF Commission to consider the TIF Plan was open to the public, at which a quorum of the Commissioners were present and acted throughout, and the proper notice of such hearing was given in accordance with all applicable laws including Chapter 610 of the Revised Statutes of Missouri;

WHEREAS, on November 24, 2025, the TIF Commission closed the public hearing to consider the proposed TIF Plan;

WHEREAS, after considering the evidence and testimony received at the public hearing, the TIF Commission now desires to recommend that the City Council make required findings and take certain actions to adopt and implement the TIF Plan.

NOW, THEREFORE, be it resolved by the Tax Increment Financing Commission of Independence, Missouri:

1. **Findings.** In accordance with Section 99.810 of the Revised Statutes of Missouri, the TIF Commission makes the following findings, and recommends that the City Council by ordinance make the following findings, regarding the TIF Plan:

A. the TIF Plan sets forth in writing a general description of the program to be undertaken to accomplish its objectives, including the estimated redevelopment project costs, the anticipated sources of funds to pay the costs, evidence of the commitments to finance the project costs, the anticipated type and term of the sources of funds to pay costs, the anticipated type and terms of the obligations to be issued, the most recent equalized assessed valuation of the property within the Redevelopment Area which is to be subjected to payments in lieu of taxes and economic activity taxes pursuant to Section 99.845 of the Revised Statutes of Missouri, an estimate as to the equalized assessed valuation after redevelopment, and the general land uses to apply in the Redevelopment Area;

B. the Redevelopment Area is blighted as set forth in the Blight Study attached to the TIF Plan as Exhibit 6 performed by a licensed attorney, which is incorporated herein by reference. The TIF Plan is accompanied by an affidavit, signed by the Developer, attesting to the blighting elements of the Redevelopment Area attached to the TIF Plan as Exhibit 11, which is incorporated herein by reference;

C. the proposed redevelopment satisfies the “but for” test set forth in Section 99.810 of the Revised Statutes of Missouri, in that the Redevelopment Area has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of tax increment financing, and the TIF Plan is accompanied by an affidavit, signed by the Developer, attesting to this statement;

D. the TIF Plan is in conformance with the Comprehensive Plan for the development of the City as a whole;

E. the TIF Plan contains both estimated dates of completion of the redevelopment project and estimated dates for the retirement of obligations incurred to finance redevelopment project costs, and said dates are not be more than twenty-three (23) years from the adoption of an ordinance approving a Redevelopment Project within the Redevelopment Area;

F. a Relocation Plan has been developed for relocation assistance for businesses and residences, and the relocation of any business or residents in the Redevelopment Area, if necessary, will take place in accordance with the Relocation Plan attached to the TIF Plan as Exhibit 9;

G. the TIF Plan is accompanied by a Cost Benefit Analysis and other evidence and documentation from Developer which contains sufficient information to evaluate whether the TIF Plan as proposed is financially feasible, showing the economic impact of the TIF Plan on each taxing district and political subdivision, and that the proposed project is financially feasible, but only if TIF assistance is provided;

H. the TIF Plan does not include the initial development or redevelopment of any gambling establishment;

I. the area selected for the Redevelopment Project includes only those parcels of real property and improvements thereon which will be directly and substantially benefited by the Project improvements; and

J. no alternative proposals for redevelopment of the Redevelopment Area have been received in response to the October 25, 2025 advertisement.

2. **Recommendations.** The TIF Commission recommends that the City Council take the following actions with respect to the TIF Plan:

A. adopt an ordinance to make the findings recommended in Section 1 above, designate the Redevelopment Area as a redevelopment area as provided in Section 99.805(11), RSMo, declare that the Redevelopment Area is a blighted area, and approve the TIF Plan;

B. adopt an ordinance which approves the Redevelopment Project and activates the collection of tax increment financing within the Redevelopment Project; and

C. declare the Developer to be the developer of record for Redevelopment Project and enter into a redevelopment agreement with the Developer to provide for the terms and conditions under which the Redevelopment Project will be implemented and reimbursement will be provided to the Developer for eligible reimbursable project costs.

APPROVED BY THE TAX INCREMENT FINANCING COMMISSION OF INDEPENDENCE,
MISSOURI THIS 24th DAY OF NOVEMBER, 2025.

By: Allison C. Farnsworth
Chair of the TIF Commission

**WALLY'S
TAX INCREMENT FINANCING PLAN
INDEPENDENCE, MISSOURI**

PREPARED BY:

Polsinelli PC
900 West 48th Place, Suite 900
Kansas City, Missouri 64112

ON BEHALF OF PLAN PROPONENT:

WALLY'S INDEPENDENCE MO OWNER LLC,
a Missouri limited liability company

1400 S Highway Drive, Suite 403
Fenton, Missouri 63026

SUBMITTED SEPTEMBER 25, 2025.

AMENDED NOVEMBER 13, 2025.

RECIEVED ON
Nov. 13, 2025
J'Howard

TABLE OF CONTENTS

I. INTRODUCTION	1
II. DEFINITIONS	3
III. TAX INCREMENT FINANCING	9
IV. EXISTING CONDITIONS IN THE REDEVELOPMENT PROJECT AREA & "BUT FOR" TEST ANALYSIS	9
V. REDEVELOPMENT PLAN OBJECTIVES	10
VI. DEVELOPER	11
VII. PLAN IMPLEMENTATION	11
VIII. FINANCING PLAN	13
IX. DISBURSEMENTS FROM SPECIAL ALLOCATION FUND	16
X. COST-BENEFIT ANALYSIS	16
XI. PROVISIONS FOR AMENDING THE TAX INCREMENT PLAN	16
XII. TERMINATION OF TAX INCREMENT FINANCING	16
XIII. REQUIRED STATUTORY FINDINGS	16
XIV. REPORTING ECONOMIC ACTIVITY TAXES	18

EXHIBITS

EXHIBIT 1	Legal Description of Redevelopment Area and Redevelopment Project Area
EXHIBIT 2	Depiction of Redevelopment Area and Redevelopment Project Areas
EXHIBIT 3	Preliminary Site Plan
<u>AMENDED EXHIBIT 4</u>	Estimated Amounts of Redevelopment and Reimbursable Project Costs
<u>AMENDED EXHIBIT 5</u>	Projected TIF, CID , & TDD Revenue
EXHIBIT 6	Blight Study
<u>AMENDED EXHIBIT 7</u>	Debt Service Schedules
EXHIBIT 8	Evidence of Commitments to Finance
EXHIBIT 9	Relocation Plan
<u>AMENDED EXHIBIT 10</u>	Cost Benefit Analysis
<u>AMENDED EXHIBIT 11</u>	Developer Affidavit

I. INTRODUCTION

This Plan provides for the redevelopment of the Redevelopment Area, which consists of blighted land generally located in the northeast quadrant of the intersection of Interstate 70 and S Noland Road in the City of Independence, Missouri. The Redevelopment Area contains approximately 20.96 acres. The Redevelopment Area is legally described on Exhibit 1.

The Redevelopment Area is a blighted area and, as evidenced by the Blight Study attached as Exhibit 6, the Redevelopment Area is not developed to its highest and best use. Moreover, the redevelopment of the Redevelopment Area will positively impact the City's economy. However, the Redevelopment Area cannot be reasonably anticipated to be developed without the assistance of tax increment financing ("TIF") to help defray, among other things, the costs of ameliorating the blighted conditions.

The Redevelopment Area is anticipated to be redeveloped through one (1) Redevelopment Project. The Redevelopment Project will consist of land acquisition, engineering, site preparation, and the marketing, design and construction of an approximately 54,000 square foot travel center, including fuel pumps, landscaping, parking and other amenities and public and private infrastructure. The legal description of the Redevelopment Project Area is the same as the legal description of the Redevelopment Area, which is set forth on Exhibit 1. A Preliminary Site Plan for the Redevelopment Area is attached as Exhibit 3.

Upon completion of the Redevelopment Project, it is estimated that approximately 200 permanent workers will be employed in the Redevelopment Area. Moreover, it is also anticipated that the construction of the Redevelopment Project will create approximately 163 one-year employment equivalent construction related jobs during the construction of the Redevelopment Project. The combined annual salaries of the construction and permanent employees are estimated to exceed \$5,000,000 annually.

The aggregate Redevelopment Costs for the Redevelopment Project are estimated to be approximately \$52,950,000, including pre-development professional service costs anticipated to be incurred by the Developer as initial expenses for the Redevelopment Project and \$1,000,000 to be directed by the City to the Noland Road Corridor Project (as defined herein). This Plan will make Payments in Lieu of Taxes and Economic Activity Taxes, together with ~~CID Revenues and TDD Revenues~~, available to reimburse the portion of those Redevelopment Project Costs that constitute Reimbursable Project Costs under this Plan.

The most recent equalized assessed valuation of the real estate within the Redevelopment Area was \$1,708,045. It is estimated that the total assessed value of real estate within the Redevelopment Area will be approximately \$9,324,000 when the Redevelopment Project is completed.

The total amount of Payments in Lieu of Taxes anticipated to be generated by the Redevelopment Project is shown on Exhibit 5 and is estimated to be approximately \$6,560,197.

The total Economic Activity Taxes (exclusive of those attributable to utility taxes, if any) anticipated to be generated by the Redevelopment Project is shown on Exhibit 5 and is estimated to be approximately \$12,273,695, which does not include the captured portions of the TDD Sales Tax. No portion of the CID Sales Tax will be captured as Economic Activity Taxes.

~~It is anticipated that a Community Improvement District encompassing the Redevelopment Project Area will be formed pursuant to the CID Act (defined herein) when the Redevelopment Plan is adopted by the City for the purpose of providing additional revenue to finance Reimbursable Project Costs through the imposition of a sales tax ("CID Sales Tax"). No portion of such CID Sales Tax will be captured as Economic Activity Taxes, and one hundred percent (100%) of such CID Sales Tax ("CID Revenues") is anticipated to be made available by the CID pursuant to an intergovernmental cooperation agreement with the City, for the purposes of repaying Reimbursable Project Costs. The estimated amount of CID Revenues is shown on Exhibit 5.~~

It is anticipated that a Transportation Development District encompassing the Redevelopment Project Area will be formed pursuant to the TDD Act (defined herein) when the Redevelopment Plan is adopted by the City for the purpose of providing additional revenue to finance Reimbursable Project Costs through the imposition of a sales tax (the "TDD Sales Tax"). One half (½) of such TDD Sales Tax will be captured as Economic Activity Taxes. One half (½) of such TDD Sales Tax (the "TDD Revenues") is anticipated to be made available by the TDD pursuant to an intergovernmental cooperation agreement with the City, for the purposes of repaying Reimbursable Project Costs. The estimated amount of TDD Revenues is shown on Exhibit 5.

Payments in Lieu of Taxes and Economic Activity Taxes generated by the Redevelopment Project Area will be made available to pay Reimbursable Project Costs, subject to any contractual agreements with regard to relative priority of pledges as collateral for Obligations, Private Loans or Developer Advances. It is projected that the Reimbursable Project Costs will be fully reimbursed in the 14th year after approval of the Redevelopment Project. After all Reimbursable Project Costs, Reimbursable Interest (defined herein), Financing Costs (defined herein) and Debt Service (defined

herein) for the Redevelopment Project are repaid, TIF for the Redevelopment Area will be terminated and the Taxing Districts will receive all tax revenues generated by the Redevelopment Project.

II. DEFINITIONS

As used in this Plan, the following terms shall mean:

- A. Approved Site Plan: The actual site plan as approved by the City for the Redevelopment Project Area.
- B. Blighted Area: An area which, by reason of the predominance of insanitary or unsafe conditions, deterioration of site improvements, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, or welfare in its present condition and use.
- C. CID: ~~The Community Improvement District anticipated to be formed for the purpose of providing revenue to finance Redevelopment Project Costs for the Redevelopment Project.~~
- D. CID Act: ~~The Community Improvement District Act, Sections 67.1401, et seq., Revised Statutes of Missouri, as amended.~~
- E. CID Revenues: ~~One hundred percent (100%) of the revenue derived from CID Sales Tax.~~
- F. CID Revenues Fund: ~~The separate segregated account established by or on behalf of the CID into which CID Revenues are to be deposited.~~
- G. CID Sales Tax: ~~A sales and use tax of 1.0% anticipated to be imposed by the CID on taxable retail sales within the Redevelopment Project Area.~~
- H. City: City of Independence, Missouri.
- I. City Council: The governing body of the City of Independence, Missouri.
- J. City Director of Finance: The Director of Finance or other chief financial officer of the City of Independence, Missouri.

- K. County: Jackson County, Missouri.
- L. County Assessor: The Assessor of Jackson County, Missouri.
- M. County Collector: The Collector of Jackson County, Missouri.
- N. Debt Service: The amount required for the payment of interest and principal on Obligations as they come due, for the payment of mandatory or optional redemption payments, and for payments to reserve funds required by the terms of Obligations.
- O. Developer: The business organization or other entity selected by the City to implement the Plan or Redevelopment Project.
- P. Developer Advance: Funds, other than TIF Revenue, ~~CID Revenue~~, TDD Revenue, the proceeds of Obligations, or the proceeds of Private Loans, used by the Developer or an affiliate of the Developer to pay Reimbursable Project Costs or to obtain or repay, wholly or partially, Private Loans that financed or refinanced Reimbursable Project Costs.
- Q. Development Agreement: An agreement to be executed by the City and the Developer relating to the Redevelopment Project and the reimbursement of Reimbursable Project Costs, which may include, at the discretion of the City, the ~~CID and/or~~ TDD as ~~parties~~ a party.
- R. Distribution Date: March 1, June 1, September 1 and December 1 of each calendar year while this Plan remains in effect.
- S. Economic Activity Account: The separate segregated account within the Special Allocation Fund into which Economic Activity Taxes are to be deposited.
- T. Economic Activity Taxes: Fifty percent (50%) of the total additional revenue from taxes, penalties and interest which are imposed by the City or other Taxing Districts, and which are generated by economic activities within the Redevelopment Project Area, over the amount of such taxes generated by economic activities within the Redevelopment Project Area in the calendar year prior to the adoption of the Redevelopment Project for the Redevelopment Project Area by Ordinance, while TIF remains in effect, but excluding personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to Section 70.500, RSMo,

taxes levied for the purpose of public transportation pursuant to Section 94.660, RSMo, licenses, fees or special assessments other than Payments In Lieu of Taxes and penalties and interest thereon, and any other taxes excluded from tax increment financing by Missouri law at the time of approval of this Plan. If a retail establishment relocates within one (1) year from one facility to another facility within the County and the City Council finds that the relocation is a direct beneficiary of tax increment financing, then for purposes of this definition the Economic Activity Taxes generated by the retail establishment shall equal the total additional revenues from Economic Activity Taxes which are imposed by the City, County or other Taxing Districts over the amount of Economic Activity Taxes generated by the retail establishment in the calendar year prior to its relocation to the Redevelopment Area.

U. Financing Costs: Those costs incurred by the TIF Commission or the City as a result of issuing or obtaining one or more series of Obligations to finance all or any portion of Reimbursable Project Costs incurred or estimated to be incurred, including but not limited to interest, loan fees, capitalized interest, financial advisor fees, legal fees, broker fees or discounts, original purchaser's discount, printing and other costs related to such financing.

V. Obligations: Bonds, loans, debentures, notes, special certificates, or other evidences of indebtedness issued by the Independence Industrial Development Authority, Missouri Development Finance Board, or similar issuer, to pay or reimburse all or any portion of Reimbursable Project Costs incurred or estimated to be incurred, to finance the cost of issuing such Obligations, to establish reserves to refund or secure such Obligations, to finance the interest costs associated with such Obligations or to refund, redeem or defease outstanding Obligations.

W. Ordinance: An ordinance enacted by the City Council.

X. Payments in Lieu of Taxes: Revenues from real property taxes in the Redevelopment Project Area selected for the Redevelopment Project which are to be used to reimburse the Reimbursable Project Costs, which Taxing Districts would have received had the City not adopted tax increment allocation financing, and which result from levies made after the time of the adoption of tax increment allocation financing within the Redevelopment Project Area, and during the time the current equalized value of real property in the

Redevelopment Project Area exceeds the Total Initial Equalized Assessed Value of real property in the Redevelopment Project Area, until the designation is terminated pursuant to this Plan which shall not be later than twenty-three (23) years after the Redevelopment Project is approved, excluding, however, the blind pension fund tax levied under the authority of Article III, Section 38(b) of the Missouri Constitution, the merchant's and manufacturer's inventory replacement tax levied under the authority of Article X, Section 6(2) of the Missouri Constitution, taxes levied under Section 205.971, RSMo, for the purpose of establishing and maintaining a county sheltered workshop, residence, facility and/or related services, and any other taxes excluded from tax increment financing by Missouri law at the time of approval of this Plan.

Y. PILOT Account: The separate segregated account within the Special Allocation Fund into which Payments in Lieu of Taxes are to be deposited.

Z. Plan: This Tax Increment Financing Plan.

AA. Preliminary Site Plan: The preliminary site plan for the Redevelopment Project Area, attached as Exhibit 3.

BB. Private Loans: Loans made to or for the benefit of the Developer or an affiliate of the Developer by a third party not affiliated with the Developer, the proceeds of which are used to finance or refinance Reimbursable Project Costs.

CC. Redevelopment Area: The real property legally described in Exhibit 1 and outlined in Exhibit 2.

DD. Redevelopment Project: The approximately 54,000 square foot travel center, including fuel pumps, landscaping, parking and other amenities and public and private infrastructure to be constructed in the Redevelopment Project Area in accordance with this Plan and the Approved Site Plan, as further described in Exhibit 4 hereto, and/or any other redevelopment project described and designated as such under any amendment to this Plan.

EE. Redevelopment Project Area: The area selected for the Redevelopment Project, which is legally described on Exhibit 1 and outlined on Exhibit 2, and/or any other redevelopment project area described and designated as such under any amendment to this Plan.

FF. Redevelopment Project Costs: The sum of all reasonable or necessary costs incurred, or estimated to be incurred, and any such costs incidental to this Plan or the Redevelopment Project, as applicable. Such costs include, but are not limited to, the following:

1. Costs of studies, surveys, plans and specifications;
2. Professional service costs, including, but not limited to, architectural, engineering, legal, marketing, financial, planning or special services (except for reasonable administrative costs of the Commission, such costs shall be allowed only as an initial expense, and are included in the costs set forth in this Plan for the Redevelopment Project);
3. Costs of preparing land for construction of buildings, including but not limited to, cost of clearing, grading, filling land, constructing adequate stormwater facilities, mitigating environmental impacts, and the costs of design, engineering and construction of such buildings;
4. Costs of landscaping, parking lot and access drive construction;
5. Costs of utility relocation and service provision;
6. Costs of construction of public works or improvements;
7. Financing Costs, including, but not limited to, all necessary and incidental expenses related to the issuance of Obligations, and which may include payment of interest on any Obligations issued hereunder accruing during the estimated period of construction of the Redevelopment Project for which such Obligations are issued and for not more than eighteen months thereafter, and including reasonable reserves related thereto;
8. All or a portion of a Taxing District's capital costs resulting from the Redevelopment Project necessarily incurred or to be incurred in furtherance of the objectives of this Plan and such Redevelopment Project, to the extent the City by written agreement accepts and approves such costs;
9. Relocation costs to the extent that the City determines that relocation costs shall be paid or are required to be paid by federal or state law; and
10. Payments in lieu of taxes.

GG. Reimbursable Interest: Interest payable to the Developer or an affiliate of the Developer, at the rate set forth in the Development Agreement on any Reimbursable Project Cost paid by the Developer from a Developer Advance or Private Loan.

HH. Reimbursable Project Costs: The sum of all reasonable or necessary costs incurred or estimated to be incurred in the design and construction of the Redevelopment Project, as shown on Exhibit 4. The amounts shown on Exhibit 4 are estimates only, and the reimbursable amount shown on Exhibit 4 with respect to any category are not maximum reimbursable amounts for such category. All costs shown under the "Total

Reimbursement” column on Exhibit 4 are reimbursable from TIF Revenues even if anticipated to be reimbursed from other sources shown on Exhibit 4.

- II. Special Allocation Fund: The fund maintained by the City into which, as required by the TIF Act, all Payments in Lieu of Taxes and Economic Activity Taxes are to be deposited.
- JJ. Taxing District: Any political subdivision of the State of Missouri located wholly or partially within the Redevelopment Area having the power to levy taxes.
- KK. TDD: The Transportation Development District anticipated to be formed for the purpose of providing revenue to finance Redevelopment Project Costs for the Redevelopment Project.
- LL. TDD Act: The Transportation Development District Act, Section 238.236, et. seq., Revised Statutes of Missouri, as amended.
- MM. TDD Revenues: That portion of the revenue derived from TDD Sales Tax that does not constitute an Economic Activity Tax.
- NN. TDD Revenues Fund: The separate, segregated account established by or on behalf of the TDD into which TDD Revenues are to be deposited.
- OO. TDD Sales Tax: A sales and use tax of 1.0% to be imposed by the TDD on taxable retail sales within the Redevelopment Project Area.
- PP. TIF Act: The Real Property Tax Increment Allocation Redevelopment Act, Section 99.800, *et seq.*, Revised Statutes of Missouri, as amended.
- QQ. TIF Commission: The Tax Increment Financing Commission of Independence, Missouri.
- RR. TIF Revenues: Payments in Lieu of Taxes and Economic Activity Taxes.
- SS. Total Initial Equalized Assessed Value: That amount certified by the County Assessor which equals the most recently ascertained equalized assessed value of each taxable lot, block, tract, or parcel of real property within the Redevelopment Project Area immediately after tax increment financing for the Redevelopment Project Area has been approved by the City Council by an Ordinance.

III. TAX INCREMENT FINANCING

This Plan is adopted pursuant to the TIF Act. The TIF Act enables municipalities to finance Redevelopment Project Costs with the revenue generated from Payments in Lieu of Taxes resulting from increased assessed valuation on real property and, subject to annual appropriations, from Economic Activity Taxes resulting from increased economic activities in the Redevelopment Area. Under the TIF Act, the TIF Commission or the City may issue Obligations to finance Redevelopment Project Costs.

Immediately after the City Council approves a Redevelopment Project and adopts tax increment financing for the respective Redevelopment Project Area, the County Assessor shall certify the Total Initial Equalized Assessed Value of the Redevelopment Project Area. Real estate taxes (including penalties and interest thereon) resulting from: (1) all taxes levied on the Total Initial Equalized Assessed Value for the Redevelopment Project Area; and (2) all taxes excluded from Payment in Lieu of Taxes as set out in the definition thereof in this Plan, will be payable to Taxing Districts as if tax increment financing were not adopted. Payments in Lieu of Taxes (including applicable penalties and interest) collected from owners of property within the Redevelopment Project Area will be paid by the County Collector to the City Treasurer and deposited in the PILOT Account within the Special Allocation Fund. In addition, the Economic Activity Taxes generated within the Redevelopment Project Area shall be paid by the collecting Taxing Districts to the City Treasurer who shall deposit such funds in the Economic Activity Account within the Special Allocation Fund, subject to annual appropriation by the City.

IV. EXISTING CONDITIONS IN THE REDEVELOPMENT PROJECT AREA – “BUT FOR” TEST ANALYSIS

The Redevelopment Area is a “blighted area” within the meaning the TIF Act. The blight study attached as Exhibit 6 details the condition of the Redevelopment Area.

Without tax increment financing, revitalization of the Redevelopment Area will not occur due to its blighted condition and other challenges to redevelopment. The aggregate redevelopment costs for the Redevelopment Project are estimated to be approximately \$52,950,000, including \$1,000,000 to be directed by the City to the Noland Road Corridor Project (as defined herein) and pre-development professional service costs anticipated to be incurred by the Developer as initial expenses for the Redevelopment Project and exclusive of permanent financing costs. The Developer will require reimbursement of Reimbursable Project Costs in the amount of ~~\$10,795,652~~ **\$8,605,401** (plus Reimbursable Interest) via reimbursement on a pay-as-you-go basis, from proceeds of the issuance of Obligations, or a combination of both, to bridge the gap between the amount the Developer is willing to

invest in private funds and the total dollars necessary to complete the Redevelopment Project. \$1,000,000 of such amount will be directed to the Noland Road Corridor Project (as defined herein). Reimbursement of Developer in the amount stated above is estimated to provide the Developer with a ~~+2.87%~~ **11.52%** internal rate of return. By contrast, absent any reimbursement of Developer's Reimbursable Project Costs, Developer's internal rate of return would be *negative* 5.35%, demonstrating that, without TIF, the Redevelopment Project is not financially feasible.

When the blight study is read in conjunction with the Preliminary Site Plan and the categories and estimates of Reimbursable Project Costs, it's clear that the TIF Revenues, or proceeds from the Obligations, are critical to the elimination of blight in, and the redevelopment of, the Redevelopment Project Area.

Given the risks involved in making the substantial investment necessary to remove the Redevelopment Project Area's blight and to develop and deliver a high-quality development project to the City, the Developer would not pursue the Redevelopment Project but for the availability of funds from TIF. Moreover, the same factors suggest that no other developer would bring a project of similar quality to the site without substantial public incentives. Thus, without reimbursement of the Reimbursable Project Costs in the amount of ~~\$10,795,652~~ **\$8,605,401** (plus Reimbursable Interest) with TIF Revenues, ~~City Revenues,~~ and TDD Revenues, the Redevelopment Project is not economically viable.

V. REDEVELOPMENT PLAN OBJECTIVES

The Redevelopment Project will be implemented by a Developer, who shall be responsible for the design and construction of the Redevelopment Project with respect to which such party has been selected as Developer. The objectives of this Plan are outlined below.

A. General Plan Objectives. The general objectives of this Plan are:

1. To eliminate the blighted condition of the Redevelopment Area.
2. To enhance the tax base of the City and other Taxing Districts by development of the Redevelopment Area to its highest and best use and encouraging private investment in the Redevelopment Area and surrounding areas.
3. To encourage commerce and industry to locate in the City.
4. To encourage retention and expansion of retail sales in the City.
5. To increase employment in the City.

6. To provide for improved public infrastructure in and around the Redevelopment Area.

7. To enhance the aesthetics of the Redevelopment Area.

B. Specific Plan Objectives. Specific objectives of this Plan are:

1. To cause the Redevelopment Area to be redeveloped through the design, engineering and construction of an approximately 54,000 square foot travel center in the Redevelopment Project Area, together with fuel pumps, landscaping, parking and other amenities and public and private infrastructure.
2. To construct public infrastructure to serve the Redevelopment Area.
3. To expand the tax base of the City by encouraging private investment in the Redevelopment Area and retaining retail sales dollars of residents and visitors.
4. To increase the employment opportunities for the City's residents.
5. To increase the quality, convenience and variety of retail offerings in the City.

VI. DEVELOPER

A. Developer Selection. The City has issued a request for proposals from prospective developers for the Redevelopment Project and will designate the Developer by ordinance at the time of approval of this Plan.

VII. PLAN IMPLEMENTATION

A. Site Acquisition. The proposed Developer is the owner of the Redevelopment Project Area.

B. General Land Use. The general land uses to apply in the Redevelopment Area are commercial and/or retail, which is in conformity with the City's Comprehensive Plan. The Redevelopment Area is currently zoned C-2, which should be adequate for the proposed uses following redevelopment.

The Redevelopment Area shall be subject to the applicable provisions of Ordinances as well as other applicable codes. All requirements for landscaping, storm water detention, parking, lighting and off-site traffic improvements which are imposed pursuant to the zoning process will automatically

become part of the requirements of this Plan. All public improvements which are to be dedicated to the City or any other municipality shall comply with City or appropriate municipal street and road construction standards.

C. Schedule of Development. The anticipated dates for the commencement and completion of construction of the Redevelopment Projects are set forth as follows:

REDEVELOPMENT PROJECT	ANTICIPATED COMMENCEMENT*	ANTICIPATED COMPLETION*
1	2025	2027

*The exact commencement and completion dates of construction of the Redevelopment Project will be dependent on many factors, including market conditions, weather, availability of materials and other events beyond the control of the Developer, and may be earlier or later than the anticipated dates.

C. Private Development. The Developer will design and construct the Redevelopment Project substantially in accordance with the Approved Site Plan. It is anticipated that the Redevelopment Project will consist of an approximately 54,000 square foot travel center, together with fuel pumps, landscaping, parking and other amenities and public and private infrastructure.

Prior to the commencement of construction of the Redevelopment Project, the Developer shall obtain approval by the City of an Approved Site Plan for the Redevelopment Project Area.

D. Public Infrastructure. Public infrastructure improvements associated with the applicable Redevelopment Project Area will be constructed by the Developer in accordance with the applicable Approved Site Plan. The costs of the design and construction of the public infrastructure improvements are Reimbursable Project Costs as shown on Exhibit 4.

E. Additional Redevelopment Projects. This Plan may be amended from time to time to identify additional Redevelopment Projects and to designate additional Redevelopment Project Areas, provided, however, that no Ordinance approving a Redevelopment Project will be adopted later than ten (10) years from the adoption of this Plan.

F. Relocation Plan. A Relocation Plan to aid persons or entities in the Redevelopment Area who may be entitled to relocation assistance pursuant to applicable law is attached as Exhibit 9. The Relocation Plan complies with the requirements of Section 523.200 et seq., RSMo.

VIII. FINANCING PLAN

A. Projected Redevelopment Project Costs. The total Redevelopment Project Cost for the Redevelopment Project is estimated to be approximately \$52,950,000, as shown on Exhibit 4 including pre-development professional service costs anticipated to be incurred by the Developer as initial expenses for the Redevelopment Project. The total aggregate amount of reimbursement paid to the Developer hereunder shall not exceed ~~\$9,795,652~~ **\$7,605,401**, plus Reimbursable Interest. \$1,000,000 shall be directed to the Noland Road Corridor Project. The amounts shown on Exhibit 4 are estimates only, and the reimbursable amount shown on Exhibit 4 with respect to any category are not maximum reimbursable amounts for such category.

The actual costs for the Redevelopment Project may vary from that estimated in this Plan due to many factors, including but not limited to the actual configuration of the Redevelopment Project, unforeseen site conditions, final determinations as to engineering, land acquisition costs, and construction and fluctuation in the cost of labor and materials. The total amounts to be paid from TIF Revenues, ~~CID Revenues~~ and TDD Revenues may include Reimbursable Project Costs, Reimbursable Interest, Financing Costs and Debt Service on Obligations issued to provide reimbursement of Reimbursable Project Costs.

B. Source of Funds. It is anticipated that the amounts necessary to pay Redevelopment Project Costs may be derived through a combination of proceeds from Obligations, Private Loans and Developer Advances. The Developer shall be entitled to payment of Reimbursable Interest. The TIF Revenues, ~~CID Revenues~~ and/or TDD Revenues, or right to repayment therefrom, may be pledged as security for the repayment of Obligations, Private Loans and Developer Advances, as agreed to by the City and the Developer.

D. Financing Schedule. It is anticipated that TIF Revenues, ~~CID Revenues~~, and TDD Revenues generated by the completed Redevelopment Project will be sufficient to repay the Reimbursable Project Costs. The Projected Debt Service Schedule for Reimbursable Project Costs for the Redevelopment Project is attached as Exhibit 7. These schedules project that the Reimbursable Project Costs for the Redevelopment Project will likely be repaid in the 14th year after approval of the Redevelopment Project.

E. Evidence of Commitments to Finance. Evidence of commitments to finance Redevelopment Project Costs is attached as Exhibit 8.

F. Issuance, Nature and Term of Obligations. Without excluding other methods of financing, this Plan anticipates that Obligations will be issued pursuant to this Plan. Any such Obligations would be issued on terms and at an interest rate determined by market conditions at the time of issuance. The proceeds of any Obligations issued would be used to finance all or some portion of Reimbursable Project Costs. The proceeds of the Obligations may also be used to fund capitalized interest accounts, debt service reserve funds, and Financing Costs, as may be required to issue such Obligations.

Such Obligations would be payable from TIF Revenues and/or TDD Revenues. Developer Reimbursable Project Costs not financed by such Obligations may be financed by the Developer through Private Loans or Developer Advances, subject to reimbursement in accordance with this Plan.

Obligations may be sold in one or more series to implement this Plan. Each Obligation issued must be retired not later than 23 years after the adoption of tax increment financing for the Redevelopment Project Area. It is anticipated that such Obligations will be retired within such 23-year period as illustrated on the Debt Service Schedule attached as Exhibit 7.

G. Projected TIF, CID, and TDD Revenues. The total amount of Payments in Lieu of Taxes anticipated to be generated by the Redevelopment Project and available to pay Reimbursable Project Costs is shown on Exhibit 5 and is estimated to be approximately \$6,560,197. The total Economic Activity Taxes (exclusive of those attributable to utility taxes, if any) anticipated to be generated by the Redevelopment Project is shown on Exhibit 5 and is estimated to be approximately \$12,273,695. ~~The total CID Revenues anticipated to be generated by the Redevelopment Project from the creation of the Community Improvement District through 23 years of operation of the Redevelopment Project is shown on Exhibit 5 and is estimated to be approximately \$6,824,746.~~ The total TDD Revenues anticipated to be generated by the Redevelopment Project from the creation of the Transportation Development District through 23 years of operation of the Redevelopment Project is shown on Exhibit 5 and is estimated to be approximately \$3,865,247.

H. Payments in Lieu of Taxes. Calculation of anticipated Payments in Lieu of Taxes are based on current and projected future real property assessed valuations and the best available information concerning future property tax levy rates, both of which are subject to change due to many factors, including statewide reassessment, the effects of real property classification for real property tax purposes, and the rollback in tax levies resulting from reassessment or reclassification. The anticipated Payments in Lieu of Taxes available to pay Reimbursable Project Costs under this Plan are limited to fifty percent (50%) of the Payments in Lieu of Taxes (the "PILOTs Reimbursement Portion"). Any Payments in Lieu of Taxes that exceed the PILOTs Reimbursement Portion shall be declared a surplus by the City and

made available for distribution to the Taxing Districts located wholly or partially within the Redevelopment Area in accordance with the Act.

1. Equalized Assessed Valuations. According to the records of the County Assessor, the Total Equalized Assessed Value of the Redevelopment Area in 2024 was \$3,152,000, which Total Equalized Assessed Value included value attributable to a building which has since been demolished. The 2025 Total Equalized Assessed Value of the Redevelopment Area is \$3,518,230; provided, however, the 2025 Total Equalized Assessed Value of the Redevelopment Area is currently under appeal. The cost-benefit analysis attached as Exhibit 10 assumes a Total Equalized Assessed Value of the Redevelopment Area of \$1,708,045, as the same is believed to be a more accurate representation of what the Total Equalized Assessed Value of the Redevelopment Area will be upon activation of the TIF as said assumed value considers the demolition of the building.

2. Anticipated Assessed Valuation. It is estimated that the total assessed value of real estate within the Redevelopment Area will be approximately \$9,324,000 when the Redevelopment Project is completed.

I. Economic Activity Taxes. Economic Activity Taxes to be generated in the Redevelopment Area consist of sales taxes generated by operation of the Redevelopment Project. The current sales tax rate for the Redevelopment Area and the captured rate for purposes of tax increment financing are shown on Exhibit 5. Additionally, ~~a CID Sales Tax of 1.0% and a TDD Sales Tax of 1.0%~~ are is proposed. Sales subject to sales taxes in the Redevelopment Area in 2024, the year prior to the year in which this Plan was adopted, were \$4,117,040.

J. Special Allocation Fund. The City shall establish and maintain the Special Allocation Fund, which shall contain two separate segregated accounts. Payments in Lieu of Taxes shall be deposited into the PILOT Account within the Special Allocation Fund, and Economic Activity Taxes shall be deposited into the Economic Activity Account within the Special Allocation Fund. TIF Revenues so deposited, and any interest earned on such deposits, will be used for and are pledged, to the extent allowable by law, for the payment of Reimbursable Project Costs. TIF Revenues shall also be available for distribution to the Taxing Districts, in the manner set forth in Article IX of this Plan. ~~CID Revenues shall be deposited in the CID Revenues Fund and applied in accordance with the Development Agreement.~~ TDD Revenues shall be deposited in the TDD Revenues Fund and applied in accordance with the Development Agreement. Notwithstanding anything to the contrary herein, an amount equal to

\$1,000,000 shall be applied as directed by the City for the installation and improvement of sidewalks, curbs, gutters, and other transportation-related corridor improvements along Noland Road (the “Noland Road Corridor Project”).

IX. DISBURSEMENTS FROM SPECIAL ALLOCATION FUND

All disbursements from the Special Allocation Fund will be made by the City out of the aforementioned separate segregated accounts maintained within the Special Allocation Fund. On each Distribution Date, Disbursements shall be made by the City from the Special Allocation Fund in the order of preference set out in the Development Agreement.

X. COST-BENEFIT ANALYSIS

The amount of all revenues estimated to be received by the Taxing Districts directly from the Redevelopment Project during the 23 years of tax increment financing collections is estimated in the cost-benefit analysis attached as Exhibit 10. The cost-benefit analysis shows the impact on the economy if the Redevelopment Project is built and if the Redevelopment Project is not built pursuant to this Plan. The cost-benefit analysis illustrates the fiscal impact on every Taxing District.

XI. PROVISIONS FOR AMENDING THE TAX INCREMENT PLAN

This Plan may be amended only pursuant to the provisions of the TIF Act.

XII. TERMINATION OF TAX INCREMENT FINANCING

Tax increment financing shall remain in effect until all Reimbursable Project Costs, Reimbursable Interest, Financing Costs and Debt Service on Obligations have been paid, except that tax increment financing for the Redevelopment Project Area shall be terminated no later than 23 years after the adoption of tax increment financing for the Redevelopment Project Area by Ordinance. At that time, tax increment financing shall be terminated for the Redevelopment Project Area by the adoption of an Ordinance of the City Council which terminates the designation of the Redevelopment Project Area under the TIF Act or by any other method authorized by the TIF Act. It is anticipated that all Reimbursable Project Costs will be reimbursed and that tax increment financing for the Redevelopment Project Area will be terminated by Ordinance in the 14th year after approval of the Redevelopment Project.

XIII. REQUIRED STATUTORY FINDINGS

With the approval of this Plan, the TIF Commission and the City Council have, as required by the TIF Act, made the findings set forth below, based upon the record of the public hearing on the Plan, including but not limited to the information in this Plan concerning blight, the impact of development on taxing jurisdictions, and the affidavit of the Developer attached as Exhibit 11.

1. Blighted Area. The Redevelopment Area as a whole is a Blighted Area within the meaning of the TIF Act.
2. Expectations for Development – “But For Test”. The Redevelopment Area, on the whole, has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of tax increment financing due to the substantial cost to ameliorate the blighted condition of the Redevelopment Area.
3. Conforms to Comprehensive Plan of City. This Plan conforms to the City’s Comprehensive Plan, as the City’s Comprehensive Plan indicates that the Redevelopment Area should be developed for commercial use.
4. Date to Adopt Redevelopment Project Area. The Ordinance approving the Redevelopment Project will not be adopted later than ten years from the adoption of this Plan.
5. Date to Complete Redevelopment. The estimated date to complete the Redevelopment Project has been stated and such date is not more than 23 years from the adoption of the Ordinance approving the Redevelopment Project.
6. Date to Retire Obligations. In the event Obligations are issued to finance Redevelopment Project Costs, it is anticipated that such Obligations will be retired in the 14th year after adoption of the Redevelopment Project, which is less than 23 years from the adoption of the Ordinance approving the Redevelopment Project.
7. Relocation Assistance. A Relocation Plan meeting the requirements of Section 523.205, RSMo, is attached as Exhibit 9.
8. Cost-Benefit Analysis. The cost-benefit analysis attached as Exhibit 10, shows the economic impact of this Plan on each Taxing District. The analyses show the impact on the economy if the Redevelopment Project is built and if the Redevelopment Project is not built pursuant to this Plan.
9. Gambling Establishment. This Plan does not include the initial development or redevelopment of any gambling establishment as defined in the TIF Act.
10. Reporting Requirements. The Commission shall report to the Director of the Department of Economic Development for the State of Missouri by the last day of February of each year the name, address, phone number and primary line of business of any business that

relocates to the Redevelopment Area. Pursuant to the TIF Act, the Director for the Department of Economic Development is required to compile and report the same to the governor, the speaker of the house and the president pro tempore of the Senate on the last day of April of each year.

11. Redevelopment Project Area. The Redevelopment Project Area includes only those parcels of real property and improvements directly and substantially benefited by the proposed Redevelopment Project. Construction activity may take place, and improvements may be constructed, on land in the vicinity of, but not included within, the Redevelopment Area which benefits the Redevelopment Area, and the costs associated therewith will be Reimbursable Project Area Costs if within a category shown as reimbursable on Exhibit 4.

XIV. REPORTING ECONOMIC ACTIVITY TAXES

Any person or entity which generates economic activity taxes within the Redevelopment Area will be asked to submit to the City, no less frequently than quarterly and no more frequently than monthly, evidence of payment of Economic Activity Taxes. Each such person or entity which generates sales taxes within the Redevelopment Area shall also be asked to authorize the Missouri Department of Revenue to release to the City the aggregate sales tax figures for all such persons' or entities' businesses within the Redevelopment Area.

EXHIBIT 1 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.

**LEGAL DESCRIPTION OF
REDEVELOPMENT AREA AND REDEVELOPMENT PROJECT AREA**

ALL THAT PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23, TOWNSHIP 49, RANGE 32, IN THE CITY OF INDEPENDENCE, JACKSON COUNTY, MISSOURI, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHEAST 1/4; THENCE SOUTH 90° 00' 00" EAST, ALONG THE NORTH LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 272.31 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 40.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF 39TH STREET, AS ESTABLISHED BY DOCUMENT NO. 1456433, RECORDED IN BOOK 11078, PAGE 1452, SAID POINT BEING THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE HEREIN DESCRIBED; THENCE SOUTH 0° 00' 00" WEST, AT RIGHT ANGLES TO SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 343.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 18.45 FEET; THENCE SOUTH 1° 15' 00" EAST, PARALLEL TO THE EAST RIGHT-OF-WAY LINE OF NOLAND ROAD, AS NOW ESTABLISHED, A DISTANCE OF 130.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 5.00 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 200.00 FEET; THENCE SOUTH 90° 00' 00" WEST, A DISTANCE OF 152.98 FEET, TO A POINT ON THE AFORESAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST (DEED = SOUTH 11° 02' 39" EAST), ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 65.40 FEET; THENCE NORTH 90° 00' 00" EAST, A DISTANCE OF 201.39 FEET; THENCE SOUTH 1° 02' 25" EAST, A DISTANCE OF 355.00 FEET; THENCE NORTH 85° 50' 55" WEST, A DISTANCE OF 140.49 FEET (DEED = 140.92 FEET), TO A POINT ON SAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 7.64 FEET (DEED = SOUTH 11° 02' 39" EAST, A DISTANCE OF 8.29 FEET), TO A POINT THAT IS OPPOSITE AND 155.00 FEET EAST OF STATION 18+50 ON THE CENTERLINE OF NOLAND ROAD; THENCE SOUTH 88° 41' 51" WEST, (DEED = SOUTH 88° 45' 00" WEST), CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 25.00 FEET TO A POINT THAT IS OPPOSITE AND 130 FEET EAST OF STATION 18+50 ON SAID NOLAND ROAD CENTERLINE; THENCE SOUTH 2° 02' 11" EAST CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 124.30 FEET (DEED = SOUTH 1° 15' 00" EAST, A DISTANCE OF 124.24 FEET), TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE ROUTE NO. 1-70, AS NOW ESTABLISHED THAT IS OPPOSITE AND 228.80 FEET NORTHERLY OF STATION 545+60 ON THE CENTERLINE OF SAID 1-70, THENCE SOUTH 84° 21' 11" EAST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 643.04 FEET (DEED = SOUTH 84° 17' 39" EAST, A DISTANCE OF 644.64 FEET) TO A POINT THAT IS OPPOSITE AND 166.30 FEET NORTHERLY OF STATION 552+00 ON THE CENTERLINE OF SAID 1-70; THENCE SOUTH 89° 55' 50" EAST, CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 546.03 FEET (DEED = SOUTH 89° 51' 16" EAST, A DISTANCE OF 545.61 FEET), TO A POINT ON THE WEST LINE OF "BROOKWOOD NO. 2", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE NORTH 1° 15' 58" WEST, ALONG THE WEST LINE OF SAID SUBDIVISION, A DISTANCE OF 785.43 FEET (DEED = NORTH 1° 12' 00" WEST, A

DISTANCE OF 786.12 FEET), TO THE SOUTHEAST CORNER OF LOT 19, "WOODRIDGE"; A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE SOUTH 89° 51' 43" WEST, ALONG THE SOUTH LINE OF SAID "WOODRIDGE"; A DISTANCE OF 251.04 FEET (DEED = NORTH 90° 00' 00" WEST, A DISTANCE OF 250.63 FEET), TO AN ANGLE POINT THEREIN; THENCE NORTH 80° 01' 00" WEST, CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 288.30 FEET TO AN ANGLE POINT THEREIN; THENCE SOUTH 89° 47' 57" WEST (DEED = NORTH 90° 00' 00" WEST), CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 286.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF DODGION STREET, AS NOW ESTABLISHED; THENCE NORTH 0° 12' 03" WEST (DEED = NORTH 0° 00' 00" WEST), ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 5.00 FEET TO THE SOUTHEAST CORNER OF LOT 34, SAID "WOODRIDGE"; THENCE SOUTH 89° 47' 57" WEST ALONG THE SOUTH LINE OF SAID LOT 34, A DISTANCE OF 135.40 FEET (DEED = 90° 00' 00" WEST, A DISTANCE OF 135.00 FEET), TO THE SOUTHWEST CORNER OF SAID LOT 34; THENCE NORTH 0° 00' 00" EAST, ALONG THE WEST LINE OF SAID "WOODRIDGE" SUBDIVISION, A DISTANCE OF 440.00 FEET TO THE AFORESAID SOUTH RIGHT-OF-WAY LINE OF 39TH STREET; THENCE NORTH 90° 00' 00" WEST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT 2 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.

**DEPICTION OF
REDEVELOPMENT AREA AND REDEVELOPMENT PROJECT AREA**

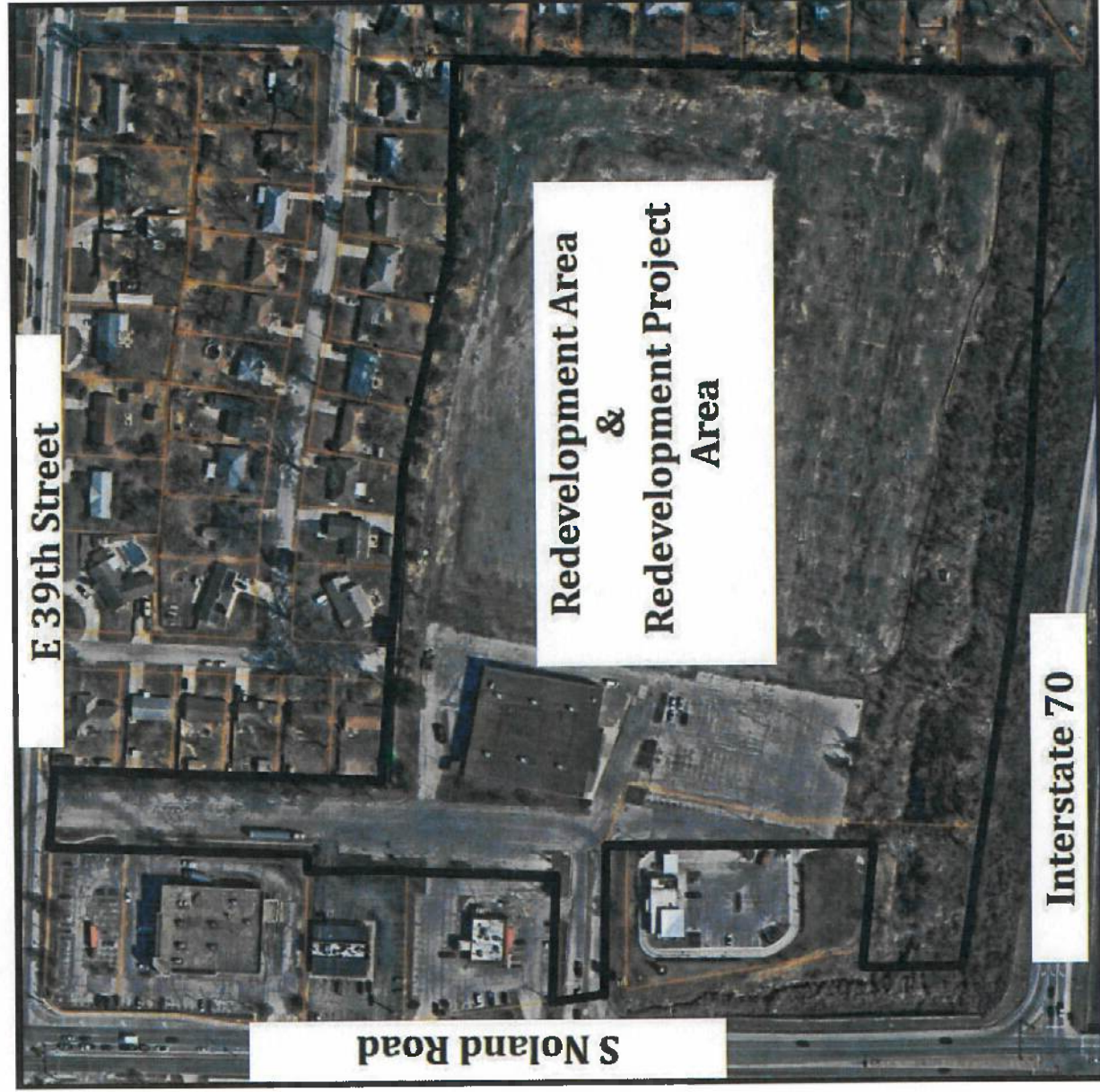
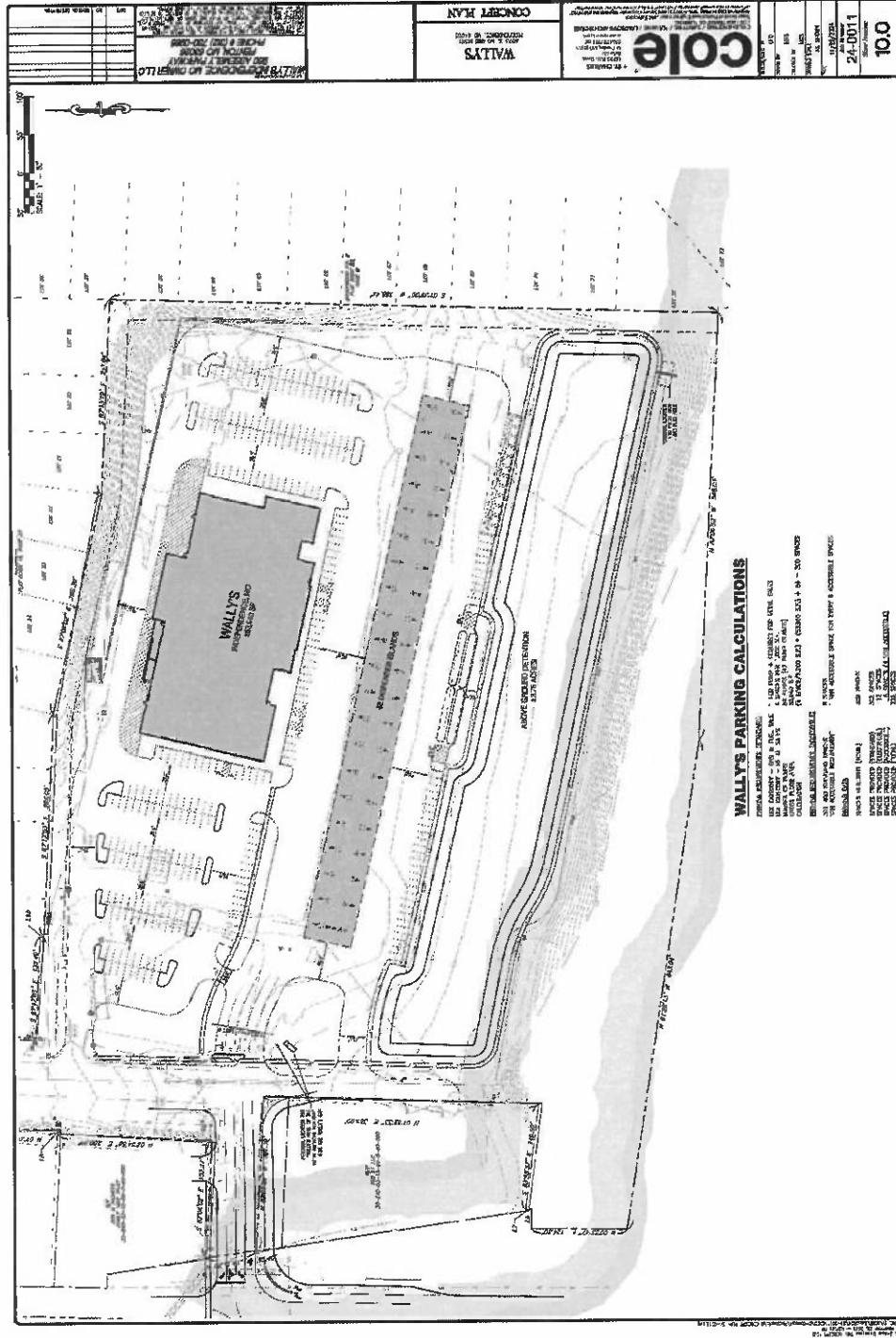


EXHIBIT 3 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.

PRELIMINARY SITE PLAN



AMENDED
EXHIBIT 4 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.

Wally's - Independence, MO
170 Noland Road
Sources Uses

* Project Cost		Total	IF Reimbursement	Non-TIF Captured TDD Reimbursement	** Total	Developer Private Costs
Acquisition Costs		\$ 10,300,000	\$ -	\$ -	\$ -	\$ 10,300,000
Site Construction Costs		\$ 17,750,000	\$ 7,346,699	\$ 1,250,702	\$ 8,605,401	\$ 9,144,599
1-70 Westbound Off Ramp Improvements						
1-70 Westbound On Ramp Improvements						
1-70 Eastbound Off Ramp Improvements						
1-70 Eastbound On Ramp Improvements						
Noland Road Improvements						
Lyn, Casterbury, and 38th Street Improvements						
Intersection Signalization and Redning						
Utilities						
Removals, Resets & Adjustments						
Drainage / Erosion Control						
Landscaping						
Signage / Striping						
Traffic Control, Mobilization, Etc.						
Earthwork						
Paving						
Soft Costs		\$ 1,000,000	\$ -	\$ 1,000,000	\$ 1,000,000	
** Noland Road Corridor Project						
Building Costs		\$ 20,100,000	\$ -	\$ -	\$ -	\$ 20,100,000
Underground Piping						
Tanks						
Dispensers						
Installation of Piping, Tanks, Dispensers						
Canopy						
Low Voltage Electric						
Cabling						
Security Monitoring						
Paving						
Communications						
Casework						
Coolers						
Kitchen Equipment						
Signage						
Hard Cost Contingency		\$ 1,000,000	\$ -	\$ -	\$ -	\$ 1,000,000
Soft Costs		\$ 2,800,000	\$ -	\$ -	\$ -	\$ 2,800,000
TOTAL PROJECT COSTS		\$ 52,950,000	\$ 7,346,699	\$ 1,250,702	\$ 8,605,401	\$ 43,344,599

* Developer Incentives to Total Project Cost Percentage: 14.36%

** All Project Costs assumes and incorporates Chapter 100 sales tax exemption.

*** \$1,000,000 will be directed to the Noland Road Corridor Project, with the remainder to be reimbursed to Developer.

AMENDED
EXHIBIT 5 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.

Wally's - Independence, MO

l-70 Noland Road

Combined Incentives Projections (TIF/TDD)

TIF / TDD REVENUE PROJECTIONS

Calendar Year	Project / Incentives Year	Assessed Value	Taxable Sales	PILOTS	EATS	TIF Revenue*	TDD Revenue	Total Incentives Revenue
2026	1	2,331,000	\$	21,259	\$	21,259	\$	21,259
2027	2	9,324,000	\$	259,898	\$	834,180	\$	145,585
2028	3	9,510,480	\$	266,262	\$	854,293	\$	1,002,379
2029	4	9,510,480	\$	266,262	\$	868,318	\$	1,018,954
2030	5	9,700,690	\$	272,753	\$	889,115	\$	1,042,351
2031	6	9,700,690	\$	272,753	\$	903,707	\$	1,059,596
2032	7	9,894,703	\$	279,374	\$	925,211	\$	1,083,806
2033	8	9,894,703	\$	279,374	\$	940,392	\$	1,101,747
2034	9	10,092,597	\$	286,127	\$	962,630	\$	1,126,801
2035	10	10,092,597	\$	286,127	\$	978,424	\$	1,145,467
2036	11	10,294,449	\$	293,015	\$	1,001,423	\$	1,171,395
2037	12	10,294,449	\$	293,015	\$	1,017,855	\$	1,190,815
2038	13	10,500,338	\$	300,041	\$	1,041,643	\$	1,217,650
2039	14	10,500,338	\$	300,041	\$	1,058,739	\$	1,237,854
2040	15	10,710,345	\$	307,208	\$	977,507	\$	1,159,793
2041	16	10,710,345	\$	307,208	\$	992,869	\$	1,178,389
2042	17	10,924,552	\$	314,518	\$	1,015,848	\$	1,204,666
2043	18	10,924,552	\$	314,518	\$	1,031,830	\$	1,224,013
2044	19	11,143,043	\$	321,974	\$	1,056,588	\$	1,251,203
2045	20	11,143,043	\$	321,974	\$	1,072,216	\$	1,271,332
2046	21	11,365,904	\$	329,579	\$	1,096,781	\$	1,299,468
2047	22	11,365,904	\$	329,579	\$	1,114,081	\$	1,320,409
2048	23	11,593,222	\$	337,337	\$	1,139,484	\$	1,349,527
2049	24	11,593,222	\$	337,337	\$	1,159,891	\$	1,369,972
2050	25	11,825,086	\$	39,422,482			\$	394,225
2051	26	11,825,086	\$	40,210,931			\$	402,109
2052	27	12,061,588	\$	41,015,150			\$	410,151
2053	28	12,061,588	\$	41,835,453			\$	418,355
2054	29	12,302,820	\$	42,672,162			\$	426,722
2055	30	12,302,820	\$	43,525,605			\$	435,256
2056	31	12,548,876	\$	44,396,117			\$	443,961
2057	32	12,548,876	\$	45,284,040			\$	452,840
2058	33	12,799,854	\$	46,189,720			\$	461,897
2059	34	12,799,854	\$	47,113,515			\$	471,135
2060	35	13,055,851	\$	48,055,785			\$	480,558
2061	36	13,055,851	\$	49,016,901			\$	490,169
2062	37	13,316,968	\$	49,997,239			\$	499,972
2063	38	13,316,968	\$	50,997,184			\$	509,972
2064	39	13,583,307	\$	52,017,127			\$	520,171
2065	40	13,583,307	\$	53,057,470			\$	530,575
TOTAL			\$	6,560,197	\$	12,273,695	\$	33,393,202
NPV @ 6%			\$	3,305,132	\$	6,176,666	\$	14,062,642

*Includes PILOTS, EATS, and TIF Captured TDD Revenue.

Wally's - Independence, MO
1-70 Noland Road
Assumptions

GENERAL ASSUMPTIONS	
Biennial Real Property Growth Rate:	2.00%
Annual Retail Sales Growth Rate:	2.00%
Net Present Value:	6.00%
TDD Sales Tax Rate:	1.00%
Commercial Assessment Rate:	32.00%

PROPERTY TAX RATES		
Taxing Jurisdiction	Rate	TIF Captured Rate
Board of Disabled Services	0.0732	0.0000
City of Independence	0.4892	0.2446
Independence School #30	5.2371	2.6186
Jackson County	0.5056	0.2628
Mental Health	0.0974	0.0487
Metro Junior College	0.1806	0.0903
Mid-Continent Library	0.3152	0.1576
Replacement Tax	1.4370	0.0000
State Blind Pension	0.0300	0.0000
TOTAL	8.3663	3.41255

SALES TAX RATES		
Taxing Jurisdiction	Rate	TIF Captured Rate
State	4.2250%	0.0000%
Jackson County	1.5000%	0.4375%
General	0.5000%	0.2500%
Sports Complex	0.3750%	0.0000%
Anti-Drug	0.2500%	0.1250%
Zoo	0.1250%	0.0625%
Community Children Services	0.2500%	0.0000%
City of Independence	2.8750%	1.4375%
General	1.0000%	0.5000%
Capital Improvement (Police)	0.1250%	0.0625%
Proposition PD	0.2500%	0.1250%
Fire Protection	0.5000%	0.2500%
Streets	0.5000%	0.2500%
Parks	0.2500%	0.1250%
Stormwater	0.2500%	0.1250%
Noland Road CID	0.7500%	0.3750%
TOTAL	9.350%	2.250%

EXHIBIT 6 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.

Blight Study

for the

**I-70 & Noland Road
TIF Redevelopment Area**

**Independence,
Missouri**

December 2024

Prepared by:

**Polsinelli PC,
Development Analysis Department**

BLIGHT STUDY

I-70 & Noland Road TIF Redevelopment Area, Lee's Summit, Missouri

I. Introduction

Purpose

This analysis has been prepared to determine whether the property at the northeast corner of the intersection of Interstate 70 and S Noland Road in Independence, Missouri is "blighted" according to § 99.805(1) of the Missouri Real Property Tax Increment Allocation Redevelopment Act (the "TIF Act"). The property evaluated by this study is generally described as follows: the property generally located east of S Noland Road, north of Interstate 70, south of E 39th Street, and west of S Hocker Avenue, all located in the City of Independence, Missouri (the "Study Area").

Study Area

The Study Area is comprised of 2 parcels of land located in the City of Independence, Jackson County, Missouri. The Study Area consists of approximately 20.96 acres and contains one existing building, which is occupied by Northern Tool + Equipment and Office Depot. A legal description and aerial depiction of the Study Area are attached as Exhibit A and Exhibit B, respectively. The boundaries of the Study Area are generally depicted below:



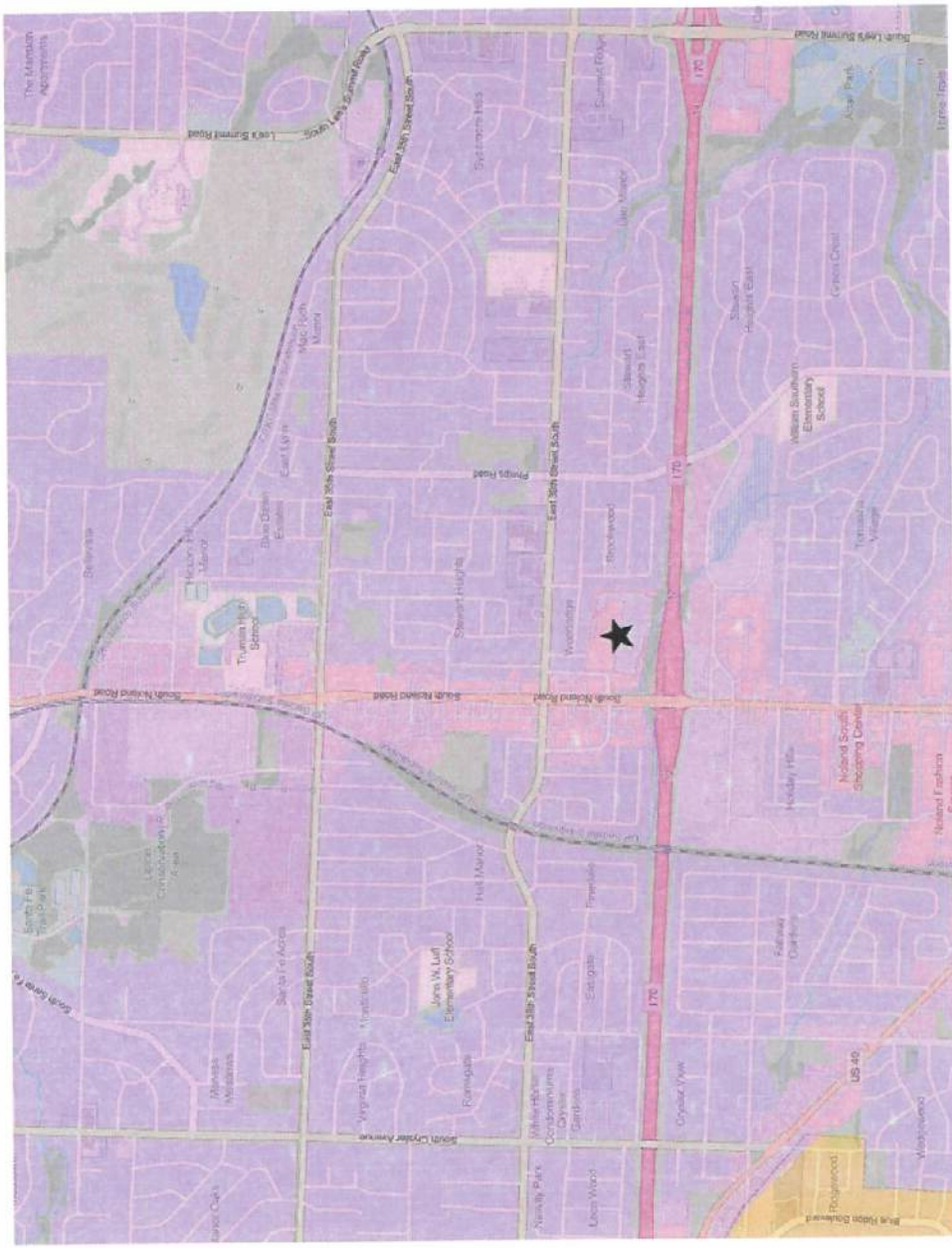
Statutory Analysis

Section 99.805(1) of the Missouri Revised Statutes defines a “Blighted Area” as “an area which, by reason of the predominance of insanitary or unsafe conditions, deterioration of site improvements, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, or welfare in its present condition and use.”

An exploration of the presence of these factors within the Study Area is included below.

II. Study Area Data

The Study Area is generally located in the southern area of Independence, Missouri and is immediately northerly adjacent to Interstate 70. The general location of the Study Area is denoted by the star below:



Property Data

Land Area

According to Jackson County records, the 2 parcels that constitute the Study Area are as follows:

Jackson County, MO Parcel #	Acreage
33-240-03-16-00-0-00-000	0.99
33-240-03-12-00-0-00-000	19.97
TOTAL	20.96

Ownership and Current Use

According to Jackson County land records, the land parcels within the Study Area are owned by the following parties and are used in the described manner:

Parcel ID	Owner	Description/Use
33-240-03-16-00-0-00-000	WALLY'S INDEPENDENCE MO OWNER LLC	Vacant/Parking Lot
33-240-03-12-00-0-00-000	WALLY'S INDEPENDENCE MO OWNER LLC	Parking Lot/Retail/Vacant

III. Blight Analysis

Section 99.805(1) of the Missouri Revised Statutes defines a “Blighted Area” as “an area which, by reason of the predominance of insanitary or unsafe conditions, deterioration of site improvements, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, retards the provision of housing accommodations or constitutes an economic or social liability or a menace to the public health, safety, or welfare in its present condition and use.

We have prepared the following study pursuant to the statutory factors described above and, accordingly, determined that the Study Area is a blighted area within the meaning of the TIF Act.

FACTOR #1: INSANITARY OR UNSAFE CONDITIONS

The Study Area is plagued with significant trash and debris from illegal dumping. Additionally, the vast majority of the Study Area lacks adequate lighting, as no lights are installed around the perimeter of the Study Area.

Trespassers have repeatedly established squatter camps within the Study Area. Squatter camps present dangerous biohazards to the Study Area as they are often times accompanied by drug paraphernalia, human excrement, and other insanitary items.

See Exhibits 1 – 6 below.

EXHIBIT 1

Trash and Debris Littering the Study Area



EXHIBIT 2

Trash and Debris Littering the Study Area



EXHIBIT 3

Trash and Debris Littering the Study Area



EXHIBIT 4

Trash and Debris Littering the Study Area



100447338.4

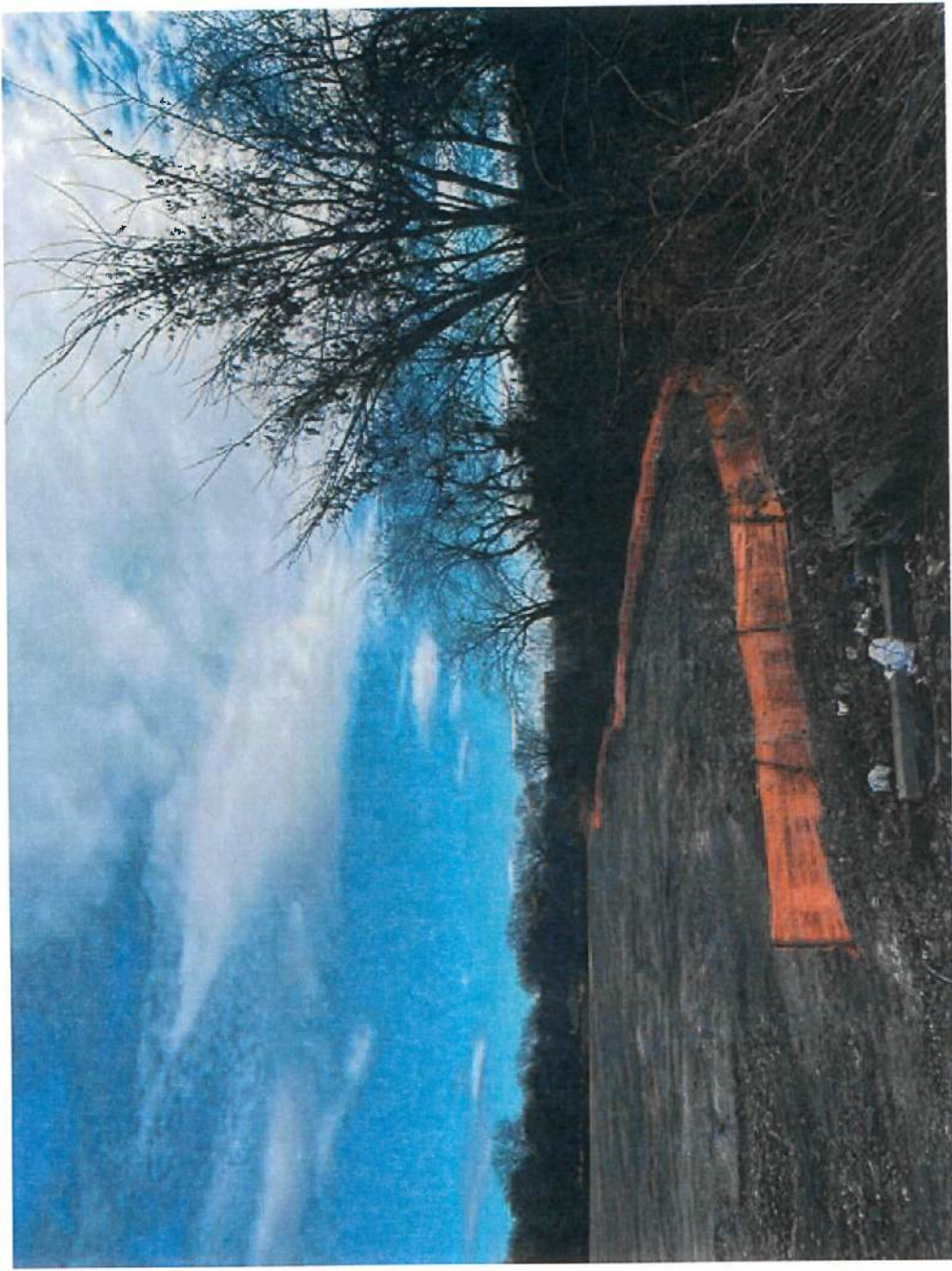
EXHIBIT 5

Squatter Camp in Study Area



EXHIBIT 6

Lack of Security and Lighting at Study Area



Unsecured and unlit southern boundary line of Study Area.

FACTOR #2: DETERIORATION OF SITE IMPROVEMENTS

Certain site improvements, most notably the sidewalks and the stormwater system, within the Study Area are in a deteriorated state.

See Exhibits 7 - 12 below.

EXHIBIT 7

Deteriorated Sidewalk

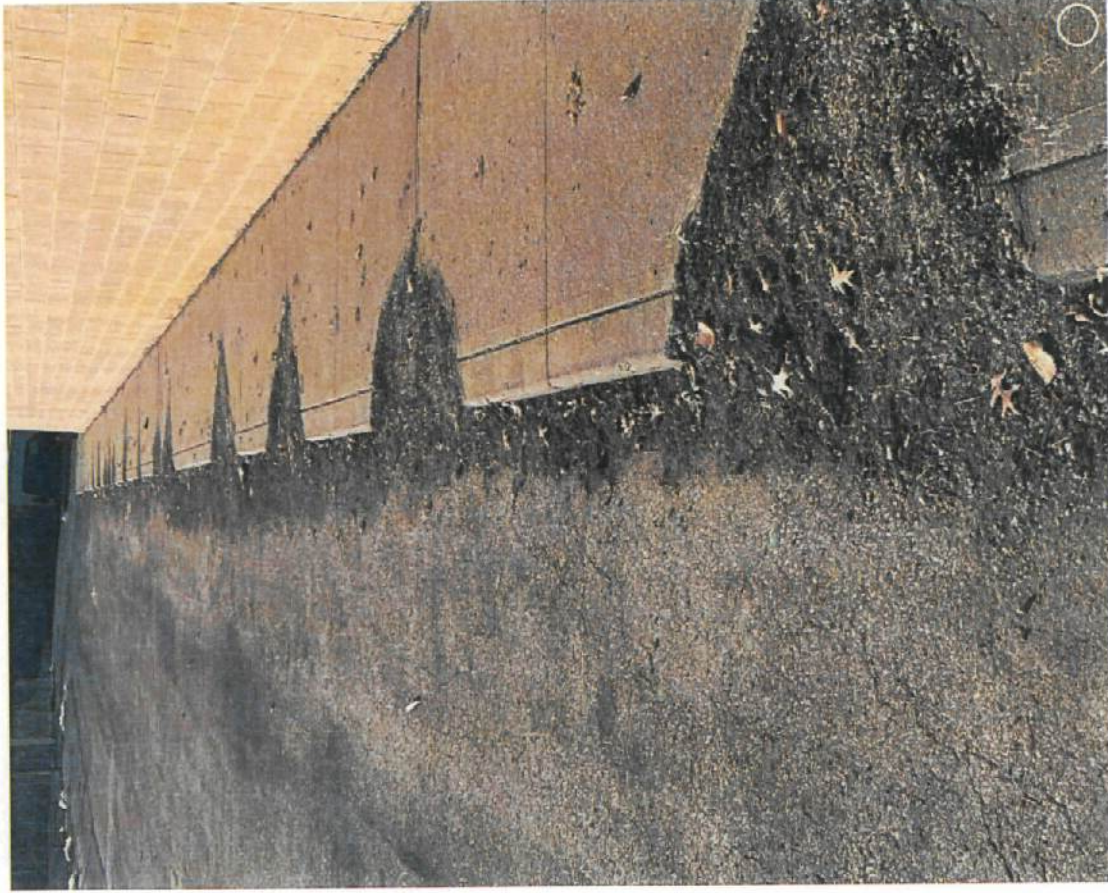


EXHIBIT 8

Deteriorated Sidewalk

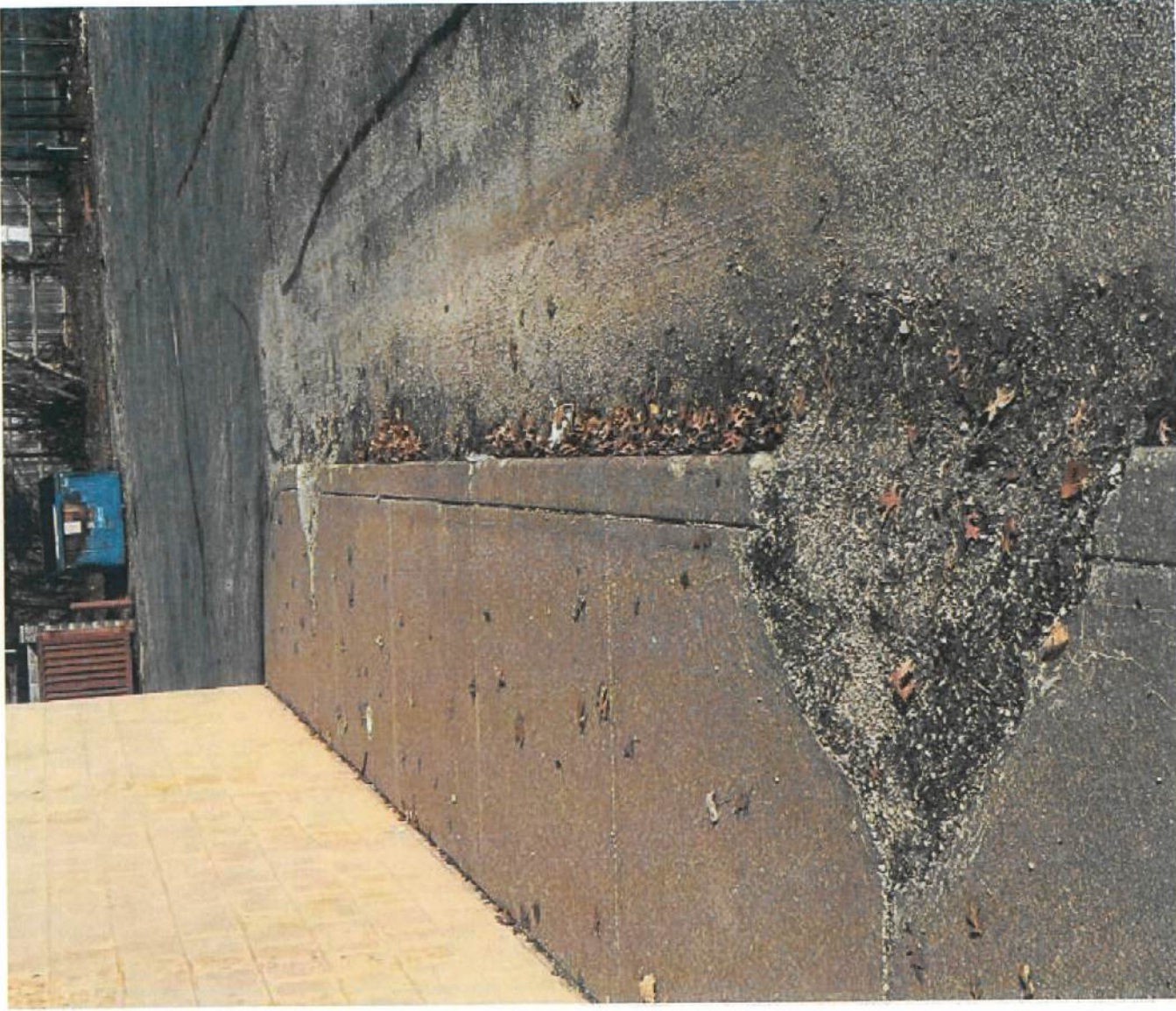


EXHIBIT 9

Deteriorated Light Pole



EXHIBIT 10

Deteriorated Stormwater System

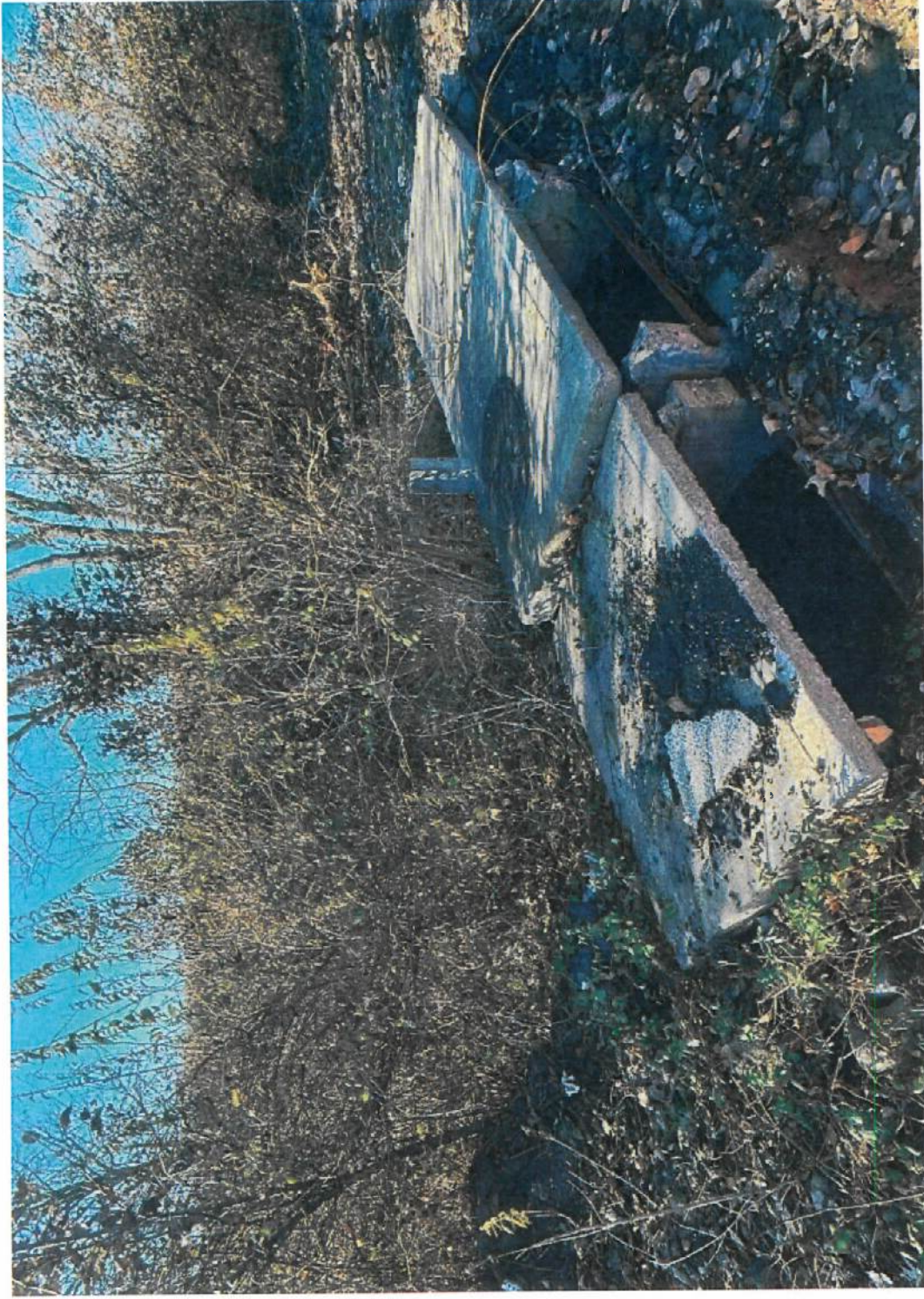
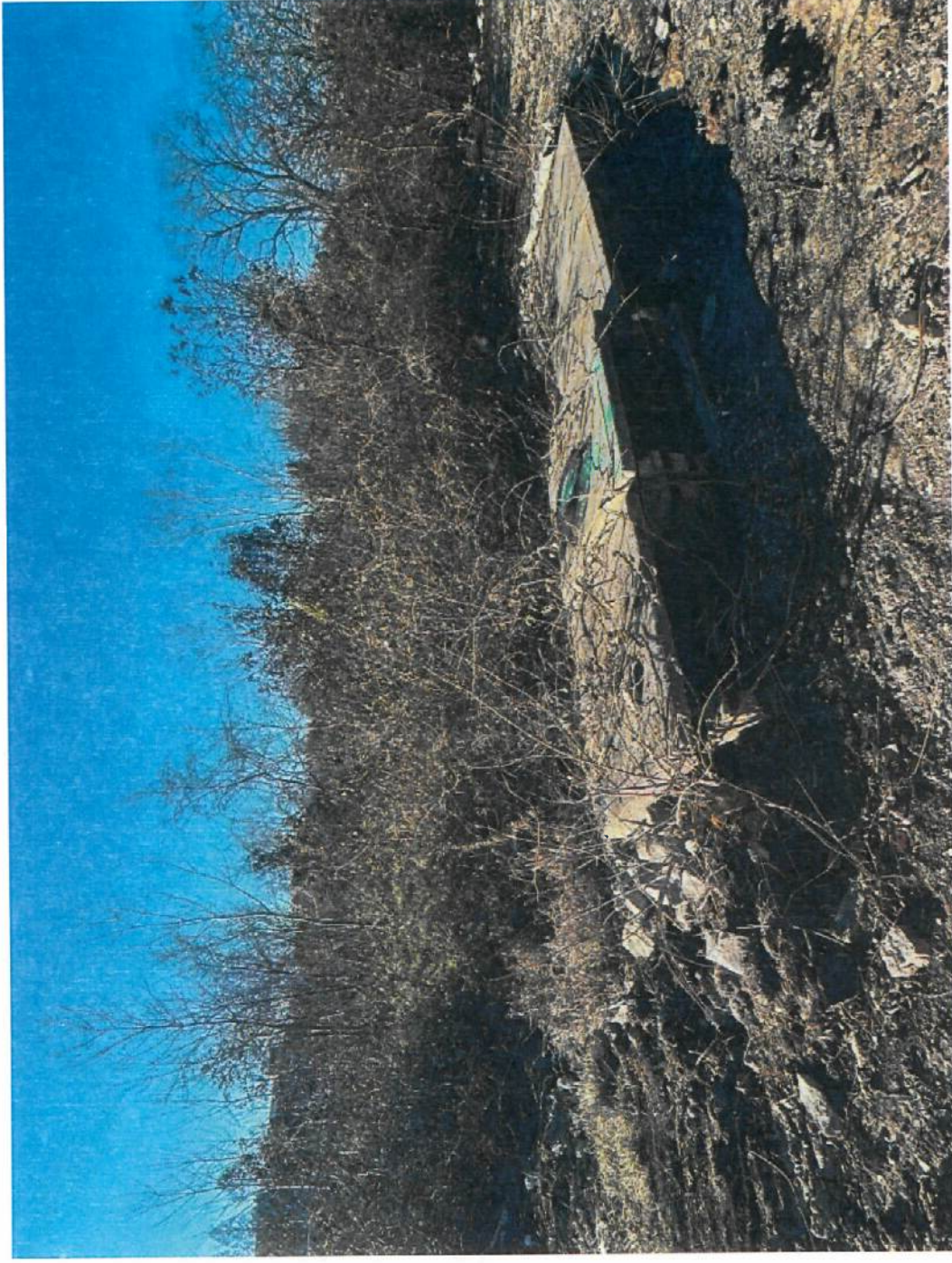


EXHIBIT 11

Deteriorated Stormwater System



100447338.4

EXHIBIT 12

Deteriorated Parking Lot



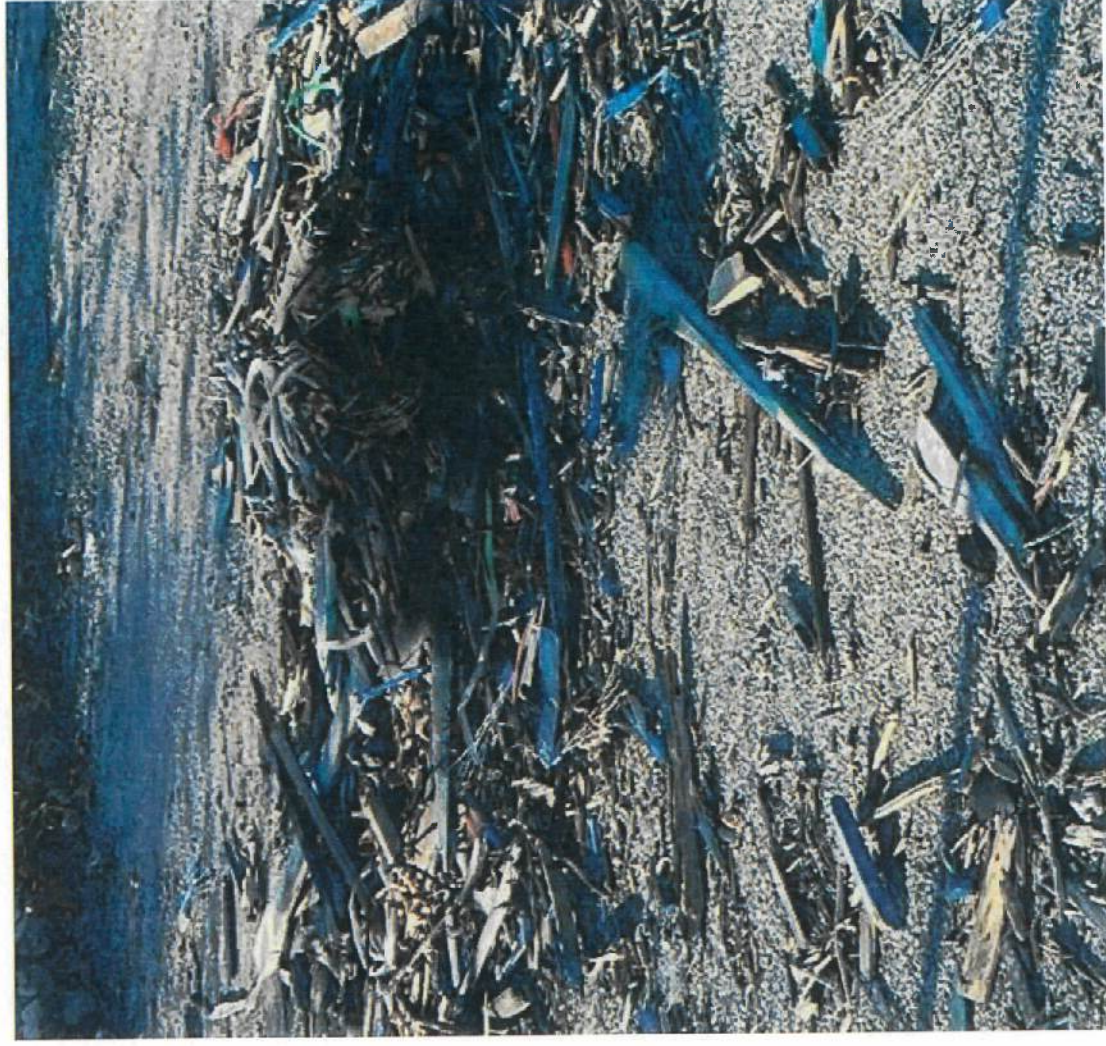
***FACTOR #3: EXISTENCE OF CONDITIONS WHICH ENDANGER
LIFE OR PROPERTY BY FIRE AND OTHER CAUSES***

Unauthorized burning by trespassers occurs within the Study Area, which pose a significant danger to both life and property given the risk of spreading.

See Exhibit 13 below.

EXHIBIT 13

Burn Pile



Conclusion

The above analysis indicates that all three defined conditions of blight – a clear predominance – are present in the Study Area and, as such, the Study Area constitutes an economic and social liability in its present condition and use.

The concept of an economic liability and the economic underutilization of property as a basis for blight has been addressed by the Missouri Supreme Court. The Court has determined that “the concept of urban redevelopment has gone far beyond ‘slum clearance’ and the concept of economic underutilization is a valid one.” *Tierney v. Planned Industrial Expansion Authority of Kansas City*, 742 S.W.2d 146, 151 (Mo. banc 1987). If vacant land “no longer meets the economic and social needs of modern city life and progress,” the land can be considered blighted. *State ex. rel. Atkinson v. Planned Industrial Expansion Authority*, 517 S.W.2d 36, 46 (Mo. banc 1975). Blight may also be found if the redevelopment of an area “could promote a higher level of economic activity, increased employment, and greater services to the public.” *Tierney*, 742 S.W.2d at 151. Further, the Court determined that an otherwise viable use of a property may be considered blighted if it is an economic underutilization of the property. *Cestwood Commons Redevelopment Corporation v. 66 Drive-In. Inc.*, 812 S.W. 2d 903, 910 (MO. App. E.D.1991). The Court determined that blight exists to the extent an area is being utilized for less than its potential from an economic standpoint.

Presently, the Study Area generates approximately \$275,000 in annual property taxes. However, if the redevelopment plan submitted to the City is fully implemented, annual property taxes in the year following completion of the project are estimated to increase by almost one hundred percent. Additionally, the Study Area may produce more than \$1,000,000 per year in local sales tax revenues.

The stagnate nature of the Study Area’s property taxes and sales taxes, coupled with the presence of the blighting factors discussed above, are clear indicators that the Study Area is not being utilized for its highest and best use. The result is less tax revenue for the taxing jurisdictions to provide services to the public, a clear economic liability to taxpayers. Clearly, the Study Area “could promote a higher level of economic activity, increased employment, and greater services to the public”, thus falling within the definition of a blighted area.

To achieve the Study Area’s highest, best, and most productive use, a developer must make significant financial investment to remove the Study Area’s blight.

Accordingly, because of the factors detailed in this report, as of December 2024, the Study Area constitutes an economic and social liability in its present condition and use, thus being a “blighted area” as defined in Section 99.805(1) of the Missouri Revised Statutes.

Accordingly, the Study Area does not meet Independence’s high priority economic and social needs and is being underutilized from an economic perspective.

EXHIBIT A

LEGAL DESCRIPTION OF STUDY AREA

ALL THAT PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23, TOWNSHIP 49, RANGE 32, IN THE CITY OF INDEPENDENCE, JACKSON COUNTY, MISSOURI, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHEAST 1/4; THENCE SOUTH 90° 00' 00" EAST, ALONG THE NORTH LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 272.31 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 40.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF 39TH STREET, AS ESTABLISHED BY DOCUMENT NO. 1456433, RECORDED IN BOOK 11078, PAGE 1452, SAID POINT BEING THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE HEREIN DESCRIBED; THENCE SOUTH 0° 00' 00" WEST, AT RIGHT ANGLES TO SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 343.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 18.45 FEET; THENCE SOUTH 1° 15' 00" EAST, PARALLEL TO THE EAST RIGHT-OF-WAY LINE OF NOLAND ROAD, AS NOW ESTABLISHED, A DISTANCE OF 130.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 5.00 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 200.00 FEET; THENCE SOUTH 90° 00' 00" WEST, A DISTANCE OF 152.81 FEET (DEED = 152.98 FEET), TO A POINT ON THE AFORESAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST (DEED = SOUTH 11° 02' 39" EAST), ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 65.40 FEET; THENCE NORTH 90° 00' 00" EAST, A DISTANCE OF 201.39 FEET; THENCE SOUTH 1° 02' 25" EAST, A DISTANCE OF 355.00 FEET; THENCE NORTH 85° 50' 55" WEST, A DISTANCE OF 140.49 FEET (DEED = 140.92 FEET), TO A POINT ON SAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST, A DISTANCE OF 7.64 FEET (DEED = SOUTH 11° 02' 39" EAST, A DISTANCE OF 8.29 FEET), TO A POINT THAT IS OPPOSITE AND 155.00 FEET EAST OF STATION 18+50 ON THE CENTERLINE OF NOLAND ROAD; THENCE SOUTH 88° 41' 51" WEST, (DEED = SOUTH 88° 45' 00" WEST), CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 25.00 FEET TO A POINT THAT IS OPPOSITE AND 130 FEET EAST OF STATION 18+50 ON SAID NOLAND ROAD CENTERLINE; THENCE SOUTH 2° 02' 11" EAST CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 124.30 FEET (DEED = SOUTH 1° 15' 00" EAST, A DISTANCE OF 124.24 FEET), TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE ROUTE NO. 1-70, AS NOW ESTABLISHED THAT IS OPPOSITE AND 228.80 FEET NORTHERLY OF STATION 545+60 ON THE CENTERLINE OF SAID 1-70, THENCE SOUTH 84° 21' 11" EAST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 643.04 FEET (DEED = SOUTH 84° 17' 39" EAST, A DISTANCE OF 644.64 FEET) TO A POINT THAT IS OPPOSITE AND 166.30 FEET NORTHERLY OF STATION 552+00 ON THE CENTERLINE OF SAID 1-70; THENCE SOUTH 89° 55' 50" EAST, CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 546.03 FEET (DEED = SOUTH 89° 51' 16" EAST, A DISTANCE OF 545.61 FEET), TO A POINT ON THE WEST LINE OF "BROOKWOOD NO. 2", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE NORTH 1° 15' 58" WEST, ALONG THE WEST LINE OF SAID SUBDIVISION, A DISTANCE OF 785.43 FEET (DEED = NORTH 1° 12' 00" WEST, A

DISTANCE OF 786.12 FEET), TO THE SOUTHEAST CORNER OF LOT 19, "WOODRIDGE", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE SOUTH 89° 51' 43" WEST, ALONG THE SOUTH LINE OF SAID "WOODRIDGE", A DISTANCE OF 251.04 FEET (DEED = NORTH 90° 00' 00" WEST, A DISTANCE OF 250.63 FEET), TO AN ANGLE POINT THEREIN; THENCE NORTH 80° 01' 00" WEST, CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 288.30 FEET TO AN ANGLE POINT THEREIN; THENCE SOUTH 89° 47' 57" WEST (DEED = NORTH 90° 00' 00" WEST), CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 286.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF DODGION STREET, AS NOW ESTABLISHED; THENCE NORTH 0° 12' 03" WEST (DEED = NORTH 0° 00' 00" WEST), ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 5.00 FEET TO THE SOUTHEAST CORNER OF LOT 34, SAID "WOODRIDGE"; THENCE SOUTH 89° 47' 57" WEST ALONG THE SOUTH LINE OF SAID LOT 34, A DISTANCE OF 135.40 FEET (DEED = 90° 00' 00" WEST, A DISTANCE OF 135.00 FEET); TO THE SOUTHWEST CORNER OF SAID LOT 34; THENCE NORTH 0° 00' 00" EAST, ALONG THE WEST LINE OF SAID "WOODRIDGE" SUBDIVISION, A DISTANCE OF 440.00 FEET TO THE AFORESAID SOUTH RIGHT-OF-WAY LINE OF 39TH STREET; THENCE NORTH 90° 00' 00" WEST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT B
MAP OF STUDY AREA



AMENDED
EXHIBIT 7 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.

CALENDAR YEAR	TIF YEAR	TIF/TDD REIMBURSABLE COST BALANCE BEFORE PMT FROM TIF/TDD REVENUE	INTEREST ON BALANCE DURING YEAR	PAYMENT FROM TIF REVENUE	PAYMENT FROM TDD REVENUE	TOTAL PAYMENT (ALL REVENUE SOURCES)	YEAR END REIMBURSABLE COST BALANCE	EXCESS TIF/TDD REVENUE
2025	0	\$ 8,605,401	\$ 129,081	\$ -	\$ -	\$ -	\$ 8,734,482	\$ -
2026	1	\$ 8,734,482	\$ 524,069	\$ -	\$ -	\$ -	\$ 9,257,292	\$ -
2027	2	\$ 9,237,292	\$ 564,238	\$ 834,180	\$ 145,585	\$ 979,765	\$ 8,811,765	\$ -
2028	3	\$ 8,811,765	\$ 628,706	\$ 854,293	\$ 148,085	\$ 1,002,379	\$ 8,338,092	\$ -
2029	4	\$ 8,338,092	\$ 500,286	\$ -	\$ 150,635	\$ 1,018,954	\$ 7,819,424	\$ -
2030	5	\$ 7,819,424	\$ 469,165	\$ 889,115	\$ 163,236	\$ 1,042,351	\$ 7,246,239	\$ -
2031	6	\$ 7,246,239	\$ 434,774	\$ 903,707	\$ 155,896	\$ 1,059,696	\$ 6,621,417	\$ -
2032	7	\$ 6,621,417	\$ 397,285	\$ 925,211	\$ 158,595	\$ 1,083,806	\$ 5,934,896	\$ -
2033	8	\$ 5,934,896	\$ 366,094	\$ 940,392	\$ 161,356	\$ 1,101,747	\$ 5,189,242	\$ -
2034	9	\$ 5,189,242	\$ 311,355	\$ 962,630	\$ 164,171	\$ 1,126,801	\$ 4,373,796	\$ -
2035	10	\$ 4,373,796	\$ 262,426	\$ 978,424	\$ 167,043	\$ 1,145,467	\$ 3,490,757	\$ -
2036	11	\$ 3,490,445	\$ 209,445	\$ 1,001,423	\$ 168,972	\$ 1,171,395	\$ 2,528,808	\$ -
2037	12	\$ 2,528,808	\$ 151,728	\$ 1,017,855	\$ 172,960	\$ 1,190,815	\$ 1,489,721	\$ -
2038	13	\$ 1,489,721	\$ 89,383	\$ 1,041,643	\$ 176,007	\$ 1,217,650	\$ 361,455	\$ -
2039	14	\$ 361,455	\$ 21,687	\$ 1,058,239	\$ 179,115	\$ 1,237,854	\$ (854,712)	\$ 675,597
2040	15	\$ (854,712)	\$ (51,283)	\$ 977,507	\$ 182,286	\$ 1,159,793	\$ (2,065,788)	\$ 1,883,502
2041	16	\$ (2,065,788)	\$ (123,947)	\$ 992,869	\$ 185,520	\$ 1,178,389	\$ (3,368,124)	\$ 3,182,604
2042	17	\$ (3,368,124)	\$ (202,087)	\$ 1,015,848	\$ 188,819	\$ 1,204,666	\$ (4,774,878)	\$ 4,586,059
2043	18	\$ (4,774,878)	\$ (286,493)	\$ 1,031,830	\$ 192,183	\$ 1,224,013	\$ (6,286,384)	\$ 6,093,200
2044	19	\$ (6,286,384)	\$ (377,123)	\$ 1,056,586	\$ 195,615	\$ 1,251,203	\$ (7,913,710)	\$ 7,718,095
2045	20	\$ (7,913,710)	\$ (474,823)	\$ 1,072,216	\$ 199,116	\$ 1,271,332	\$ (9,659,864)	\$ 9,460,748
2046	21	\$ (9,659,864)	\$ (579,592)	\$ 1,096,781	\$ 202,687	\$ 1,299,468	\$ (11,538,924)	\$ 11,336,237
2047	22	\$ (11,538,924)	\$ (692,339)	\$ 1,114,081	\$ 206,329	\$ 1,320,409	\$ (13,551,669)	\$ 13,345,340
2048	23	\$ (13,551,669)	\$ (813,100)	\$ 1,139,484	\$ 210,043	\$ 1,349,527	\$ (15,714,296)	\$ 15,504,252

Wally's - Independence, MO
I-70 Noland Road
Reimbursement Amortization

EXHIBIT 8 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.



June 9th, 2025

Mr. Curtis J Petersen
Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, Missouri 64112

Dear Mr. Petersen:

Wally's Parent Holdco LLC (and its affiliates, and Michael Rubenstein and Wally's Independence MO Holdings LLC) has a longstanding relationship with Commerce Bank, which has included financing for numerous substantial projects spanning more than the past five years.

We are familiar with Tax Increment Financing, Community Improvement District financing, and how those interact with the Construction Loans we have provided to projects relying on such financing. We are also familiar with Wally's proposed redevelopments plan located at 4023 South Nolan Road, Independence Missouri 64055, as generally depicted on Exhibit A attached hereto, and the approximately \$40 million cost estimate to design and construct the project, including the public improvements.

The Bank would be willing to finance this project, subject to the usual caveats, underwriting, Loan Committee and Board approval. Should there be any questions or need for additional information, please do not hesitate to contact me at 314-746-3914.

Respectfully,

A handwritten signature in blue ink, appearing to read "Jason Scott", is written over a horizontal line.

Jason Scott
Vice President

EXHIBIT A
PROJECT PLANS
SEE ATTACHED

WALL'S INDEPENDENCE, MO. 430,900 SF

42 DISPENSER ISLAND

ABOVE GROUND DETENTION

LOT 16 LOT 17 LOT 18 LOT 19 LOT 20 LOT 21 LOT 22 LOT 23 LOT 24

SCALE 1" = 50'

WALL'S INDEPENDENCE, MO OWNER LLC
950 ASSEMBLY PARKWAY

EXHIBIT 9 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.

RELOCATION ASSISTANCE PLAN

Section 99.810.1, RSMo, requires that a TIF Plan include a relocation plan for “relocation assistance for businesses and residences” within the Redevelopment Area. The Redevelopment Area does contain buildings, but no current business or residences. In the event relocation of any occupant or business is necessary, it will be carried out in accordance with Section 523.200-215 RSMo. (the “Relocation Statute”). This Relocation Assistance Plan adopts the minimum statutory requirements of the Relocation Statute which is incorporated herein.

AMENDED
EXHIBIT 10 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.

Wally's - Independence, MO
I-70 Noland Road
Cost Benefit Analysis - Summary

Taxing Jurisdiction		New Real Property Tax Revenue	New Sales Tax Revenue	Total Benefit	[1] Net Present Value of Benefit
Board of Disabled Services	\$	137,187	-	137,187	\$ 69,431
City of Independence	\$	653,322	15,114,772	15,768,094	\$ 7,133,966
Independence School #30	\$	6,994,101	-	6,994,101	\$ 3,167,660
Jackson County	\$	675,224	8,865,614	9,540,839	\$ 4,491,117
Mental Health	\$	130,077	-	130,077	\$ 58,912
Metro Junior College	\$	241,190	-	241,190	\$ 109,236
Mid-Continent Library	\$	420,947	-	420,947	\$ 190,649
Replacement Tax	\$	2,693,133	-	2,693,133	\$ 1,363,004
State Blind Pension	\$	54,381	-	54,381	\$ 27,688
Zoo	\$	-	657,164	657,164	\$ 297,308
State of Missouri	\$	-	30,467,492	30,467,492	\$ 15,505,013
Noland Road CID	\$	-	1,576,987	1,576,987	\$ 999,016
TOTAL		\$ 11,999,562	\$ 56,682,030	\$ 68,681,591	\$ 33,413,000

[1] Net Present Value Discount Rate: 6%

Wally's - Independence, MO
1-70 Noland Road
Cost Benefit Analysis - Disabled Services

DEVELOPER					
CALENDAR YEAR	TIF YEAR	*AD VALOREM TAXES - WITH REDEVELOPMENT	*AD VALOREM TAXES - WITHOUT REDEVELOPMENT	PILOTS	EATS
2025	0	\$ 1,250	\$ 1,250	-	-
2026	1	\$ 1,706	\$ 1,250	-	-
2027	2	\$ 6,825	\$ 1,275	-	-
2028	3	\$ 6,962	\$ 1,301	-	-
2029	4	\$ 6,962	\$ 1,301	-	-
2030	5	\$ 7,101	\$ 1,301	-	-
2031	6	\$ 7,101	\$ 1,327	-	-
2032	7	\$ 7,243	\$ 1,327	-	-
2033	8	\$ 7,243	\$ 1,353	-	-
2034	9	\$ 7,388	\$ 1,353	-	-
2035	10	\$ 7,388	\$ 1,380	-	-
2036	11	\$ 7,536	\$ 1,380	-	-
2037	12	\$ 7,536	\$ 1,408	-	-
2038	13	\$ 7,686	\$ 1,408	-	-
2039	14	\$ 7,686	\$ 1,436	-	-
2040	15	\$ 7,840	\$ 1,436	-	-
2041	16	\$ 7,840	\$ 1,465	-	-
2042	17	\$ 7,997	\$ 1,465	-	-
2043	18	\$ 7,997	\$ 1,494	-	-
2044	19	\$ 8,157	\$ 1,494	-	-
2045	20	\$ 8,157	\$ 1,524	-	-
2046	21	\$ 8,320	\$ 1,524	-	-
2047	22	\$ 8,320	\$ 1,555	-	-
2048	23	\$ 8,486	\$ 1,555	-	-
TOTAL		\$ 169,474	\$ 32,288	-	-
NPV		\$ 86,279	\$ 16,848	-	-

TOTAL BENEFIT TO TAXING JURISDICTION	\$	137,187
NPV OF BENEFIT TO TAXING JURISDICTION	\$	69,431
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$	-

*Amounts shown herein include jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (iii) the PILOTS generated by the redevelopment project.

Wally's - Independence, MO
1-70 Noland Road
Cost Benefit Analysis - City of Independence

AD VALOREM TAXES			SALES TAXES			DEVELOPER		
CALENDAR YEAR	TIF YEAR	*WITH REDEVELOPMENT	WITHOUT REDEVELOPMENT	WITH REDEVELOPMENT	WITHOUT REDEVELOPMENT	PILOTS	EATS	TOTAL TIF REVENUE
2025	0	\$ 8,356	\$ 8,356	\$ -	\$ -	\$ -	\$ -	\$ -
2026	1	\$ 9,880	\$ 8,356	\$ -	\$ -	\$ 1,524	\$ -	\$ 1,524
2027	2	\$ 26,984	\$ 8,523	\$ 418,557	\$ -	\$ 18,629	\$ 300,193	\$ 318,821
2028	3	\$ 27,441	\$ 8,523	\$ 425,745	\$ -	\$ 19,085	\$ 307,380	\$ 326,465
2029	4	\$ 27,441	\$ 8,693	\$ 433,076	\$ -	\$ 19,085	\$ 314,711	\$ 333,796
2030	5	\$ 27,906	\$ 8,693	\$ 440,554	\$ -	\$ 19,550	\$ 322,189	\$ 341,739
2031	6	\$ 27,906	\$ 8,867	\$ 448,182	\$ -	\$ 19,550	\$ 329,817	\$ 349,367
2032	7	\$ 28,380	\$ 8,867	\$ 455,961	\$ -	\$ 20,025	\$ 337,597	\$ 357,621
2033	8	\$ 28,380	\$ 9,045	\$ 463,897	\$ -	\$ 20,025	\$ 345,532	\$ 365,557
2034	9	\$ 28,864	\$ 9,045	\$ 471,991	\$ -	\$ 20,509	\$ 353,626	\$ 374,135
2035	10	\$ 28,864	\$ 9,225	\$ 480,248	\$ -	\$ 20,509	\$ 361,883	\$ 382,391
2036	11	\$ 29,358	\$ 9,225	\$ 488,669	\$ -	\$ 21,002	\$ 370,304	\$ 391,306
2037	12	\$ 29,358	\$ 9,410	\$ 497,259	\$ -	\$ 21,002	\$ 378,894	\$ 399,896
2038	13	\$ 29,862	\$ 9,410	\$ 506,020	\$ -	\$ 21,506	\$ 387,655	\$ 409,161
2039	14	\$ 29,862	\$ 9,598	\$ 514,957	\$ -	\$ 21,506	\$ 396,592	\$ 418,098
2040	15	\$ 52,395	\$ 9,598	\$ 929,780	\$ -	\$ -	\$ -	\$ -
2041	16	\$ 52,395	\$ 9,790	\$ 948,375	\$ -	\$ -	\$ -	\$ -
2042	17	\$ 53,443	\$ 9,790	\$ 967,343	\$ -	\$ -	\$ -	\$ -
2043	18	\$ 53,443	\$ 9,986	\$ 986,690	\$ -	\$ -	\$ -	\$ -
2044	19	\$ 54,512	\$ 9,986	\$ 1,006,424	\$ -	\$ -	\$ -	\$ -
2045	20	\$ 54,512	\$ 10,186	\$ 1,026,552	\$ -	\$ -	\$ -	\$ -
2046	21	\$ 55,602	\$ 10,186	\$ 1,047,083	\$ -	\$ -	\$ -	\$ -
2047	22	\$ 55,602	\$ 10,389	\$ 1,068,025	\$ -	\$ -	\$ -	\$ -
2048	23	\$ 56,714	\$ 10,389	\$ 1,089,385	\$ -	\$ -	\$ -	\$ -
TOTAL		\$ 869,103	\$ 215,781	\$ 15,114,772	\$ -	\$ 263,505	\$ 4,506,372	\$ 4,769,877
NPV		\$ 408,488	\$ 112,596	\$ 6,838,074	\$ -	\$ 168,117	\$ 2,841,027	\$ 3,009,144

AD VALOREM TAXES	SALES TAXES	ALL TAXES
\$ 653,322	\$ 15,114,772	\$ 15,768,094
\$ 295,893	\$ 6,838,074	\$ 7,133,966
TOTAL TIF REVENUE CAPTURED BY DEVELOPER		
\$ 3,009,144		

*Amounts shown herein include jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (ii) the PILOTS generated by the redevelopment project.
**Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

Wally's - Independence, MO
I-70 Noland Road
Cost Benefit Analysis - Independence School District #30

DEVELOPER					TIF YEAR		CALENDAR YEAR
TOTAL TIF REVENUE		EATS	PILOTS	REDEVELOPMENT WITHOUT *AD VALOREM TAXES -	REDEVELOPMENT WITH *AD VALOREM TAXES -		
						0	2025
				\$ 89,452	\$ 89,452		2026
				\$ 89,452	\$ 105,764	1	2027
				\$ 91,241	\$ 288,680	2	2028
				\$ 91,241	\$ 293,763	3	2029
				\$ 91,241	\$ 293,763	4	2030
				\$ 93,066	\$ 298,743	5	2031
				\$ 93,066	\$ 298,743	6	2032
				\$ 94,927	\$ 303,824	7	2033
				\$ 96,826	\$ 303,824	8	2034
				\$ 96,826	\$ 309,006	9	2035
				\$ 98,762	\$ 309,006	10	2036
				\$ 98,762	\$ 314,291	11	2037
				\$ 100,737	\$ 314,291	12	2038
				\$ 100,737	\$ 319,683	13	2039
				\$ 102,752	\$ 319,683	14	2040
				\$ 102,752	\$ 560,911	15	2041
				\$ 102,752	\$ 560,911	16	2042
				\$ 104,807	\$ 572,130	17	2043
				\$ 104,807	\$ 572,130	18	2044
				\$ 106,903	\$ 583,572	19	2045
				\$ 106,903	\$ 583,572	20	2046
				\$ 109,042	\$ 595,244	21	2047
				\$ 109,042	\$ 595,244	22	2048
				\$ 111,222	\$ 607,149	23	TOTAL
				\$ 1,205,387	\$ 4,373,047		NPV
				\$ 1,799,765			

TOTAL BENEFIT TO TAXING JURISDICTION	\$	6,994,101
NPV OF BENEFIT TO TAXING JURISDICTION	\$	3,167,660
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$	1,799,765

*Amounts shown herein include jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (ii) the PILOTs generated by the redevelopment project.
**Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

Wally's - Independence, MO
1-70 Noland Road
Cost Benefit Analysis - Jackson County

		AD VALOREM TAXES		SALES TAXES		DEVELOPER	
CALENDAR YEAR	TIF YEAR	*WITH REDEVELOPMENT	WITHOUT REDEVELOPMENT	WITH REDEVELOPMENT	WITHOUT REDEVELOPMENT	PILOTS	EATS
							TOTAL TIF REVENUE
2025	0	\$ 8,636	\$ 8,636	\$ -	\$ -	\$ -	\$ -
2026	1	\$ 10,211	\$ 8,636	\$ -	\$ -	\$ 1,575	\$ 1,575
2027	2	\$ 27,889	\$ 8,809	\$ 283,637	\$ -	\$ 19,253	\$ 91,363
2028	3	\$ 28,360	\$ 8,809	\$ 288,950	\$ -	\$ 19,725	\$ 93,550
2029	4	\$ 28,360	\$ 8,885	\$ 294,368	\$ -	\$ 19,725	\$ 95,782
2030	5	\$ 28,841	\$ 8,985	\$ 299,895	\$ -	\$ 20,205	\$ 98,058
2031	6	\$ 28,841	\$ 9,164	\$ 305,533	\$ -	\$ 20,205	\$ 100,379
2032	7	\$ 29,332	\$ 9,164	\$ 311,284	\$ -	\$ 20,696	\$ 102,747
2033	8	\$ 29,332	\$ 9,348	\$ 317,149	\$ -	\$ 20,696	\$ 105,162
2034	9	\$ 29,832	\$ 9,348	\$ 323,132	\$ -	\$ 21,196	\$ 107,625
2035	10	\$ 29,832	\$ 9,535	\$ 329,234	\$ -	\$ 21,196	\$ 110,138
2036	11	\$ 30,342	\$ 9,535	\$ 335,459	\$ -	\$ 21,706	\$ 112,701
2037	12	\$ 30,342	\$ 9,725	\$ 341,807	\$ -	\$ 21,706	\$ 115,315
2038	13	\$ 30,863	\$ 9,725	\$ 348,283	\$ -	\$ 22,227	\$ 117,982
2039	14	\$ 30,863	\$ 9,920	\$ 354,889	\$ -	\$ 22,227	\$ 120,702
2040	15	\$ 54,152	\$ 9,920	\$ 485,102	\$ -	\$ -	\$ -
2041	16	\$ 54,152	\$ 10,118	\$ 494,805	\$ -	\$ -	\$ -
2042	17	\$ 55,235	\$ 10,118	\$ 504,701	\$ -	\$ -	\$ -
2043	18	\$ 55,235	\$ 10,321	\$ 514,795	\$ -	\$ -	\$ -
2044	19	\$ 56,339	\$ 10,321	\$ 525,091	\$ -	\$ -	\$ -
2045	20	\$ 56,339	\$ 10,527	\$ 535,592	\$ -	\$ -	\$ -
2046	21	\$ 57,466	\$ 10,527	\$ 546,304	\$ -	\$ -	\$ -
2047	22	\$ 57,466	\$ 10,738	\$ 557,230	\$ -	\$ -	\$ -
2048	23	\$ 58,615	\$ 10,738	\$ 568,375	\$ -	\$ -	\$ -
TOTAL		\$ 898,239	\$ 223,014	\$ 8,865,614	\$ -	\$ 272,339	\$ 1,371,505
NPV		\$ 422,183	\$ 116,370	\$ 4,185,305	\$ -	\$ 173,753	\$ 916,540

AD VALOREM TAXES		SALES TAXES		ALL TAXES	
TOTAL BENEFIT TO TAXING JURISDICTION		\$ 675,224	\$ 8,865,614	\$ 9,540,839	
NPV OF BENEFIT TO TAXING JURISDICTION		\$ 305,812	\$ 4,185,305	\$ 4,491,117	
TOTAL TIF REVENUE CAPTURED BY DEVELOPER		\$ 1,038,413			

*Amounts shown herein include jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (iii) the PILOTs generated by the redevelopment project.
**Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

Wally's - Independence, MO
I-70 Noland Road
Cost Benefit Analysis - Mental Health

DEVELOPER

CALENDAR YEAR	TIF YEAR	*AD VALOREM TAXES - WITH REDEVELOPMENT	*AD VALOREM TAXES - WITHOUT REDEVELOPMENT	PILOTS	EATS	TOTAL TIF REVENUE
2025	0	\$ 1,664	\$ 1,664	\$ -	\$ -	\$ -
2026	1	\$ 1,967	\$ 1,664	\$ 303	\$ -	\$ 303
2027	2	\$ 5,373	\$ 1,697	\$ 3,709	\$ -	\$ 3,709
2028	3	\$ 5,463	\$ 1,697	\$ 3,800	\$ -	\$ 3,800
2029	4	\$ 5,463	\$ 1,731	\$ 3,800	\$ -	\$ 3,800
2030	5	\$ 5,556	\$ 1,731	\$ 3,892	\$ -	\$ 3,892
2031	6	\$ 5,556	\$ 1,765	\$ 3,892	\$ -	\$ 3,892
2032	7	\$ 5,651	\$ 1,765	\$ 3,987	\$ -	\$ 3,987
2033	8	\$ 5,651	\$ 1,801	\$ 3,987	\$ -	\$ 3,987
2034	9	\$ 5,747	\$ 1,801	\$ 4,083	\$ -	\$ 4,083
2035	10	\$ 5,747	\$ 1,837	\$ 4,083	\$ -	\$ 4,083
2036	11	\$ 5,845	\$ 1,837	\$ 4,182	\$ -	\$ 4,182
2037	12	\$ 5,845	\$ 1,874	\$ 4,182	\$ -	\$ 4,182
2038	13	\$ 5,945	\$ 1,874	\$ 4,282	\$ -	\$ 4,282
2039	14	\$ 5,945	\$ 1,911	\$ 4,282	\$ -	\$ 4,282
2040	15	\$ 10,432	\$ 1,911	\$ -	\$ -	\$ -
2041	16	\$ 10,432	\$ 1,949	\$ -	\$ -	\$ -
2042	17	\$ 10,641	\$ 1,949	\$ -	\$ -	\$ -
2043	18	\$ 10,641	\$ 1,988	\$ -	\$ -	\$ -
2044	19	\$ 10,853	\$ 1,988	\$ -	\$ -	\$ -
2045	20	\$ 10,853	\$ 2,028	\$ -	\$ -	\$ -
2046	21	\$ 11,070	\$ 2,028	\$ -	\$ -	\$ -
2047	22	\$ 11,070	\$ 2,069	\$ -	\$ -	\$ -
2048	23	\$ 11,292	\$ 2,069	\$ -	\$ -	\$ -
TOTAL		\$ 173,039	\$ 42,962	\$ 52,464	\$ -	\$ 52,464
NPV		\$ 81,330	\$ 22,418	\$ 33,472	\$ -	\$ 33,472

TOTAL BENEFIT TO TAXING JURISDICTION	\$	130,077
NPV OF BENEFIT TO TAXING JURISDICTION	\$	58,912
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$	33,472

*Amounts shown herein include jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (ii) the PILOTs generated by the redevelopment project.
**Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

Wally's - Independence, MO
I-70 Noland Road
Cost Benefit Analysis - Metro Junior College

DEVELOPER					
CALENDAR YEAR	TIF YEAR	*AD VALOREM TAXES - WITH REDVELOPMENT	AD VALOREM TAXES - WITHOUT REDVELOPMENT	PILOTS	EATS
2025	0	\$ 3,085	\$ 3,085	\$ -	\$ -
2026	1	\$ 3,647	\$ 3,085	\$ 563	\$ 563
2027	2	\$ 9,962	\$ 3,146	\$ 6,877	\$ 6,877
2028	3	\$ 10,130	\$ 3,146	\$ 7,046	\$ 7,046
2029	4	\$ 10,130	\$ 3,209	\$ 7,046	\$ 7,046
2030	5	\$ 10,302	\$ 3,209	\$ 7,217	\$ 7,217
2031	6	\$ 10,302	\$ 3,274	\$ 7,217	\$ 7,217
2032	7	\$ 10,477	\$ 3,274	\$ 7,393	\$ 7,393
2033	8	\$ 10,477	\$ 3,339	\$ 7,393	\$ 7,393
2034	9	\$ 10,656	\$ 3,339	\$ 7,571	\$ 7,571
2035	10	\$ 10,656	\$ 3,406	\$ 7,571	\$ 7,571
2036	11	\$ 10,838	\$ 3,406	\$ 7,754	\$ 7,754
2037	12	\$ 10,838	\$ 3,474	\$ 7,754	\$ 7,754
2038	13	\$ 11,024	\$ 3,474	\$ 7,939	\$ 7,939
2039	14	\$ 11,024	\$ 3,543	\$ 7,939	\$ 7,939
2040	15	\$ 19,343	\$ 3,543	\$ -	\$ -
2041	16	\$ 19,343	\$ 3,614	\$ -	\$ -
2042	17	\$ 19,730	\$ 3,614	\$ -	\$ -
2043	18	\$ 19,730	\$ 3,687	\$ -	\$ -
2044	19	\$ 20,124	\$ 3,687	\$ -	\$ -
2045	20	\$ 20,124	\$ 3,760	\$ -	\$ -
2046	21	\$ 20,527	\$ 3,760	\$ -	\$ -
2047	22	\$ 20,527	\$ 3,835	\$ -	\$ -
2048	23	\$ 20,937	\$ 3,835	\$ -	\$ -
TOTAL		\$ 320,850	\$ 79,661	\$ 97,279	\$ 97,279
NPV		\$ 150,803	\$ 41,567	\$ 62,064	\$ 62,064

TOTAL BENEFIT TO TAXING JURISDICTION	\$	241,190
NPV OF BENEFIT TO TAXING JURISDICTION	\$	109,236
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$	62,064

*Amounts shown herein include jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (iii) the PILOTs generated by the redevelopment project.
**Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

Wally's - Independence, MO
1-70 Noland Road
Cost Benefit Analysis - Mid-Continent Library

DEVELOPER

CALENDAR YEAR	TIF YEAR	*AD VALOREM TAXES - WITH REDEVELOPMENT	*AD VALOREM TAXES - WITHOUT REDEVELOPMENT	PILOTS	EATS	TOTAL TIF REVENUE
2025	0	\$ 5,384	\$ 5,384	\$ -	\$ -	\$ -
2026	1	\$ 6,366	\$ 5,384	\$ 982	\$ -	\$ 982
2027	2	\$ 17,387	\$ 5,491	\$ 12,003	\$ -	\$ 12,003
2028	3	\$ 17,680	\$ 5,491	\$ 12,297	\$ -	\$ 12,297
2029	4	\$ 17,680	\$ 5,601	\$ 12,297	\$ -	\$ 12,297
2030	5	\$ 17,980	\$ 5,601	\$ 12,596	\$ -	\$ 12,596
2031	6	\$ 17,980	\$ 5,713	\$ 12,596	\$ -	\$ 12,596
2032	7	\$ 18,286	\$ 5,713	\$ 12,902	\$ -	\$ 12,902
2033	8	\$ 18,286	\$ 5,828	\$ 12,902	\$ -	\$ 12,902
2034	9	\$ 18,598	\$ 5,828	\$ 13,214	\$ -	\$ 13,214
2035	10	\$ 18,598	\$ 5,944	\$ 13,214	\$ -	\$ 13,214
2036	11	\$ 18,916	\$ 5,944	\$ 13,532	\$ -	\$ 13,532
2037	12	\$ 18,916	\$ 6,063	\$ 13,532	\$ -	\$ 13,532
2038	13	\$ 19,240	\$ 6,063	\$ 13,857	\$ -	\$ 13,857
2039	14	\$ 19,240	\$ 6,184	\$ 13,857	\$ -	\$ 13,857
2040	15	\$ 33,759	\$ 6,184	\$ -	\$ -	\$ -
2041	16	\$ 33,759	\$ 6,308	\$ -	\$ -	\$ -
2042	17	\$ 34,434	\$ 6,308	\$ -	\$ -	\$ -
2043	18	\$ 34,434	\$ 6,434	\$ -	\$ -	\$ -
2044	19	\$ 35,123	\$ 6,434	\$ -	\$ -	\$ -
2045	20	\$ 35,123	\$ 6,563	\$ -	\$ -	\$ -
2046	21	\$ 35,825	\$ 6,563	\$ -	\$ -	\$ -
2047	22	\$ 35,825	\$ 6,694	\$ -	\$ -	\$ -
2048	23	\$ 36,542	\$ 6,694	\$ -	\$ -	\$ -
TOTAL		\$ 559,978	\$ 139,031	\$ 169,781	\$ -	\$ 169,781
NPV		\$ 263,196	\$ 72,547	\$ 108,321	\$ -	\$ 108,321

TOTAL BENEFIT TO TAXING JURISDICTION	\$	420,947
NPV OF BENEFIT TO TAXING JURISDICTION	\$	190,649
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$	108,321

*Amounts shown herein include jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (iii) the PILOTs generated by the redevelopment project.
**Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

Wally's - Independence, MO
I-70 Noland Road
Cost Benefit Analysis - Replacement Tax

DEVELOPER					
CALENDAR YEAR	TIF YEAR	*AD VALOREM TAXES - WITH REDEVELOPMENT	*AD VALOREM TAXES - WITHOUT REDEVELOPMENT	PILOTS	EATS
2025	0	\$ 24,545	\$ 24,545	\$ -	\$ -
2026	1	\$ 33,496	\$ 24,545	\$ -	\$ -
2027	2	\$ 133,986	\$ 25,035	\$ -	\$ -
2028	3	\$ 136,666	\$ 25,035	\$ -	\$ -
2029	4	\$ 136,666	\$ 25,536	\$ -	\$ -
2030	5	\$ 139,399	\$ 25,536	\$ -	\$ -
2031	6	\$ 139,399	\$ 26,047	\$ -	\$ -
2032	7	\$ 142,187	\$ 26,047	\$ -	\$ -
2033	8	\$ 142,187	\$ 26,568	\$ -	\$ -
2034	9	\$ 145,031	\$ 26,568	\$ -	\$ -
2035	10	\$ 145,031	\$ 27,099	\$ -	\$ -
2036	11	\$ 147,931	\$ 27,099	\$ -	\$ -
2037	12	\$ 147,931	\$ 27,641	\$ -	\$ -
2038	13	\$ 150,890	\$ 27,641	\$ -	\$ -
2039	14	\$ 150,890	\$ 28,194	\$ -	\$ -
2040	15	\$ 153,908	\$ 28,194	\$ -	\$ -
2041	16	\$ 153,908	\$ 28,758	\$ -	\$ -
2042	17	\$ 156,986	\$ 28,758	\$ -	\$ -
2043	18	\$ 156,986	\$ 29,333	\$ -	\$ -
2044	19	\$ 160,126	\$ 29,333	\$ -	\$ -
2045	20	\$ 160,126	\$ 29,920	\$ -	\$ -
2046	21	\$ 163,328	\$ 29,920	\$ -	\$ -
2047	22	\$ 163,328	\$ 30,518	\$ -	\$ -
2048	23	\$ 166,595	\$ 30,518	\$ -	\$ -
TOTAL		\$ 3,326,977	\$ 633,844	\$ -	\$ -
NPV		\$ 1,693,749	\$ 330,744	\$ -	\$ -

TOTAL BENEFIT TO TAXING JURISDICTION	\$	2,693,133
NPV OF BENEFIT TO TAXING JURISDICTION	\$	1,363,004
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$	-

*Amounts shown herein include jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (ii) the PILOTs generated by the redevelopment project.
**Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

Wally's - Independence, MO
I-70 Notand Road
Cost Benefit Analysis - Blind Pension

DEVELOPER					
CALENDAR YEAR	TIF YEAR	*AD VALOREM TAXES - WITH REDEVELOPMENT	*AD VALOREM TAXES - WITHOUT REDEVELOPMENT	PILOTS	EATS
2025	0	\$ 512	\$ 512	\$ -	\$ -
2026	1	\$ 699	\$ 523	\$ -	\$ -
2027	2	\$ 2,797	\$ 533	\$ -	\$ -
2028	3	\$ 2,853	\$ 544	\$ -	\$ -
2029	4	\$ 2,853	\$ 555	\$ -	\$ -
2030	5	\$ 2,910	\$ 566	\$ -	\$ -
2031	6	\$ 2,910	\$ 577	\$ -	\$ -
2032	7	\$ 2,968	\$ 589	\$ -	\$ -
2033	8	\$ 2,968	\$ 600	\$ -	\$ -
2034	9	\$ 3,028	\$ 612	\$ -	\$ -
2035	10	\$ 3,028	\$ 625	\$ -	\$ -
2036	11	\$ 3,088	\$ 637	\$ -	\$ -
2037	12	\$ 3,088	\$ 650	\$ -	\$ -
2038	13	\$ 3,150	\$ 663	\$ -	\$ -
2039	14	\$ 3,150	\$ 676	\$ -	\$ -
2040	15	\$ 3,213	\$ 690	\$ -	\$ -
2041	16	\$ 3,213	\$ 703	\$ -	\$ -
2042	17	\$ 3,277	\$ 718	\$ -	\$ -
2043	18	\$ 3,277	\$ 732	\$ -	\$ -
2044	19	\$ 3,343	\$ 746	\$ -	\$ -
2045	20	\$ 3,343	\$ 761	\$ -	\$ -
2046	21	\$ 3,410	\$ 777	\$ -	\$ -
2047	22	\$ 3,410	\$ 792	\$ -	\$ -
2048	23	\$ 3,478	\$ 808	\$ -	\$ -
TOTAL		\$ 69,457	\$ 15,076	\$ -	\$ -
NPV		\$ 35,360	\$ 7,672	\$ -	\$ -

TOTAL BENEFIT TO TAXING JURISDICTION	\$	54,381
NPV OF BENEFIT TO TAXING JURISDICTION	\$	27,688
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$	-

*Amounts shown herein include jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (ii) the PILoTs generated by the redevelopment project.
**Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

Wally's - Independence, MO
1-70 Noland Road
Cost Benefit Analysis - Zoo

CALENDAR YEAR		TIF YEAR	SALES TAXES		DEVELOPER	
2025	0	\$	-	\$	-	TOTAL TIF REVENUE
2026	1	\$	-	\$	-	-
2027	2	\$	18,198	\$	-	13,052
2028	3	\$	18,511	\$	-	13,364
2029	4	\$	18,829	\$	-	13,683
2030	5	\$	19,155	\$	-	14,008
2031	6	\$	19,486	\$	-	14,340
2032	7	\$	19,824	\$	-	14,678
2033	8	\$	20,169	\$	-	15,023
2034	9	\$	20,521	\$	-	15,375
2035	10	\$	20,880	\$	-	15,734
2036	11	\$	21,246	\$	-	16,100
2037	12	\$	21,620	\$	-	16,474
2038	13	\$	22,001	\$	-	16,855
2039	14	\$	22,389	\$	-	17,243
2040	15	\$	40,425	\$	-	-
2041	16	\$	41,234	\$	-	-
2042	17	\$	42,058	\$	-	-
2043	18	\$	42,900	\$	-	-
2044	19	\$	43,758	\$	-	-
2045	20	\$	44,633	\$	-	-
2046	21	\$	45,525	\$	-	-
2047	22	\$	46,436	\$	-	-
2048	23	\$	47,365	\$	-	-
TOTAL		\$	657,164	\$	-	195,929
NPV		\$	297,308	\$	-	123,523

TOTAL BENEFIT TO TAXING JURISDICTION	\$	657,164
NPV OF BENEFIT TO TAXING JURISDICTION	\$	297,308
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$	123,523

**Amounts shown herein include jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (ii) the PILOTs generated by the redevelopment project.
**Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

SALES TAXES		DEVELOPER			
CALENDAR YEAR	TIF YEAR	WITH REDEVELOPMENT	WITHOUT REDEVELOPMENT	PILOTS	EATS
2025	0	\$ -	\$ -	\$ -	\$ -
2026	1	\$ -	\$ -	\$ -	\$ -
2027	2	\$ 109,189	\$ -	\$ -	\$ 78,311
2028	3	\$ 111,064	\$ -	\$ -	\$ 80,186
2029	4	\$ 112,976	\$ -	\$ -	\$ 82,099
2030	5	\$ 114,927	\$ -	\$ -	\$ 84,049
2031	6	\$ 116,917	\$ -	\$ -	\$ 86,039
2032	7	\$ 118,946	\$ -	\$ -	\$ 88,069
2033	8	\$ 121,017	\$ -	\$ -	\$ 90,139
2034	9	\$ 123,128	\$ -	\$ -	\$ 92,250
2035	10	\$ 125,282	\$ -	\$ -	\$ 94,404
2036	11	\$ 127,479	\$ -	\$ -	\$ 96,601
2037	12	\$ 129,720	\$ -	\$ -	\$ 98,842
2038	13	\$ 132,005	\$ -	\$ -	\$ 101,127
2039	14	\$ 134,337	\$ -	\$ -	\$ 103,459
TOTAL		\$ 1,576,987	\$ -	\$ -	\$ 1,175,575
NPV		\$ 999,016	\$ -	\$ -	\$ 741,137

TOTAL BENEFIT TO TAXING JURISDICTION	\$	1,576,987
NPV OF BENEFIT TO TAXING JURISDICTION	\$	999,016
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$	741,137

*Amounts shown herein include jurisdiction's share of (i) the taxes paid by Developer on the base assessed value of the Property and (ii) the PILOTs generated by the redevelopment project.
**Assumes NRCID terminates at end of calendar year 2039.
***Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

Wally's - Independence, MO
I-70 Noland Road
Cost Benefit Analysis - State Sales Tax

DEVELOPER

CALENDAR YEAR	TIF YEAR	SALES TAXES - WITH REDEVELOPMENT	SALES TAXES - WITHOUT REDEVELOPMENT	PILOTS	EATS	TOTAL TIF REVENUE
2025	0	\$ -	\$ -	\$ -	\$ -	\$ -
2026	1	\$ 1,056,260	\$ -	\$ -	\$ -	\$ -
2027	2	\$ 1,077,375	\$ -	\$ -	\$ -	\$ -
2028	3	\$ 1,098,923	\$ -	\$ -	\$ -	\$ -
2029	4	\$ 1,120,901	\$ -	\$ -	\$ -	\$ -
2030	5	\$ 1,143,319	\$ -	\$ -	\$ -	\$ -
2031	6	\$ 1,166,185	\$ -	\$ -	\$ -	\$ -
2032	7	\$ 1,189,509	\$ -	\$ -	\$ -	\$ -
2033	8	\$ 1,213,299	\$ -	\$ -	\$ -	\$ -
2034	9	\$ 1,237,565	\$ -	\$ -	\$ -	\$ -
2035	10	\$ 1,262,317	\$ -	\$ -	\$ -	\$ -
2036	11	\$ 1,287,563	\$ -	\$ -	\$ -	\$ -
2037	12	\$ 1,313,314	\$ -	\$ -	\$ -	\$ -
2038	13	\$ 1,339,580	\$ -	\$ -	\$ -	\$ -
2039	14	\$ 1,366,372	\$ -	\$ -	\$ -	\$ -
2040	15	\$ 1,393,699	\$ -	\$ -	\$ -	\$ -
2041	16	\$ 1,421,573	\$ -	\$ -	\$ -	\$ -
2042	17	\$ 1,450,005	\$ -	\$ -	\$ -	\$ -
2043	18	\$ 1,479,005	\$ -	\$ -	\$ -	\$ -
2044	19	\$ 1,508,585	\$ -	\$ -	\$ -	\$ -
2045	20	\$ 1,538,757	\$ -	\$ -	\$ -	\$ -
2046	21	\$ 1,569,532	\$ -	\$ -	\$ -	\$ -
2047	22	\$ 1,600,923	\$ -	\$ -	\$ -	\$ -
2048	23	\$ 1,632,941	\$ -	\$ -	\$ -	\$ -
TOTAL		\$ 30,467,492	\$ -	\$ -	\$ -	\$ -
NPV		\$ 15,505,013	\$ -	\$ -	\$ -	\$ -

TOTAL BENEFIT TO TAXING JURISDICTION	\$	30,467,492
NPV OF BENEFIT TO TAXING JURISDICTION	\$	15,505,013
TOTAL TIF REVENUE CAPTURED BY DEVELOPER	\$	-

*Assumes full reimbursement in 14th year after approval of the Redevelopment Project.

AMENDED
EXHIBIT 11 TO WALLY'S TAX INCREMENT FINANCING PLAN

SEE ATTACHED.

AFFIDAVIT

STATE OF TEXAS)

) SS

COUNTY OF HARRIS)

COMES NOW, Michael Rubenstein, and being first duly sworn, on his oath states:

1. I am over the age of eighteen (18) and competent to testify to the following matters of my own knowledge and belief and am duly authorized to testify on behalf of WALLY'S INDEPENDENCE MO OWNER LLC, a Missouri limited liability company.
2. I am an agent for, and Manager of, WALLY'S INDEPENDENCE MO OWNER LLC, and am providing this Affidavit on behalf of WALLY'S INDEPENDENCE MO OWNER LLC.
3. WALLY'S INDEPENDENCE MO OWNER LLC is the proposed developer for the redevelopment project described in the Tax Increment Financing Plan ("TIF Plan") relating to the development of real property generally located in the northeast quadrant of the intersection of Interstate 70 and South Noland Road in Independence, Missouri. The conditions, which evidence the Redevelopment Project Area (as legally described in the TIF Plan) is a blighted area, are detailed in the TIF Plan.
4. In my opinion, the Redevelopment Project Area on a whole is a "blighted area" as that term is defined in the TIF Plan and has not recently been subject to growth and development through investment by private enterprise.
5. The Redevelopment Project Area would not reasonably be anticipated to be further developed without the adoption of tax increment financing due to the substantial cost to ameliorate the conditions which make such real property a blighted area.
6. The cost benefit analysis included in the TIF Plan shows the anticipated economic impact of the TIF Plan on each affected taxing jurisdiction.
7. WALLY'S INDEPENDENCE MO OWNER LLC will not, and cannot reasonably be expected to, develop the subject property as proposed without the adoption of the proposed TIF Plan.
8. As demonstrated in the calculations of return on investment attached to this affidavit, the Redevelopment Project described in the TIF Plan is not economically viable without such assistance.
9. As demonstrated in the calculations of return on investment attached to this affidavit, the Redevelopment Project described in the TIF Plan is financially feasible with the assistance described in the TIF Plan.
10. To my knowledge the TIF Plan meets the requirements of Section 99.810 of the Real Property Tax Increment Allocation Redevelopment Act, Revised Statutes of Missouri.

11. The information submitted to the tax increment financing commission, and the statements and averments in this affidavit are, to the best of my knowledge and belief, true, accurate and complete in all material respects.

[No further text on this page]

WALLY'S INDEPENDENCE MO OWNER
LLC



By: Michael Rubenstein, Manager

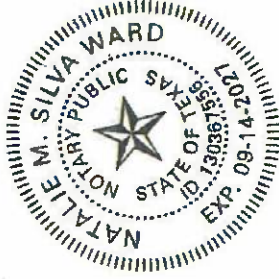
Subscribed and sworn to before me, a Notary Public, in and for said County and State this 25th day of September, 2025.


Notary Public
Printed Name: NATALIE M SILVA WARD

My Commission Expires:

sept 14, 2027

SEAL



Page 852 of 1221

(The above space is reserved for Recorder's Certification.)

TITLE OF DOCUMENT: REDEVELOPMENT AGREEMENT

DATE OF DOCUMENT: _____, 202__

GRANTOR: WALLY'S INDEPENDENCE MO OWNER LLC

GRANTOR'S MAILING ADDRESS: 1400 S Highway Drive, Suite 403
Fenton, Missouri 63026
Attn: _____

GRANTEE: CITY OF INDEPENDENCE, MISSOURI

GRANTEE'S MAILING ADDRESS: City Manager's Office
City of Independence, Missouri
111 E. Maple Ave.
Independence, MO 64050

RETURN DOCUMENTS TO: David Martin
Gilmore & Bell, P.C., Suite 1100
2405 Grand Blvd.
Kansas City, Missouri 64108

LEGAL DESCRIPTION: See **Exhibit A**

REDEVELOPMENT AGREEMENT

between the

CITY OF INDEPENDENCE, MISSOURI,

and

WALLY'S INDEPENDENCE MO OWNER LLC

dated as of

_____, 202____

WALLY'S PROJECT

TABLE OF CONTENTS

	<u>Page</u>
Recitals	- 1 -
ARTICLE I	
DEFINITIONS	
1.1. Definitions	- 2 -
ARTICLE II	
DESIGNATION OF DEVELOPER; ADVANCED COSTS	
2.1. Developer Designation	- 8 -
2.2. Developer to Advance Costs.....	- 8 -
ARTICLE III	
OWNERSHIP OF THE PROPERTY; SCHEDULE; CONSTRUCTION OF REDEVELOPMENT PROJECT; CITY APPROVALS	
3.1 Ownership of Property	- 9 -
3.2 Relocation	- 9 -
3.3. Project Construction	- 9 -
3.4. Construction of the Redevelopment Project	- 9 -
3.5. Construction Contracts; Insurance	- 10 -
3.6. Competitive Bids; Prevailing Wage; Federal Work Authorization	- 10 -
3.7. Governmental Approvals; Building Permit Fees	- 10 -
3.8. Concept Site Plan; Approved Site Plan; Zoning	- 10 -
3.9 Construction Plans	- 11 -
3.10. Special Development Conditions.....	- 11 -
3.11. Tenant Selection; Prohibited Uses	- 11 -
3.12. Certificate of Substantial Completion.....	- 12 -
3.13. [Reserved].....	- 12 -
3.14. Transportation Development District	- 12 -
3.15. Sales Tax Exemption on Construction Materials.....	- 13 -
ARTICLE IV	
REIMBURSEMENT OF DEVELOPER COSTS	
4.1. City's Obligation to Reimburse Developer.....	- 13 -
4.2. Reimbursable Redevelopment Project Cost Approval Process	- 14 -

4.3.	City’s Obligations Limited to Special Allocation Fund and Bond Proceeds.....	- 15 -
4.4.	Interest on Reimbursable Redevelopment Project Costs	- 15 -

ARTICLE V

OBLIGATIONS

5.1.	Issuance of TIF Obligations.....	- 15 -
5.2.	Cooperation in the Issuance and Administration of TIF Obligations	- 16 -
5.3.	City to Select Financial Advisor; Term and Interest Rate of TIF Obligations	- 17 -
5.4.	No Other Obligations or Uses of Available Revenues	- 17 -
5.5.	Corridor Improvement Project.....	- 17 -

ARTICLE VI

SPECIAL ALLOCATION FUND; COLLECTION AND USE OF REVENUES

6.1.	Special Allocation Fund.....	- 18 -
6.2.	Application of Available Revenues	- 18 -
6.3.	Developer Cooperation in Determining Available Revenues.....	- 20 -
6.4.	Obligation to Report EATS and TDD Sales Tax.....	- 21 -

ARTICLE VII

GENERAL PROVISIONS

7.1.	Developer’s Right of Termination	- 21 -
7.2.	City’s Right of Termination.....	- 21 -
7.3.	Results of Termination.....	- 22 -
7.4.	Term of Agreement.....	- 22 -
7.5.	Successors and Assigns; Transfers to Tax-Exempt Organizations.....	- 22 -
7.6.	Remedies; Lender’s Right to Cure.....	- 23 -
7.7.	Extensions of Time for Performance	- 24 -
7.8.	Notices	- 24 -
7.9.	Conflict of Interest.....	- 25 -
7.10.	Insurance; Damage or Destruction of Redevelopment Project.....	- 25 -
7.11.	Inspection.....	- 26 -
7.12.	Choice of Law.....	- 26 -
7.13.	Entire Agreement; Amendment	- 26 -
7.14.	Counterparts.....	- 26 -
7.15.	Severability	- 26 -
7.16.	Representatives Not Personally Liable	- 27 -
7.17.	Actions Contesting the Validity and Enforceability of the Redevelopment Plan	- 27 -
7.18.	Release and Indemnification.....	- 27 -
7.19.	Survival.....	- 28 -
7.20.	Maintenance of the Property	- 28 -
7.21.	Enforcement of Agreement.....	- 29 -
7.22.	Recording of Agreement.....	- 29 -
7.23.	No Waiver of Sovereign Immunity.....	- 29 -
7.24.	No Third-Party Beneficiaries.....	- 29 -

ARTICLE VIII

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTIES

8.1. Representations of the City..... - 29 -
8.2. Representations of the Developer - 30 -
8.3. Contractual Liability Insurance..... - 31 -
8.4 Anti-Israel Discrimination - 31 -

Signatures - 32 -

- EXHIBIT A – Legal Description of Redevelopment Area
- EXHIBIT B – Concept Site Plan
- EXHIBIT C – Form of Certificate of Substantial Completion
- EXHIBIT D – Form of Certificate of Reimbursable Redevelopment Project Costs
- EXHIBIT E – Elevations and Appearance
- EXHIBIT F – Project Budget

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (this “*Agreement*”) is made and entered into as of _____, 202____, by and between the **CITY OF INDEPENDENCE, MISSOURI**, a constitutional charter city organized and existing under the laws of the State of Missouri (the “*City*”) and **WALLY’S INDEPENDENCE MO OWNER LLC**, a Missouri limited liability company (the “*Developer*”). *All capitalized terms used but not otherwise defined herein shall have the meanings ascribed in Article I of this Agreement.*

RECITALS

A. The City Council of the City created the Tax Increment Financing Commission of Independence, Missouri (the “*TIF Commission*”) and empowered the TIF Commission to exercise those powers and fulfill such duties as are required or authorized for the TIF Commission under Sections 99.800 to 99.865 of the Revised Statutes of Missouri (the “*TIF Act*”).

B. On September 25, 2025, the Developer submitted an application for tax increment financing assistance (the “*Application*”) in connection with the proposed redevelopment of approximately 20.9 acres located near the intersection of Noland Road and Interstate Highway 70 in Independence, Missouri (as further described on **Exhibit A** attached hereto, the “*Redevelopment Area*”) by removing blighted buildings and redeveloping the Redevelopment Area into an approximately 54,000 square foot travel center, including fuel pumps, landscaping, parking and other amenities and public and private infrastructure (as further described in the below-defined Redevelopment Plan, the “*Redevelopment Project*”).

C. On October 25, 2025 the Commission published a Notice of Public Hearing relating to the Wally’s Tax Increment Financing Plan and Project and Notice of Request for Redevelopment Project Proposals (the “*RFP*”) in *The Examiner* seeking alternative proposals for the Redevelopment Area. No alternative proposals were received by the Commission.

D. On November 12, 2025 and November 24, 2025, the TIF Commission held a duly-noticed and continued public hearing regarding the Wally’s Tax Increment Financing Plan (the “*Redevelopment Plan*”), the Redevelopment Area and the Redevelopment Project, at which all interested parties had the opportunity to be heard and at which the TIF Commission heard and considered all protests and objections concerning the Redevelopment Plan, the Redevelopment Area and the Redevelopment Project.

E. Upon conclusion of the above-described public hearing, the TIF Commission passed a resolution recommending that the City Council approve the Redevelopment Plan, designate the Redevelopment Area as a “redevelopment area” pursuant to the TIF Act, approve the Redevelopment Project and adopt tax increment financing.

F. On November 7, 2025, the Developer filed a petition with the Circuit Court of Jackson County to establish the Wally’s Transportation Development District (the “*TDD*”) with boundaries coterminous with the Redevelopment Area to assist in financing and implementing the Redevelopment Project.

G. On December ___, 2025, the City Council gave due consideration to the TIF Commission’s recommendation, comments by the public and taxing districts and the requirements of the

applicable statutes. On _____, 202__, the City Council gave final reading to and passed the following ordinances:

(a) Ordinance No. _____ approving the Redevelopment Plan, designating the Redevelopment Area, designating the Developer as the developer of record for the Redevelopment Area and approving this Agreement;

(b) Ordinance No. _____ approving the issuance of taxable industrial revenue bonds associated with the Redevelopment Project pursuant to Article VI, Section 27(b) of the Missouri Constitution, as amended, and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended, to facilitate a sales tax exemption on construction materials purchased for the Redevelopment Project; and

(c) Ordinance No. _____ approving the Redevelopment Project and adopting tax increment financing within the area legally described for the Redevelopment Project.

H. The City Council hereby determines that the implementation of the Redevelopment Plan and the fulfillment generally of this Agreement are in the best interests of the City, and the health, safety, morals and welfare of its residents, and in accordance with the public purposes specified in the Redevelopment Plan.

I. Pursuant to provisions of the TIF Act and Ordinance No. _____, the City is authorized to enter into this Agreement.

AGREEMENT

Now, therefore, in consideration of the premises and mutual promises contained herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1. Definitions. As used in this Agreement, the following words and terms shall have the following meanings:

“Agreement” means this Redevelopment Agreement, as the same may be from time to time modified, amended or supplemented in writing by the parties hereto.

“Approved Site Plans” means the combination of site plans reflecting one or more portions of the Work approved by all entities required to approve a site plan pursuant to the Municipal Code and **Section 3.8**, as such site plans may be submitted, approved and amended from time to time in accordance with the Municipal Code and **Section 3.8**.

“Available Revenues” means all money on deposit from time to time (including investment earnings thereon) in or consisting of:

(a) the PILOTS Account (except for the Surplus PILOTS);

(b) subject to annual appropriation by the City, the EATS Account; and

(c) TDD Revenues appropriated by the TDD for the payment of Reimbursable Redevelopment Project Costs or the repayment of any TIF Obligations pursuant to the terms of, and for the purposes set forth in, the TDD Act;

excluding in each case (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer, or (ii) any sum received by the City or the TDD that is the subject of a suit or other claim communicated to the City or the TDD, as applicable, which suit or claim challenges the collection of such sum.

“Bond Counsel” means Gilmore & Bell, P.C., Kansas City, Missouri, or an attorney at law or a firm of attorneys selected by the City of nationally recognized standing in matters pertaining to the tax-exempt nature of interest on obligations issued by states and their political subdivisions, duly admitted to the practice of law before the highest court of any state of the United States of America or the District of Columbia.

“Bond Indenture” means the trust indenture or indentures executed by the IDA and the Bond Trustee in connection with the issuance of TIF Obligations.

“Bond Proceeds” means the net cash proceeds from the sale of TIF Obligations available for deposit in the Project Fund (after deposit of funds for Issuance Costs, capitalized interest and any debt service reserve), together with any interest earned thereon.

“Bond Trustee” means UMB Bank, N.A. or such other trustee designated by the City Manager; provided, however, that a successor Bond Trustee may be appointed in accordance with the terms of the Bond Indenture.

“Certificate of Reimbursable Redevelopment Project Costs” means a document, substantially in the form of **Exhibit D** attached hereto, delivered by the Developer to the City in accordance with **Article IV** hereof.

“Certificate of Substantial Completion” means a document, substantially in the form of **Exhibit C** attached hereto, delivered by the Developer and which, upon the City’s written acceptance thereof, will evidence the Developer’s satisfaction of all obligations and covenants to perform the Work. The Certificate of Substantial Completion does not constitute a final occupancy certificate, final inspection certificate, or other documentation required by the Municipal Code to occupy the Redevelopment Project or any portion thereof.

“City” means the City of Independence, Missouri, a constitutional charter city and political subdivision of the State of Missouri.

“City Administrative Fee” means 2.0% of the PILOTS and EATS paid into the Special Allocation Fund during the first full calendar year of collections and annually thereafter, the greater of \$5,000 or 1.0% of the PILOTS and EATS paid into the Special Allocation Fund.

“City Attorney” means, at any time, the then-current City Attorney or Acting City Attorney of the City.

“City Council” means the City Council of the City.

“*City Manager*” means, at any time, the then-current City Manager or Interim City Manager of the City.

“*Commence Work*” means Developer’s receipt of a demolition permit for the Property and the commencement of demolition at the Property.

“*Concept Site Plan*” means the conceptual site plan attached hereto as **Exhibit B** and incorporated herein by this reference.

“*Construction Plans*” means plans, drawings, specifications and related documents, and construction schedules for the construction of the Work, together with all supplements, amendments or corrections approved by the City in accordance with the Municipal Code.

“*Cooperative Agreements*” means the TDD Cooperative Agreement and any agreement entered into between the TDD and/or the Developer and the Missouri Highways and Transportation Commission or the Missouri Department of Transportation relating to the TDD Project.

“*Corridor Improvement Project*” means the City’s Noland Road corridor project, which may consist of installation and improvement of sidewalks, curbs, gutters, and other transportation-related corridor improvements along Noland Road.

“*Developer*” means Wally’s Independence MO Owner LLC, a Missouri limited liability company, or its permitted successors or assigns in interest.

“*Developer-Paid City Administrative Costs*” means all amounts paid or reimbursed to the City in connection with the administration of the Redevelopment Plan or otherwise in connection with the redevelopment of the Property, other than the City Administrative Fee, including but not limited to the amounts paid to the City pursuant to **Section 2.2(b)**.

“*EATS Account*” means an account of the Special Allocation Fund into which 50% of the Economic Activity Taxes are deposited pursuant to Section 99.845 of the TIF Act.

“*Economic Activity Taxes*” or “*EATS*” shall have the meaning ascribed to such term in Section 99.805 of the TIF Act, but not including any taxes that are excluded from tax increment financing by Missouri law.

“*Financing Agreement*” means an agreement to be entered into among the TDD, the IDA and (in the City’s sole discretion) the City, pursuant to which the IDA will issue TIF Obligations and the other parties thereto will transfer Available Revenues to the Bond Trustee for the repayment of such TIF Obligations.

“*Governmental Approvals*” means all plat approvals, re-zoning or other zoning changes, planned unit development approvals, site plan approvals, conditional use permits, variances, building permits, architectural review or other subdivision, zoning or similar approvals, or approvals related to the TDD Project required by the Municipal Code, the Cooperative Agreements or this Agreement for the implementation of the Redevelopment Project.

“*IDA*” means The Industrial Development Authority of Independence, Missouri or another issuer of municipal bonds acceptable to the City and the Developer.

“Issuance Costs” means all costs reasonably incurred by the IDA, the City and/or the TDD in connection with the issuance of the TIF Obligations, including, but not limited to, the fees and expenses of the City’s financial advisors and consultants, the City’s and the IDA’s attorneys (including the City Attorney, issuer’s counsel, Bond Counsel and disclosure counsel), Developer’s counsel and consultants, the TDD’s attorneys, the IDA’s underwriter and underwriter’s counsel, underwriters’ discounts and fees, initial fees and charges of the trustee, the cost of obtaining CUSIP numbers, the costs of printing any TIF Obligations and any offering documents relating thereto, and any other costs related to the issuance of TIF Obligations and approved by Bond Counsel.

“Lender” means any entity (1) not affiliated with the Developer that has made a loan to the Developer which is secured by all or a portion of the reimbursement to be received by the Developer under this Agreement, and (2) for which the Developer has provided notice to the City, including notice of the fact that such entity has provided such loan and the name, address and contact person for such entity.

“Lender Rate” means the rate paid by the Developer on the Loan issued to pay costs of the Redevelopment Project; *provided that*, (1) the Lender Rate may change when a new Loan is executed for construction financing, permanent financing or refinancing (at the request of the Developer accompanied by documentation establishing the new rate), and (2) no Lender Rate shall exceed the Maximum Lender Rate at the time the related Loan is executed or be reset under the Loan documents to exceed the Maximum Lender Rate at the time of such reset. If the rate charged under a Loan exceeds the Maximum Lender Rate at execution or reset, the applicable Lender Rate shall be equal to the Maximum Lender Rate.

“Loan” means any loan made to the Developer by a Lender, proceeds of which are applied to the payment of Reimbursable Redevelopment Project Costs.

“Maximum Developer Reimbursement Amount” means (1) with respect to Reimbursable Redevelopment Project Costs, \$7,605,401 of principal amount of reimbursement that may be paid to the Developer under this Agreement, (2) all Reimbursable Interest, (3) all Developer-Paid City Administrative Costs, and (4) \$1,000,000 with respect to the Corridor Improvement Project, which shall be paid in the manner described in **Section 5.5** hereof.

“Maximum Lender Rate” means, as of the applicable date, 1.50% *plus* the prime rate reported in the most recently published “Money Rates” column or any successor column of *The Wall Street Journal*, currently defined therein as the base rate on corporate loans posted by at least 75% of the nation’s 30 largest banks. If *The Wall Street Journal* ceases publication of the prime rate, then “prime rate,” as used in this definition, shall mean the “prime rate” or “base rate” announced by UMB Bank, N.A., or any successor thereto.

“Municipal Code” means the Code of Ordinances City of Independence, Missouri, as it may be amended from time to time.

“Payments in Lieu of Taxes” or *“PILOTS”* shall have the meaning ascribed to such term in Section 99.805 of the TIF Act.

“PILOTS Account” means an account of the Special Allocation Fund into which Payments in Lieu of Taxes are deposited pursuant to Section 99.845 of the TIF Act.

“Preliminary Funding Agreement” means the Preliminary Funding Agreement dated as of March 28, 2025, between the City and the Developer, as amended from time to time in accordance with its terms.

“Project Fund” means the Project Fund created in the Bond Indenture.

“Property” means all privately-owned land within the Redevelopment Area.

“Redevelopment Area” means the area described in the Redevelopment Plan.

“Redevelopment Plan” means the plan entitled “Wally’s Tax Increment Financing Plan,” as approved by the City Council pursuant to the TIF Ordinances, as such plan may from time to time be amended in accordance with the TIF Act.

“Redevelopment Project” means the redevelopment project described in the Redevelopment Plan.

“Redevelopment Project Costs” shall have the meaning assigned to such term in Section 99.805 of the TIF Act.

“Reimbursable Interest” means interest on the Reimbursable Redevelopment Project Costs that is payable to the Developer under **Section 4.4** of this Agreement.

“Reimbursable Redevelopment Project Costs” means those Redevelopment Project Costs that are reimbursable to the Developer under **Article II, Article IV** (other than Reimbursable Interest), the Redevelopment Plan and the TIF Act.

“Related Party” means any party related to the Developer by one of the relationships described in Section 267(b) or 707(b) of the United States Internal Revenue Code of 1986, as amended, or any party controlled by or under common control with the Developer.

“Relocation Costs” means all costs incurred to relocate the occupants of and businesses in the Redevelopment Area in accordance with the Relocation Policy, including, but not limited to, relocation payments to displaced persons or businesses, and all costs of implementing the Relocation Policy including costs of referrals, relocation specialists, planners, attorneys’ fees, brokers’ commissions and staff costs.

“Relocation Policy” means the relocation policy of the City described in the Redevelopment Plan.

“Special Allocation Fund” means the Wally’s Project Special Allocation Fund authorized by the TIF Ordinances.

“Special Use Permit Ordinance” means Ordinance No. 19731 of the City passed on October 6, 2025.

“State” means the State of Missouri.

“Surplus PILOTS” means 50% of the PILOTS deposited into the Special Allocation Fund.

“TDD” means the Wally’s Transportation Development District, a transportation development district and political subdivision of the State of Missouri, established by order of the Circuit Court of Jackson County, Missouri pursuant to Case No. 2516-CV36834, which shall be maintained pursuant to **Section 3.14**, the TDD Act, and the TDD Cooperative Agreement.

“TDD Act” means the Missouri Transportation Development District Act, Sections 238.200 to 238.280 of the Revised Statutes of Missouri.

“TDD Annual Operating Costs” means an amount equal to \$10,000 for calendar year 2026, which amount shall be increased by 2% for each subsequent calendar year.

“TDD Cooperative Agreement” means the cooperative agreement to be entered among the City, the Developer and the TDD relating to the operation of the TDD and the collection and distribution of the TDD Revenues, as amended from time to time.

“TDD Project” means the improvements described in the TDD Cooperative Agreement that shall, in the opinion of counsel to the TDD, be qualified expenditures for the TDD under Missouri law.

“TDD Revenues” means the revenues received by the TDD from the TDD Sales Tax, less TDD Annual Operating Costs, to the extent the same are not required to be deposited into the Special Allocation Fund by operation of the TIF Act.

“TDD Sales Tax” means the sales tax to be levied by the TDD at a rate of not more than 1% in accordance with the TDD Act.

“TIF Act” means the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri.

“TIF Activation Ordinance” means Ordinance No. _____ approving the Redevelopment Project and adopting tax increment financing within the area legally described for the Redevelopment Project.

“TIF Commission” means the Tax Increment Financing Commission of Independence, Missouri.

“TIF Obligations” means bonds issued by the IDA that are repayable from all or a portion of the Available Revenues, subject to the requirements of **Section 5.1**.

“TIF Ordinances” means the TIF Activation Ordinance and Ordinance No. _____ adopted by the City Council on _____, 202__.

“TIF Revenues” means, collectively the Payments in Lieu of Taxes (with the exception of the Surplus PILOTS) and 50% of the Economic Activity Taxes.

“Work” means the:

(a) demolition of the existing improvements within the Redevelopment Area and construction of an approximately 54,000 square foot travel center, including fuel pumps, landscaping, parking and other amenities; and

(b) construction within and nearby the Redevelopment Area of all support facilities such as signage, lighting, parking lots, curbed islands, landscaping, drainage, storm water management, street improvements, utilities and site improvements essential to the preparation of the Redevelopment Area for use in accordance with the Redevelopment Plan, including but not limited to all improvements required by the Special Use Permit Ordinance.

ARTICLE II

DESIGNATION OF DEVELOPER; ADVANCED COSTS

2.1. Developer Designation. The City hereby selects the Developer to perform the Work, and to carry out the Redevelopment Project, in accordance with the Approved Site Plans, the Redevelopment Plan, this Agreement and all Governmental Approvals. To the extent of any inconsistency among the foregoing, the parties agree that the Work described in the Governmental Approvals shall govern so long as such approvals do not constitute a change to the Redevelopment Plan or Redevelopment Project as would, in the opinion of the City Attorney or special counsel retained by the City, require further hearing pursuant to the TIF Act.

2.2. Developer to Advance Costs. The Developer agrees to advance all Redevelopment Project Costs as necessary to complete the Work, subject to the Developer's right to abandon the Redevelopment Project and terminate this Agreement as set forth in **Section 7.1**. Additionally, and not by way of limitation:

(a) *Preliminary Funding Agreement.* The Developer has heretofore advanced, or caused to be advanced, pursuant to the Preliminary Funding Agreement, the sum of \$35,000.00 for certain planning, legal, administrative and other costs associated with the Redevelopment Project, the negotiation of this Agreement, and the formation of the TDD. The Preliminary Funding Agreement shall terminate upon the date of this Agreement.

(b) *Expenses after Termination of Preliminary Funding Agreement.* Upon termination of the Preliminary Funding Agreement, the City shall retain an amount not greater than \$35,000.00 to pay administrative costs and actual out-of-pocket expenses that are incurred in connection with the administration of the Redevelopment Plan (including, without limitation, the review of Certificates of Reimbursable Redevelopment Project Costs, the Certificate of Substantial Completion, site plans and construction plans, and the formation of the TDD). The City shall advise Developer in writing if it intends to utilize the services of any consultant to perform its obligations under the terms of this Agreement. Such written notice shall include the name of the consultant, the service to be performed and an estimate of the cost expected. If the amount initially deposited pursuant to this subsection is insufficient for the purposes described herein, the Developer shall deposit any additional amount necessary for such purposes and requested by the City within 10 days of a written request therefor; provided, however, that (i) the City shall obtain the Developer's approval before entering into any new engagements with any third party and (ii) the City shall provide the Developer with a monthly statement showing each agreement executed, amounts paid pursuant to each agreement, and amounts remaining due with respect to each agreement. The obligation under this subsection shall terminate at such time as the proceeds of the City Administrative Fee are equal to \$5,000 in one year. Upon such termination, the remaining amounts held by the City under this subsection shall be returned to the Developer. All amounts paid by Developer under this subsection shall be included in the Developer-Paid City Administrative Costs.

(c) *No Waivers.* Payments under this Section will not be credited against any application fee or other cost to the Developer associated with any Governmental Approval required by the Municipal Code.

(d) *Advances to be Reimbursable.* To the extent permitted by law, all sums advanced under this Section shall constitute Reimbursable Redevelopment Project Costs to the extent submitted and approved in accordance with **Article IV**.

ARTICLE III

OWNERSHIP OF THE PROPERTY; SCHEDULE; CONSTRUCTION OF REDEVELOPMENT PROJECT; CITY APPROVALS

3.1. Ownership of Property. The Developer represents that either it or a Related Party currently owns all of the Property.

3.2 Relocation. The Developer shall relocate those occupants or businesses displaced from any portion of the Redevelopment Area acquired by the Developer in accordance with and to the extent required by the requirements of the Relocation Policy and any applicable law. Notwithstanding the foregoing, the displaced occupant or business and the Developer may agree in writing upon a different amount or different benefits, it being understood and agreed that any displaced occupant or business may waive his/her/their rights to statutory and other relocation benefits and assistance under the Relocation Policy or otherwise.

3.3. Project Construction.

(a) Subject to **Section 7.7**, the Developer shall commence and complete the Redevelopment Project pursuant to the following schedule:

<u>Activity</u>	<u>Maximum Time for Performance</u>
Commence Work	June 30, 2026
Complete items in paragraph (a) of the definition of “Work”	December 31, 2027
Complete items in paragraph (b) of the definition of “Work”	December 31, 2027

(b) The Developer and its project teams shall (1) submit quarterly written reports to the City Council regarding the status of constructing the Work and (2) upon reasonable notice and at times agreed to by City and Developer, meet with the City Manager and/or such other City staff and consultants as designated by the City Manager to review and discuss the design and construction of the Work to enable the City to monitor the status of construction and to determine that the Work is being performed and completed in accordance with this Agreement and the Municipal Code.

3.4. Construction of the Redevelopment Project.

(a) Construction of the Work shall be pursued in a good and workmanlike manner in accordance with the terms of this Agreement.

(b) Before entering into a joint venture, co-developer or sub-development arrangement with an entity whose principals are not a Related Party (other than any such joint venture, co-developer or sub-development arrangement entered into to provide financing or financial resources and such entity is not being relied upon to provide development assistance), the Developer will provide the City Manager with

information reasonably demonstrating that such entity has sufficient expertise to carry out each component of the Redevelopment Project for which such entity is responsible.

3.5. Construction Contracts; Insurance.

(a) The Developer may enter into one or more construction contracts to complete the Work. All construction contracts entered into by or on behalf of the Developer shall state that the contractor has no recourse against the City in connection with the contractor's construction of the applicable portion of the Work. The Developer will provide written notice to the City of any mechanic's or materialmen's liens filed against the Redevelopment Projects within 10 days of receipt of service of such lien. The Developer shall resolve all such liens within 60 days of receipt of service unless, before such time, the Developer provides a written explanation of the nature of the business dispute to the City Manager and the Developer continues to proceed in a commercially reasonable manner to resolve such dispute prior to the enforcement of any court order authorizing the foreclosure of such lien.

(b) The Developer shall obtain or shall require any contractor to obtain workers' compensation, commercial public liability and builder's risk insurance coverage in amounts required by the City pursuant to **Section 7.10** and shall deliver evidence of such insurance to the City. The Developer shall require that such insurance be maintained by the contractors for the duration of the construction of the applicable portion of the Work. The Developer shall be responsible for ensuring that contractors construct the Work in a good and workmanlike manner in accordance with the terms of this Agreement.

3.6. Competitive Bids; Prevailing Wage; Federal Work Authorization.

(a) The Developer shall comply with all federal, State and local laws relating to the construction of the Redevelopment Project, including, but not limited to, Section 107.170, RSMo., and laws relating to the payment of prevailing wages and competitive bidding, to the extent such laws are applicable to the Redevelopment Project or portions thereof.

(b) The Developer acknowledges that it must comply with Section 285.530, RSMo. regarding enrollment and participation in a federal work authorization program with respect to its employees working in connection with the Redevelopment Project. The Developer represents and warrants that it is in compliance with Section 285.530, RSMo. at the time of execution of this Agreement and has provided a sworn affidavit and supporting documentation affirming participation in a qualified work authorization program as evidence thereof.

3.7. Governmental Approvals. The City agrees to cooperate with the Developer and to process and timely consider all complete applications for the Governmental Approvals as received, all in accordance with the applicable City ordinances and laws of the State.

3.8. Concept Site Plan; Approved Site Plans; Zoning.

(a) *Approval of Concept Site Plan; Approved Site Plan.* The City hereby approves the Concept Site Plan. Such approval does not exempt the Developer from any zoning or site plan review process required by the Municipal Code. The parties agree that the Approved Site Plans shall govern the ultimate design and construction of the Redevelopment Project. Notwithstanding the foregoing, any site plan submitted by the Developer for approval as the Approved Site Plans must not, without the City's advance consent, result in such a change in the Redevelopment Project as would require compliance with the notice and hearing requirements of Section 99.825 of the TIF Act.

(b) *Changes.* During the progress of the Work, the Developer may make changes to the Approved Site Plans as permitted by the Municipal Code.

(c) *Zoning.* The Developer will apply to the City for any zoning changes or variances required to construct and operate the Redevelopment Project on the Property. Nothing in this Agreement is intended to alter the City's generally applicable procedures for land use approvals.

3.9 Construction Plans.

(a) The Construction Plans shall be prepared by one or more professional engineers or architects licensed to practice in the State. The Construction Plans and all construction practices and procedures with respect to the Work shall conform with all applicable State and local laws, ordinances and regulations, including, but not limited to, any performance, labor and material payment bonds required for public improvements. The Developer shall submit Construction Plans for approval by the City's Community Development Department in sufficient time to allow for review of the plans in accordance with applicable City ordinances and procedures and in accordance with the schedule set forth in **Section 3.3**. The plans shall be in sufficient completeness and detail to meet the requirements of the Municipal Code.

(b) Before commencement of construction or during the progress of the Work, the Developer may make such reasonable changes, including, without limitation, modification of the areas in which the Work is to be performed, relocation, expansion or deletion of items, revisions to the areas and scope of the Work, and any and all such other changes as site conditions or orderly development may dictate or as may be required to meet any reasonable requests of prospective tenants or purchasers of any real property located within the Redevelopment Area or as may be necessary or desirable, in the sole determination of the Developer, to enhance the economic viability of the Redevelopment Project and as may be in furtherance of the general objectives of the Redevelopment Plan; provided that, (1) the Developer shall obtain all necessary approvals under, and comply with the requirements of, the Municipal Code, (2) any changes shall not result in an extension of the time for performance of any obligation under this Agreement, and (3) the Developer shall obtain the City's advance written consent to any change that would, in the opinion of the City Attorney or special counsel retained by the City, result in such a change in the Redevelopment Projects as would require compliance with the notice and hearing requirements of Section 99.825 of the TIF Act.

3.10. Special Development Conditions. The Developer acknowledges that in consideration of the public participation in financing Redevelopment Project Costs, the City expects that the Redevelopment Project will include enhanced aesthetic features, including facades, landscaping and signage in similar or superior quality and design to the depictions attached hereto as **Exhibit E**. Additionally, the Developer shall comply in all respects with the requirements of the Special Use Permit Ordinance.

3.11. Tenant Selection; Prohibited Uses.

(a) The City and the Developer agree that the Redevelopment Project is intended to be occupied by the Developer and Related Parties. To the extent any portion of the Redevelopment Project is to be leased to a third-party user, the Developer agrees to use commercially reasonable efforts to secure high quality, unique users (unique users being users that do not already have locations within 5 miles of the Redevelopment Area).

(b) Unless approved in writing by the City, the following types of uses shall not be permitted within the Redevelopment Area: adult business; adult entertainment; adult book or video stores; liquor

stores as a primary use (not including liquor sales within or relating to a store of a different type); laundromats; marijuana-related businesses; smoke shops as a primary use (not including tobacco sales or sales of electronic smoking devices within or relating to a store of a different type); pawn shops; payday loan, title loan, check-cashing and similar uses; secondhand stores that receive their inventory through donations; automobile sales, leasing and rental, ATV/RV/boat sales, repair, service and leasing; manufactured housing (mobile home) sales, service or leasing; trailer sales (as a primary business), service or leasing, or any display of trailers in front of stores or in primary parking areas; self-service storage facilities; taxi dispatch yards and offices; or any lodging use that is rented or leased as a single housekeeping unit to guests for less than 30 consecutive nights in exchange for a fee, money, goods, services or other performances.

3.12. Certificate of Substantial Completion.

(a) Upon substantial completion of the Work, the Developer shall furnish a Certificate of Substantial Completion to the City. The Certificate of Substantial Completion shall be in substantially the form of **Exhibit C**.

(b) The appropriate City official shall diligently process the submitted Certificate of Substantial Completion, including making such inspections as may be reasonably necessary to verify the accuracy of the project architect's certifications accompanying the Certificate of Substantial Completion. The appropriate City official shall accept or reject the Certificate of Substantial Completion, and the accompanying certifications of the project architect, and shall do so in writing within 60 days following delivery to the City. If the City fails to approve or reject the Certificate of Substantial Completion in writing within such 60-day period, then the Developer shall notify the City in writing of its failure to take action on the Certificate of Substantial Completion and the City shall have 30 days from receipt of such notice to accept or reject the Certificate of Substantial Completion in writing. If the City has not accepted or rejected the Certificate of Substantial Completion within such 30-day period, the Certificate of Substantial Completion shall be deemed accepted by the City. If the appropriate City official rejects the Certificate of Substantial Completion and/or accompanying certifications, such rejection shall specify in reasonable detail in what respects the Developer has failed to complete the applicable Work in reasonable accordance with the provisions of this Agreement, or in what respects the Developer is otherwise in default, and what reasonable measures or acts the Developer must take or perform, in the opinion of such City official, to obtain such acceptance.

(c) Upon acceptance (or deemed acceptance) of the Certificate of Substantial Completion by the City, the Developer may record the Certificate of Substantial Completion with the Jackson County Recorder, and the same shall constitute evidence of the satisfaction of the Developer's agreements and covenants to perform the applicable Work in accordance with this Agreement.

3.13. [Reserved].

3.14. Transportation Development District.

(a) The Developer shall cause the TDD, promptly following constitution of a board of directors, to (1) authorize and enter into the TDD Cooperative Agreement and (2) take such steps as are necessary (including casting votes as a qualified voter under the TDD Act) to impose the TDD Sales Tax.

(b) The City acknowledges that the TDD is integral to the financing of the Redevelopment Project, and in that regard the City will, at the Developer's expense, cooperate with and assist the Developer in proceedings relating to the creation and certification of the TDD.

(c) While the TIF Obligations are outstanding, the TDD will not issue any bonds, notes or other obligations and will not pledge the TDD Sales Tax revenues to the repayment of any obligation senior to or on parity with the TIF Obligations (provided that a subordinate pledge may be made while the TIF Obligations are outstanding only if allowed under the Financing Agreement).

(d) The parties agree that 50% of the revenues attributable to the TDD Sales Tax will, pursuant to Section 99.845 of the TIF Act, be transferred to or at the direction of the City for deposit into the EATS Account of the Special Allocation Fund, and the Developer will cause the TDD to provide the necessary consents thereto required by Section 99.845.3 of the TIF Act. In addition, the Developer will cause the TDD to transfer all other TDD Revenues that constitute Available Revenues (i.e., the portion of TDD Sales Tax revenues not required to be deposited into the Special Allocation Fund by operation of the TIF Act, less the TDD Annual Operating Costs) to the Bond Trustee in accordance with the Financing Agreement and the Bond Indenture. Developer hereby consents to the transfers of TDD Revenues as provided in this subsection.

(e) Once all TIF Obligations have been paid in full and all Reimbursable Redevelopment Project Costs, Developer-Paid City Administrative Costs and Reimbursable Interest have been paid, the City and the Developer will cooperate to cause the TDD to be dissolved

(f) So long as any TIF Obligations are outstanding, the TDD Sales Tax may not be repealed or reduced.

(g) The Developer shall comply (and, as necessary, cause the TDD to comply) with Section 228.225 of the TDD Act and shall obtain approval from the Missouri Highways and Transportation Commission of any portions of the TDD Project intended to be merged into the state highways and transportation system.

3.15. Sales Tax Exemption on Construction Materials. In order to provide sales tax exemption on construction materials used or consumed in the process of constructing the Redevelopment Project, the City has approved a plan for industrial development (a “Chapter 100 Plan”) pursuant to Article VI, Section 27(b) of the Missouri Constitution, as amended, and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended (“Chapter 100”) for the Redevelopment Project. Under the Chapter 100 Plan, the City will (1) take title to the Property during the construction period, after which point title will conveyed back to the Developer, and (2) issue industrial development revenue bonds (“Chapter 100 Bonds”) in an amount equal to the total costs of the Redevelopment Project. The Chapter 100 Bonds shall be issued under documents acceptable to the City and Developer, and shall provide for the City to grant its sales tax exemption certificate for the Redevelopment Project, provided that the Developer indemnifies the City for any use of the sales tax exemption certificate found to be unlawful by the Missouri Department of Revenue. If the implementation of Chapter 100 results in the base property tax certification for the Redevelopment Area being reduced below \$1,708,045, an additional amount of PILOTS shall be declared surplus in each year such that the taxes flowing to the taxing districts from the certified base plus such additional surplus equals the taxes that would have been due to the taxing jurisdictions if the based had been certified at \$1,708,045.

ARTICLE IV

REIMBURSEMENT OF DEVELOPER COSTS

4.1. City’s Obligation to Reimburse Developer. The City agrees to reimburse the Developer, but solely from Available Revenues and Bond Proceeds, for approved Reimbursable

Redevelopment Project Costs, Developer-Paid City Administrative Costs and Reimbursable Interest. Issuance Costs shall be paid solely from proceeds from the sale of TIF Obligations. The total amount to be paid to the Developer under this Agreement shall not exceed the Maximum Developer Reimbursement Amount. All payments to the Developer under this Agreement, whether from Bond Proceeds, TIF Revenues or TDD Revenues shall be counted toward the Maximum Developer Reimbursement Amount, provided that the amounts of Reimbursable Interest and Developer-Paid City Administrative Costs to be paid are not limited by that definition.

4.2. Reimbursable Redevelopment Project Cost Approval Process. Reimbursements to the Developer are limited to costs that qualify as “redevelopment project costs” under Section 99.805(15) of the TIF Act. Reimbursable Redevelopment Project Costs incurred by the Developer will be eligible for reimbursement upon compliance with the following procedures:

(a) The Developer may submit to the City a Certificate of Reimbursable Redevelopment Project Costs in substantially the form attached as **Exhibit D** hereto. Such Certificate shall be accompanied by itemized invoices, receipts or other information that will demonstrate that any cost has been incurred and qualifies for reimbursement pursuant to this Agreement.

(b) The City shall notify the Developer in writing within 30 days after each submission of its approval or disapproval of the costs identified in each Certificate of Reimbursable Redevelopment Project Costs. If the City determines that any cost identified as a Reimbursable Redevelopment Project Cost is not a Reimbursable Redevelopment Project Cost under this Agreement, the City shall so notify the Developer in writing within 30 days after the submission, identifying the ineligible cost and the basis for determining the cost to be ineligible. The Developer shall then have the right to identify and substitute other Redevelopment Project Costs as Reimbursable Redevelopment Project Costs, which shall be included with a supplemental application for payment submitted within 15 days after the City’s notification of any ineligible costs. The City shall then review and notify the Developer in writing within 30 days after submission of its approval or disapproval of the costs identified in the supplemental application for payment. If the City fails to approve or disapprove the Certificate of Reimbursable Redevelopment Project Costs within 30 days of submission, the Certificate shall be deemed approved. The amount of Reimbursable Redevelopment Project Costs included in all approved Certificates of Reimbursable Redevelopment Project Costs shall not exceed the Maximum Project Cost Reimbursement Amount. City will process and approve each Certificate of Reimbursable Redevelopment Project Costs submitted by Developer in accordance with the provisions of this **Section 4.2** regardless of whether there are sufficient funds available, either from Bond Proceeds or from Available Revenues (including amounts held the Special Allocation Fund), to reimburse Developer for the Reimbursable Redevelopment Project Costs included in such Certificate of Reimbursable Redevelopment Project Costs.

(c) The Developer shall provide such information, books and records as the City may reasonably request for the City to confirm that any cost submitted qualifies as a Reimbursable Redevelopment Project Cost under this Agreement and has been incurred and paid by the Developer or will be paid from the Project Fund upon approval of the Certificate. The City may retain such consultants as it reasonably deems necessary in connection with such review, the cost of which shall be paid from the funds deposited pursuant to **Section 2.2(b)**.

(d) Reimbursable Redevelopment Project Costs shall include only costs for those categories of Redevelopment Project Costs set forth in the Project Budget set out in **Exhibit F** under the “Reimbursable Redevelopment Project Costs” column.

4.3. City's Obligations Limited to Available Revenues and Bond Proceeds. Notwithstanding any other term or provision of this Agreement, the City shall have no obligation to make any payment under this Agreement other than from Bond Proceeds and from Available Revenues (including amounts held the Special Allocation Fund). The City shall have no liability for the failure of such sources of revenue to provide full reimbursement of all costs incurred by the Developer that are otherwise reimbursable under this Agreement.

4.4. Interest on Reimbursable Redevelopment Project Costs. Reimbursable Redevelopment Project Costs which have been approved by the City through a Certificate of Reimbursable Redevelopment Project Costs submitted in accordance with this Agreement shall accrue simple interest at the Lender Rate for such costs starting on the day that such costs are paid by the Developer (whether from Loan proceeds or otherwise), as certified to the City by the Developer on **Schedule 1 to Exhibit D** hereto, until the principal amount of such approved Reimbursable Redevelopment Project Costs are paid, or until this Agreement is terminated as provided herein. Interest due on approved Reimbursable Redevelopment Project Costs shall be calculated by the City and shall constitute Reimbursable Interest under this Agreement. Unpaid Reimbursable Interest shall accrue but shall not be compounded. Upon request, the Developer shall provide all documentation necessary to substantiate the date of payment of costs and the Lender Rate applicable to any particular cost.

ARTICLE V

TIF OBLIGATIONS

5.1. Issuance of TIF Obligations. The Developer shall cause the TDD to cooperate with the IDA to issue to TIF Obligations, and the City shall request the IDA to issue such TIF Obligations, subject to the following conditions:

- (a) the City shall select Bond Counsel and the Bond Trustee for any TIF Obligations;
- (b) the Developer may select the underwriter or placement agent for the TIF Obligations, subject to the approval of the City Manager, which shall not be unreasonably withheld;
- (c) the TDD, the IDA and (in the City's sole discretion) the City shall enter into a Financing Agreement providing for the transfer of Available Revenues to the Bond Trustee for application under the Bond Indenture, *provided that*, should the City decide not to enter into a Financing Agreement with respect to the TIF Obligations, the City shall execute a certificate in connection with the TIF Obligations recognizing such obligations as TIF Obligations under this Agreement and stating that the transfers of Available Revenues required of the City with respect to the TIF Obligations under this Agreement will be made with respect to such obligations;
- (d) the City shall have approved the Bond Indenture in substantially final form;
- (e) at the time of issuance, no default or event of default has occurred and is continuing, nor has the City issued any notice to Developer under **Section 7.6** with respect to any event that has occurred and is continuing which with the lapse of time would constitute a default or an event of default in any material respect on the part of the Developer under this Agreement;

(f) the Developer shall have (or will simultaneously with the issuance of the TIF Obligations) enter into a guaranteed maximum price construction contract or contracts for the construction of the applicable portion of the Redevelopment Project included in the bond underwriting;

(g) the Developer shall have provided to the City's reasonable satisfaction, evidence of commitments to build the applicable improvements included in the Redevelopment Project and included in the bond underwriting;

(h) the payments to be made under the TIF Obligations must not exceed the Available Revenues reasonably anticipated to be available for repayment of the TIF Obligations, as set out in a revenue study produced by a consultant acceptable to the City;

(i) the IDA, in consultation with its (or the City's) financial advisor and the underwriter or placement agent, determines that a reasonably prudent issuer of municipal securities would find that the then-current market conditions are sufficient to support the proposed issuance of TIF Obligations;

(j) each issue of TIF Obligations shall provide sufficient funds to pay all Issuance Costs relating to such TIF Obligations; and

(k) the first issue of TIF Obligations shall be structured to provide the deposit described in **Section 5.5**.

Notwithstanding the foregoing, the City and the Developer agree and acknowledge that additional conditions and restrictions on the issuance of TIF Obligations and the use of Bond Proceeds may be included in the Financing Agreement and the Bond Indenture. Following issuance of the initial TIF Obligations, the Developer shall cooperate and the City shall request the IDA to cooperate, from time to time (and subject to the IDA's determination of acceptable market conditions in similar manner to (i) above), to issue additional TIF Obligations to (1) reimburse any remaining Reimbursable Redevelopment Project Costs not paid from Bond Proceeds from prior TIF Obligations (but not to exceed the Maximum Developer Reimbursement Amount) and (2) refund any previously issued TIF Obligations to achieve interest cost savings or to restructure debt service for the purpose of providing additional reimbursement of remaining Reimbursable Redevelopment Project Costs.

Under no circumstances shall the City be liable for any failure of the IDA to issue TIF Obligations. The City makes no guarantee that TIF Obligations will be marketable or that the IDA will approve the issuance of TIF Obligations. The City itself will not issue any TIF Obligations. The City will not be required to participate in the preparation of or give representations with respect to the content of any offering documents relating to the TIF Obligations.

If for any reason the IDA shall determine not to proceed with the issuance of the TIF Obligations, the Developer shall have the right to seek to engage another issuer for the TIF Obligations, and City agrees to consider in good faith an alternative issuer identified by the Developer so long as such alternative issuer does not seek to impose any requirements or obligations upon the City that are not acceptable to the City in its sole discretion.

5.2. Cooperation in the Issuance and Administration of TIF Obligations.

(a) If the IDA issues TIF Obligations, the Developer covenants to cooperate and take all reasonable actions necessary to assist the IDA, Bond Counsel, underwriters and financial advisors in the

preparation of offering statements, private placement memorandum or other disclosure documents and all other documents necessary to market and sell the TIF Obligations, including (1) disclosure of tenants of the Redevelopment Area and the non-financial terms of the leases and operating agreements between the Developer and such tenants, and (2) providing sufficiently detailed estimates of Reimbursable Redevelopment Project Costs so as to enable Bond Counsel to render its opinion as to the tax-exemption of TIF Obligations and to analyze the applicability of the various sources of Available Revenues. The Developer shall, if requested by the City, execute a continuing disclosure agreement or undertaking, whereby the Developer will be required to provide annual updates to certain operating information, including the information regarding tenant leases described above, and notice of certain events. The Developer will not be required to disclose to the general public or any investor the rent payable under any such lease or any proprietary or confidential financial information pertaining to the Developer, its tenants or the leases with its tenants, but upon the execution of a confidentiality agreement acceptable to the Developer, the Developer will provide such information to the City's financial advisor and to the underwriter and its counsel to enable such parties to satisfy their due diligence obligations. Such compliance obligation shall be a covenant running with the land, enforceable as if any subsequent transferee thereof were originally a party to and bound by this Agreement.

(b) Except for the certificate described in **Section 5.1(c)**, above, the execution of any documents relating to the TIF Obligations by the City shall be in the sole discretion of the City. It should be assumed that the City's maximum involvement in terms of taking on duties or obligations relating to the TIF Obligations will be the transfer of Available Revenues held by the City to the Bond Trustee and that the City will not agree to any other payment, reporting or other obligations relating to the TIF Obligations.

5.3. City to Select Financial Advisor; Term and Interest Rate of TIF Obligations. The City shall have the right to select its own financial advisor in connection with the issuance of the TIF Obligations, the fees of which advisor shall be paid as Issuance Costs. Prior to the selection of such financial advisor, the City shall provide Developer ten (10) days' notice of such intended selection during which time Developer may (on a one-time basis only) request reconsideration by the City of such selection. The City's consideration or rejection of the Developer's request for reconsideration shall be in the City's sole discretion. The TIF Obligations shall bear interest at such rates, shall be subject to redemption and shall have such terms as the City and the Developer shall agree, following consultation with the underwriter, financial advisors and consultants.

5.4. No Other Obligations or Uses of Available Revenues. The City shall not issue any other indebtedness or obligations secured by Available Revenues deposited into the account of the Special Allocation Fund from which the TIF Obligations are or will be secured. Following the redemption and payment in full of the TIF Obligations and payment of any remaining Reimbursable Redevelopment Project Costs, Developer-Paid City Administrative Costs and Reimbursable Interest, the City may dissolve the Special Allocation Fund; provided, however, that City will provide thirty (30) days prior written notice to Developer before proceeding with such dissolution (but further provided that the City shall have no monetary liability to the Developer for failure to give such notice).

5.5. Corridor Improvement Project. From the Bond Proceeds from the initial issuance of TIF Obligations, the amount of \$1,000,000 shall be deposited with the City for purposes of paying costs of the Corridor Improvement Project. Such deposit shall constitute a Reimbursable Redevelopment Project Cost under this Agreement and the transfer of such deposit to the City from Bond Proceeds shall constitute payment of such Reimbursable Redevelopment Project Cost to the Developer. The City shall apply such deposit in a manner consistent with the TIF Act and the TDD Act so that the principal amount of TIF Obligations, together with interest thereon, allocable to such deposit is repayable from TIF Revenues and TDD Revenues, and the City shall maintain documentation of all expenditures of such

deposit sufficient to demonstrate the same. No payment to the Developer for Developer-Paid City Administrative Costs, Reimbursable Interest or approved Reimbursable Redevelopment Project Costs shall be made until the deposit described in this Section has been fully funded.

ARTICLE VI

SPECIAL ALLOCATION FUND; COLLECTION AND USE OF REVENUES

6.1. Special Allocation Fund. The City agrees to cause its finance department to maintain the Special Allocation Fund, including within such fund a “*PILOTS Account*,” and an “*EATS Account*.” Subject to the requirements of the TIF Act and, with respect to Economic Activity Taxes, subject to annual appropriation by the City Council, the City will, promptly upon receipt thereof, deposit all Payments in Lieu of Taxes generated from the Redevelopment Area into the PILOTS Account and all Economic Activity Taxes generated from the Redevelopment Area into the EATS Account. The City shall take such actions as it deems reasonable to cause the county assessor, the county collector, and the Missouri Department of Revenue to perform all duties required to be performed pursuant to Section 99.845 of the TIF Act.

(a) *Certificate of Total Initial Equalized Assessed Value.* The City shall provide to the Developer, within 30 days after the City’s receipt thereof, the Jackson County Assessor’s calculation of the total initial assessed value of all taxable property within the Redevelopment Area, determined pursuant to Section 99.855.1 of the TIF Act.

(b) *Certificate of Initial Economic Activity Tax Revenues.* The City shall provide to the Developer and shall file with Jackson County, within 30 days after the City’s adoption of the TIF Activation Ordinance, a certification of the total additional revenues from Economic Activity Taxes that are eligible pursuant to the TIF Act or other Missouri law for deposit into the Special Allocation Fund and which were imposed by the City or other taxing districts for economic activities within the Redevelopment Area in the calendar year prior to the adoption of tax increment financing for such area.

(c) *Consent to Release of Sales Tax Information.* If there are five (5) or fewer businesses generating sales taxes within the Redevelopment Area or the TDD, the Developer shall use commercially reasonable efforts to cause each such business to deliver a consent to disclose sales tax information allowing the City and the TDD to make public sales tax information for the purposes of (1) complying with reporting requirements contained in the TIF Act and the TDD Act, (2) providing such information to the Trustee for any TIF Obligations and (3) making certain disclosures associated with any offering of TIF Obligations. Receipt of such consent, to the extent required by this subsection, shall be a prerequisite to the disclosure of sales tax collections information in connection with the offering of TIF Obligations. The Developer shall provide such information for the Developer and any Related Parties.

6.2. Application of Available Revenues.

(a) Available Revenues will be applied in the manner required by the Financing Agreement and the Bond Indenture during the time that any TIF Obligations are outstanding.

(b) The City and the Developer agree that Available Revenues may, if recommended by Bond Counsel and approved by the Developer, be separated so that portions of the Available Revenues are used to pay separate series of TIF Obligations.

(c) The City agrees to direct the officer of the City charged with the responsibility of formulating budget proposals to include in the budget proposal submitted to the City Council for each fiscal year a request to appropriate all moneys in the EATS Account to the applications described in this Section and in the Bond Indenture.

(d) Following the redemption and payment in full of the TIF Obligations, or otherwise during any time that no TIF Obligations are outstanding, the Available Revenues shall be applied as follows:

The TIF Revenues shall be applied in the following order of priority:

1. Payment of the City Administration Fee;
2. Reimbursement to the City for any costs of the City incurred pursuant to Section 7.17 or otherwise in the enforcement of any provision of this Agreement or in defense of the establishment, existence or implementation of the Redevelopment Plan or Redevelopment Project, to the extent not paid or reimbursed to the City by the Developer;
3. Payment of Reimbursable Interest; and
4. Reimbursement to the Developer for any amounts paid to the City as reimbursement or indemnification for costs incurred by the City or for costs directly incurred by the Developer in the enforcement of any provision of this Agreement (unless stemming from a default by the Developer) or in defense of the establishment, existence or implementation of the Redevelopment Plan or Redevelopment Project;
5. Payment of Developer-Paid City Administrative Costs;
6. Payment of the principal of the Developer's approved Reimbursable Redevelopment Project Costs.

The TDD Revenues shall be applied in the following order of priority:

1. Payment of the TDD Annual Operating Costs;
2. Reimbursement to the City and/or the TDD for any costs incurred in the enforcement of any provision of the TDD Cooperative Agreement or in defense of the establishment, existence or implementation of the TDD, to the extent not paid or reimbursed to the City or TDD, as applicable, by the Developer;
3. Payment of the Reimbursable Interest on the Developer's approved Reimbursable Redevelopment Project Costs that are eligible for payment from the TDD Revenues; and
4. Reimbursement to the Developer for any amounts paid to the City or TDD as reimbursement or indemnification for costs incurred by the City or TDD, or for costs directly incurred by the Developer in the enforcement of any provision of the TDD Cooperative Agreement (unless stemming from a default by the Developer) or in defense of the establishment, existence or implementation of the TDD;

5. Payment of Developer-Paid City Administrative Costs that are eligible for payment from the TDD Revenues;

6. Payment of the principal of the Developer's approved Reimbursable Redevelopment Project Costs that are eligible for payment from the TDD Revenues.

The Developer shall cause the TDD to enter into a TDD Cooperative Agreement with provisions relating to the TDD Revenues that reflect the terms of this Section.

(e) In accordance with the Redevelopment Plan, 50% of the PILOTS deposited into the PILOTS Account of the Special Allocation Fund is hereby declared as surplus by the City. Such declaration of surplus shall continue at a level of 50% throughout the entire term of the Redevelopment Plan and this Agreement. Any Surplus PILOTS received by the City shall be separately accounted for in the PILOTS Account of the Special Allocation Fund and distributed in accordance with this paragraph, less the City Administration Fee attributable to such Surplus PILOTS. The City shall, or, if an agreement between the City and County has been executed for such purpose then the county collector shall on behalf of the City, pay such Surplus PILOTS to the appropriate taxing districts affected by the Redevelopment Project as provided in the TIF Act. Such declaration of Surplus PILOTS may not be modified by any subsequent agreement, contract, indenture, or other legal document and any attempted modification shall be void and have no effect on the amount of Surplus PILOTS distributed to the appropriate taxing districts.

6.3. Developer Cooperation in Determining Available Revenues.

(a) The Developer (or its successor(s) in interest as an owner or owner(s) of the affected portion(s) of the Redevelopment Area) shall:

(1) contractually obligate each "seller" (as that term is defined in Section 144.010(10) of the Revised Statutes of Missouri, as amended) that has multiple business operations within the City and that operates within the Redevelopment Area to file a separate Missouri Department of Revenue Form 53-1 for each location in order to separately identify and declare all sales taxes originating within the Redevelopment Area;

(2) contractually obligate each "seller" (as that term is defined in Section 144.010(10), RSMo.) that operates within the Redevelopment Area to supply or cause to be promptly supplied to the City, monthly sales tax information of such "seller" in a form substantially similar to the monthly sales tax returns filed with the Missouri Department of Revenue;

(3) make good faith efforts to assist the City in compiling any information that the City must publicly report, including, without limitation, the information required by Section 99.865.1 of the TIF Act; and

(4) include a provision in any new or amended lease, purchase agreement or similar agreement requiring any lessee, purchaser or transferee of real property or other user of real property located within the Redevelopment Area that states:

Economic Activity Taxes: [*Tenant/Purchaser/Transferee*] acknowledges that the [Premises] are a part of a tax increment financing redevelopment area (the "TIF District") created by the City of Independence, Missouri (the "City") and that certain taxes generated by [*Tenant/Purchaser/Transferee*]'s economic activities, including sales

taxes, will be applied toward the costs of improvements for the development that the [Premises] are part of. Upon the request of [*Landlord/Seller/Transferor*] or the City, [*Tenant/Purchaser/Transferee*] shall forward to the City monthly or quarterly, as applicable, sales tax information in a form substantially similar to the sales tax returns filed with the Missouri Department of Revenue for its property located in the TIF District, and, upon request, shall provide such other reports and returns regarding other local taxes generated by [*Tenant/Purchaser/Transferee*]'s economic activities in the TIF District as the City shall require, all in the format prescribed by them. Sales tax confidentiality shall be protected by the City as required by law. [*Tenant/Purchaser/Transferee*] acknowledges that the City is a third-party beneficiary of the obligations in this Section, and that the City may enforce these obligations in any manner provided by law.

Alternate language may be used by the Developer if such language is approved by the City Attorney. At the request of the City, the Developer shall provide a certification to the City confirming that a lease, purchase agreement or similar agreement includes the provisions satisfying the Developer's obligation as set forth above.

(b) The Developer hereby waives any claim to utility tax revenues and hereby agrees to bring no suit, claim or other action against the City seeking the deposit of utility tax revenues into the Special Allocation Fund. Any utility tax revenues generated from the Redevelopment Area are hereby declared to be surplus by the City pursuant to the TIF Act. The Developer hereby acknowledges and agrees that the City will not be able to readily determine whether use tax revenues are generated within the Redevelopment Area and, therefore, subject to tax increment financing. Accordingly, the Developer hereby waives any claim to use tax revenues as having been generated in the Redevelopment Area, and hereby agrees to bring no suit, claim or other action against the City seeking deposit of use tax revenues into the Special Allocation Fund. To the extent any use tax revenues generated in Redevelopment Area qualify as Economic Activity Taxes, such taxes shall be declared as surplus under the TIF Act.

6.4. Obligation to Report EATS and TDD Sales Tax. Any purchaser or transferee of the Property, and any lessee or other user of the Property required to pay EATS and TDD Sales Tax that leases its premises after the date of this Agreement, shall use all reasonable efforts to timely furnish to the City such documentation as is required by **Section 6.3**. So long as any TIF Obligations are outstanding, the Developer shall cause such obligation to be a covenant running with the land and shall be enforceable as if such purchaser, transferee, lessee or other user of such real property were originally a party to and bound by this Agreement; subject, however, to the provisions of existing leases of premises located in the Redevelopment Area.

ARTICLE VII

GENERAL PROVISIONS

7.1. Developer's Right of Termination. At any time prior to the issuance of the TIF Obligations, the Developer may, by giving written notice to the City, abandon the Work and terminate this Agreement and the Developer's obligations hereunder (except as may expressly survive termination) if the Developer determines, in its sole discretion, that the Redevelopment Project is no longer economically feasible.

7.2. City's Right of Termination. The City may terminate the Developer's right to reimbursement of Reimbursable Redevelopment Project Costs, Developer-Paid City Administrative Costs

and Reimbursable Interest under this Agreement, *other than those costs previously approved by the City*, at any time prior to the delivery of the Certificate of Substantial Completion if:

(1) the Developer defaults in or breaches any material provision of this Agreement and fails to cure such default or breach pursuant to **Section 7.6** (subject to extension in accordance with **Section 7.7**), or materially breaches any representation or warranty contained in **Section 8.2**; or

(2) the Developer fails to complete the Work within the time set forth in **Section 3.3(a)** (subject to extension in accordance with **Section 7.7**).

7.3. Results of Termination. If this Agreement is terminated in whole or in part pursuant to **Section 7.1**, then the City shall have no further obligation to reimburse the Developer for any amounts advanced under this Agreement, any remaining Reimbursable Redevelopment Project Costs, Developer-Paid City Administrative Costs or Reimbursable Interest, or any other costs otherwise incurred or paid by the Developer with respect to the Redevelopment Project (however, any previously issued TIF Obligations will remain outstanding and payable from Available Revenues as provided in the Financing Agreement and the Bond Indenture). If rights of the Developer under this Agreement are terminated as described in **Section 7.2**, then the City shall have no obligation to reimburse the Developer for any amounts advanced under this Agreement, any remaining Reimbursable Redevelopment Project Costs, Developer-Paid City Administrative Costs or Reimbursable Interest, or any other costs otherwise incurred or paid by the Developer with respect to the Redevelopment Project, *other than those costs previously approved by the City* (however, any previously issued TIF Obligations will remain outstanding and payable from Available Revenues as provided in the Financing Agreement and the Bond Indenture).

7.4. Term of Agreement. This Agreement, and all of the rights and obligations of the parties hereunder, shall terminate and shall become null and void on that date which is the earliest of (a) 23 years from the date of adoption of the TIF Activation Ordinance, (b) the payment of all Reimbursable Redevelopment Project Costs, Developer-Paid City Administrative Costs and Reimbursable Interest and the retirement in full of all TIF Obligations, or (c) the delivery of a written notice by the City (and recordation of a copy of such notice with the Jackson County Recorder) that this Agreement has been fully terminated pursuant to **Section 7.1** or **7.2**.

7.5. Successors and Assigns; Transfers to Tax-Exempt Organizations.

(a) *Successor and Assigns.*

(1) This Agreement shall be binding on and shall inure to the benefit of the parties named herein and their respective successors and assigns.

(2) With the prior, written approval of the City, all or any part of the Redevelopment Area or any interest therein may be sold, transferred, encumbered, leased, or otherwise disposed of at any time, and the rights of the Developer named herein or any successors in interest under this Agreement or any part hereof may be assigned at any time before, during or after redevelopment of the Redevelopment Project, whereupon the party disposing of its interest in any portion of the Redevelopment Area or assigning its interest under this Agreement shall be thereafter released from further obligation under this Agreement with respect thereto (although any such portion of the Redevelopment Area so disposed of or to which such interest pertains shall remain subject to the terms and conditions of this Agreement).

(3) The Developer may, without the City's prior approval:

(i) assign all of its rights, duties and obligations hereunder to a Related Party if (A) such entity expressly assumes all of the applicable Developer's rights, duties and obligations hereunder and satisfies the requirements set forth in **Section 8.3**, (B) such entity provides evidence of insurance as required by **Section 7.10**, (C) the Developer provides at least 15 days' advance written notice of the proposed assignment (and a copy of the proposed assignment agreement) to the City, and (D) the Developer promptly provides a copy of the executed assignment to the City; or

(ii) encumber or collaterally assign its interests in the Redevelopment Area or any portion thereof to secure loans, advances or extensions of credit to finance or from time to time refinance all or any part of the Redevelopment Project Costs or associated costs, or the right of the holder of any such encumbrance or transferee of any such collateral assignment (or trustee or agent on its behalf) to transfer such interest by foreclosure or transfer in lieu of foreclosure under such encumbrance or collateral assignment and for the successor to further transfer the property to its successors;

(iii) lease or sell portions of the Redevelopment Area to tenants or users in the ordinary course of the Developer's business (provided that no sale of the travel center shall occur without the prior, written approval of the City), provided that, for the purposes of clarity, in the event of a lease or sale of such property, such tenant or user shall not be entitled to seek reimbursement from the City for any costs incurred; or

(iv) subject to **Section 3.4(b)**, enter into joint venture or other similar arrangements so long as Developer remains responsible to City for all requirements under this Agreement.

(b) *Tax-Exempt Organizations.* The Developer, without the prior written consent of the City, shall not, until all Reimbursable Redevelopment Project Costs have been paid (including TIF Obligations issued to finance such Reimbursable Redevelopment Project Costs), sell any Property within the Redevelopment Area to an organization exempt from payment of ad valorem property taxes.

7.6. Remedies; Lender's Right to Cure.

(a) In the case of any default in or breach of any term or condition of this Agreement by either party, the defaulting or breaching party shall, upon written notice from the other party specifying such default or breach, cure or remedy such default or breach within 30 days after receipt of notice (or such longer period as shall be reasonably required to cure such default, provided that (1) the breaching party has commenced such cure within said 30-day period, and (2) the breaching party diligently prosecutes such cure to completion. If such cure or remedy is not taken or not diligently pursued, or the default or breach is not cured or remedied as provided above, (1) the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to proceedings to compel specific performance by the defaulting or breaching party or, at any time when no TIF Obligations are outstanding, to terminate this Agreement, and/or (2) the City may stop payment of Reimbursable Redevelopment Project Costs, Developer-Paid City Administrative Costs or Reimbursable Interest under this Agreement during the continuance of such default or breach by the Developer. Neither party shall have the right to terminate this Agreement at any time that any TIF Obligations are outstanding; except that that City shall retain the right to terminate certain reimbursements to the Developer as described under Section 7.2.

(b) The City shall provide to each Lender a copy of any notice of default given by the City under subsection (a), above. The Lender shall have an additional 30 days after the expiration of the time given to the Developer to cure or remedy a default or breach under subsection (a) for the Lender to itself cure or remedy of such default or breach, provided that the Lender shall have no obligation to do so.

7.7. Extensions of Time for Performance.

(a) Neither the City nor (upon satisfaction of the provisions of subsection (b)(3) of this Section) the Developer or any successor in interest shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended in the event of any delay caused by force majeure, including, without limitation, damage or destruction by fire or casualty; strike; lockout; pandemic; civil disorder; acts of terrorism; significant escalation of hostilities involving U.S. armed forces; lack of issuance of any permits and/or legal authorization by the governmental entity necessary for the applicable Developer to proceed with construction of the applicable portion of the Work, including rezoning and approval of the Concept Site Plan (but only if the Developer files all necessary documentation relating thereto in a timely manner considering the dates set forth in Section 3.3 of this Agreement); shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or wet soil conditions; or other causes beyond the reasonable control of the party required to perform, including, but not limited to, any litigation, court order or judgment resulting from any litigation affecting the validity of the Redevelopment Plan, the Redevelopment Project, the TIF Obligations, this Agreement or any other litigation that adversely affects the development of the Redevelopment Project. Notwithstanding the foregoing, the parties agree that economic conditions, market conditions, financial conditions, lender restrictions, or lack of tenant interest do not constitute events of force majeure hereunder. The parties further agree that, to the best of their knowledge, no event of force majeure exists at the time of execution of this Agreement.

(b) No event under (a) shall be deemed to exist (1) as to any matter that could have been avoided by the exercise of due care in accordance with industry standards, and (2) unless the Developer demonstrates to the City's reasonable satisfaction that the Developer has diligently pursued its obligations under this Agreement, but for reasons beyond the Developer's control, has been unable to complete such obligations within the time specified in this Agreement. Times for performance shall be extended only for the amount of delay resulting from the event of force majeure.

7.8. Notices. Any notice, demand or other communication required by this Agreement to be given by one party hereto to another shall be in writing and shall be sufficiently given or delivered if dispatched by overnight delivery service, certified United States first class mail, postage prepaid or delivered personally:

(a) If to the City:

City Manager's Office
City of Independence, Missouri
111 E. Maple Ave.
Independence, MO 64050

with a copy to:

David Martin
Gilmore & Bell, P.C., Suite 1100
2405 Grand Blvd.
Kansas City, Missouri 64108

(b) If to the Developer:

Wally's Independence MO Owner LLC,
1400 S. Highway Drive, Suite 403
Fenton, Missouri 63026
Attn: Michael Rubenstein

with a copy to:

Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112
Attn: Curt Petersen

or to such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this paragraph. A duplicate copy of each notice or other communication given hereunder shall be given to each other party.

7.9. Conflict of Interest. No member of the City Council, the TIF Commission, or any branch of the City's government who has any power of review or approval of any of the Developer's undertakings, or of the City's contracting for goods or services for the Redevelopment Area, shall participate in any decisions relating thereto which affect that member's personal interests or the interests of any corporation, partnership or other entity in which that member is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the City Council the nature of such interest and seek a determination by the City Council with respect to such interest and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

7.10. Insurance; Damage or Destruction of Redevelopment Project.

(a) The Developer will cause there to be insurance as hereinafter set forth at all times during the process of constructing the Work and continuing so long as any TIF Obligations are outstanding. The Developer shall, from time to time at the request of the City, furnish the City with proof of coverage for:

(1) Commercial liability insurance with coverages of not less than the current absolute statutory waivers of sovereign immunity in Sections 537.600 and 537.610 of the Revised Statutes of Missouri. Further, the policy shall be adjusted upward annually, to remain at all times not less than the inflation-adjusted sovereign immunity limits as published in the Missouri Register on an annual basis by the Department of Insurance pursuant to Section 537.610 of the Revised Statutes of Missouri, as amended; and

(2) Workers' Compensation insurance, with statutorily required coverage.

(b) The policies of insurance required pursuant to clause (1) above shall be in form and content reasonably satisfactory to the City and shall be placed with financially sound and reputable insurers licensed to transact business in the State with a financial strength rating of not less than A- and a financial size category of not less than VIII as designated in the most current available "Best's" insurance reports. The policies of insurance delivered pursuant to clause (1) above shall name the City as an additional insured, shall be primary and non-contributory with respect to any insurance maintained by the City, and shall contain an agreement of the insurer to give not less than ten (10) days advance written

notice to the City in the event of cancellation of such policy or change affecting the coverage thereunder. Limits of insurance can be satisfied through a combination of primary and excess liability coverage. The Developer shall deliver or cause to be delivered to the City evidence, in the form of certificates of insurance, of all insurance to be maintained hereunder. The certificates of insurance shall state that “the City of Independence is an additional insured on a primary and non-contributory basis.”

(c) The Developer hereby agrees that, so long as any TIF Obligations are outstanding, if any portion of the Redevelopment Project owned by the Developer is damaged or destroyed, in whole or in part, by fire or other casualty (whether or not covered by insurance), or by any taking in condemnation proceedings or the exercise of any right of eminent domain, the Redevelopment Project shall be restored, replaced or rebuilt with such alterations or changes as may be approved in writing by the City, which approval shall not be unreasonably withheld. The Developer (upon learning of the same) shall give prompt written notice to the City of any material damage or destruction (meaning damage or destruction anticipated to cost in excess of \$500,000 to remediate) to any portion of the Redevelopment Project by fire or other casualty, and in such circumstances the Developer shall use commercially reasonable efforts to make the portions of the Redevelopment Area that it controls in compliance with all applicable laws as provided herein.

(d) These covenants are for the benefit of the City and may be enforced by the City by a suit for specific performance or for damages, or both.

7.11. Inspection. The City may conduct such periodic inspections of the Work as may be generally provided for in the Municipal Code. In addition, the Developer shall allow other authorized representatives of the City access to the Redevelopment Area from time to time upon reasonable advance notice for inspection of the Redevelopment Project. The Developer shall also allow the City and its employees, agents and representatives to inspect, upon request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Work as the City determines is reasonable and necessary to verify the applicable Developer’s compliance with the terms of this Agreement. The Developer shall advise each contractor for the Redevelopment Project of the contractor’s obligations under the Municipal Code regarding permits and inspections. The provisions of this Section shall terminate upon the approval or deemed approval of the Certificate of Substantial Completion.

7.12. Choice of Law. This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by the laws of State for all purposes and intents. Any action arising out of, or concerning, this Agreement shall be brought only in the Circuit Court of Jackson County, Missouri. All parties to this Agreement consent to the jurisdiction and venue of such court.

7.13. Entire Agreement; Amendment. The parties agree that this Agreement constitutes the entire agreement among the parties and that no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the parties.

7.14. Counterparts. This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instrument.

7.15. Severability. If any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

7.16. Representatives Not Personally Liable. No elected or appointed official, agent, employee or representative of the City shall be personally liable to the Developer in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement. No member, agent, employee or representative of the Developer shall be personally liable to the City in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

7.17. Actions Contesting the Validity and Enforceability of the Redevelopment Plan.

(a) If a third party brings an action against the City or the City's officials, agents, employees or representatives contesting the validity or legality of the Redevelopment Area, the Redevelopment Project, the Redevelopment Plan, the TIF Obligations or this Agreement, the Developer may, at its option, assume the defense of such claim or action with counsel of the Developer's choosing, but the Developer may not settle or compromise any claim or action for which the Developer has assumed the defense without the prior approval of the City. If the City does not approve a settlement or compromise which the Developer would agree to, the Developer shall not be responsible for any costs or expenses incurred thereafter in the defense of such claim or action or any portion of any settlement or compromise in excess of the settlement or compromise the Developer would agree to (provided, however, that such costs may be paid under the provisions in the Bond Indenture, if allowed thereunder). The parties expressly agree that so long as no conflicts of interest exist between them with regard to the handling of such litigation, the same attorney or attorneys may simultaneously represent the City and the Developer in any such proceeding; provided, the Developer and its counsel shall consult with the City, and the City and its counsel shall consult with the Developer, throughout the course of any such action and the Developer shall pay all reasonable and necessary costs incurred by the City in connection with such action. All costs of any such defense, whether incurred by the City or the Developer, shall be reimbursable as described in **Article IV** hereof. The City shall have no obligation to defend the validity or legality of the Redevelopment Area, the Redevelopment Project, the Redevelopment Plan, the TIF Obligations or this Agreement if the Developer chooses not to assume the defense of such claim or action as described above.

(b) In addition, if a third party brings an action against the City or the City's officials, agents, employees or representatives with respect to any other matter as to which the Developer is obligated to indemnify pursuant to **Section 7.18(b)**, the Developer may, at its option, assume the defense of such claim or action with counsel of the Developer's choosing, but the Developer may not settle or compromise any claim or action for which the Developer has assumed the defense without the prior approval of the City. If the City does not approve a settlement or compromise which the Developer would agree to, the Developer shall not be responsible for any costs or expenses incurred thereafter in the defense of such claim or action or any portion of any settlement or compromise in excess of the settlement or compromise the Developer would agree to. The parties expressly agree that so long as no conflicts of interest exist between them with regard to the handling of such litigation, the same attorney or attorneys may simultaneously represent the City and the Developer in any such proceeding; provided, the Developer and its counsel shall consult with the City, and the City and its counsel shall consult with the Developer, throughout the course of any such action and the Developer shall pay all reasonable and necessary costs incurred by the City in connection with such action.

7.18. Release and Indemnification.

(a) *Releases.* Notwithstanding anything herein to the contrary, the City and its elected officials, officers, agents, servants, employees and independent contractors shall not be liable to the Developer for any damages or losses (including injuries and deaths) (1) resulting from any part of the TIF

Act, or any ordinance adopted in connection with either the TIF Act, this Agreement or the Redevelopment Plan, being declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the Developer is prevented from enjoying the rights and privileges hereof, (2) occurring at or about or resulting from the construction of the Work and the maintenance of the Redevelopment Area or (3) resulting from any lawful decision made or position taken by the City relating in any manner whatsoever to this Agreement, the Redevelopment Plan, the Redevelopment Project, the Approved Site Plans, the Work or the Redevelopment Area. The Developer hereby acknowledges and agrees that all covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its elected officials, officers, agents, servants or employees in their individual capacities.

(b) *Indemnifications.* The Developer covenants and agrees to indemnify, defend and hold harmless the City, its elected officials, officers, agents, servants, employees and independent contractors against any loss or damage to property or any injury to or death of any person:

(1) occurring or resulting from the construction of the Work, including but not limited to location of hazardous wastes, hazardous materials or other environmental contaminants in the Redevelopment Area and the design and development of the Redevelopment Project;

(2) occurring or resulting from the negligence or willful misconduct of the Developer, its employees, agents or independent contractors; or

(3) resulting from the lack of compliance by the Developer with any state, federal or local environmental law, regulation or ordinance applicable to the Redevelopment Area.

The indemnification provided under this Section includes all costs of defense, including attorneys' fees, interest fees and other penalties. Notwithstanding anything to the contrary contained herein, the indemnity provided in this Section will not extend to any matters arising out of the gross negligence or willful misconduct of the City and its elected officials, officers, agents, servants, employees and independent contractors.

(c) The releases and indemnifications contained in this Section shall survive termination or expiration of this Agreement, but nothing in this Agreement (including **Section 7.19**) shall be construed to require the Developer to indemnify the City, its elected officials, officers, employees, agents and independent contractors for any claims related to actions or events that occur after the termination of this Agreement.

7.19. Survival. Notwithstanding anything to the contrary in this Agreement, the following provisions shall survive the expiration or termination of this Agreement: (a) the Developer's reimbursement obligation in **Section 2.2** with respect to costs incurred by the City prior to termination of this Agreement; (b) the limitation on liability in **Section 7.16**; and (c) the provisions of **Sections 7.17** and **7.18**.

7.20. Maintenance of the Property. The Redevelopment Project shall remain in compliance with all applicable provisions of the Municipal Code relating to maintenance and appearance during the construction of the Redevelopment Project or any portions thereof. The obligations under this Section shall be a covenant running with the land, enforceable as if any subsequent transferee thereof were originally a party to and bound by this Agreement

7.21. Enforcement of Agreement. The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with its specific terms or was otherwise breached. It is accordingly agreed that the parties shall be entitled to obtain an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof.

7.22. Recording of Agreement. The Developer shall cause the obligations arising pursuant to this Agreement to be a covenant running with the land by recording this Agreement or a memorandum of this Agreement in the real estate records of Jackson County, Missouri. Upon the expiration or termination of this Agreement, the City will, at the expense and request of the Developer, join with the Developer to execute and record a notice of such expiration or termination and a release of the Property from the terms of this Agreement in the real estate records of Jackson County.

7.23. No Waiver of Sovereign Immunity. Nothing in this Agreement shall be construed or deemed to constitute a waiver of the City's sovereign immunity.

7.24. No Third-Party Beneficiaries. This Agreement constitutes a contract solely between the City and the Developer. No third party has any beneficial interest in or derived from this Agreement.

ARTICLE VIII

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PARTIES

8.1. Representations of the City. The City makes the following representations and warranties, which are true and correct on the date hereof:

(a) *No Violations.* The execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

(b) *No Litigation.* To the best of the City's knowledge, no litigation, proceedings or investigations are pending or, to the knowledge of the City, threatened against the City with respect to the Redevelopment Plan or this Agreement. In addition, no litigation, proceedings or investigations are pending or, to the knowledge of the City, threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of, the terms and provisions of this Agreement.

(c) *Governmental or Corporate Consents.* No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution and delivery by the City of this Agreement.

(d) *No Default.* No default or event of default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the City under this Agreement.

8.2. Representations of the Developer. The Developer makes the following representations and warranties, which representations and warranties are true and correct on the date hereof:

(a) *No Violations.* The execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

(b) *No Litigation.* No litigation, proceedings or investigations are pending or, to the best of the Developer's knowledge (including the knowledge of any member of the Developer executing this Agreement), threatened against the Developer (or any member of the Developer) with respect to the Redevelopment Plan or against the Redevelopment Project. In addition, to the best of the Developer's knowledge, no litigation, proceedings or investigations are pending or, to the knowledge of the Developer (including the knowledge of any member of the Developer executing this Agreement), threatened against the Developer (or any member of the Developer) seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developer (or any member of the Developer) to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer (or any member of the Developer) of, the terms and provisions of this Agreement.

(c) *Governmental or Corporate Consents.* To the best of the Developer's knowledge, no consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery and performance by the Developer of this Agreement, except for consents that must be secured subsequent to the execution of this Agreement.

(d) *No Default.* No default or event of default has occurred and is continuing, and to the best of the Developer's knowledge, no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the Developer under this Agreement, or any other material agreement or material instrument related to the Developer's ability to perform pursuant to this Agreement to which the Developer is a party or by which the Developer is or may be bound.

(e) *Compliance with Laws.* With respect to its ability to perform pursuant to this Agreement, the Developer is, to the best of its knowledge, in compliance in all material respects with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, operations as contemplated by this Agreement.

(f) *Accuracy of Project Data.* The Developer represents that the information regarding project costs, projected rents and other information included in the Redevelopment Plan and related cost benefit analysis and other information submitted to the City in connection with the request for consideration of the Redevelopment Plan (altogether, the "*Project Data*") was, to the best of the Developer's knowledge, information and belief, developed and provided in good faith and includes a good faith representation of the Developer's estimates and expectations with regard to the Redevelopment Project as of the date of this Agreement and, to the best of the Developer's knowledge, information and belief, the Concept Site Plan attached as **Exhibit B** hereto is a good faith representation of the uses that the Developer will endeavor to locate in the Redevelopment Area.

8.3. Contractual Liability Insurance.

(a) The Developer shall provide evidence (in form and substance reasonably acceptable to the City) that the insurance policy referenced in **Section 7.10(a)(1)** or another applicable policy includes contractual liability insurance covering the Developer's obligations to indemnify the City, as provided in this Agreement.

(b) Simultaneously with the delivery of this Agreement and annually thereafter prior to the acceptance or deemed acceptance of the Certificate of Substantial Completion, the Developer shall provide to the City Attorney evidence of continued insurance demonstrating compliance with paragraph (a). The Developer agrees to provide immediate written notice to the City when the cancellation, termination, expiration or modification of the applicable contractual liability policy occurs.

8.4 Anti-Israel Discrimination. Pursuant to Section 34.600, RSMo., the Developer certifies it is not currently engaged in and shall not, for the duration of this Agreement, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or 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.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed in their respective names and the City has caused its seal to be affixed thereto, and attested as to the date first above written.

CITY OF INDEPENDENCE, MISSOURI

By: _____
Lisa Reynolds, Interim City Manager

(SEAL)

ATTEST:

Susanne Holland, City Clerk

STATE OF MISSOURI)
) SS
COUNTY OF JACKSON)

On this __ day of _____, 2025, before me appeared **LISA REYNOLDS**, to me personally known, who, being by me duly sworn, did say that he is the **INTERIM CITY MANAGER** of the **CITY OF INDEPENDENCE, MISSOURI**, a constitutional charter city and political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its City Council, and said person acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Name:
Notary Public – State of Missouri
Commissioned in _____ County

(SEAL)

My Commission Expires:

Redevelopment Agreement
Wally's Project

WALLY’S INDEPENDENCE MO OWNER LLC,
a Missouri limited liability company

By: _____
Name:
Its:

STATE OF _____)
) SS
COUNTY OF _____)

On this ____ day of _____, 2025, before me appeared _____, to me personally known, who, being by me duly sworn, did say that (s)he is the _____ of **WALLY’S INDEPENDENCE MO OWNER LLC**, a Missouri limited liability company, and that (s)he is authorized to sign the foregoing instrument on behalf of said limited liability company, and acknowledged to me that he executed the within instrument as said limited liability company’s free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

(SEAL)

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION OF REDEVELOPMENT AREA

ALL THAT PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23, TOWNSHIP 49, RANGE 32, IN THE CITY OF INDEPENDENCE, JACKSON COUNTY, MISSOURI, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHEAST 1/4; THENCE SOUTH 90° 00' 00" EAST, ALONG THE NORTH LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 272.31 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 40.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF 39TH STREET, AS ESTABLISHED BY DOCUMENT NO. 1456433, RECORDED IN BOOK 11078, PAGE 1452, SAID POINT BEING THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE HEREIN DESCRIBED; THENCE SOUTH 0° 00' 00" WEST, AT RIGHT ANGLES TO SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 343.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 18.45 FEET; THENCE SOUTH 1° 15' 00" EAST, PARALLEL TO THE EAST RIGHT-OF-WAY LINE OF NOLAND ROAD, AS NOW ESTABLISHED, A DISTANCE OF 130.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 5.00 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 200.00 FEET; THENCE SOUTH 90° 00' 00" WEST, A DISTANCE OF 152.81 FEET (DEED = 152.98 FEET), TO A POINT ON THE AFORESAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST (DEED = SOUTH 11° 02' 39" EAST), ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 65.40 FEET; THENCE NORTH 90° 00' 00" EAST, A DISTANCE OF 201.39 FEET; THENCE SOUTH 1° 02' 25" EAST, A DISTANCE OF 355.00 FEET; THENCE NORTH 85° 50' 55" WEST, A DISTANCE OF 140.49 FEET (DEED = 140.92 FEET), TO A POINT ON SAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 7.64 FEET (DEED = SOUTH 11° 02' 39" EAST, A DISTANCE OF 8.29 FEET), TO A POINT THAT IS OPPOSITE AND 155.00 FEET EAST OF STATION 18+50 ON THE CENTERLINE OF NOLAND ROAD; THENCE SOUTH 88° 41' 51" WEST, (DEED = SOUTH 88° 45' 00" WEST), CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 25.00 FEET TO A POINT THAT IS OPPOSITE AND 130 FEET EAST OF STATION 18+50 ON SAID NOLAND ROAD CENTERLINE; THENCE SOUTH 2° 02' 11" EAST CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 124.30 FEET (DEED = SOUTH 1° 15' 00" EAST, A DISTANCE OF 124.24 FEET), TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE ROUTE NO. 1-70, AS NOW ESTABLISHED THAT IS OPPOSITE AND 228.80 FEET NORTHERLY OF STATION 545+60 ON THE CENTERLINE OF SAID 1-70, THENCE SOUTH 84° 21' 11" EAST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 643.04 FEET (DEED = SOUTH 84° 17' 39" EAST, A DISTANCE OF 644.64 FEET) TO A POINT THAT IS OPPOSITE AND 166.30 FEET NORTHERLY OF STATION 552+00 ON THE CENTERLINE OF SAID 1-70; THENCE SOUTH 89° 55' 50" EAST, CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 546.03 FEET (DEED = SOUTH 89° 51' 16" EAST, A DISTANCE OF 545.61 FEET), TO A POINT ON THE WEST LINE OF "BROOKWOOD NO. 2", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE NORTH 1° 15' 58" WEST, ALONG THE WEST LINE OF SAID SUBDIVISION, A DISTANCE OF 785.43 FEET (DEED = NORTH 1° 12' 00" WEST, A

DISTANCE OF 786.12 FEET), TO THE SOUTHEAST CORNER OF LOT 19, "WOODRIDGE", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE SOUTH $89^{\circ} 51' 43''$ WEST, ALONG THE SOUTH LINE OF SAID "WOODRIDGE", A DISTANCE OF 251.04 FEET (DEED = NORTH $90^{\circ} 00' 00''$ WEST, A DISTANCE OF 250.63 FEET), TO AN ANGLE POINT THEREIN; THENCE NORTH $80^{\circ} 01' 00''$ WEST, CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 288.30 FEET TO AN ANGLE POINT THEREIN; THENCE SOUTH $89^{\circ} 47' 57''$ WEST (DEED = NORTH $90^{\circ} 00' 00''$ WEST), CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 286.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF DODGION STREET, AS NOW ESTABLISHED; THENCE NORTH $0^{\circ} 12' 03''$ WEST (DEED = NORTH $0^{\circ} 00' 00''$ WEST), ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 5.00 FEET TO THE SOUTHEAST CORNER OF LOT 34, SAID "WOODRIDGE"; THENCE SOUTH $89^{\circ} 47' 57''$ WEST ALONG THE SOUTH LINE OF SAID LOT 34, A DISTANCE OF 135.40 FEET (DEED = $90^{\circ} 00' 00''$ WEST, A DISTANCE OF 135.00 FEET), TO THE SOUTHWEST CORNER OF SAID LOT 34; THENCE NORTH $0^{\circ} 00' 00''$ EAST, ALONG THE WEST LINE OF SAID "WOODRIDGE" SUBDIVISION, A DISTANCE OF 440.00 FEET TO THE AFORESAID SOUTH RIGHT-OF-WAY LINE OF 39TH STREET; THENCE NORTH $90^{\circ} 00' 00''$ WEST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

CONCEPT SITE PLAN

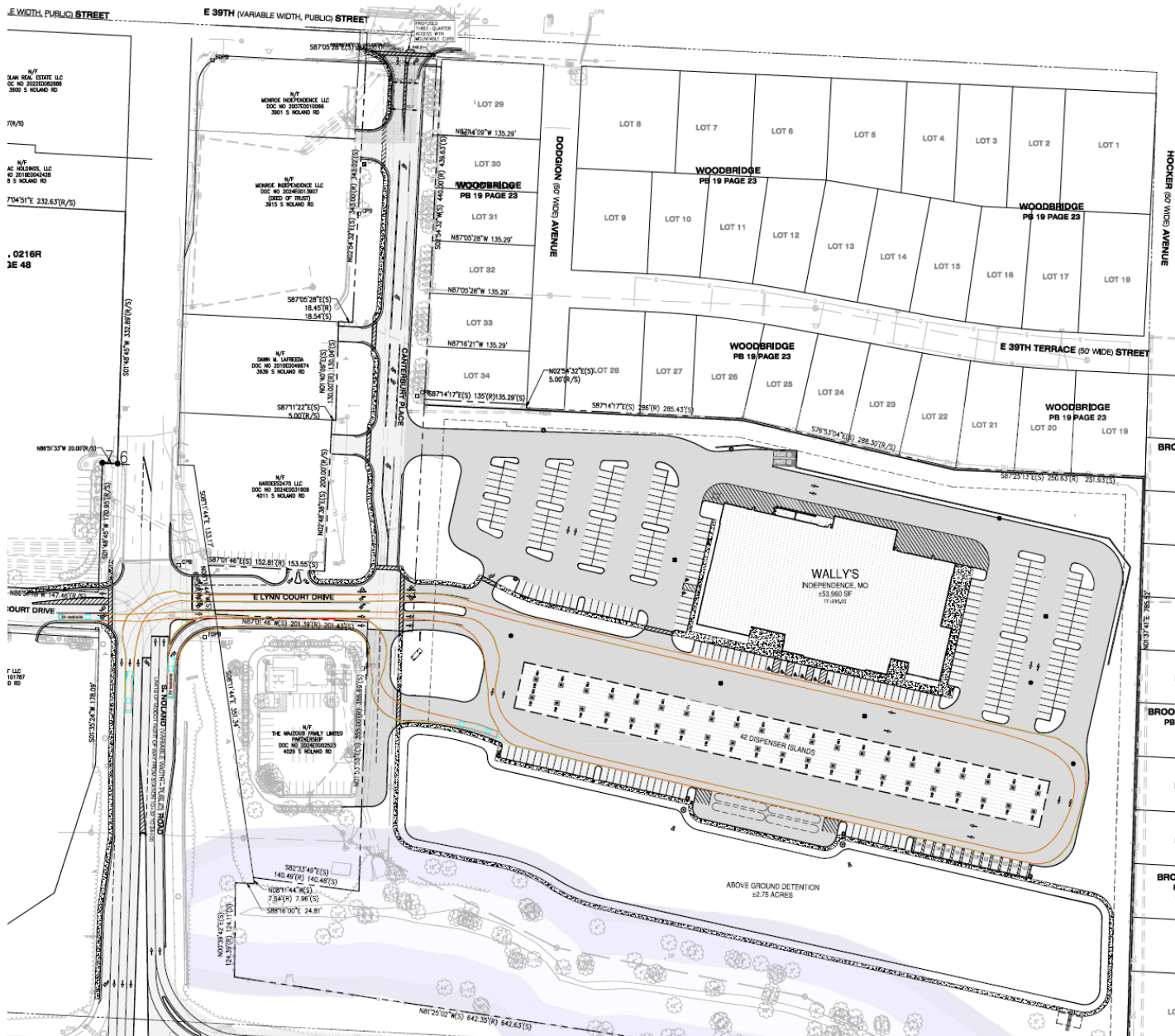


EXHIBIT C

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

Certificate of Substantial Completion

TO: City of Independence, Missouri
111 E. Maple Ave.
Independence, MO 64050
City Manager's Office

The undersigned, WALLY'S INDEPENDENCE MO OWNER LLC, a Missouri limited liability company (the "*Developer*"), pursuant to that certain Redevelopment Agreement dated as of ____, 2025, between the City of Independence, Missouri (the "*City*") and the Developer (the "*Agreement*"), hereby certifies to the City as follows:

1. That as of ____, 20__, the Work (as such term is defined in the Agreement) has been substantially completed in accordance with the Agreement.
2. The Work has been performed in a workmanlike manner and in accordance with the Construction Plans (as defined in the Agreement).
3. Lien waivers for the Work have been obtained.
4. This Certificate of Substantial Completion is accompanied by one or more architect's or engineer's certificate(s) of substantial completion on AIA Form G-704 (or the substantial equivalent thereof), a copy of which is attached hereto as **Appendix A** and by this reference incorporated herein), certifying that the Work has been substantially completed in accordance with the Agreement.
5. This Certificate of Substantial Completion is being issued by the Developer to the City in accordance with the Agreement to evidence the Developer's satisfaction of all obligations and covenants with respect to completion of the Work.
6. The City's acceptance (below) or the City's failure to object in writing to this Certificate within 60 days of the date of delivery of this Certificate to the City (which written objection, if any, must be delivered to the Developer prior to the end of such 60-day period), and the recordation of this Certificate with the Jackson County Recorder shall evidence the satisfaction of the Developer's agreements and covenants to perform the Work.

This Certificate shall be recorded in the office of the Jackson County Recorder. This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

_____, 20____.

WALLY'S INDEPENDENCE MO OWNER LLC
a Missouri limited liability company

By: _____
Name: _____
Its: _____

STATE OF _____)
) SS
COUNTY OF _____)

On this ____ day of 20____, before me appeared _____, to me personally known, who, being by me duly sworn, did say that [he/she] is the _____ of **WALLY'S INDEPENDENCE MO OWNER LLC**, a Missouri limited liability company, and that [he/she] is authorized to sign the foregoing instrument on behalf of said limited liability company, and acknowledged to me that he executed the within instrument as said limited liability company's free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Notary Public

(SEAL)

My Commission Expires:

ACCEPTED:

CITY OF INDEPENDENCE, MISSOURI

By: _____
[Name], [Title]

(Insert Notary Form(s) and Legal Description)

EXHIBIT D

FORM OF CERTIFICATE OF REIMBURSABLE REDEVELOPMENT PROJECT COSTS

Certificate of Reimbursable Redevelopment Project Costs

TO: City of Independence, Missouri
111 E. Maple Ave.
Independence, MO 64050
City Manager's Office

Re: City of Independence, Missouri, Wally's Project

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Redevelopment Agreement dated as of _____, 2025 (the "*Agreement*") between the City of Independence, Missouri (the "*City*") and WALLY'S INDEPENDENCE MO OWNER LLC (the "*Developer*"). In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on **Schedule 1** hereto is a Reimbursable Redevelopment Project Cost and was incurred in connection with the construction of the Redevelopment Project.
2. These Reimbursable Redevelopment Project Costs have been paid by or have been caused to have been paid by the Developer or are to be paid to the payees designated on **Schedule 1**.
3. Each item listed on **Schedule 1** has not previously been paid or reimbursed from Bond Proceeds or Available Revenues, and no part thereof has been included in any other certificate of reimbursable expenses previously filed with the City or the TDD.
4. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
5. All necessary permits and approvals required for the Work for which this certificate relates have been issued and are in full force and effect.
6. All Work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Approved Site Plans and the Agreement.
7. If any cost item to be reimbursed under this Certificate is deemed not to constitute a "redevelopment project cost" within the meaning of the TIF Act and the Agreement, the Developer shall have the right to substitute other eligible Reimbursable Redevelopment Project Costs for payment hereunder.
8. The amounts of the Reimbursable Redevelopment Project Costs requested under this certificate that are eligible for payment from TDD Revenues are set out on **Schedule 1**.

9. The Developer is not in material default or breach of any term or condition of the Agreement.

Dated this ____ day of _____, 20__.

WALLY'S INDEPENDENCE MO OWNER LLC
a Missouri limited liability company

By: _____
Name: _____
Its: _____

Attorney Certification:

The items listed on **Schedule I** are eligible for reimbursement as Reimbursable Redevelopment Project Costs and/or are payable from TDD Revenues, as set out on **Schedule I**, under the Agreement and the TIF Act and/or TDD Act, as applicable.

[Name of Law Firm]

By: _____
Name: _____

Approved on this ____ day of _____, 20__:

CITY OF INDEPENDENCE, MISSOURI

By: _____
[Name], [Title]

Schedule 1

Payee	Description of Reimbursable Redevelopment Project Costs	Date Paid to Payee	Total Amount of Reimbursable Redevelopment Project Costs	Amount Eligible for Payment from TDD Revenues
Total				

The image displays four architectural elevations of a building named 'Waitys'. The elevations are labeled 'NORTH ELEVATION', 'EAST ELEVATION', 'SOUTH ELEVATION', and 'WEST ELEVATION', each with a scale of 1/8" = 1'-0". The drawings show the building's facade with various materials, windows, and doors. A legend titled 'EXTERIOR FINISH LEGEND' is located in the bottom right corner, listing materials and their corresponding codes.

EXTERIOR FINISH LEGEND

1.01	BRICK, RED, GLAZED	1.02	BRICK, RED, GLAZED
1.03	BRICK, RED, GLAZED	1.04	BRICK, RED, GLAZED
1.05	BRICK, RED, GLAZED	1.06	BRICK, RED, GLAZED
1.07	BRICK, RED, GLAZED	1.08	BRICK, RED, GLAZED
1.09	BRICK, RED, GLAZED	1.10	BRICK, RED, GLAZED
1.11	BRICK, RED, GLAZED	1.12	BRICK, RED, GLAZED
1.13	BRICK, RED, GLAZED	1.14	BRICK, RED, GLAZED
1.15	BRICK, RED, GLAZED	1.16	BRICK, RED, GLAZED
1.17	BRICK, RED, GLAZED	1.18	BRICK, RED, GLAZED
1.19	BRICK, RED, GLAZED	1.20	BRICK, RED, GLAZED
1.21	BRICK, RED, GLAZED	1.22	BRICK, RED, GLAZED
1.23	BRICK, RED, GLAZED	1.24	BRICK, RED, GLAZED
1.25	BRICK, RED, GLAZED	1.26	BRICK, RED, GLAZED
1.27	BRICK, RED, GLAZED	1.28	BRICK, RED, GLAZED
1.29	BRICK, RED, GLAZED	1.30	BRICK, RED, GLAZED
1.31	BRICK, RED, GLAZED	1.32	BRICK, RED, GLAZED
1.33	BRICK, RED, GLAZED	1.34	BRICK, RED, GLAZED
1.35	BRICK, RED, GLAZED	1.36	BRICK, RED, GLAZED
1.37	BRICK, RED, GLAZED	1.38	BRICK, RED, GLAZED
1.39	BRICK, RED, GLAZED	1.40	BRICK, RED, GLAZED
1.41	BRICK, RED, GLAZED	1.42	BRICK, RED, GLAZED
1.43	BRICK, RED, GLAZED	1.44	BRICK, RED, GLAZED
1.45	BRICK, RED, GLAZED	1.46	BRICK, RED, GLAZED
1.47	BRICK, RED, GLAZED	1.48	BRICK, RED, GLAZED
1.49	BRICK, RED, GLAZED	1.50	BRICK, RED, GLAZED
1.51	BRICK, RED, GLAZED	1.52	BRICK, RED, GLAZED
1.53	BRICK, RED, GLAZED	1.54	BRICK, RED, GLAZED
1.55	BRICK, RED, GLAZED	1.56	BRICK, RED, GLAZED
1.57	BRICK, RED, GLAZED	1.58	BRICK, RED, GLAZED
1.59	BRICK, RED, GLAZED	1.60	BRICK, RED, GLAZED
1.61	BRICK, RED, GLAZED	1.62	BRICK, RED, GLAZED
1.63	BRICK, RED, GLAZED	1.64	BRICK, RED, GLAZED
1.65	BRICK, RED, GLAZED	1.66	BRICK, RED, GLAZED
1.67	BRICK, RED, GLAZED	1.68	BRICK, RED, GLAZED
1.69	BRICK, RED, GLAZED	1.70	BRICK, RED, GLAZED
1.71	BRICK, RED, GLAZED	1.72	BRICK, RED, GLAZED
1.73	BRICK, RED, GLAZED	1.74	BRICK, RED, GLAZED
1.75	BRICK, RED, GLAZED	1.76	BRICK, RED, GLAZED
1.77	BRICK, RED, GLAZED	1.78	BRICK, RED, GLAZED
1.79	BRICK, RED, GLAZED	1.80	BRICK, RED, GLAZED
1.81	BRICK, RED, GLAZED	1.82	BRICK, RED, GLAZED
1.83	BRICK, RED, GLAZED	1.84	BRICK, RED, GLAZED
1.85	BRICK, RED, GLAZED	1.86	BRICK, RED, GLAZED
1.87	BRICK, RED, GLAZED	1.88	BRICK, RED, GLAZED
1.89	BRICK, RED, GLAZED	1.90	BRICK, RED, GLAZED
1.91	BRICK, RED, GLAZED	1.92	BRICK, RED, GLAZED
1.93	BRICK, RED, GLAZED	1.94	BRICK, RED, GLAZED
1.95	BRICK, RED, GLAZED	1.96	BRICK, RED, GLAZED
1.97	BRICK, RED, GLAZED	1.98	BRICK, RED, GLAZED
1.99	BRICK, RED, GLAZED	2.00	BRICK, RED, GLAZED



EXHIBIT F
PROJECT BUDGET

Redevelopment Project Component	Redevelopment Project Costs	Reimbursable Redevelopment Project Costs
Acquisition Costs	\$10,300,000	\$-0-
Building Construction	20,100,000	-0-
Site Construction	17,750,000	7,605,401*
Corridor Improvement Project Contribution	1,000,000	1,000,000
Contingency	1,000,000	-0-
Soft Costs	2,800,000	-0-
Total	\$52,950,000	\$8,605,401

* Reimbursable components of Site Construction consist of the following:

- I-70 Westbound Off-Ramp Improvements
- I-70 Westbound On-Ramp Improvements
- I-70 Eastbound Off-Ramp Improvements
- I-70 Eastbound On-Ramp Improvements
- Noland Road Improvements
- Lynn, Canterbury, and 39th Street Improvements

and the following items, to the extent allocable to the above:

- Intersection Signalization and Retiming
- Utilities
- Removals, Resets & Adjustments
- Drainage / Erosion Control
- Landscaping
- Signage / Striping
- Traffic Control, Mobilization, Etc.
- Earthwork
- Paving
- Soft Costs

BILL NO. 25.126
ORDINANCE NO. 19768

AN ORDINANCE APPROVING THE WALLY'S TAX INCREMENT FINANCING PLAN, ESTABLISHING A REDEVELOPMENT AREA, DESIGNATING THE REDEVELOPMENT AREA AS A BLIGHTED AREA, MAKING OTHER REQUIRED FINDINGS FOR THE REDEVELOPMENT PLAN, DESIGNATING A DEVELOPER, APPROVING A REDEVELOPMENT AGREEMENT WITH THE DEVELOPER AND DIRECTING STAFF TO IMPLEMENT THE REDEVELOPMENT PLAN.

WHEREAS, City staff has worked with Wally's Independence MO Owner LLC, the proposed developer ("Developer") to prepare the Wally's Tax Increment Financing Plan (as attached hereto, the "TIF Plan") pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri (the "TIF Act"), for the redevelopment of a 20.9-acre area located in Independence, Missouri, and generally bounded by E. 39th Street and E. 39th Terrace to the north, S. Dodgion Avenue and S. Hocker Avenue to the east, Interstate Highway 70 to the south, and S. Noland Road to the west (the "Redevelopment Area") that is proposed to be developed in a single redevelopment project described under the TIF Plan (the "Redevelopment Project"); and

WHEREAS, pursuant to the provisions of the Act, the Tax Increment Financing Commission of Independence, Missouri (the "TIF Commission") was composed of representatives from the City and from the affected taxing jurisdictions for the purpose of conducting a public hearing and making recommendations with respect to the TIF Plan, the Redevelopment Area and the Redevelopment Project to the City Council of the City of Independence, Missouri ("City Council"); and

WHEREAS, in accordance with the written procedures relating to bids and proposals for implementation of redevelopment projects as adopted by the City, the City published in *The Examiner* on October 25, 2025, a notice of request for proposals for the implementation of redevelopment projects for the TIF Plan, which provided reasonable opportunity for any person to submit proposals for redevelopment projects in compliance with Section 99.820.1(3) of the Revised Statutes of Missouri; and

WHEREAS, the City received no additional proposals in response to the published request for proposals; and

WHEREAS, on November 12, 2025, after due notice in accordance with the Act, the TIF Commission opened a public hearing, at which all interested persons and taxing districts affected by the TIF Plan were afforded an opportunity to make comments, file written objections, protests, and be heard orally regarding adoption of the TIF Plan; and

WHEREAS, the public hearing was continued on motion of a commissioner to November 24, 2025 in order to allow for certain changes to be made to the TIF Plan (further references to the TIF Plan shall mean the TIF Plan, as so amended); and

WHEREAS, on November 24, 2025, the TIF Commission having heard and considered the objections, protests, comments, and other evidence adduced at the public hearing, voted to approve Resolution No. 2025-01 which recommended that the City Council make certain required findings and approve the TIF Plan, the Redevelopment Area and the Redevelopment Project; and

WHEREAS, on December 8, 2025, at a special meeting, the City Council considered the TIF Plan, the recommendations of the TIF Commission, the recommendations of City staff, and provided parties in interest and citizens an opportunity to be heard regarding the TIF Plan, the Redevelopment Area and the Redevelopment Project; and

WHEREAS, having heard and considered the objections, protests, comments, and other evidence adduced at the meetings, the evidence and testimony submitted at the TIF Commission public hearing, the recommendations of the TIF Commission, the recommendations of City staff, and the input of interested persons and citizens, the City Council desires to approve the TIF Plan, designate the Redevelopment Area, declare the Redevelopment Area as a blighted area, designate the Developer as the developer of record for the TIF Plan, and approve a redevelopment agreement with the Developer (the "Redevelopment Agreement") and;

WHEREAS, the City Council desires to enter into the Redevelopment Agreement with the Developer to establish the rights, duties and obligations of the City and the Developer, to implement the TIF Plan and establish certain related matters.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, AS FOLLOWS:

SECTION 1. The City Council hereby makes the following findings for approval of the TIF Plan:

A. The TIF Plan sets forth in writing a general description of the program to be undertaken to accomplish its objectives, including the estimated redevelopment project costs, the anticipated sources of funds to pay the costs, evidence of the commitments to finance the project costs, the anticipated type and term of the sources of funds to pay costs, the anticipated type and terms of the obligations to be issued, the most recent equalized assessed valuation of the property within the Redevelopment Area which is to be subjected to payments in lieu of taxes and economic activity taxes pursuant to Section 99.845, RSMo, an estimate as to the equalized assessed valuation after redevelopment, and the general land uses to apply in the Redevelopment Area.

B. The Redevelopment Area on the whole is a blighted area, as such term is defined in Section 99.805(1), RSMo, due to the presence of blighting factors as set forth in Exhibit 6 to the TIF Plan performed by a licensed attorney, which is incorporated herein by reference, including that the Redevelopment Area is characterized by insanitary and unsafe conditions, deterioration of site improvements, and conditions which endanger life and property, and that the area is an economic and social liability for the City in its present condition and use. The TIF Plan is also accompanied by an affidavit, signed by the Developer and set forth in Exhibit 11 to the TIF Plan, attesting to the blighting conditions of the Redevelopment Area.

C. The proposed redevelopment satisfies the "but for" test set forth in Section 99.810, RSMo, in that the Redevelopment Area has not been subject to growth and development through investment by private enterprise and would not reasonably be anticipated to be developed without the adoption of tax increment financing. The TIF Plan is accompanied by an affidavit, signed by the Developer and set forth in Exhibit 11, attesting to this finding.

D. The TIF Plan is in conformance with the Comprehensive Plan for the development of the City as a whole.

E. The TIF Plan contains estimated dates of completion of the Redevelopment Project and estimated dates for the retirement of obligations incurred to finance redevelopment project costs, and said dates are not more than twenty-three (23) years from the adoption of an ordinance approving a Redevelopment Project within the Redevelopment Area.

F. A Relocation Plan has been developed for relocation assistance for businesses and residences, and the relocation of any business or residents in the Redevelopment Area, if necessary, will take place in accordance with the Relocation Plan attached to the TIF Plan as Exhibit 9.

G. The TIF Plan is accompanied by a Cost-Benefit Analysis showing the economic impact of the TIF Plan on each taxing district and political subdivision within the Redevelopment Area if the proposed Redevelopment Project is built pursuant to the TIF Plan or is not built, and the Commission received evidence that the proposed Redevelopment Project is financially feasible to undertake with TIF assistance in the form of the Developer's return on investment calculations included in Exhibit 11 to the TIF Plan.

H. The Plan does not include the initial development or redevelopment of any gambling establishment.

I. The area selected for the Redevelopment Project includes only those parcels of real property and improvements thereon which will be directly and substantially benefited by the Redevelopment Project improvements.

SECTION 2. The TIF Plan, with attached Cost-Benefit Analysis, which is attached to this ordinance as Exhibit A and incorporated herein by reference is hereby approved.

SECTION 3. Wally's Independence MO Owner LLC is hereby designated as the developer of record for the TIF Plan and the Redevelopment Project.

SECTION 4. The land legally described in Exhibit 1 of the TIF Plan is hereby designated as the Redevelopment Area for the TIF Plan.

SECTION 5. There is hereby created and ordered to be established within the treasury of the City a separate fund to be known as the "*Wally's Special Allocation Fund*" which shall contain separate segregated accounts into which payments in lieu of taxes, economic activity taxes and other revenues shall be deposited, as collected by the City pursuant to the TIF Plan.

SECTION 6. The Redevelopment Agreement, in substantially the form attached hereto as Exhibit B (the "Agreement"), is hereby approved and the Mayor, City Clerk, and/or (Interim) City Manager are authorized to execute and deliver the Agreement with such changes therein as shall be approved by the officials of the City executing the Agreement, such officials' signatures thereon being conclusive evidence of their approval thereof.

SECTION 7. The Mayor, City Clerk, (Interim) City Manager, City staff, the City's special legal counsel, and other appropriate City officials are hereby authorized to take any and all actions as may be deemed necessary or convenient to carry out and comply with the intent of this Ordinance, to create those funds and accounts required by the Act to implement the TIF Plan, and to execute and deliver for and on

behalf of the City all certificates, instruments, and agreements or other documents as may be necessary, desirable, convenient, or proper to perform all matters authorized herein.

SECTION 8. It is hereby declared to be the intention of the City Council that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the City Council intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

SECTION 9. This ordinance shall take effect and be in full force as set forth in the City Charter.

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PASSED ON THIS 15th DAY OF Dec., 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:


Interim City Manager

EXHIBIT A

WALLY'S TAX INCREMENT FINANCING PLAN

EXHIBIT B
REDEVELOPMENT AGREEMENT

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

25-123 **2R** An ordinance approving a redevelopment project for the Wally's Tax Increment Financing Plan and initiating tax increment financing therein. **2R Item passes 7-0 Ord. No. 19769**

Recommendations:

Staff recommends approval.

Background:

The Wally's Tax Increment Financing Plan (the "Redevelopment Plan") was submitted for consideration by Wally's Independence MO Owner LLC (the "Developer"). A public hearing was opened before the TIF Commission on November 12, 2025, and continued on November 24, 2025, after which the TIF Commission voted to recommend approval of the Redevelopment Plan, the designation of the proposed redevelopment area (the "Redevelopment Area"), and the adoption of the redevelopment project described in the Redevelopment Plan (the "Redevelopment Project").

The proposed Redevelopment Area, which contains approximately 20.9 acres, is generally bounded by E. 39th Street and E. 39th Terrace to the north, S. Dodgion Avenue and S. Hocker Avenue to the east, Interstate Highway 70 to the south, and S. Noland Road to the west.

This ordinance begins the 23-year collection period for tax increment financing within the Redevelopment Area.

Emergency Justification:**Fiscal Impact:****Council Action:**

Department / Contact	Community Development /
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REVIEWERS

Tom Scannell
Melissa Cabrera
Jeremy Cover
Charlie Dissell
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. 2. TIF Ordinance - Project Approval
2. Ord. No. 19769

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE APPROVING A REDEVELOPMENT PROJECT FOR THE
WALLY'S TAX INCREMENT FINANCING PLAN AND INITIATING TAX
INCREMENT FINANCING THEREIN.

WHEREAS, by ordinance, the City Council approved the Wally's Tax Increment Financing Plan (the "TIF Plan") pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri, designated a 20.9-acre area generally bounded by E. 39th Street and E. 39th Terrace to the north, S. Dodgion Avenue and S. Hocker Avenue to the east, Interstate Highway 70 to the south, and S. Noland Road to the west, as the Redevelopment Area, declared the Redevelopment Area to be a blighted area, and designated Wally's Independence MO Owner LLC, as the developer of record for the TIF Plan; and

WHEREAS, the Tax Increment Financing Commission of Independence, Missouri approved Resolution 2025-1 which recommended that the City Council approve the Redevelopment Project by ordinance;

WHEREAS, the City Council now desires to approve the Redevelopment Project for the TIF Plan and activate the collection of tax increment financing revenues within the Redevelopment Project.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF
INDEPENDENCE, AS FOLLOWS:

SECTION 1. The area selected for the Redevelopment Project, as legally described in Exhibit A and as depicted in Exhibit B of this ordinance, is approved as a redevelopment project pursuant to the TIF Act.

SECTION 2. Tax increment allocation financing is hereby adopted for taxable real property in the above-described area selected for the Redevelopment Project. After the total equalized assessed valuation of the taxable real property in the Redevelopment Project exceeds the certified total initial equalized assessed valuation of the taxable real property in the Redevelopment Project, the ad valorem taxes, and payment in lieu of taxes, if any, arising from the levies upon the taxable real property in such project by taxing districts and tax rates determined in the manner provided in subsection 2 of Section 99.855 each year after the effective date of the ordinance until redevelopment costs have been paid shall be divided as set forth in this section.

A. That portion of taxes, penalties and interest levied upon each taxable lot, block, tract, or parcel of real property which is attributable to the initial equalized assessed value of each such taxable lot, block, tract, or parcel of real property in the area selected for the Redevelopment Project shall be allocated to and, when collected, shall be paid to the respective affected taxing districts in the manner required by law in the absence of the adoption of tax increment allocation financing.

B. Payments in lieu of taxes attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract, or parcel of real property in the area selected for the Redevelopment Project, and any applicable penalty and interest over and above the initial

equalized assessed value of each such unit of property shall be allocated to and, when collected, shall be paid to the City's finance director or other designated financial officer of the City who shall deposit such payment in lieu of taxes into the Wally's Special Allocation Fund of the City for the purpose of paying Redevelopment Project costs.

SECTION 3. In addition to the payments in lieu of taxes described in Section 2 above, fifty percent (50%) of the total additional revenue from taxes, penalties and interest which are imposed by the City or taxing districts, and which are generated by economic activities within the Redevelopment Project over the amount of such taxes generated by economic activities within such area in the calendar year prior to the adoption of this ordinance, while tax increment financing remains in effect, but excluding personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees or special assessments other than payments in lieu of taxes and interest and penalties thereon and all other taxes excluded from tax increment financing by Missouri law at the time of this ordinance, shall be allocated to, and paid by the local political subdivision collecting officer to the City's finance director or other designated financial officer of the City, who shall deposit such funds in a separate segregated account within the Wally's Special Allocation Fund.

SECTION 4. The City staff, the City's special legal counsel, and other appropriate City officials are hereby authorized to take any and all actions as may be deemed necessary or convenient to carry out and comply with the intent of this Ordinance, to create those funds and accounts required by the Act to implement the TIF Plan, and to execute and deliver for and on behalf of the City all certificates, instruments, and agreements or other documents as may be necessary, desirable, convenient, or proper to perform all matters authorized herein.

SECTION 5. It is hereby declared to be the intention of the City Council that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the City Council intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

SECTION 6. This ordinance shall take effect and be in full force as set forth in the City Charter.

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PASSED ON 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:

Interim City Manager

EXHIBIT A

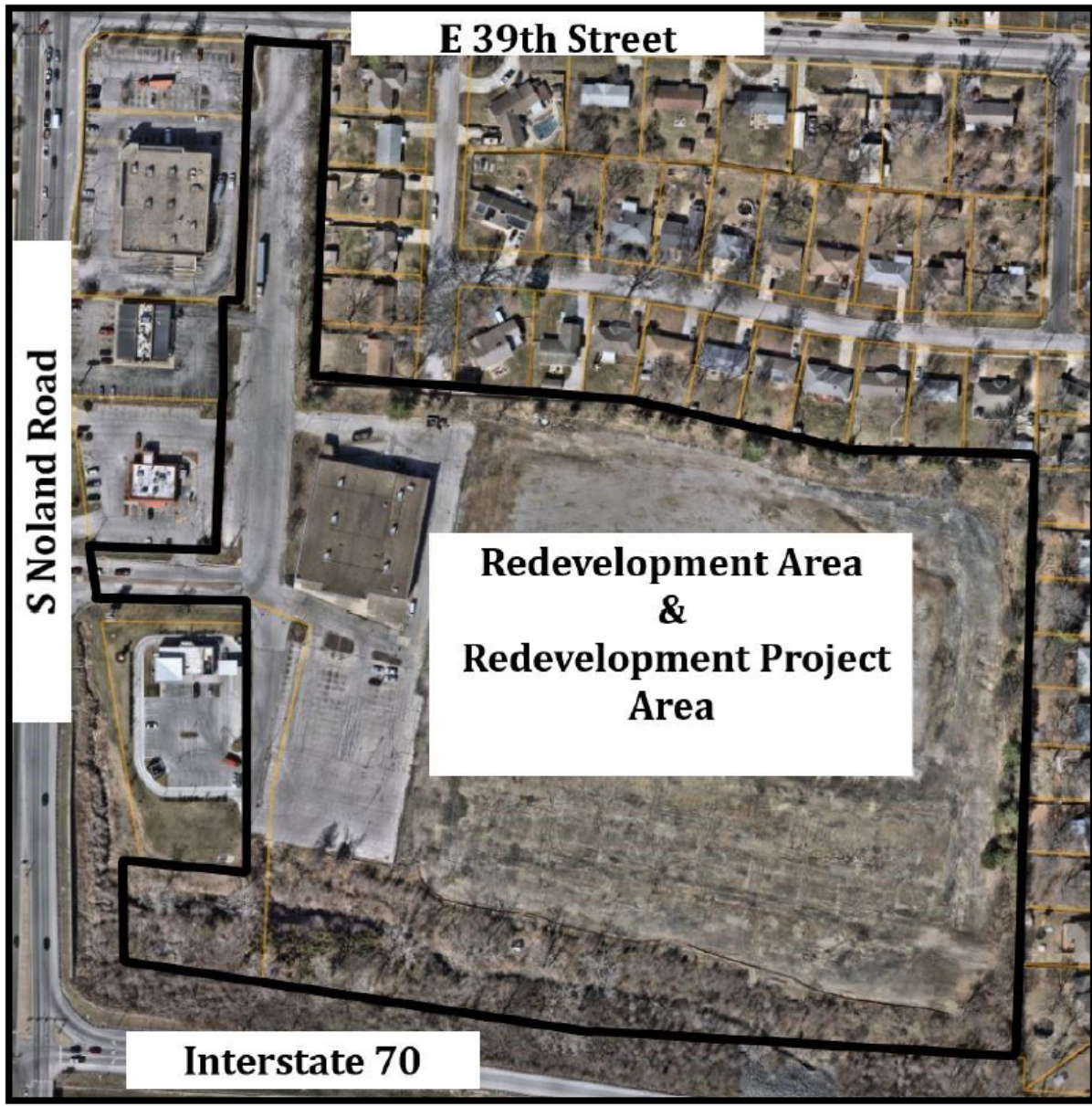
LEGAL DESCRIPTION OF THE REDEVELOPMENT PROJECT

ALL THAT PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23, TOWNSHIP 49, RANGE 32, IN THE CITY OF INDEPENDENCE, JACKSON COUNTY, MISSOURI, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHEAST 1/4; THENCE SOUTH 90° 00' 00" EAST, ALONG THE NORTH LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 272.31 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 40.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF 39TH STREET, AS ESTABLISHED BY DOCUMENT NO. 1456433, RECORDED IN BOOK 11078, PAGE 1452, SAID POINT BEING THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE HEREIN DESCRIBED; THENCE SOUTH 0° 00' 00" WEST, AT RIGHT ANGLES TO SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 343.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 18.45 FEET; THENCE SOUTH 1° 15' 00" EAST, PARALLEL TO THE EAST RIGHT-OF-WAY LINE OF NOLAND ROAD, AS NOW ESTABLISHED, A DISTANCE OF 130.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 5.00 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 200.00 FEET; THENCE SOUTH 90° 00' 00" WEST, A DISTANCE OF 152.81 FEET (DEED = 152.98 FEET), TO A POINT ON THE AFORESAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST (DEED = SOUTH 11° 02' 39" EAST), ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 65.40 FEET; THENCE NORTH 90° 00' 00" EAST, A DISTANCE OF 201.39 FEET; THENCE SOUTH 1° 02' 25" EAST, A DISTANCE OF 355.00 FEET; THENCE NORTH 85° 50' 55" WEST, A DISTANCE OF 140.49 FEET (DEED = 140.92 FEET), TO A POINT ON SAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 7.64 FEET (DEED = SOUTH 11° 02' 39" EAST, A DISTANCE OF 8.29 FEET), TO A POINT THAT IS OPPOSITE AND 155.00 FEET EAST OF STATION 18+50 ON THE CENTERLINE OF NOLAND ROAD; THENCE SOUTH 88° 41' 51" WEST, (DEED = SOUTH 88° 45' 00" WEST), CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 25.00 FEET TO A POINT THAT IS OPPOSITE AND 130 FEET EAST OF STATION 18+50 ON SAID NOLAND ROAD CENTERLINE; THENCE SOUTH 2° 02' 11" EAST CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 124.30 FEET (DEED = SOUTH 1° 15' 00" EAST, A DISTANCE OF 124.24 FEET), TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE ROUTE NO. 1-70, AS NOW ESTABLISHED THAT IS OPPOSITE AND 228.80 FEET NORTHERLY OF STATION 545+60 ON THE CENTERLINE OF SAID 1-70, THENCE SOUTH 84° 21' 11" EAST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 643.04 FEET (DEED = SOUTH 84° 17' 39" EAST, A DISTANCE OF 644.64 FEET) TO A POINT THAT IS OPPOSITE AND 166.30 FEET NORTHERLY OF STATION 552+00 ON THE CENTERLINE OF SAID 1-70; THENCE SOUTH 89° 55' 50" EAST, CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 546.03 FEET (DEED = SOUTH 89° 51' 16" EAST, A DISTANCE OF 545.61 FEET), TO A POINT ON THE WEST LINE OF "BROOKWOOD NO. 2", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE NORTH 1° 15' 58" WEST, ALONG THE WEST LINE OF SAID SUBDIVISION, A DISTANCE OF 785.43 FEET (DEED = NORTH 1° 12' 00" WEST, A

DISTANCE OF 786.12 FEET), TO THE SOUTHEAST CORNER OF LOT 19, "WOODRIDGE", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE SOUTH $89^{\circ} 51' 43''$ WEST, ALONG THE SOUTH LINE OF SAID "WOODRIDGE", A DISTANCE OF 251.04 FEET (DEED = NORTH $90^{\circ} 00' 00''$ WEST, A DISTANCE OF 250.63 FEET), TO AN ANGLE POINT THEREIN; THENCE NORTH $80^{\circ} 01' 00''$ WEST, CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 288.30 FEET TO AN ANGLE POINT THEREIN; THENCE SOUTH $89^{\circ} 47' 57''$ WEST (DEED = NORTH $90^{\circ} 00' 00''$ WEST), CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 286.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF DODGION STREET, AS NOW ESTABLISHED; THENCE NORTH $0^{\circ} 12' 03''$ WEST (DEED = NORTH $0^{\circ} 00' 00''$ WEST), ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 5.00 FEET TO THE SOUTHEAST CORNER OF LOT 34, SAID "WOODRIDGE"; THENCE SOUTH $89^{\circ} 47' 57''$ WEST ALONG THE SOUTH LINE OF SAID LOT 34, A DISTANCE OF 135.40 FEET (DEED = $90^{\circ} 00' 00''$ WEST, A DISTANCE OF 135.00 FEET), TO THE SOUTHWEST CORNER OF SAID LOT 34; THENCE NORTH $0^{\circ} 00' 00''$ EAST, ALONG THE WEST LINE OF SAID "WOODRIDGE" SUBDIVISION, A DISTANCE OF 440.00 FEET TO THE AFORESAID SOUTH RIGHT-OF-WAY LINE OF 39TH STREET; THENCE NORTH $90^{\circ} 00' 00''$ WEST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

MAP OF THE REDEVELOPMENT PROJECT



BILL NO. 25.123

ORDINANCE NO. 19769

AN ORDINANCE APPROVING A REDEVELOPMENT PROJECT FOR THE
WALLY'S TAX INCREMENT FINANCING PLAN AND INITIATING TAX
INCREMENT FINANCING THEREIN.

WHEREAS, by ordinance, the City Council approved the Wally's Tax Increment Financing Plan (the "TIF Plan") pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri, designated a 20.9-acre area generally bounded by E. 39th Street and E. 39th Terrace to the north, S. Dodgion Avenue and S. Hocker Avenue to the east, Interstate Highway 70 to the south, and S. Noland Road to the west, as the Redevelopment Area, declared the Redevelopment Area to be a blighted area, and designated Wally's Independence MO Owner LLC, as the developer of record for the TIF Plan; and

WHEREAS, the Tax Increment Financing Commission of Independence, Missouri approved Resolution 2025-1 which recommended that the City Council approve the Redevelopment Project by ordinance;

WHEREAS, the City Council now desires to approve the Redevelopment Project for the TIF Plan and activate the collection of tax increment financing revenues within the Redevelopment Project.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, AS FOLLOWS:

SECTION 1. The area selected for the Redevelopment Project, as legally described in Exhibit A and as depicted in Exhibit B of this ordinance, is approved as a redevelopment project pursuant to the TIF Act.

SECTION 2. Tax increment allocation financing is hereby adopted for taxable real property in the above-described area selected for the Redevelopment Project. After the total equalized assessed valuation of the taxable real property in the Redevelopment Project exceeds the certified total initial equalized assessed valuation of the taxable real property in the Redevelopment Project, the ad valorem taxes, and payment in lieu of taxes, if any, arising from the levies upon the taxable real property in such project by taxing districts and tax rates determined in the manner provided in subsection 2 of Section 99.855 each year after the effective date of the ordinance until redevelopment costs have been paid shall be divided as set forth in this section.

A. That portion of taxes, penalties and interest levied upon each taxable lot, block, tract, or parcel of real property which is attributable to the initial equalized assessed value of each such taxable lot, block, tract, or parcel of real property in the area selected for the Redevelopment Project shall be allocated to and, when collected, shall be paid to the respective affected taxing districts in the manner required by law in the absence of the adoption of tax increment allocation financing.

B. Payments in lieu of taxes attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract, or parcel of real property in the area selected for the Redevelopment Project, and any applicable penalty and interest over and above the initial

equalized assessed value of each such unit of property shall be allocated to and, when collected, shall be paid to the City's finance director or other designated financial officer of the City who shall deposit such payment in lieu of taxes into the Wally's Special Allocation Fund of the City for the purpose of paying Redevelopment Project costs.

SECTION 3. In addition to the payments in lieu of taxes described in Section 2 above, fifty percent (50%) of the total additional revenue from taxes, penalties and interest which are imposed by the City or taxing districts, and which are generated by economic activities within the Redevelopment Project over the amount of such taxes generated by economic activities within such area in the calendar year prior to the adoption of this ordinance, while tax increment financing remains in effect, but excluding personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, licenses, fees or special assessments other than payments in lieu of taxes and interest and penalties thereon and all other taxes excluded from tax increment financing by Missouri law at the time of this ordinance, shall be allocated to, and paid by the local political subdivision collecting officer to the City's finance director or other designated financial officer of the City, who shall deposit such funds in a separate segregated account within the Wally's Special Allocation Fund.

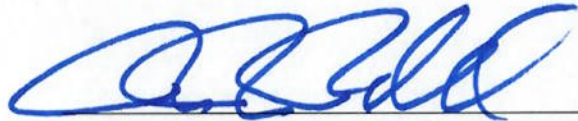
SECTION 4. The City staff, the City's special legal counsel, and other appropriate City officials are hereby authorized to take any and all actions as may be deemed necessary or convenient to carry out and comply with the intent of this Ordinance, to create those funds and accounts required by the Act to implement the TIF Plan, and to execute and deliver for and on behalf of the City all certificates, instruments, and agreements or other documents as may be necessary, desirable, convenient, or proper to perform all matters authorized herein.

SECTION 5. It is hereby declared to be the intention of the City Council that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the City Council intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

SECTION 6. This ordinance shall take effect and be in full force as set forth in the City Charter.

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PASSED ON THIS 15th DAY OF Dec., 2025 BY THE CITY COUNCIL OF THE
CITY OF INDEPENDENCE, MISSOURI.



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

ATTEST:

Suzanne Holland
City Clerk



APPROVED AS TO FORM AND LEGALITY:

J. H. C.
City Counselor

REVIEWED BY:

C. Reynolds
Interim City Manager

EXHIBIT A

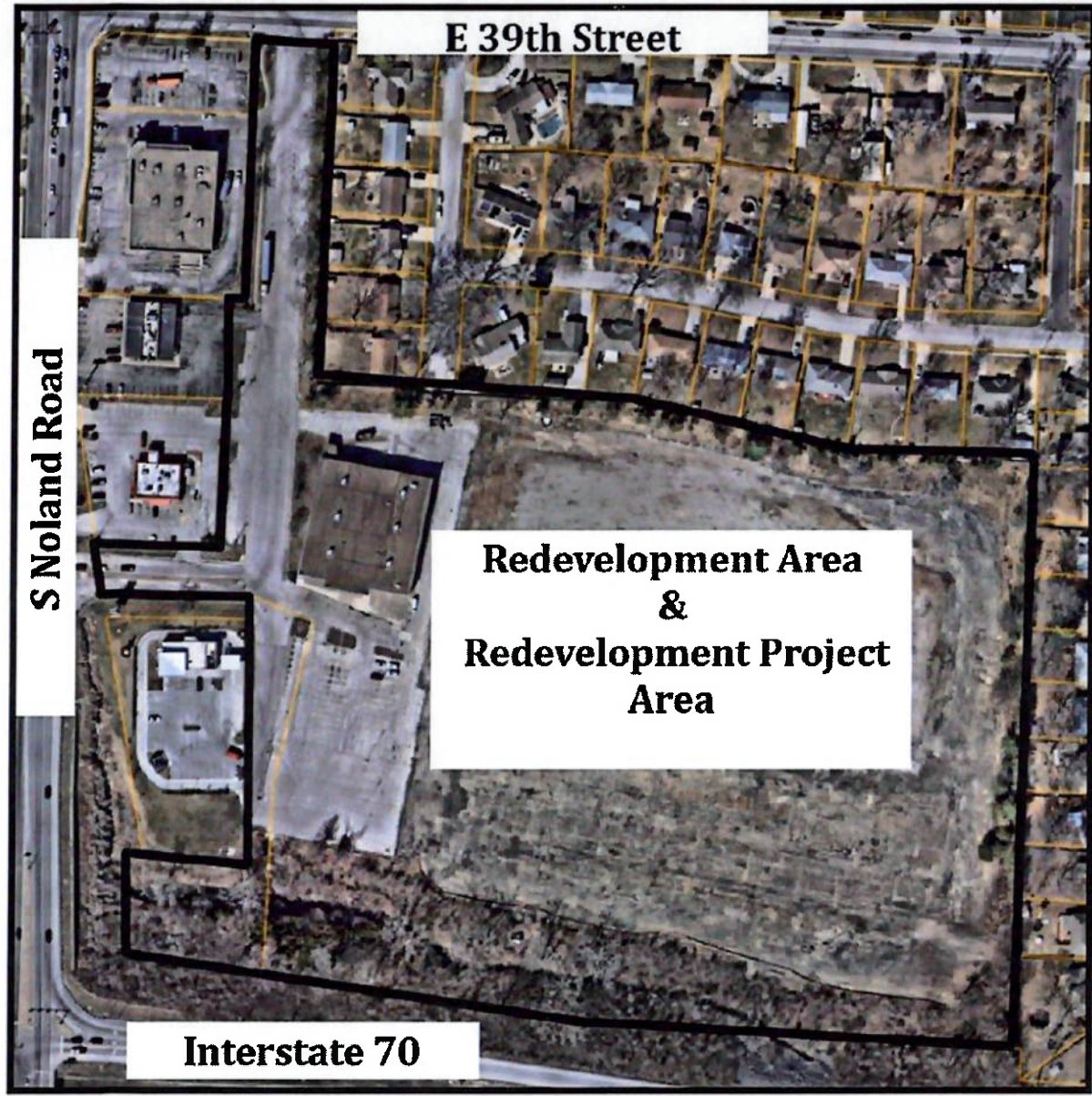
LEGAL DESCRIPTION OF THE REDEVELOPMENT PROJECT

ALL THAT PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23, TOWNSHIP 49, RANGE 32, IN THE CITY OF INDEPENDENCE, JACKSON COUNTY, MISSOURI, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHEAST 1/4; THENCE SOUTH 90° 00' 00" EAST, ALONG THE NORTH LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 272.31 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 40.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF 39TH STREET, AS ESTABLISHED BY DOCUMENT NO. 1456433, RECORDED IN BOOK 11078, PAGE 1452, SAID POINT BEING THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE HEREIN DESCRIBED; THENCE SOUTH 0° 00' 00" WEST, AT RIGHT ANGLES TO SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 343.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 18.45 FEET; THENCE SOUTH 1° 15' 00" EAST, PARALLEL TO THE EAST RIGHT-OF-WAY LINE OF NOLAND ROAD, AS NOW ESTABLISHED, A DISTANCE OF 130.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 5.00 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 200.00 FEET; THENCE SOUTH 90° 00' 00" WEST, A DISTANCE OF 152.81 FEET (DEED = 152.98 FEET), TO A POINT ON THE AFORESAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST (DEED = SOUTH 11° 02' 39" EAST), ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 65.40 FEET; THENCE NORTH 90° 00' 00" EAST, A DISTANCE OF 201.39 FEET; THENCE SOUTH 1° 02' 25" EAST, A DISTANCE OF 355.00 FEET; THENCE NORTH 85° 50' 55" WEST, A DISTANCE OF 140.49 FEET (DEED = 140.92 FEET), TO A POINT ON SAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 7.64 FEET (DEED = SOUTH 11° 02' 39" EAST, A DISTANCE OF 8.29 FEET), TO A POINT THAT IS OPPOSITE AND 155.00 FEET EAST OF STATION 18+50 ON THE CENTERLINE OF NOLAND ROAD; THENCE SOUTH 88° 41' 51" WEST, (DEED = SOUTH 88° 45' 00" WEST), CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 25.00 FEET TO A POINT THAT IS OPPOSITE AND 130 FEET EAST OF STATION 18+50 ON SAID NOLAND ROAD CENTERLINE; THENCE SOUTH 2° 02' 11" EAST CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 124.30 FEET (DEED = SOUTH 1° 15' 00" EAST, A DISTANCE OF 124.24 FEET), TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE ROUTE NO. 1-70, AS NOW ESTABLISHED THAT IS OPPOSITE AND 228.80 FEET NORTHERLY OF STATION 545+60 ON THE CENTERLINE OF SAID 1-70, THENCE SOUTH 84° 21' 11" EAST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 643.04 FEET (DEED = SOUTH 84° 17' 39" EAST, A DISTANCE OF 644.64 FEET) TO A POINT THAT IS OPPOSITE AND 166.30 FEET NORTHERLY OF STATION 552+00 ON THE CENTERLINE OF SAID 1-70; THENCE SOUTH 89° 55' 50" EAST, CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 546.03 FEET (DEED = SOUTH 89° 51' 16" EAST, A DISTANCE OF 545.61 FEET), TO A POINT ON THE WEST LINE OF "BROOKWOOD NO. 2", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE NORTH 1° 15' 58" WEST, ALONG THE WEST LINE OF SAID SUBDIVISION, A DISTANCE OF 785.43 FEET (DEED = NORTH 1° 12' 00" WEST, A

DISTANCE OF 786.12 FEET), TO THE SOUTHEAST CORNER OF LOT 19, "WOODRIDGE", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE SOUTH $89^{\circ} 51' 43''$ WEST, ALONG THE SOUTH LINE OF SAID "WOODRIDGE", A DISTANCE OF 251.04 FEET (DEED = NORTH $90^{\circ} 00' 00''$ WEST, A DISTANCE OF 250.63 FEET), TO AN ANGLE POINT THEREIN; THENCE NORTH $80^{\circ} 01' 00''$ WEST, CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 288.30 FEET TO AN ANGLE POINT THEREIN; THENCE SOUTH $89^{\circ} 47' 57''$ WEST (DEED = NORTH $90^{\circ} 00' 00''$ WEST), CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 286.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF DODGION STREET, AS NOW ESTABLISHED; THENCE NORTH $0^{\circ} 12' 03''$ WEST (DEED = NORTH $0^{\circ} 00' 00''$ WEST), ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 5.00 FEET TO THE SOUTHEAST CORNER OF LOT 34, SAID "WOODRIDGE"; THENCE SOUTH $89^{\circ} 47' 57''$ WEST ALONG THE SOUTH LINE OF SAID LOT 34, A DISTANCE OF 135.40 FEET (DEED = $90^{\circ} 00' 00''$ WEST, A DISTANCE OF 135.00 FEET), TO THE SOUTHWEST CORNER OF SAID LOT 34; THENCE NORTH $0^{\circ} 00' 00''$ EAST, ALONG THE WEST LINE OF SAID "WOODRIDGE" SUBDIVISION, A DISTANCE OF 440.00 FEET TO THE AFORESAID SOUTH RIGHT-OF-WAY LINE OF 39TH STREET; THENCE NORTH $90^{\circ} 00' 00''$ WEST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

MAP OF THE REDEVELOPMENT PROJECT



City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

25-125 **2R** An ordinance approving a plan for an industrial development project for the Wally's Redevelopment Project; authorizing the City of Independence, Missouri to issue taxable industrial development revenue bonds in a principal amount not to exceed \$52,050,000; and authorizing certain documents and actions in connection therewith. **2R Item passes 7-0 Ord. No. 19770**

Recommendations:

Staff recommends approval.

Background:

The Wally's Tax Increment Financing Plan (the "Redevelopment Plan") was submitted for consideration by Wally's Independence MO Owner LLC (the "Developer"). The proposed Redevelopment Area, which contains approximately 20.9 acres, is generally bounded by E. 39th Street and E. 39th Terrace to the north, S. Dodgion Avenue and S. Hocker Avenue to the east, Interstate Highway 70 to the south, and S. Noland Road to the west.

In connection with the Redevelopment Plan, the Developer has requested sales tax exemption on construction materials for projects implementing to the Redevelopment Plan. Chapter 100 provides the mechanism to implement sales tax exemption on construction materials. A payment in lieu of tax will be paid in the amount equal to 100% of the prior (base) taxes on the Redevelopment Area plus 50% of the tax that would be generated by any incremental value. The Chapter 100 transaction will expire at the end of the construction period.

Emergency Justification:**Fiscal Impact:****Council Action:**

**Department /
Contact**

Community Development /

REVIEWERS

Tom Scannell
Melissa Cabrera
Jeremy Cover
Charlie Dissell
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. 4. Chapter 100 Ordinance - Plan and Bond Documents
2. Chapter 100 Support Documents - Plan and Bond Documents
3. Ord. No. 19770

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE APPROVING A PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT FOR THE WALLY'S REDEVELOPMENT PROJECT; AUTHORIZING THE CITY OF INDEPENDENCE, MISSOURI TO ISSUE TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS IN A PRINCIPAL AMOUNT NOT TO EXCEED \$52,050,000; AND AUTHORIZING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of Independence, Missouri (the "City") is a constitutional charter city and municipal corporation of the State of Missouri, duly created, organized and existing under and by virtue of the Constitution and laws of the State of Missouri; and

WHEREAS, the City is authorized under the provisions of Article VI, Section 27 of the Missouri Constitution, as amended, and Sections 100.010 to 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the "Act"), to purchase, construct, extend and improve certain projects (as defined in the Act) for the purposes set forth in the Act and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable; and

WHEREAS, the City, in accordance with Section 100.050 of the Act, has prepared a plan for industrial development (the "Plan") for Wally's Independence MO Owner LLC, a Missouri limited liability company (the "Company"), with respect to a project consisting of (a) the demolition of existing improvements and construction of an approximately 54,000 square foot travel center, including fuel pumps, landscaping, parking and other amenities on approximately 20.9 acres near the intersection of Noland Road and Interstate Highway 70 in Independence, Missouri (the "Project Site"), and (b) public improvements relating to the development of the Project Site, including improvements to I-70 on and off ramps, Noland Road, Lynn, Canterbury, and 39th Street, with related signalization, utilities and earthwork (altogether, the "Project"), notice of the Project was given to the taxing jurisdictions in accordance with Section 100.059.1 of the Act and the City now desires to approve the Plan; and

WHEREAS, the City desires to finance the costs of the Project out of the proceeds of industrial development revenue bonds to be issued under the Act (the "Bonds"); and

WHEREAS, the City has and does hereby find and determine that it is desirable for the economic development of the City and within the public purposes of the Act that the City proceed with the issuance of the Bonds for the purpose described above; and

WHEREAS, Section 10.7 of the City Charter requires that all bonds sold by the City be sold at public sale upon sealed proposals after at least ten days' notice in a newspaper of general circulation in the City; and

WHEREAS, a notice of sale was published in *The Examiner* inviting potential bond purchasers to submit bids for the Bonds and the City has received one bid for the Bonds; and

WHEREAS, the City further finds and determines that it is necessary and desirable in connection with approval of the Plan and the issuance of the Bonds that the City enter into certain documents, and that the City take certain other actions and approve the execution of certain other documents as herein provided;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

Section 1. Promotion of Economic Development. The Council hereby finds and determines that the Project is a commercial project that will promote the economic welfare and the development of the City, and the issuance of the Bonds by the City to pay the costs of the Project will be in furtherance of the public purposes set forth in the Act.

Section 2. Approval of Plan. The Council hereby approves the Plan for an Industrial Development Project attached hereto as *Exhibit A* in accordance with Section 100.050 of the Act.

Section 3. Authorization and Sale of the Bonds. The City is hereby authorized to issue and sell its Taxable Industrial Development Revenue Bonds (Wally's Redevelopment Project), in an aggregate principal amount not to exceed \$52,050,000, for the purpose of providing funds to pay the costs of the Project. The Bonds shall be issued and secured pursuant to the herein authorized Trust Indenture and shall bear such date, shall mature at such time, shall be in such denominations, shall bear interest at such rate, shall be in such form, shall be subject to redemption, shall have such other terms and provisions, shall be issued, executed and delivered in such manner and shall be subject to such provisions, covenants and agreements as are specified in the Trust Indenture upon the execution thereof, and the signatures of the officers of the City executing the Trust Indenture shall constitute conclusive evidence of their approval and the City's approval thereof. The City hereby accepts the bid received from the Company for the sale of the Bonds. The sale of the Bonds to the Company or its designee(s), as the winning bidder at the public sale, at the interest rate set forth in the winning bid and upon the terms set forth in the Trust Indenture is hereby approved.

Section 4. Limited Obligations. The Bonds and the interest thereon shall be limited obligations of the City payable solely out of certain payments, revenues and receipts derived by the City from the herein authorized Lease Agreement, and such payments, revenues and receipts shall be pledged and assigned to the Trustee as security for the payment of the Bonds as provided in the Trust Indenture. The Bonds and the interest thereon shall not be deemed to constitute a debt or liability of the City within the meaning of any constitutional provision, statutory limitation or City Charter provision and shall not constitute a pledge of the full faith and credit of the City. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the City to levy any form of taxation therefore or to make any appropriation for their payment.

Section 5. Approval and Authorization of Documents. The following documents (the "City Documents") are hereby approved in substantially the forms presented to the Council at this meeting (copies of which documents shall be filed in the records of the City), and the City is hereby authorized to execute and deliver the City Documents with such changes therein as shall be approved by the officials of the City executing such documents, such officials' signatures thereon being conclusive evidence of their approval thereof:

(a) Trust Indenture dated as of the date set forth therein (the "Trust Indenture"), between the City and UMB BANK, N.A., as trustee (the "Trustee"), pursuant to which the Bonds shall be issued and the City shall pledge and assign the payments, revenues and receipts received pursuant to the Lease Agreement to the Trustee for the benefit and security of the owners of the Bonds upon the terms and conditions as set forth in the Trust Indenture;

(b) Lease Agreement dated as of the date set forth therein (the “Lease Agreement”), between the City and the Company, under which the City will provide funds for the construction and improvement of the Project and lease the Project to the Company pursuant to the terms and conditions in the Lease Agreement, in consideration of rental payments by the Company which will be sufficient to pay the principal of, premium, if any, and interest on the Bonds and certain other payments; and

(c) Bond Purchase Agreement dated as of the date set forth therein, between the City and the Company, pursuant to which the Company agrees to purchase the Bonds.

Section 6. Execution of Documents. The Mayor or (Interim) City Manager of the City is hereby authorized and directed to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Indenture. The Mayor and/or (Interim) City Manager of the City is hereby authorized and directed to execute 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, for and on behalf of and as the act and deed of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the Bonds and 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.

Section 7. Further Authority. The Mayor, (Interim) City Manager, Director of Finance, City Clerk and other officials, agents and employees of the City as required are hereby authorized and directed to take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Bonds and the City Documents, including but not limited to the execution of any financing documents in accordance with the Lease.

Section 8. Effective Date. This Ordinance shall take effect and be in full force as provided by the City Charter.

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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:

Interim City Manager

EXHIBIT A

PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT

NOTICE TO TAXING JURISDICTIONS

PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT FOR THE WALLY'S REDEVELOPMENT PROJECT

On behalf of the City of Independence, Missouri (the "City"), please find enclosed a copy of a proposed plan for an industrial development project and cost benefit analysis (the "Plan").

The City Council will consider an ordinance to approve the Plan during the City Council's meeting on December 1, 2025, at 6:00 p.m. in the Council Chambers at City Hall, 111 E. Maple in Independence, Missouri.

The City invites you to submit written comments to the Council on the proposed Plan. All comments will be fairly and duly considered by the City. Comments will also be taken during a public hearing at the City Council meeting referred to above.

A copy of the Plan will be on file in the office of the City Clerk and will be available for public inspection during normal business hours.

Dated: November 6, 2025

Independence City Hall
111 E Maple Ave
Independence, MO 64050

Taxing Jurisdictions -- Distribution List

Independence School District Superintendent 201 N. Forest Ave Independence, MO 64050	Junior College District of Metropolitan Kansas City, Missouri (Metropolitan Community College) Chancellor 3200 Broadway Kansas City, MO 64111
Jackson County Board of Disabled Services 8511 Hillcrest Rd., Suite 300 Kansas City, MO 64138	Mid-Continent Public Library Director 15616 E. Highway 24 Independence, MO 64050-2057
Jackson County County Executive 415 E. 12th Street, 2nd Floor Kansas City, MO 64106	Jackson County Community Mental Health Executive Director 1627 Main Street, Suite 500 Kansas City, MO 64108
Jackson County Assessment Department Truman Courthouse 112 W. Lexington 1st Floor Independence, MO 64050	City of Independence City Clerk 111 E Maple Ave Independence, MO 64050
Jackson County Community Children's Services Fund Executive Director 2345 Grand Blvd., Suite 1450 Kansas City, MO 64108	Jackson County Collections Department Truman Courthouse 112 W. Lexington 1st Floor Independence, MO 64050
Missouri Department of Revenue County Tax Section Merchants/Manufacturers Replacement Tax Fund 301 West High Street Jefferson City, MO 65102-0453	Missouri Department of Revenue County Tax Section State Blind Pension Fund 301 West High Street Jefferson City, MO 65102-0453
Kansas City Zoological District Chair of the Board of Directors 6800 Zoo Drive Kansas City, MO 64132	Noland Road Community Improvement District 4315 South Noland Road, Suite B Independence, MO 64055

CITY OF INDEPENDENCE, MISSOURI

PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT

FOR THE

WALLY'S REDEVELOPMENT PROJECT

NOVEMBER 6, 2025

I. PURPOSE OF THIS PLAN

The City Council of the City of Independence, Missouri (the “City”) will consider an ordinance approving this plan (the “Chapter 100 Plan”) and authorizing the issuance by the City of taxable industrial development revenue bonds in the aggregate principal amount of not to exceed \$52,050,000 (the “Chapter 100 Bonds”) with respect to an industrial development project (the “Project”) within a redevelopment area to be created pursuant to the Wally’s Tax Increment Financing Plan (the “TIF Plan”), which will be considered by the Tax Increment Financing Commission of Independence, Missouri on November 12. The Chapter 100 Bonds will be issued pursuant to the provisions of Sections 100.010 to 100.200 of the Revised Statutes of Missouri, as amended, and Article VI, Section 27(b) of the Missouri Constitution, as amended (collectively, “Chapter 100”). The TIF Plan is for the benefit of Wally’s Independence MO Owner LLC, (the “Developer”) and provides for the capture of 50% of incremental property tax revenues (“TIF PILOTs”) and 50% of incremental sales tax revenues or “economic activity taxes,” as well as certain other special revenue sources, to reimburse the Developer for a portion of the costs of implementing the overall development described in the TIF Plan.

The purpose of this Chapter 100 Plan is to provide sales tax exemption on construction materials while maintaining property tax benefits for the Developer similar to what would have been provided in reimbursement under the TIF Plan.

This Chapter 100 Plan has been prepared to satisfy requirements of Chapter 100 and to analyze the potential costs and benefits, including the related tax impact on all affected taxing jurisdictions, of using industrial development revenue bonds to finance the Project.

II. GENERAL DESCRIPTION OF CHAPTER 100 FINANCINGS

General. Chapter 100 authorizes cities, counties, towns and villages to issue industrial development revenue bonds to finance the purchase, construction, extension and improvement of warehouses, distribution facilities, research and development facilities, office industries, agricultural processing industries, service facilities that provide interstate commerce, industrial plants and other commercial facilities.

Issuance and Sale of Bonds. Revenue bonds issued pursuant to Chapter 100 do not require voter approval and are payable solely from revenues received from the project. The municipality issues its bonds and in exchange, the benefited company promises to make payments that are sufficient to pay the principal of and interest on the bonds as they become due. Thus, the municipality merely acts as a conduit for the financing.

Concurrently with the closing of the Chapter 100 Bonds, the owner of the property underlying the project will convey to the City title to such property, to the extent not already owned by the City or another political subdivision. At the same time, the City will lease such property and the project back to the benefited company pursuant to a lease agreement. The lease agreement will require the benefited company, acting on behalf of the City, to use bond proceeds to pay the costs or reimburse the costs of purchasing, constructing and installing the project.

Property Tax Abatement. Under Article X, Section 6 of the Missouri Constitution and Section 137.100 of the Revised Statutes of Missouri, all property of any political subdivision is exempt from taxation. In order to establish the level of property tax abatement at less than 100%, the City and the Developer or its assignee will enter into an agreement to make payments in lieu of taxes (“Chapter 100 PILOTs”). The anticipated amount of Chapter 100 PILOTs to be paid with respect to the Project is shown in the Cost-Benefit Analysis attached hereto. The payments in lieu of taxes are payable by December 1 of

each year, and are distributed to the municipality and to each political subdivision within the Site (defined below) in the same manner and in the same proportion as property taxes would otherwise be distributed under Missouri law.

III. DESCRIPTION OF THE PARTIES

The Developer. The Developer is a limited liability company organized and existing under the laws of the State of Missouri. The Developer is an affiliate of the Wally's brand, which operates travel centers in Pontiac, Illinois and Fenton, Missouri.

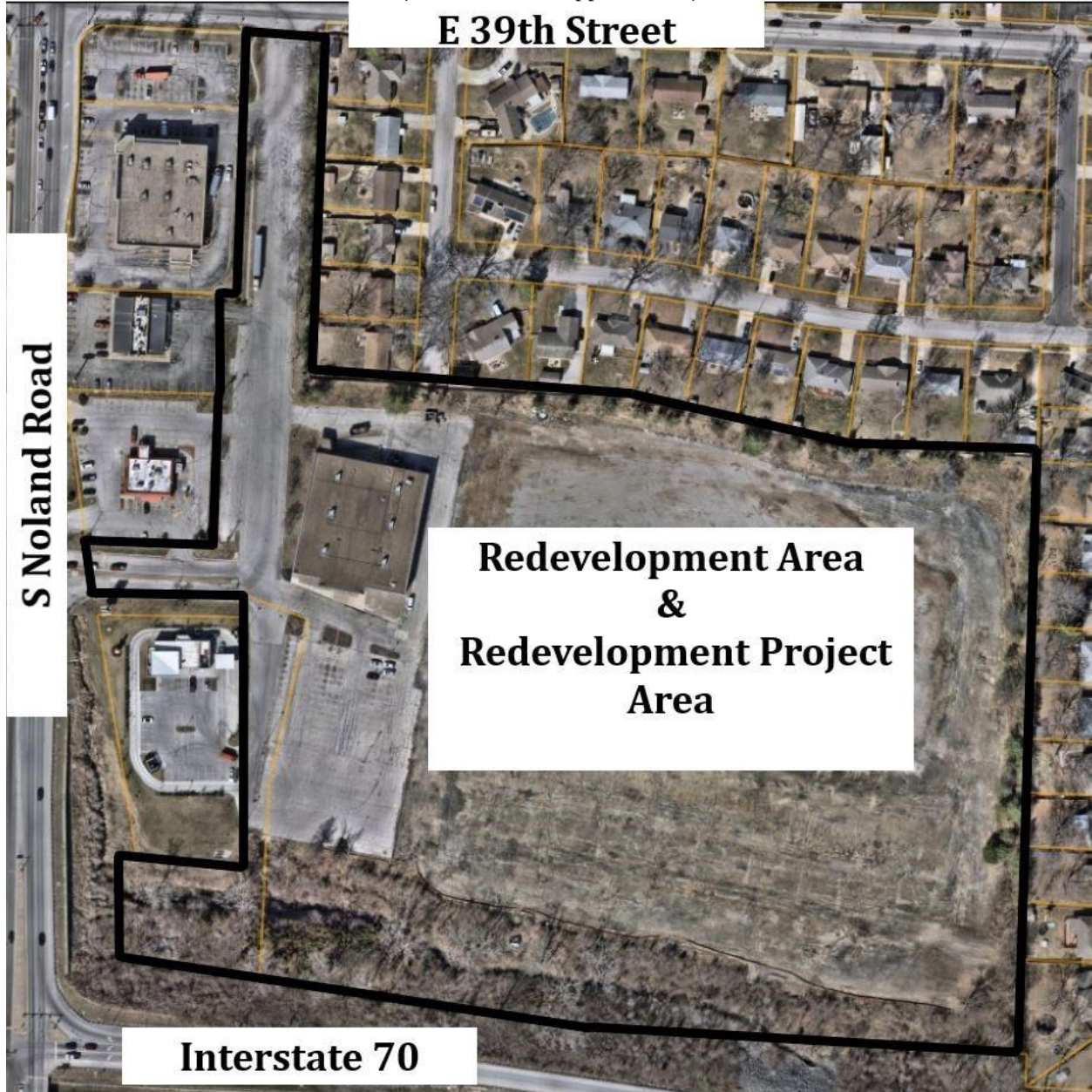
City of Independence, Missouri. The City is a constitutional home rule charter city and municipal corporation organized and existing under the laws of the State of Missouri. The City is authorized and empowered pursuant to the provisions of Chapter 100 to purchase, construct, extend and improve certain projects (as defined in Chapter 100) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes upon such terms and conditions as the City deems advisable.

IV. REQUIREMENTS OF CHAPTER 100

Description of the Project. The Project to be financed by the Chapter 100 Bonds consists of (a) the demolition of existing improvements and construction of an approximately 54,000 square foot travel center, including fuel pumps, landscaping, parking and other amenities on approximately 20.9 acres located near the intersection of Noland Road and Interstate Highway 70 in Independence, Missouri, as shown below (the "Site"), and (b) public improvements relating to the development of the Site, including improvements to I-70 on and off ramps, Noland Road, Lynn, Canterbury, and 39th Street, with related signalization, utilities and earthwork.

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Map of Site
(boundaries are approximate)



Estimate of the Costs of the Project. The Project to be financed by the Chapter 100 Bonds is estimated to cost approximately \$52,050,000. Investments in the Project are planned to be made in 2026, and are assumed to be made in such year for purposes of the attached Cost Benefit Analysis. However, actual Project implementation may change the calendar year(s) in which the investments are made.

Source of Funds to be Expended for the Project. The sources of funds to be expended for the Project will be the proceeds of the Chapter 100 Bonds in an aggregate principal amount not to exceed \$52,050,000, to be issued by the City. The Chapter 100 Bonds will be payable solely from the revenues derived by the City from the lease or other disposition of the Project. The Chapter 100 Bonds will not be an indebtedness or general obligation, debt or liability of the City or the State of Missouri.

Statement of the Terms Upon Which the Project is to be Leased or Otherwise Disposed of by the City. The City will hold title to the Site during the completion of the Project. The City will lease the Project to the Company or its designee (the “Tenant”) for lease payments equal to the principal and interest payments on the Bonds. Under the terms of the lease agreement the Tenant will have the option to purchase the Project at any time and will have the obligation to purchase the Project at the termination of the lease.

The lease entered into for the Project will be short term, the term of which will be tied to the construction period anticipated for the Project. Upon completion of the Project, the improved Site will be returned to the tax rolls and be subject to the TIF Plan.

Affected Taxing Districts. The Independence School District is the school district, Jackson County, Missouri is the county, the City is the city, and the Junior College District of Metropolitan Kansas City, Missouri is the community college district affected by the Project. There is no fire or ambulance district affected by the Project. The Cost-Benefit Analysis attached hereto for the Project identifies all other taxing districts affected by the Project.

Assessed Valuation. According to the records of the County Assessor, the total equalized assessed value of the Site in 2024 was \$3,152,000, which total equalized assessed value included value attributable to a building which has since been demolished. The 2025 total equalized assessed value of the Site is \$3,518,230; provided, however, the 2025 total equalized assessed value is currently under appeal. The Cost-Benefit Analysis attached hereto assumes a total equalized assessed value of the Site of \$1,708,045, as the same is believed to be a more accurate representation of what the total equalized assessed value of the Site will be when the City takes title to the Site.

The estimated total equalized assessed valuation of the Site after development of the Project is \$9,324,000 (for tax year 2027).

Payments in Lieu of Taxes. Chapter 100 PILOTs will be due during the construction period for the Site and Project in an amount equal to 100% of the taxes that would be due on the Site and 50% of the taxes that would be due on the Project. The purpose of this is to provide a similar benefit as would be provided under the TIF Plan through the capture of TIF PILOTs, effectively providing the incremental property tax benefit that would otherwise be given under the TIF Plan, but in the way of tax abatement as opposed to payments under the TIF Plan (the fact that the merchants’ and manufacturers’ replacement tax and the blind pension tax can be abated under Chapter 100 but cannot be captured under the TIF Plan make the Chapter 100 abatement slightly more valuable). Upon completion of the Project, the Site and Project will be returned to the tax rolls and become subject to the TIF Plan. Since the Project is anticipated to be started and completed in 2026, the attached Cost-Benefit Analysis shows a Chapter 100 PILOT based solely on the value of the Site. If the Project spans more than one calendar year, an additional Chapter 100 PILOT component will be added for subsequent years calculated as 50% of the taxes that would be due on the Project.

Cost-Benefit Analysis. In compliance with Section 100.050.2(3) of the Revised Statutes of Missouri, this Chapter 100 Plan has been prepared to show the costs and benefits to the City and to other taxing jurisdictions affected by the tax abatements and exemptions of the Projects. A Cost Benefit Analysis for the Project is attached hereto. The tax rates used in this Chapter 100 Plan reflect the rates in effect for the tax year 2025.

V. SALES AND USE TAX EXEMPTIONS

Sales and Use Tax Exemption on Construction Materials. Building materials purchased for the construction of the Project are expected to be exempt from sales and use tax pursuant to the provisions of Section 144.062 of the Revised Statutes of Missouri and the underlying bond documents upon delivery of project exemption certificates by the City. Shown below are estimates based on assumptions relating to the building materials to be purchased for the Project and the associated effects on taxing jurisdictions of the exemption from sales and use tax. Please note that any variance from the assumptions will alter the fiscal impact of the sales and use tax exemptions on the affected taxing jurisdictions.

	Tax Rate	Estimated Sales/Use Tax Revenues Subject to Exemption
State of Missouri	4.225%	\$1,039,456
Jackson County		
General	0.500	123,013
Drug Task Force	0.250	61,506
Sports Complex	0.375	92,259
Zoo District	0.125	30,753
City of Independence		
General Revenue	1.000	246,025
Capital Improvement - Police	0.125	30,753
Proposition PD - Police	0.250	61,506
Fire Protection	0.500	123,013
Streets	0.500	123,013
Parks	0.250	61,506
Storm water	0.250	61,506
Children's Services	0.250	61,506
Noland Road CID	0.750	184,519
Total	9.350%	\$2,300,334

* * *

EXHIBIT A

COST BENEFIT ANALYSIS

The Cost Benefit Analysis shows the anticipated effect of the Project on the taxing jurisdictions affected by the Project. The calendar years shown in the attached Cost Benefit Analysis are for demonstrative purposes only and Project implementation may change the calendar years affected.

**City of Independence, Missouri
(Wally's Redevelopment Project)**

**COST BENEFIT ANALYSIS
PLAN FOR INDUSTRIAL DEVELOPMENT PROJECT**



Table of Contents

Project Assumptions	1
Summary of Cost Benefit Analysis	2
Taxes on Existing Base without Project	3
Projected Taxes after Completion (Post-Chapter 100)	4
Projected Chapter 100 PILOTS	5
Projected Abatement	6

This information is provided based on the factual information and assumptions provided to Gilmore & Bell, P.C. by a party to or a representative of a party to the proposed transaction. This information is intended to provide factual information only and is provided in conjunction with our legal representation. It is not intended as financial advice or a financial recommendation to any party. Gilmore & Bell, P.C. is not a financial advisor or a “municipal advisor” as defined in the Securities Exchange Act of 1934, as amended.

Project Assumptions

♦ Initial year taxes assessed	2026
♦ Assessed Value on Existing Base	\$ 1,708,045
♦ Assessed value at Completion	\$ 9,323,770
♦ Terms of abatement:	
Real property	
Year 1	0%

Summary of Cost Benefit Analysis

Taxing Jurisdiction	Tax Rate	Taxes on Existing Base without Project	Projected Taxes after Completion (Post-Chapter 100)	Projected Chapter 100 PILOTS	Projected Abatement
Board of Disabled Services	0.0728 \$	1,243	\$ 6,788	\$ 1,243	\$ -
City - Independence	0.6657	11,370	62,068	11,370	-
Independence School District	5.2371	89,452	488,295	89,452	-
Jackson County	0.5556	9,490	51,803	9,490	-
Mental Health	0.0969	1,655	9,035	1,655	-
Metro Junior College	0.1767	3,018	16,475	3,018	-
Mid-Continent Library	0.3119	5,327	29,081	5,327	-
State Blind Pension	0.0300	512	2,797	512	-
Surtax	1.4370	24,545	133,983	24,545	-
	8.5837 \$	146,613	\$ 800,324	\$ 146,613	\$ -

Taxes on Existing Base without Project

Estimated Assessed Value of Existing Base		\$1,708,045		
		Tax Rate per		
Taxing Jurisdiction	\$100	2026	Total	
Board of Disabled Services	0.0728	\$ 1,243	\$ 1,243	
City - Independence	0.6657	11,370	11,370	
Independence School District	5.2371	89,452	89,452	
Jackson County	0.5556	9,490	9,490	
Mental Health	0.0969	1,655	1,655	
Metro Junior College	0.1767	3,018	3,018	
Mid-Continent Library	0.3119	5,327	5,327	
State Blind Pension	0.0300	512	512	
Surtax	1.4370	24,545	24,545	
	8.5837	\$ 146,613	\$146,613	

**Projected Taxes After Completion
(Post-Chapter 100)**

Estimated Assessed value at Completion		\$9,323,770	
		Tax Rate per	
Taxing Jurisdiction	\$100	2027	Total
Board of Disabled Services	0.0728	\$ 6,788	\$ 6,788
City - Independence	0.6657	62,068	62,068
Independence School District	5.2371	488,295	488,295
Jackson County	0.5556	51,803	51,803
Mental Health	0.0969	9,035	9,035
Metro Junior College	0.1767	16,475	16,475
Mid-Continent Library	0.3119	29,081	29,081
State Blind Pension	0.0300	2,797	2,797
Surtax	1.4370	133,983	133,983
	8.5837	\$ 800,324	\$800,324

Projected Chapter 100 PILOTS

Estimated Assessed value at Completion	\$ 1,708,045
PILOT Payment	100%

Taxing Jurisdiction	Tax Rate per		
	\$100	2026	Total
Board of Disabled Services	0.0728	\$ 1,243	\$ 1,243
City - Independence	0.6657	11,370	11,370
Independence School District	5.2371	89,452	89,452
Jackson County	0.5556	9,490	9,490
Mental Health	0.0969	1,655	1,655
Metro Junior College	0.1767	3,018	3,018
Mid-Continent Library	0.3119	5,327	5,327
State Blind Pension	0.0300	512	512
Surtax	1.4370	24,545	24,545
	8.5837	\$ 146,613	\$ 146,613

Projected Abatement

Estimated Assessed value at Completion	\$ 1,708,045
Abatement Percentage	0%

Taxing Jurisdiction	Tax Rate per		
	\$100	2026	Total
Board of Disabled Services	0.0728	\$ -	\$ -
City - Independence	0.6657	-	-
Independence School District	5.2371	-	-
Jackson County	0.5556	-	-
Mental Health	0.0969	-	-
Metro Junior College	0.1767	-	-
Mid-Continent Library	0.3119	-	-
State Blind Pension	0.0300	-	-
Surtax	1.4370	-	-
	8.5837	\$ -	\$ -

**CITY OF INDEPENDENCE, MISSOURI,
the City**

AND

**UMB BANK, N.A.,
as Trustee**

TRUST INDENTURE

Dated as of January 1, 2026

Relating to:

**\$52,050,000
(Aggregate Maximum Principal Amount)
City of Independence, Missouri
Taxable Industrial Development Revenue Bonds
(Wally's Redevelopment Project)
Series 2026**

TRUST INDENTURE

TABLE OF CONTENTS

	<u>Page</u>
Parties	1
Recitals.....	1
Granting Clauses.....	2

ARTICLE I

DEFINITIONS

Section 101.	Definitions of Words and Terms	3
Section 102.	Rules of Interpretation	7

ARTICLE II

THE BONDS

Section 201.	Title and Amount of Bonds.....	7
Section 202.	Nature of Obligation	7
Section 203.	Denomination, Number and Dating of the Bonds.....	8
Section 204.	Method and Place of Payment of Bonds.....	8
Section 205.	Execution and Authentication of Bonds	9
Section 206.	Registration, Transfer and Exchange of Bonds.....	9
Section 207.	Persons Deemed Owners of Bonds.....	10
Section 208.	Authorization of the Bonds.....	10
Section 209.	Mutilated, Lost, Stolen or Destroyed Bonds.....	11
Section 210.	Cancellation and Destruction of Bonds Upon Payment.....	12

ARTICLE III

REDEMPTION OF BONDS

Section 301.	Redemption of Bonds	12
Section 302.	Effect of Call for Redemption.....	13
Section 303.	Notice of Redemption.....	13

ARTICLE IV

FORM OF BONDS

Section 401.	Form Generally	13
--------------	----------------------	----

ARTICLE V

CUSTODY AND APPLICATION OF BOND PROCEEDS

Section 501.	Creation of Funds.....	13
--------------	------------------------	----

Section 502.	Deposits into the Project Fund.....	14
Section 503.	Disbursements from the Project Fund.....	14
Section 504.	Completion of the Project	14
Section 505.	Deposits into and Disbursements from the Costs of Issuance Fund	14
Section 506.	Disposition Upon Acceleration	15

ARTICLE VI

REVENUES AND FUNDS

Section 601.	Deposits Into the Bond Fund	15
Section 602.	Application of Moneys in the Bond Fund.....	15
Section 603.	Payments Due on Days Other than Business Days.....	16
Section 604.	Nonpresentment of Bonds.....	16
Section 605.	Repayment to the Company from the Bond Fund	16

ARTICLE VII

SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 701.	Moneys to be Held in Trust.....	16
Section 702.	Investment of Moneys in Project Fund and Bond Fund	17
Section 703.	Record Keeping	17

ARTICLE VIII

GENERAL COVENANTS AND PROVISIONS

Section 801.	Payment of Principal and Interest	17
Section 802.	Authority to Execute Indenture and Issue Bonds.....	17
Section 803.	Performance of Covenants.....	18
Section 804.	Instruments of Further Assurance	18
Section 805.	Recordings and Filings	18
Section 806.	Inspection of Project Books.....	18
Section 807.	Enforcement of Rights Under the Lease	18

ARTICLE IX

DEFAULT AND REMEDIES

Section 901	Events of Default; Notice; Opportunity to Cure	19
Section 902.	Acceleration of Maturity in Event of Default; Rescission.....	19
Section 903.	Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession.....	20
Section 904.	Appointment of Receivers in Event of Default.....	20
Section 905.	Exercise of Remedies by the Trustee	20
Section 906.	Limitation on Exercise of Remedies by Owners	21
Section 907.	Right of Owners to Direct Proceedings	21
Section 908.	Application of Moneys in Event of Default.....	22
Section 909.	Remedies Cumulative	23
Section 910.	Waivers of Events of Default.....	23

ARTICLE X

THE TRUSTEE

Section 1001.	Acceptance of the Trusts.....	23
Section 1002.	Fees, Charges and Expenses of the Trustee	26
Section 1003.	Notice to Owners if Default Occurs.....	26
Section 1004.	Intervention by the Trustee	26
Section 1005.	Successor Trustee Upon Merger, Consolidation or Sale.....	26
Section 1006.	Resignation of Trustee	27
Section 1007.	Removal of Trustee.....	27
Section 1008.	Appointment of Successor Trustee	27
Section 1009.	Vesting of Trusts in Successor Trustee.....	27
Section 1010.	Right of Trustee to Pay Taxes and Other Charges	28
Section 1011.	Trust Estate May be Vested in Co-Trustee.....	28
Section 1012.	Accounting.....	29
Section 1013.	Performance of Duties Under the Lease	29

ARTICLE XI

SUPPLEMENTAL INDENTURES

Section 1101.	Supplemental Indentures Not Requiring Consent of Owners.....	29
Section 1102.	Supplemental Indentures Requiring Consent of Owners	29
Section 1103.	Company's Consent to Supplemental Indentures.....	30
Section 1104.	Opinion of Counsel.....	30

ARTICLE XII

SUPPLEMENTAL LEASES

Section 1201.	Supplemental Leases Not Requiring Consent of Owners.....	30
Section 1202.	Supplemental Leases Requiring Consent of Owners	31
Section 1203.	Opinion of Counsel.....	31

ARTICLE XIII

SATISFACTION AND DISCHARGE OF INDENTURE

Section 1301.	Satisfaction and Discharge of this Indenture	31
Section 1302.	Bonds Deemed to be Paid.....	32

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 1401.	Consents and Other Instruments by Owners.....	32
Section 1402.	Limitation of Rights Under this Indenture.....	33
Section 1403.	Notices	33
Section 1404.	Severability	34
Section 1405.	Execution in Counterparts.....	34

Section 1406.	Governing Law	34
Section 1407.	Electronic Storage.....	34
Section 1408.	Electronic Notice to Trustee.....	34
	Signatures and Seals	S-1
	Exhibit A – Project Site	
	Exhibit B – Project Improvements	
	Exhibit C – Form of Bonds	
	Exhibit D – Form of Representation Letter	

TRUST INDENTURE

THIS TRUST INDENTURE dated as of January 1, 2026 (the “Indenture”), is between the **CITY OF INDEPENDENCE, MISSOURI**, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri (the “City”), and **UMB BANK, N.A.**, Kansas City, Missouri, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the United States of America, with a corporate trust office located in Kansas City, Missouri, as Trustee (the “Trustee”);

RECITALS:

1. The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the “Act”), to purchase, construct, extend and improve certain “projects” (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or businesses for manufacturing, commercial, research and development, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

2. Pursuant to the Act, the City Council passed an ordinance (the “Ordinance”), authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Wally’s Redevelopment Project), Series 2026, in the maximum principal amount of \$52,050,000 (the “Bonds”), for the purpose of acquiring and improving certain real property located on approximately 20.9 acres near the intersection of Noland Road and Interstate Highway 70 in the City (the “Project Site,” as more fully described on **Exhibit A** hereto), including the construction and improvement of a commercial facility on the Project Site together with related public improvements (the “Project Improvements,” as more fully described on **Exhibit B** hereto).

3. The Ordinance authorizes the City to lease the Project Site and the Project Improvements (collectively, the “Project”) to Wally’s Independence MO Owner LLC, a Missouri limited liability company (the “Company”).

4. Pursuant to the Ordinance, the City is authorized to execute and deliver (a) this Indenture for the purpose of issuing and securing the Bonds, (b) the Lease Agreement of even date herewith (the “Lease”) with the Company, under which the City, as lessor, will, or will cause the Company to, construct and improve the Project and will lease the Project to the Company, as lessee, in consideration of rentals that will be sufficient to pay the principal of and interest on the Bonds and certain payments in lieu of taxes with respect to the Project.

5. All things necessary to make the Bonds, when authenticated by the Trustee and issued as provided in this Indenture, the valid and legally binding obligations of the City, and to constitute this Indenture a valid and legally binding pledge and assignment of the Trust Estate (defined herein) herein made for the security of the payment of the principal of and interest on the Bonds, have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized.

NOW, THEREFORE, THIS TRUST INDENTURE WITNESSETH:

GRANTING CLAUSES

That the City, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Owners thereof, and of other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of and interest on all of the Bonds issued and outstanding under this Indenture from time to time according to their tenor and effect, and to secure the performance and observance by the City of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby pledge and assign to the Trustee and its successors and assigns until this Indenture has been satisfied and discharged, the property described in paragraphs (a), (b) and (c) below (said property being herein referred to as the "Trust Estate"), to-wit:

(a) Excluding the Unassigned Rights, all right, title and interest in and to the Project together with the tenements, hereditaments, appurtenances, rights, easements, privileges and immunities thereunto belonging or appertaining and, to the extent permissible, all permits, certificates, approvals and authorizations;

(b) Excluding the Unassigned Rights, all right, title and interest of the City in, to and under the Lease, and all rents, revenues and receipts derived by the City from the Project including, without limitation, all rentals and other amounts to be received by the City and paid by the Company under and pursuant to and subject to the provisions of the Lease; and

(c) All moneys and securities from time to time held by or now or hereafter required to be paid to the Trustee under the terms of this Indenture, and any and all other real or personal property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder by the City or by anyone in its behalf, or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD, all and singular, the Trust Estate with all rights and privileges hereby pledged and assigned or agreed or intended so to be, to the Trustee and its successors and assigns forever;

IN TRUST NEVERTHELESS, upon the terms and subject to the conditions herein set forth, for the equal and proportionate benefit, protection and security of all Owners from time to time of the Bonds outstanding under this Indenture, without preference, priority or distinction as to lien or otherwise of any of the Bonds over any other of the Bonds except as expressly provided in or permitted by this Indenture;

PROVIDED, HOWEVER, that if the City pays, or causes to be paid, the principal of and interest on the Bonds, at the time and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, or provides for the payment thereof (as provided in **Article XIII** hereof), and pays or causes to be paid to the Trustee all other sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Indenture and the rights thereby granted shall cease, determine and be void; otherwise, this Indenture shall be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Trust Estate is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as

hereinafter expressed, and the City does hereby agree and covenant with the Trustee and with the respective Owners from time to time, as follows:

ARTICLE I

DEFINITIONS

Section 101. Definitions of Words and Terms. In addition to words and terms defined in **Section 1.1** of the Lease, which definitions shall be deemed to be incorporated herein, and terms defined elsewhere in this Indenture, the following words and terms as used in this Indenture shall have the following meanings, unless some other meaning is plainly intended:

“Act” means, collectively, Article VI, Section 27(b) of the Missouri Constitution, as amended, and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended.

“Additional Rent” means the additional rental described in **Sections 5.2** and **6.2** of the Lease.

“Authorized City Representative” means the Mayor, the (Interim) City Manager, the City Clerk or such other person at the time designated to act on behalf of the City as evidenced by written certificate furnished to the Company and the Trustee containing the specimen signature of such person and signed on behalf of the City by its Mayor or (Interim) City Manager. Such certificate may designate an alternate or alternates each of whom shall be entitled to perform all duties of the Authorized City Representative.

“Authorized Company Representative” means the Person at the time designated to act on behalf of the Company as evidenced by written certificate furnished to the City and the Trustee containing the specimen signature of such Person and signed on behalf of the Company by an authorized officer of the Company. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Company Representative.

“Basic Rent” means the rental described in **Section 5.1** of the Lease.

“Bond” or **“Bonds”** means the Taxable Industrial Development Revenue Bonds (Wally’s Redevelopment Project), Series 2026, in the maximum aggregate principal amount of \$52,050,000, issued, authenticated and delivered under and pursuant to this Indenture.

“Bond Fund” means the “City of Independence, Missouri, Bond Fund – Wally’s Independence MO Owner LLC” created in **Section 501** of this Indenture.

“Bond Purchase Agreement” means the agreement by that name with respect to the Bonds, dated as of January 1, 2026, by and between the City and the Purchaser.

“Business Day” means any day other than a Saturday or Sunday or legal holiday or a day on which banks located in the city in which the payment office of the Trustee are required or authorized by law to remain closed.

“City” means the City of Independence, Missouri, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri, and its successors and assigns.

“Closing Date” means the date identified in the Bond Purchase Agreement for the initial issuance and delivery of the Bonds.

“Closing Price” means the amount specified in writing by the Purchaser and agreed to by the City as the amount required to pay for the initial issuance of the Bonds on the Closing Date.

“Company” means Wally’s Independence MO Owner LLC, a Missouri limited liability company, and its successors or assigns.

“Completion Date” means the date of execution of the certificate required pursuant to **Section 504** hereof.

“Costs of Issuance Fund” means the “City of Independence, Missouri, Costs of Issuance Fund – Wally’s Independence MO Owner LLC” created in **Section 501** hereof.

“Cumulative Outstanding Principal Amount” means an amount equal to the aggregate of all amounts paid into the Project Fund in accordance with the provisions of this Indenture, the Bond Purchase Agreement and the Lease, as reflected in the bond registration records maintained by the Trustee or in the Table of Cumulative Outstanding Principal Amount set forth in the form of Bond in **Exhibit C** hereto.

“Event of Default” means, with respect to this Indenture, any Event of Default as defined in **Section 901** hereof and, with respect to the Lease, any Event of Default as described in **Section 12.1** of the Lease.

“Government Securities” means direct obligations of, or obligations the payment of principal of and interest on which are unconditionally guaranteed by, the United States of America.

“Indenture” means this Trust Indenture, as from time to time amended and supplemented by Supplemental Indentures in accordance with the provisions of **Article XI** hereof.

“Investment Securities” means any of the following securities:

- (a) Government Securities;
- (b) obligations of the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, and Farmers Home Administration;
- (c) direct and general obligations of any state of the United States of America, to the payment of the principal of and interest on which the full faith and credit of such state is pledged, provided that at the time of their purchase under this Indenture such obligations are rated in either of the two highest rating categories by a nationally-recognized bond rating agency;
- (d) certificates of deposit, whether negotiable or nonnegotiable, and U.S. dollar denominated deposit accounts issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee or any of its affiliates), provided that such certificates of deposit or deposit accounts shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities as are described above in clauses (a) through (c),

inclusive, which shall have a market value at all times at least equal to the principal amount of such certificates of deposit and shall be deposited with the Trustee or a custodian bank, trust company or national banking association. The bank, trust company or national banking association holding each such certificate of deposit required to be so secured shall furnish the Trustee written evidence that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount at least equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking;

(e) shares of a fund registered under the Investment Company Act of 1940, as amended, whose shares are registered under the Securities Act of 1933, as amended, having assets of at least \$100,000,000, and which shares, at the time of purchase, are rated by S&P and Moody's in one of the two highest rating categories (without regard to any refinements or gradation of rating category by numerical modifier or otherwise) assigned by such rating agencies for obligations of that nature; or

(f) any other investment approved in writing by the Authorized City Representative and the Owners of all of the Outstanding Bonds.

"Lease" means the Lease Agreement dated as of January 1, 2026, between the City, as lessor, and the Company, as lessee, as from time to time amended and supplemented by Supplemental Leases in accordance with the provisions thereof and of **Article XII** of this Indenture.

"Lender" has the meaning set forth in the Lease.

"Moody's" means Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, "Moody's" will be deemed to refer to any other nationally recognized securities rating agency designated by the Authorized Company Representative.

"Outstanding" means, when used with reference to Bonds, as of a particular date, all Bonds theretofore authenticated and delivered, except:

(a) Bonds subsequently cancelled by the Trustee or delivered to the Trustee for cancellation;

(b) Bonds deemed to be paid in accordance with the provisions of **Section 1302** hereof; and

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Indenture.

"Owner" or **"Bondowner"** means the registered owner of any Bond as recorded on the bond registration records maintained by the Trustee.

"Paying Agent" means the Trustee and any other bank or trust company designated by this Indenture as paying agent for the Bonds at which the principal of or interest on the Bonds shall be payable.

“Payment Date” means the date on which principal or interest on any Bond, whether at the stated maturity thereof or the redemption date thereof, is payable, which shall be December 1 of each year that the Bonds are Outstanding.

“Person” or **“person”** means an individual, partnership, corporation, business trust, joint stock company, limited liability company, bank, insurance company, unincorporated association, joint venture or other entity of whatever nature.

“Project” means the Project Site and the Project Improvements as they may at any time exist.

“Project Costs” means all costs of construction and improvement of the Project and the Public Improvements and acquisition of the Project Site.

“Project Fund” means the “City of Independence, Missouri, Project Fund – Wally’s Independence MO Owner LLC” created in **Section 501** hereof.

“Project Improvements” means the Public Improvements and all buildings, structures, improvements and fixtures to be purchased, constructed, installed and otherwise improved on the Project Site pursuant to **Article IV** of the Lease and paid for in whole or in part from the proceeds of Bonds, as described in **Exhibit B** attached hereto, and all additions, alterations, modifications and improvements thereof made pursuant to the Lease.

“Project Site” means all of the real estate as described in **Exhibit A** attached hereto and by this reference made a part hereof.

“Purchaser” means the entity identified in the Bond Purchase Agreement as the purchaser of the Bonds.

“Public Improvements” means that portion of the Project Improvements designated as such on **Exhibit B** hereto.

“S&P” means S&P Global Ratings, a division of Standard & Poor’s Financial Services, LLC, its successors and assigns, and if such company is dissolved or liquidated or no longer performs the functions of a securities rating agency, “S&P” will be deemed to refer to any other nationally recognized securities rating agency designated by the Authorized Company Representative.

“State” means the State of Missouri.

“Supplemental Indenture” means any indenture supplemental or amendatory to this Indenture entered into by the City and the Trustee pursuant to **Article XI** hereof.

“Supplemental Lease” means any supplement or amendment to the Lease entered into pursuant to **Article XII** hereof.

“Trust Estate” means the Trust Estate described in the Granting Clauses of this Indenture.

“Trustee” means UMB Bank, N.A., Kansas City, Missouri, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under

the laws of the United States of America, and its successor or successors and any other corporation which at the time may be substituted in its place pursuant to and at the time serving as Trustee under this Indenture.

“Unassigned Rights” means (1) the City’s right to receive moneys for its own account, including but not limited to payments in lieu of taxes, (2) the City’s rights to indemnification or to be protected from liabilities by insurance policies required by the Lease, and (3) the rights of the City to provide any consent or approval under the Lease and to enforce provisions of the Lease relating to the completion, condition or use of the Project.

Section 102. Rules of Interpretation.

(a) Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing Persons shall include firms, associations and corporations, including public bodies, as well as natural Persons.

(b) Wherever in this Indenture it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(c) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision.

(d) Whenever an item or items are listed after the word “including”, such listing is not intended to be a listing that excludes items not listed.

(e) The Table of Contents and the Article and Section headings of this Indenture shall not be treated as a part of this Indenture or as affecting the true meaning of the provisions hereof.

ARTICLE II

THE BONDS

Section 201. Title and Amount of Bonds. No Bonds may be issued under this Indenture except in accordance with the provisions of this Article. The Bonds authorized to be issued under this Indenture shall be designated as “City of Independence, Missouri, Taxable Industrial Development Revenue Bonds (Wally’s Redevelopment Project), Series 2026.” The maximum total principal amount of Bonds that may be issued hereunder is hereby expressly limited to \$52,050,000.

Section 202. Nature of Obligation. The Bonds and the interest thereon shall be special obligations of the City payable solely out of the rents, revenues and receipts derived by the City from the Project and the Lease (excluding the Unassigned Rights), and not from any other fund or source of the City. The Bonds are secured by a pledge and assignment of the Trust Estate to the Trustee in favor of the Owners, as provided in this Indenture. The Bonds and the interest thereon shall not constitute general obligations of the City, the State or any political subdivision thereof, and neither the City, the State or related political subdivision thereof shall be liable thereon, and the Bonds shall not constitute an indebtedness within the

meaning of any constitutional, charter or statutory debt limitation or restriction, and are not payable in any manner by taxation.

Section 203. Denomination, Number and Dating of the Bonds.

(a) The Bonds shall be issuable in the form of one fully-registered Bond, in substantially the form set forth in **Exhibit C** hereto, in the denomination of \$0.01 or any multiple thereof.

(b) The Bonds shall be dated by the Trustee as of the date of initial delivery thereof as provided herein. If the Bonds are at any time thereafter transferred, any replacement Bonds shall be dated as of the date of authentication thereof and numbered from 1 upward.

Section 204. Method and Place of Payment of Bonds.

(a) The principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for payment of public and private debts.

(b) Payment of the principal of the Bonds shall be made upon the presentation and surrender of such Bonds at the payment office of any Paying Agent named in the Bonds. The payment of principal on the Bonds shall be noted on the Bonds on **Schedule I** thereto and the registration books maintained by the Trustee pursuant to **Section 206** hereof. Payment of the interest on the Bonds shall be made by the Trustee on each Payment Date to the Person appearing on the registration books of the Trustee hereinafter provided for as the Owner thereof on the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Payment Date by check or draft mailed to such Owner at such Owner's address as it appears on such registration books.

(c) The Bonds and the original **Schedule I** thereto shall be held by the Trustee in trust, unless otherwise directed in writing by the Owner. If the Bonds are held by the Trustee, the Trustee shall, on each Payment Date, send a revised copy of **Schedule I** via facsimile or other electronic means to the Owner, the Company (if not the Owner) and the City. Absent manifest error, the amounts shown on **Schedule I** as noted by the Trustee shall be conclusive evidence of the principal amount paid on the Bonds.

(d) If there is one Owner of the Bonds, the Trustee is authorized to make the final or any interim payments of principal on such Bonds by internal bank transfer or by electronic transfer to an account at a commercial bank or savings institution designated in writing by such Owner and located in the continental United States. The Trustee is also authorized to make interest payments on such Bonds by internal bank transfer or by electronic transfer to an account at a commercial bank or savings institution designated by such Owner and located in the continental United States.

(e) If the Company is the sole Owner of the Bonds, then the Company may set-off (by book entry or other reasonable means) its obligation to pay Basic Rent to the City as lessee under the Lease against the City's obligations to the Company as the bondholder under this Indenture. The Trustee may conclusively rely on the absence of any notice from the Company to the contrary as evidence that such set-off has occurred. On the final Payment Date, the Company may deliver to the Trustee for cancellation the Bonds and the Company shall receive a credit against the Basic Rent payable by the Company under **Section 5.1** of the Lease in an amount equal to the remaining principal on the Bond so tendered for cancellation plus accrued interest thereon.

Section 205. Execution and Authentication of Bonds.

(a) The Bonds shall be executed on behalf of the City by the manual or facsimile signature of its Mayor or (Interim) City Manager and attested by the manual or facsimile signature of the City Clerk, and shall have the corporate seal of the City affixed thereto or imprinted thereon. If any officer whose signature or facsimile thereof appears on the Bonds ceases to be such officer before the delivery of such Bond, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such Person had remained in office until delivery. Any Bond may be signed by such Persons as at the actual time of the execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such Persons may not have been such officers.

(b) The Bonds shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in **Exhibit C** hereof, which shall be manually executed by the Trustee. No Bond shall be entitled to any security or benefit under this Indenture or shall be valid or obligatory for any purposes until such Certificate of Authentication has been duly executed by the Trustee. The executed Certificate of Authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Indenture. The Certificate of Authentication on any Bond shall be deemed to have been duly executed if signed by any authorized signatory of the Trustee.

Section 206. Registration, Transfer and Exchange of Bonds.

(a) The Trustee shall keep books for the registration and for the transfer of Bonds as provided in this Indenture.

(b) The Bonds may be transferred only upon the books kept for the registration and transfer of Bonds upon surrender thereof to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or such Owner's attorney or legal representative in such form as shall be satisfactory to the Trustee. In connection with any such transfer of the Bonds, the City and the Trustee shall receive an executed representation letter signed by the proposed assignee in substantially the form of **Exhibit D** hereto. Upon any such transfer, the City shall execute and the Trustee shall authenticate and deliver in exchange for such Bond a new fully registered Bond or Bonds, registered in the name of the transferee, of any denomination or denominations authorized by this Indenture, in an aggregate principal amount equal to the outstanding principal amount of such Bond, of the same maturity and bearing interest at the same rate.

(c) In all cases in which Bonds are exchanged or transferred hereunder the provisions of any legend restrictions on the Bonds shall be complied with and the City shall execute and the Trustee shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such exchange or transfer shall forthwith be cancelled by the Trustee. The City or the Trustee may make a reasonable charge for every such exchange or transfer of Bonds sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, and such charge shall be paid before any such new Bond shall be delivered. Neither the City nor the Trustee shall be required to make any such exchange or transfer of Bonds during the 15 days immediately preceding a Payment Date on the Bonds or, in the case of any proposed redemption of Bonds, during the 15 days immediately preceding the selection of Bonds for such redemption or after such Bonds or any portion thereof has been selected for redemption.

(d) If any Owner fails to provide a certified taxpayer identification number to the Trustee, the Trustee may make a charge against such Owner sufficient to pay any governmental charge required to be

paid as a result of such failure, which amount may be deducted by the Trustee from amounts otherwise payable to such Owner under such Owner's Bond.

(e) The City and Trustee consent to the pledge of the Bonds to any Lender with a Mortgage (as such term is defined in the Lease) on all or any portion of the Project Site.

Section 207. Persons Deemed Owners of Bonds. As to any Bond, the Person in whose name the same is registered as shown on the bond registration books required by **Section 206** hereof shall be deemed and regarded as the absolute owner thereof for all purposes. Payment of or on account of the principal of and interest on any such Bond shall be made only to or upon the order of the Owner thereof or a legal representative thereof. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

Section 208. Authorization of the Bonds.

(a) The Bonds are authorized in the aggregate maximum principal amount of \$52,050,000 for the purpose of providing funds to pay the costs of the Project and the costs of issuing the Bonds, which Bonds shall be designated "City of Independence, Missouri, Taxable Industrial Development Revenue Bonds (Wally's Redevelopment Project), Series 2026." The Bonds shall be dated as provided in **Section 203(b)** hereof, shall become due on **December 1, 2027** (subject to prior redemption as provided in **Article III** hereof) and shall bear interest as specified in **Section 208(f)** hereof, payable on the dates specified in **Section 208(f)** hereof.

(b) The Trustee is hereby designated as the Paying Agent. The Owners of a majority of Bonds then Outstanding may designate a different Paying Agent upon written notice to the City and the Trustee.

(c) The Bonds shall be executed without material variance from the form and in the manner set forth in **Exhibit C** hereto and delivered to the Trustee for authentication. Prior to or simultaneously with the authentication and delivery of the Bonds by the Trustee, there shall be filed with the Trustee electronic copies of the following:

(1) The ordinance passed by the City Council authorizing the issuance of the Bonds and the execution of this Indenture, the Lease, and the Bond Purchase Agreement;

(2) Counterparts of this Indenture, the Lease and the Bond Purchase Agreement;

(3) A representation letter from the Purchaser in substantially the form attached as **Exhibit D** hereto;

(4) A request and authorization to the Trustee on behalf of the City, executed by the Authorized City Representative, to authenticate the Bonds and deliver the same to or at the direction of the Purchaser upon payment to the Trustee, for the account of the City, of the purchase price thereof specified in the Bond Purchase Agreement. The Trustee shall be entitled to conclusively rely upon such request and authorization as to names of the purchaser and the amount of such purchase price;

(5) An opinion of counsel nationally recognized on the subject of municipal bonds to the effect that the Bonds are in proper form and have been duly authorized in accordance with the Constitution and statutes of the State of Missouri, including the Act, and constitute valid and legally binding special obligations of the City; and

(6) Such other certificates, statements, receipts, opinions and documents as the Trustee shall reasonably require for the delivery of the Bonds.

(d) When the documents specified in subsection (c) of this Section have been filed with the Trustee, and when the Bonds have been executed and authenticated as required by this Indenture, the Purchaser shall pay the Closing Price to the Trustee, and the Trustee shall endorse the Bonds in an amount equal to the Closing Price and then either hold the Bonds in trust or if so directed in writing deliver the Bonds to or upon the order of the Purchaser.

(e) Following the initial issuance and delivery of the Bonds, the Company may submit additional requisition certificates in accordance with **Section 4.4** of the Lease, and the Trustee shall, based solely of the amount set forth in the requisition, endorse the Bonds in an amount equal to the amount set forth in each requisition certificate. The date of endorsement of each Principal Amount Advanced (as defined in subsection (g) below) as set forth on **Schedule I** to the Bonds shall be the date of the City's approval of each requisition certificate. The Trustee shall keep a record of the total requisitions submitted, and shall notify the City if the requisitions submitted exceed the maximum Cumulative Outstanding Principal Amount of the Bonds permitted hereunder.

(f) The Bonds shall bear interest at the rate of 7.00% per annum on the Cumulative Outstanding Principal Amount of the Bonds. Such interest shall be payable in arrears on each December 1, commencing on December 1, 2026, and continuing thereafter until the Cumulative Outstanding Principal Amount is paid in full; provided that the aggregate maximum principal amount shall not exceed \$52,050,000 and further provided that the Bonds shall be paid in full no later than **December 1, 2027**. Interest shall be calculated on the basis of a year of 360 days consisting of twelve months of 30 days each.

(g) The Trustee shall keep and maintain a record of the amount deposited or deemed to be deposited into the Project Fund pursuant to the terms of this Indenture as "Principal Amount Advanced" and shall enter the aggregate principal amount of the Bonds then Outstanding on its records as the "Cumulative Outstanding Principal Amount." On each date upon which a portion of the Cumulative Outstanding Principal Amount is paid to the Owners, pursuant to the redemption provisions of this Indenture, the Trustee shall enter on its records the principal amount paid on the Bonds as "Principal Amount Redeemed," and shall enter the then Outstanding principal amount of the Bonds as "Cumulative Outstanding Principal Amount." The records maintained by the Trustee as to amounts deposited into the Project Fund or principal amounts paid on the Bonds shall be the official records of the Cumulative Outstanding Principal Amount for all purposes, absent manifest error, and shall be in substantially the form of the Table of Cumulative Outstanding Principal Amount as set out in the form of Bonds in **Exhibit C** hereto. If any moneys are deposited by the Trustee into the Project Fund, then the Trustee shall provide a statement of receipts and disbursements with respect thereto to the City and the Company upon written request. After the Project has been completed and the certificate of payment of all costs is filed as provided in **Section 504** hereof, the Trustee, upon written request, to the extent it has not already done so pursuant to this Section or **Section 1012** hereof, shall file a final statement of receipts and disbursements with respect thereto with the City and the Company.

Section 209. Mutilated, Lost, Stolen or Destroyed Bonds. If any Bond becomes mutilated, or is lost, stolen or destroyed, the City shall execute and the Trustee shall authenticate and deliver a new Bond of like series, date and tenor as the Bond mutilated lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the City and the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to the Trustee to

save each of the City and the Trustee harmless. If any such Bond has matured, instead of delivering a substitute Bond, the Trustee may pay the same without surrender thereof. Upon the issuance of any substitute Bond, the City and the Trustee may require the payment of an amount sufficient to reimburse the City and the Trustee for any tax or other governmental charge that may be imposed in relation thereto and any other reasonable fees and expenses incurred in connection therewith.

Section 210. Cancellation and Destruction of Bonds Upon Payment.

(a) All Bonds which have been paid or redeemed or which the Trustee has purchased or which have otherwise been surrendered to the Trustee under this Indenture, either at or before maturity shall be cancelled by the Trustee immediately upon the payment, redemption or purchase of such Bonds and the surrender thereof to the Trustee.

(b) All Bonds cancelled under any of the provisions of this Indenture shall be destroyed by the Trustee. The Trustee shall execute a certificate describing the Bonds so destroyed, and shall file executed counterparts of such certificate with the City and the Company.

ARTICLE III

REDEMPTION OF BONDS

Section 301. Redemption of Bonds.

(a) The Bonds are subject to redemption and payment at any time before the stated maturity thereof, at the option of the City, upon written instructions from the Company, (1) in whole, if the Company exercises its option to purchase the Project and deposits an amount sufficient to effect such purchase pursuant to the Lease on the applicable redemption date, or (2) in part, if the Company prepays additional Basic Rent pursuant to the Lease. If only a portion of the Bonds are to be redeemed, (1) Bonds aggregating at least 10% of the maximum aggregate principal amount of Bonds authorized hereunder shall not be subject to redemption and payment before the stated maturity thereof, and (2) the Trustee shall keep a record of the amount of Bonds to remain Outstanding following such redemption. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date.

(b) The Bonds are subject to mandatory redemption, in whole or in part, to the extent of amounts deposited in the Bond Fund pursuant to **Sections 9.1 or 9.2** of the Lease, in the event of substantial damage to or destruction or condemnation of substantially all of the Project. Bonds to be redeemed pursuant to this paragraph shall be called for redemption by the Trustee on the earliest practicable date for which timely notice of redemption may be given as provided hereunder. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date. Before giving notice of redemption to the Owners pursuant to this paragraph (b), money in an amount equal to the redemption price shall have been deposited in the Bond Fund.

(c) In connection with a redemption under paragraphs (a) or (b) of this Section, at its option, the Company may deliver to the Trustee for cancellation any Bonds owned by the Company and not previously paid, and the Company shall receive a credit against the amounts payable by the Company for

the redemption of such Bonds in an amount equal to the principal amount of the Bonds so tendered for cancellation, plus accrued interest.

Section 302. Effect of Call for Redemption. Before or on the date fixed for redemption, funds, Government Securities, or a combination thereof, shall be placed with the Trustee which are sufficient to pay the Bonds called for redemption and accrued interest thereon, if any, to the redemption date. Upon the happening of the above conditions and appropriate written notice having been given, the Bonds or the portions of the principal amount of Bonds thus called for redemption shall cease to bear interest on the specified redemption date, and shall no longer be entitled to the protection, benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture. If the Bonds are fully redeemed before maturity and an amount of money equal to the Trustee's and the Paying Agent's agreed to fees and expenses hereunder accrued and to accrue in connection with such redemption is paid or provided for, the City shall, at the Company's direction, deliver to the Company the items described in **Section 11.2** of the Lease.

Section 303. Notice of Redemption. If the Bonds are to be called for redemption as provided in **Section 301(a)** hereof, the Company shall deliver written notice to the City and the Trustee that it has elected to direct the City to redeem all or a portion of the Bonds at least 40 days (10 days if the Company is the Owner) prior to the scheduled redemption date. The Trustee shall then deliver written notice to the Owners at least 30 days (five days if the Company is the Owner) prior to the scheduled redemption date by facsimile and by first-class mail stating the date upon which the Bonds will be redeemed and paid, unless such notice period is waived by the Owners in writing.

ARTICLE IV

FORM OF BONDS

Section 401. Form Generally. The Bonds and the Trustee's Certificate of Authentication to be endorsed thereon shall be issued in substantially the forms set forth in **Exhibit C** hereto. The Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any custom, usage or requirements of law with respect thereto.

ARTICLE V

CUSTODY AND APPLICATION OF BOND PROCEEDS

Section 501. Creation of Funds. There are hereby created and ordered to be established in the custody of the Trustee the following special trust funds in the name of the City:

(a) "City of Independence, Missouri, Project Fund – Wally's Independence MO Owner LLC" (herein called the "Project Fund");

(b) "City of Independence, Missouri, Costs of Issuance Fund – Wally's Independence MO Owner LLC" (herein called the "Costs of Issuance Fund"); and

(c) “City of Independence, Missouri, Bond Fund – Wally’s Independence MO Owner LLC” (herein called the “Bond Fund”).

Section 502. Deposits into the Project Fund. The proceeds of the sale of the Bonds (whether actually paid or deemed paid under **Section 208** hereof), including Additional Payments provided for in the Bond Purchase Agreement, when received, excluding such amounts required to be paid into the Bond Fund pursuant to **Section 601** hereof, shall be deposited by the Trustee into the Project Fund. Any money received by the Trustee from any other source for the purpose of purchasing, constructing and improving the Project shall pursuant to any directions from the Person depositing such moneys also be deposited into the Project Fund.

Section 503. Disbursements from the Project Fund.

(a) The moneys in the Project Fund shall be disbursed by the Trustee for the payment of, or reimbursement to the Company (or any other party that has made payment on behalf of the Company) for payment of, Project Costs upon receipt of requisition certificates signed by the Company in accordance with the provisions of **Article IV** of the Lease. The Trustee hereby covenants and agrees to disburse such moneys in accordance with such provisions.

(b) If, pursuant to **Section 208** hereof, the Trustee is deemed to have deposited into the Project Fund the amount specified in the requisition certificates submitted by the Company in accordance with the provisions of **Article IV** of the Lease, the Trustee shall upon endorsement of the Bonds in an equal amount be deemed to have disbursed such funds from the Project Fund to the Company (or such other purchaser designated by the Company) in satisfaction of the requisition certificate.

(c) In paying any requisition under this Section, the Trustee may rely as to the completeness and accuracy of all statements in such requisition certificate if such requisition certificate is signed by the Authorized Company Representative. If the City so requests in writing, a copy of each requisition certificate submitted to the Trustee for payment under this Section shall be promptly provided by the Trustee to the City. The City hereby authorizes and directs the Trustee to make disbursements in the manner and as provided for by the aforesaid provisions of the Lease.

Section 504. Completion of the Project. The completion of the construction and improvement of the Project and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the certificate required by the provisions of **Section 4.5** of the Lease. As soon as practicable after the Completion Date any balance remaining in the Project Fund shall without further authorization be transferred by the Trustee to the Bond Fund and applied as provided in **Section 4.6** of the Lease.

Section 505. Deposits into and Disbursements from the Costs of Issuance Fund. Money deposited by the Company in the Costs of Issuance Fund shall be used solely to pay costs of issuing the Bonds or refunded to the Company as hereinafter provided. The Trustee shall without further authorization disburse from the Costs of Issuance Fund, to the extent available, money sufficient to pay the amounts shown in a closing memorandum or requisition certificate provided to the Trustee on or before the date of delivery of the Bonds, which shall have attached thereto the statements, invoices and related items described in said closing memorandum or requisition certificate. The Trustee may rely conclusively on the amounts due as shown in the closing memorandum or requisition certificate and will not be required to make any independent inspection or investigation in connection therewith. Any of such money not used to pay costs of issuance by the date that is six months after the Closing Date shall be refunded to the Company.

Section 506. Disposition Upon Acceleration. If the principal of the Bonds has become due and payable pursuant to **Section 902** hereof, upon the date of payment by the Trustee of any moneys due as provided in **Article IX** hereof, any balance remaining in the Project Fund shall without further authorization be deposited in the Bond Fund by the Trustee, with advice to the City and to the Company of such action.

ARTICLE VI

REVENUES AND FUNDS

Section 601. Deposits Into the Bond Fund.

(a) The Trustee shall deposit into the Bond Fund, as and when received, (a) all Basic Rent payable by the Company to the City specified in **Section 5.1** of the Lease; (b) any Additional Rent payable by the Company specified in **Section 5.2** of the Lease; (c) any amount in the Project Fund to be transferred to the Bond Fund pursuant to **Section 504** hereof upon completion of the Project or pursuant to **Section 506** hereof upon acceleration of the Bonds; (d) the balance of any Net Proceeds (as defined in the Lease) of condemnation awards or insurance received by the Trustee pursuant to **Article IX** of the Lease; (e) the amounts to be deposited in the Bond Fund pursuant to **Sections 9.1(f)** and **9.2(c)** of the Lease; (f) all interest and other income derived from investments of Bond Fund moneys as provided in **Section 702** hereof; and (g) all other moneys received by the Trustee under and pursuant to any of the provisions of the Lease when accompanied by directions from the Person depositing such moneys that such moneys are to be paid into the Bond Fund.

(b) If the Company is not the sole Owner of the Bonds, the Trustee shall notify the Company in writing, at least 15 days before each date on which a payment is due under **Section 5.1** of the Lease, of the amount that is payable by the Company pursuant to such Section.

Section 602. Application of Moneys in the Bond Fund.

(a) Except as provided in **Section 604** and **Section 908** hereof or in **Section 4.6(a)** of the Lease, moneys in the Bond Fund shall be expended solely for the payment of the principal of and the interest on the Bonds as the same mature and become due or upon the redemption thereof before maturity; provided, however, that any amounts received by the Trustee as Additional Rent under **Section 5.2** of the Lease and deposited to the Bond Fund as provided in **Section 601** above, shall be expended by the Trustee for such items of Additional Rent as they are received or due without further authorization from the City.

(b) The City hereby authorizes and directs the Trustee to withdraw sufficient funds from the Bond Fund to pay the principal of and the interest on the Bonds as the same become due and payable and to make said funds so withdrawn available to the Paying Agent for the purpose of paying said principal and interest. To the extent the Company is the Owner of all of the Bonds Outstanding, payment may be made via transaction entry on the trust records held by Trustee.

(c) Whenever the amount in the Bond Fund from any source whatsoever is sufficient to redeem all of the Bonds Outstanding and to pay interest to accrue thereon before such redemption, the City covenants and agrees, upon request of the Company, to take and cause to be taken the necessary steps to redeem all such Bonds on the next succeeding redemption date for which the required redemption notice may be given or on such later redemption date as may be specified by the Company. The Trustee may use

any moneys in the Bond Fund to redeem a part of the Bonds Outstanding in accordance with and to the extent permitted by **Article III** hereof so long as the Company is not in default with respect to any payments under the Lease and to the extent said moneys are in excess of the amount required for payment of Bonds theretofore matured or called for redemption and past due interest, if any, in all cases when such Bonds have not been presented for payment.

(d) After payment in full of the principal of and interest, if any, on the Bonds (or provision has been made for the payment thereof as provided in this Indenture), and the fees, charges and expenses of the Trustee, the City and any Paying Agent and any other amounts required to be paid under this Indenture and the Lease, all amounts remaining in the Bond Fund shall be paid to the Company upon the expiration or sooner termination of the Lease.

Section 603. Payments Due on Days Other than Business Days. In any case where the date of maturity of principal of or interest, if any, on the Bonds or the date fixed for redemption of any Bonds is not a Business Day, then payment of principal or interest, if any, need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest, if any, shall continue to accrue for the period after such date.

Section 604. Nonpresentment of Bonds. If any Bond is not presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if funds sufficient to pay such Bond shall have been made available to the Trustee, all liability of the City to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the Owner of such Bond who shall thereafter be restricted exclusively to such fund or funds for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Bond. If any Bond is not presented for payment within one year following the date when such Bond becomes due, whether by maturity or otherwise, the Trustee shall without liability for interest thereon repay to the Company the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Company, and the Owner thereof shall be entitled to look only to the Company for payment, and then only to the extent of the amount so repaid, and the Company shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

Section 605. Repayment to the Company from the Bond Fund. After payment in full of the principal of and interest on the Bonds (or provision has been made for the payment thereof as provided in this Indenture), and the reasonable fees, charges and expenses of the Trustee and the City and any other amounts required to be paid under this Indenture and the Lease, all amounts remaining in the Bond Fund shall be paid to the Company upon the expiration or sooner termination of the Lease.

ARTICLE VII

SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 701. Moneys to be Held in Trust. All moneys deposited with or paid to the Trustee for account of the Bond Fund or the Project Fund under any provision of this Indenture, and all moneys deposited with or paid to any Paying Agent under any provision of this Indenture, shall be held by the Trustee or Paying Agent in trust and shall be applied only in accordance with the provisions of this Indenture

and the Lease, and, until used or applied as herein provided, shall constitute part of the Trust Estate and be subject to the lien hereof. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any moneys received hereunder except such as may be agreed upon in writing.

Section 702. Investment of Moneys in Project Fund and Bond Fund. Moneys held in the Project Fund and the Bond Fund shall, pursuant to written direction of the Company, signed by the Authorized Company Representative, be separately invested and reinvested by the Trustee in Investment Securities which mature or are subject to redemption by the Owner before the date such funds will be needed. Moneys in the Costs of Issuance fund shall be held un-invested. If the Company fails to provide written directions concerning investment of moneys held in the Project Fund and the Bond Fund, the Trustee shall invest in such Investment Securities specified in paragraph (e) of the definition of Investment Securities, provided they mature or are subject to redemption before the date such funds will be needed. The Trustee is specifically authorized to implement its automated cash investment system to assure that cash on hand is invested and to charge its normal cash management fees and cash sweep account fees, which may be deducted from income earned on investments; provided that any such fees shall not exceed the interest income on the investment. Any such Investment Securities shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund in which such moneys are originally held, and the interest accruing thereon and any profit realized from such Investment Securities shall be credited to such fund, and any loss resulting from such Investment Securities shall be charged to such fund. After the Trustee has notice pursuant to **Section 1001(h)** hereof of the existence of an Event of Default, the Trustee shall direct the investment of moneys in the Bond Fund and the Project Fund. The Trustee shall sell and reduce to cash a sufficient amount of such Investment Securities whenever the cash balance in any Fund is insufficient for the purposes of such Fund. In determining the balance in any Fund, investments in such Fund shall be valued at the lower of their original cost or their fair market value as of the most recent Payment Date. The Trustee may make any and all investments permitted by the provisions of this Section through its own bond department or any affiliate or short-term investment department. The Trustee may rely on the investment directions of the Authorized Company Representative as to both the suitability and legality of the directed investments.

Section 703. Record Keeping. The Trustee shall maintain records designed to show compliance with the provisions of this Article and with the provisions of **Article VI** hereof for at least six years after the payment of all of the Outstanding Bonds.

ARTICLE VIII

GENERAL COVENANTS AND PROVISIONS

Section 801. Payment of Principal and Interest. The City covenants and agrees that it will, but solely from the rents, revenues and receipts derived from the Project and the Lease (excluding the Unassigned Rights) as described herein, deposit or cause to be deposited in the Bond Fund sufficient sums payable under the Lease promptly to meet and pay the principal of and the interest on the Bonds as they become due and payable at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof. Nothing herein shall be construed as requiring the City to operate the Project as a business other than as lessor or to use any funds or revenues from any source other than funds and revenues derived from the Project.

Section 802. Authority to Execute Indenture and Issue Bonds. The City covenants that it is duly authorized under the Constitution and laws of the State to execute this Indenture, to issue the Bonds

and to pledge and assign the Trust Estate in the manner and to the extent herein set forth; that all action on its part for the execution and delivery of this Indenture and the issuance of the Bonds has been duly and effectively taken; that the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the City according to the import thereof.

Section 803. Performance of Covenants. The City covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in the Bonds and in all proceedings of its governing body pertaining thereto. The Trustee may take such action as it deems appropriate to enforce all such covenants, undertakings, stipulations and provisions of the City hereunder.

Section 804. Instruments of Further Assurance. The City covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures and such further acts, instruments, financing statements and other documents as the Trustee may reasonably require for the better pledging and assigning unto the Trustee the property and revenues herein described to the payment of the principal of and interest, if any, on the Bonds. The City covenants and agrees that, except as herein and in the Lease provided, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the Project or the rents, revenues and receipts derived therefrom or from the Lease, or of its rights under the Lease.

Section 805. Recordings and Filings. The City shall file or cause to be kept and filed all financing statements, and hereby authorizes the Trustee to file or cause to be kept and filed continuation statements with respect to such originally filed financing statements related to this Indenture in order to fully preserve and protect the security of the Owners and the rights of the Trustee hereunder provided a copy of the originally filed financing statement is timely delivered to the Trustee. Unless otherwise notified in writing by the Company or City, the Trustee may conclusively rely upon any originally filed financing statements in filing any continuation statements hereunder. The City will cooperate in causing this Indenture and all Supplemental Indentures, the Lease and all Supplemental Leases and all other security instruments to be recorded and filed in such manner and in such places as may be required by law in order to fully preserve and protect the security of the Owners and the rights of the Trustee hereunder.

Section 806. Inspection of Project Books. The City covenants and agrees that all books and documents in its possession relating to the Project and the rents, revenues and receipts derived from the Project shall at all times be open to inspection by such accountants or other agencies as the Trustee may from time to time designate.

Section 807. Enforcement of Rights Under the Lease. The City covenants and agrees that it will enforce all of its rights and all of the obligations of the Company (at the expense of the Company) under the Lease to the extent necessary to preserve the Project in good repair and reasonably safe operating condition, and to protect the rights of the Trustee and the Owners hereunder with respect to the pledge and assignment of the rents, revenues and receipts coming due under the Lease; provided that, the City and the Trustee, as its assignee, shall refrain from enforcing any such right or obligation (except for the Unassigned Rights, any other rights of the City or the Trustee to receive payments owing to either of them for their own account under the Indenture or the Lease or any other agreement related to the Bonds or for their rights of indemnification or to be protected from liabilities by insurance policies required by the Lease) if so directed in writing by the Owners of 100% of the Outstanding Bonds. The City agrees that the Trustee, as assignee of the rentals and other amounts to be received by the City and paid by the Company under the Lease, or in its name or in the name of the City, may enforce all rights of the City to receive such rentals and other

amounts and all obligations of the Company to pay such rentals and other amounts under and pursuant to the Lease for and on behalf of the Owners, whether or not the City is in default hereunder.

ARTICLE IX

DEFAULT AND REMEDIES

Section 901. Events of Default; Notice; Opportunity to Cure. If any of the following events occur, it is hereby defined as and declared to be and to constitute an “Event of Default”:

- (a) Default in the due and punctual payment of the principal on any Bond, whether at the stated maturity or accelerated maturity thereof, or at any date fixed for redemption thereof;
- (b) Default in the due and punctual payment of the interest on any Bond, whether at the stated maturity or accelerated maturity thereof, or at any date fixed for redemption thereof;
- (c) Default as specified in **Section 12.1** of the Lease has occurred; or
- (d) Default in the performance, or breach, of any other covenant or agreement under this Indenture.

No default specified above shall constitute an Event of Default until the City, the Trustee or the Owners of 25% in aggregate principal amount of all Bonds Outstanding has given actual notice of such default by registered or certified mail to the Company, and the Company has had 30 days after receipt of such notice to correct said default or cause said default to be corrected and has not corrected said default or caused said default to be corrected within such period; provided, however, if any such default (other than a default in the payment of any money) is such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the Company or the City (as the case may be) within such period and diligently pursued until the default is corrected.

Section 902. Acceleration of Maturity in Event of Default; Rescission. If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, the Trustee may, and upon the written request of the Owners of not less than 25% in aggregate principal amount of Bonds then Outstanding, shall, by notice in writing delivered to the City and the Company, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable. At any time after such a declaration of acceleration has been made, but before any judgment or decree for payment of money due on any Bonds has been obtained by the Trustee as provided in this Article, the owners of a majority in principal amount of the Bonds Outstanding may, by written notice to the Company and Trustee but with the written consent of the City, rescind and annul such declaration and its consequences if: (a) there is deposited with the Trustee a sum sufficient to pay: (1) all overdue installments of interest on all Bonds; (2) the principal of (and premium, if any, on) any Bonds which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in such Bonds; and (3) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and (b) all events of default, other than

the non-payment of the principal of Bonds which have become due solely by such declaration of acceleration, have been cured or have been waived as provided in **Section 910** of this Indenture.

Section 903. Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession. If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** hereof elapses, the City, upon demand of the Trustee, shall forthwith surrender the possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to take possession of all or any part of the Trust Estate, together with the books, papers and accounts of the City pertaining thereto, and including the rights and the position of the City under the Lease, and to hold, operate and manage the same, and from time to time make all needful repairs and improvements. The Trustee may lease the Project (excluding the Unassigned Rights) or any part thereof, in the name and for account of the City, and collect, receive and sequester the rents, revenues and receipts therefrom, and out of the same and any moneys received from any receiver of any part thereof pay, and set up proper reserves for the payment of all proper costs and expenses of so taking, holding and managing the same, including without limitation (a) reasonable compensation to the Trustee, its agents and counsel, (b) any reasonable charges of the Trustee hereunder, (c) any taxes and assessments and other charges having a lien that is senior to the lien of this Indenture, (d) all expenses of such repairs and improvements and (e) any amounts payable as payments in lieu of tax. The Trustee shall apply the remainder of the moneys so received in accordance with the provisions of **Section 908** hereof. Whenever all that is due upon the Bonds has been paid and all defaults cured, the Trustee shall surrender possession of the Trust Estate to the City, its successors or assigns, the same right of entry, however, to exist upon any subsequent Event of Default. While in possession of such property, the Trustee shall render annually to the City and the Company a summarized statement of receipts and expenditures in connection therewith.

Section 904. Appointment of Receivers in Event of Default. If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate or any part thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

Section 905. Exercise of Remedies by the Trustee.

(a) Upon the occurrence of an Event of Default, the Trustee may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce the payment of the principal of and interest on the Bonds then Outstanding and all other amounts due hereunder, and to enforce and compel the performance of the duties and obligations of the City or the Company as herein set forth or as set forth in the Lease, respectively.

(b) If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, and if requested to do so by (1) the City (in the case of an Event of Default pursuant to **Section 12.1(b), (c), (d), (e)** or **(f)** of the Lease), or (2) the Owners of 25% in aggregate principal amount of Bonds then Outstanding, and if indemnified as provided in subsection (l) of **Section 1001** hereof, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient and in the interests of the City or the Owners, as the case may be.

(c) All rights of action under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without necessity of joining as plaintiffs or defendants any Owners, and any recovery of judgment shall, subject to the provisions of **Section 908** hereof, be for the equal benefit of all the Owners of the Outstanding Bonds.

Section 906. Limitation on Exercise of Remedies by Owners. No Owner shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (a) a default has occurred of which the Trustee has been notified as provided in **Section 1001(h)** hereof or of which by said subsection the Trustee is deemed to have notice, (b) such default has become an Event of Default, (c) the Owners of 25% in aggregate principal amount of Bonds then Outstanding have made written request to the Trustee, have offered it reasonable opportunity either to proceed for such reasonable period not to exceed 60 days following such notice and to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and have offered to the Trustee indemnity as provided in **Section 1001(i)** hereof, and (d) the Trustee thereafter fails or refuses to exercise the powers herein granted or to institute such action, suit or proceeding in its own name; such notification, request and offer of indemnity are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Owners shall have any right in any manner whatsoever to affect, disturb or prejudice this Indenture by their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of all Bonds then Outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Owner to payment of the principal of and interest on any Bond at and after the maturity thereof or the obligation of the City to pay the principal of and interest on each of the Bonds issued hereunder to the respective Owners thereof at the time, place, from the source and in the manner herein and in the Bonds expressed.

Section 907. Right of Owners to Direct Proceedings.

(a) The Owners of a majority in aggregate principal amount of Bonds then Outstanding may, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, including **Section 1001(i)** hereof.

(b) Notwithstanding any provision in this Indenture to the contrary, including paragraph (a) of this Section, the Owners shall not have the right to control or direct any remedies hereunder upon an Event of Default under **Section 12.1(b) or (c)** (in either case, with respect to the Unassigned Rights), **(d), (e) or (f)** of the Lease.

Section 908. Application of Moneys in Event of Default.

(a) All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of any obligations outstanding under the Lease, of the cost and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses, liabilities and advances incurred or made by the Trustee (including any attorneys fees and expenses) or amounts to be paid pursuant to **Section 903** hereof, be deposited in the Bond Fund and all moneys so deposited in the Bond Fund shall be applied as follows:

(1) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST -- To the payment to the Persons entitled thereto of all installments of interest, if any, then due and payable on the Bonds, in the order in which such installments of interest became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege;

SECOND -- To the payment to the Persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due and payable (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment, ratably, according to the amount of principal due on such date, to the Persons entitled thereto without any discrimination or privilege.

(2) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest, if any, then due and unpaid on all of the Bonds, without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Person entitled thereto, without any discrimination or privilege.

(3) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of **Section 910** hereof, then, subject to the provisions of subsection (2) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of subsection (1) of this Section.

(b) Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times and from time to time as the Trustee shall determine, having due regard to the amount of such moneys available and which may become available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be a Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue.

(c) Whenever all of the Bonds and interest thereon, if any, have been paid under the provisions of this Section, and all fees, expenses and charges of the City and the Trustee and any other amounts

required to be paid under this Indenture and the Lease have been paid (including any amounts payable as payments in lieu of tax), any balance remaining in the Bond Fund shall be paid to the Company as provided in **Section 602** hereof.

Section 909. Remedies Cumulative. No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Owners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Owners hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right, power or remedy accruing upon any Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient. If the Trustee has proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry, or otherwise, and such proceedings have been discontinued or abandoned for any reason, or have been determined adversely, then and in every such case the City, the Company, the Trustee and the Owners shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 910. Waivers of Events of Default. The Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest, if any, on Bonds, and only upon the written request of the Owners of at least 50% in aggregate principal amount of all the Bonds then Outstanding, provided, however, that (1) there shall not be waived without the consent of the City an Event of Default hereunder arising from an Event of Default under **Section 12.1(b), (c), (d) (e) or (f)** of the Lease, and (2) there shall not be waived without the consent of the Owners of all the Bonds Outstanding (a) any Event of Default in the payment of the principal of any Outstanding Bonds when due (whether at the date of maturity or redemption specified therein), or (b) any Event of Default in the payment when due of the interest on any such Bonds, unless prior to such waiver or rescission, all arrears of interest, or all arrears of payments of principal when due, as the case may be, and all reasonable expenses of the Trustee and the City (including reasonable attorneys' fees and expenses), in connection with such default, shall have been paid or provided for. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the City, the Company, the Trustee and the Owners shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

ARTICLE X

THE TRUSTEE

Section 1001. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

- (a) The Trustee, before the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If any Event of Default has occurred and is continuing, subject to **Section 1001(i)** hereof, the Trustee shall exercise such of the rights and

powers vested in it by this Indenture, and shall use the same degree of care and skill in their exercise, as a prudent Person would exercise or use under the circumstances in the conduct of its own affairs.

(b) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, affiliates, attorneys or receivers and shall not be responsible for any misconduct or negligence on the part of any agent, attorney or receiver appointed or chosen by it with due care. The Trustee may conclusively rely upon and act or refrain from acting upon any opinion or advice of counsel, who may be counsel to the City or to the Company, concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys and receivers as may reasonably be employed in connection with the trusts hereof. The Trustee shall not be responsible for any loss or damage resulting from any action or inaction by it taken or omitted to be taken in good faith in reliance upon such opinion or advice of counsel addressed to the City and the Trustee.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (except with respect to the Certificate of Authentication of the Trustee endorsed on the Bonds), or except as provided in the Lease and particularly **Section 10.8** thereof, for the recording or rerecording, filing or refiling of this Indenture or any security agreement in connection therewith (excluding the continuation of Uniform Commercial Code financing statements), or for insuring the Project or collecting any insurance moneys, or for the validity of the execution by the City of this Indenture or of any Supplemental Indentures or instruments of further assurance, or for the sufficiency of the security of the Bonds. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with **Article VII** hereof.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated and delivered hereunder. The Trustee, in its individual or any other capacity, may become the Owner or pledgee of Bonds with the same rights that it would have if it were not Trustee. The Trustee shall not be accountable for the use or application by the City or the Company of the proceeds of any of the Bonds or of any money paid to or upon the order of the City or Company under any provision of this Indenture.

(e) The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, affidavit, letter, telegram or other paper or document provided for under this Indenture believed by it to be genuine and correct and to have been signed, presented or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any Person who, at the time of making such request or giving such authority or consent is an Owner, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or upon transfer or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, or whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Trustee shall be entitled to rely upon a certificate signed by the Authorized City Representative or an Authorized Company Representative as sufficient evidence of the facts therein contained, and before the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section or of which by said subsection it is deemed to have notice, the Trustee shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure

such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee is under no duty to perform an independent investigation as to any statement or fact contained in any such certificate, opinion or advice it obtains regarding the accuracy or truth of any statement or correctness of any opinion. The Trustee shall not be liable for any action or inaction taken in good faith in reliance on such a certificate or any advice received from counsel, and the Trustee may conclusively rely as to the truth of the statements and the correctness of the opinions or statements expressed therein.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct. In no event shall the Trustee be liable for consequential damages. The Trustee shall not be liable for any act or omission, in the absence of bad faith, when the Trustee reasonably believes the act or failure to act is authorized and within its powers to perform under the Indenture.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the City to cause to be made any of the payments to the Trustee required to be made in **Article VI** hereof, unless the Trustee is specifically notified in writing of such default by the City or by the Owners of at least 25% in aggregate principal amount of all Bonds then Outstanding.

(i) At any and all reasonable times and subject to the Company's reasonable and standard security procedures, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives may, but shall not be required to, inspect any and all of the Project, and all books, papers and records of the City pertaining to the Project and the Bonds, and to take such memoranda from and in regard thereto as may be desired. The Trustee shall treat all proprietary information of the Company as confidential.

(j) The Trustee shall not be required to give any bond or surety in respect to the execution of its trusts and powers hereunder or otherwise in respect of the Project.

(k) The Trustee may, but shall not be required to, demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the City to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) Notwithstanding anything in the Indenture or the Lease to the contrary, before taking any action under this Indenture other than the payments from moneys on deposit in the Project Fund or the Bond Fund, as provided herein, the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all costs and expenses to which it may be put and to protect it against all liability which it may incur in or by reason of such action, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

(m) Notwithstanding any other provision of this Indenture to the contrary, any provision relating to the conduct of, intended to provide authority to act, right to payment of fees and expenses, protection, immunity and indemnification to the Trustee, shall be interpreted to

include any action of the Trustee, whether it is deemed to be in its capacity as Trustee, bond registrar or Paying Agent.

(n) The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds and shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

(o) None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

Section 1002. Fees, Charges and Expenses of the Trustee. The Trustee shall be entitled to payment of and/or reimbursement for reasonable fees for its ordinary services rendered hereunder and all advances, agent and counsel fees and other ordinary expenses reasonably made or incurred by the Trustee in connection with such ordinary services. If it becomes necessary for the Trustee to perform extraordinary services, it shall be entitled to reasonable extra compensation therefor and to reimbursement for reasonable extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the neglect or willful misconduct of the Trustee, it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for the reasonable fees and charges of the Trustee as Paying Agent for the Bonds. Pursuant to the provisions of **Section 5.2** of the Lease, the Company has agreed to pay to the Trustee all reasonable fees, charges and expenses of the Trustee under this Indenture. The Trustee agrees that the City shall have no liability for any reasonable fees, charges and expenses of the Trustee, and the Trustee agrees to look only to the Company for the payment of all reasonable fees, charges and expenses of the Trustee and any Paying Agent as provided in the Lease. Upon the occurrence of an Event of Default and during its continuance, the Trustee shall have a lien with right of payment before payment on account of principal of or interest on any Bond, upon all moneys in its possession under any provisions hereof for the foregoing reasonable advances, fees, costs and expenses incurred. The Trustee's right to compensation and indemnification relating to period during which it serves as Trustee hereunder shall survive the satisfaction and discharge of this Indenture or its resignation or removal hereunder and payment in full of the Bonds.

Section 1003. Notice to Owners if Default Occurs. If a default occurs of which the Trustee is by **Section 1001(h)** hereof required to take notice or if notice of default is given as in said subsection (h) provided, then the Trustee shall give written notice thereof to the last known Owners of all Bonds then Outstanding as shown by the bond registration books required by **Section 206** hereof to be kept at the corporate trust office of the Trustee.

Section 1004. Intervention by the Trustee. In any judicial proceeding to which the City is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Owners, the Trustee may intervene on behalf of Owners and, subject to the provisions of **Section 1001(l)** hereof, shall do so if requested in writing by the Owners of at least 25% of the aggregate principal amount of Bonds then Outstanding.

Section 1005. Successor Trustee Upon Merger, Consolidation or Sale. With the prior written consent of the Company, any corporation or association into which the Trustee may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any

merger, conversion, sale, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder and shall be vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

Section 1006. Resignation of Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 30 days' written notice to the City, the Company and the Owners, and such resignation shall take effect at the end of such 30 days, or upon the earlier appointment of a successor Trustee by the Owners or by the City; provided, however, that in no event shall the resignation of the Trustee or any successor trustee become effective until such time as a successor trustee has been appointed and has accepted the appointment. If no successor has been appointed and accepted the appointment within 30 days after the giving of such notice of resignation, the Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee. The Trustee's rights to indemnity and to any fees, charges or other amounts due and payable to it shall survive such resignation.

Section 1007. Removal of Trustee. The Trustee may be removed at any time, with or without cause, by an instrument or concurrent instruments in writing (a) delivered to the Trustee, the City and the Company and signed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding, or (b) so long as no Event of Default under this Indenture or the Lease shall have occurred and be continuing, delivered to the Trustee, the Company and the Owners and signed by the City. The Trustee's rights to indemnity and to any fees, charges or other amounts due and payable to it shall survive such removal.

Section 1008. Appointment of Successor Trustee. If the Trustee hereunder resigns or is removed, or otherwise becomes incapable of acting hereunder, or if it is taken under the control of any public officer or officers or of a receiver appointed by a court, a successor Trustee (a) reasonably acceptable to the City may be appointed by the Company (so long as no Event of Default has occurred and is continuing), or (b) reasonably acceptable to the City and the Company may be appointed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing; provided, nevertheless, that in case of such vacancy, the City, by an instrument executed and signed by its Mayor or (Interim) City Manager and attested by its City Clerk under its seal, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed in the manner above provided. Any such temporary Trustee so appointed by the City shall immediately and without further acts be superseded by the successor Trustee so appointed as provided above. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank in good standing and qualified to accept such trust with a corporate trust office in the State, and having, or whose obligations are guaranteed by a financial institution having, a reported capital, surplus and undivided profits of not less than \$50,000,000. If no successor Trustee has been so appointed and accepted appointment in the manner herein provided, the Trustee or any Owner may petition any court of competent jurisdiction for the appointment of a successor Trustee, until a successor shall have been appointed as above provided.

Section 1009. Vesting of Trusts in Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the City and the Company an instrument in writing accepting such appointment hereunder, and thereupon such successor shall, without any further act, deed or conveyance, become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its predecessor and the duties and obligations of such predecessor hereunder shall thereafter cease and terminate; but such predecessor shall, nevertheless, on the written request of the City, execute and deliver an instrument transferring to such successor Trustee all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of such predecessor hereunder; every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder

to its successor. Should any instrument in writing from the City be required by any predecessor or successor Trustee for more fully and certainly vesting in such successor the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereby vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

Section 1010. Right of Trustee to Pay Taxes and Other Charges. If any tax, assessment or governmental or other charge upon, or insurance premium with respect to, any part of the Project is not paid as required herein or in the Lease, the Trustee may pay such tax, assessment or governmental charge or insurance premium, without prejudice, however, to any rights of the Trustee or the Owners hereunder arising in consequence of such failure; any amount at any time so paid under this Section, with interest thereon from the date of payment at the rate of 10% per annum, shall become an additional obligation secured by this Indenture, and the same shall be given a preference in payment over any payment of principal of or interest on the Bonds, and shall be paid out of the proceeds of rents, revenues and receipts collected from the Project, if not otherwise caused to be paid; but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by the Owners of at least 25% of the aggregate principal amount of Bonds then Outstanding and shall have been provided adequate funds for the purpose of such payment.

Section 1011. Trust Estate May be Vested in Co-Trustee.

(a) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the State) denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Lease, and in particular in case of the enforcement of either this Indenture or the Lease upon the occurrence of an Event of Default or if the Trustee deems that by reason of any present or future law of any jurisdiction it cannot exercise any of the powers, rights or remedies herein granted to the Trustee, or take any other action which may be desirable or necessary in connection therewith, it may be necessary or desirable that the Trustee appoint an additional individual or institution as a co-trustee or separate trustee, and the Trustee is hereby authorized to appoint such co-trustee or separate trustee.

(b) If the Trustee appoints an additional individual or institution as a co-trustee or separate trustee (which appointment shall be subject to the approval of the Company), each and every remedy, power, right, claim, demand, cause of action, immunity, title, interest and lien expressed or intended by this Indenture to be exercised by the Trustee with respect thereto shall be exercisable by such co-trustee or separate trustee but only to the extent necessary to enable such co-trustee or separate trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such co-trustee or separate trustee shall run to and be enforceable by either of them.

(c) Should any deed, conveyance or instrument in writing from the City be required by the co-trustee or separate trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to such co-trustee such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

(d) If any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, all the properties, rights, powers, trusts, duties and obligations of such co-trustee or separate trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such co-trustee or separate trustee.

Section 1012. Accounting. The Trustee shall render an annual accounting for the period ending December 31 of each year, within 90 days following the end of such year, to the City, the Company and to any Owner requesting the same and, upon the request of the City, the Company or any Owner, a monthly accounting to any such party, showing in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and the balance in any funds or accounts created by this Indenture as of the beginning and close of such accounting period.

Section 1013. Performance of Duties Under the Lease. The Trustee hereby accepts and agrees to perform all duties and obligations assigned to it under the Lease.

ARTICLE XI

SUPPLEMENTAL INDENTURES

Section 1101. Supplemental Indentures Not Requiring Consent of Owners. The City and the Trustee may from time to time, without the consent of or notice to any of the Owners, enter into such Supplemental Indenture or Supplemental Indentures as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture, or to make any other change which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or the Owners (provided the Trustee is entitled to receive and may conclusively rely upon an opinion of counsel in exercising such judgment);
- (b) To grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners or the Trustee or either of them;
- (c) To more precisely identify any portion of the Project or to add additional property thereto;
- (d) To conform the Indenture to amendments to the Lease made by the City and the Company; or
- (e) To subject to this Indenture additional revenues, properties or collateral.

Section 1102. Supplemental Indentures Requiring Consent of Owners.

(a) Exclusive of Supplemental Indentures covered by **Section 1101** hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding may, from time to time, anything contained in this Indenture to the contrary notwithstanding, consent to and approve the execution by the City and the Trustee of such other Supplemental Indenture or Supplemental Indentures as shall be deemed necessary and desirable by the City for the purpose of modifying, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that without the consent of the Owners of 100% of the principal amount of the Bonds then Outstanding, nothing in this Indenture contained shall permit or be construed as permitting (1) an extension of the maturity or a shortening of the redemption date of the principal of or the interest, if any, on any Bond

issued hereunder, or (2) a reduction in the principal amount of any Bond or the rate of interest thereon, if any, or (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (4) a reduction in the aggregate principal amount of Bonds; for any of which the consent of the Owners of 100% of the principal amount of the affected Bonds then Outstanding is required.

(b) If at the time the City requests the Trustee to enter into any such Supplemental Indenture for any of the purposes of this Section, the Trustee shall cause notice of the proposed execution of such Supplemental Indenture to be mailed to each Owner as shown on the bond registration books required by **Section 206** hereof. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the corporate trust office of the Trustee for inspection by all Owners. If within 60 days or such longer period as may be prescribed by the City following the mailing of such notice, the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

Section 1103. Company's Consent to Supplemental Indentures. Anything herein to the contrary notwithstanding, a Supplemental Indenture under this Article that affects any rights of the Company shall not become effective unless and until the Company shall have consented in writing to the execution and delivery of such Supplemental Indenture. The Trustee shall cause notice of the proposed execution and delivery of any Supplemental Indenture (regardless of whether it affects the Company's rights) together with a copy of the proposed Supplemental Indenture to be mailed to the Company at least 15 days prior to the proposed date of execution and delivery of the Supplemental Indenture.

Section 1104. Opinion of Counsel. In executing, or accepting the additional trusts created by, any Supplemental Indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee and the City shall receive, and, shall be fully protected in relying upon, an opinion of counsel addressed and delivered to the Trustee and the City stating that the execution of such Supplemental Indenture is permitted by and in compliance with this Indenture and will, upon the execution and delivery thereof, be a valid and binding obligation of the City. The Trustee may, but shall not be obligated to, enter into any such Supplemental Indenture which affects the Trustee's rights, duties or immunities under this Indenture or otherwise.

ARTICLE XII

SUPPLEMENTAL LEASES

Section 1201. Supplemental Leases Not Requiring Consent of Owners. The City and the Trustee shall, without the consent of or notice to the Owners, consent to the execution of any Supplemental Lease or Supplemental Leases by the City and the Company as may be required (a) by the provisions of the Lease and this Indenture, (b) for the purpose of curing any ambiguity or formal defect or omission in the Lease, (c) so as to more precisely identify the Project or add additional property thereto or (d) in connection with any other change therein which, in the judgment of the Trustee, does not materially and adversely affect the Trustee or security for the Owners (provided the Trustee is entitled to receive and may conclusively rely upon an opinion of counsel in exercising such judgment).

Section 1202. Supplemental Leases Requiring Consent of Owners. Except for Supplemental Leases as provided for in **Section 1201** hereof, neither the City nor the Trustee shall consent to the execution of any Supplemental Lease or Supplemental Leases by the City or the Company without the mailing of notice and the obtaining of the written approval or consent of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding given and obtained as provided in **Section 1102** hereof. If at any time the City and the Company shall request the consent of the Trustee to any such proposed Supplemental Lease, the Trustee shall cause notice of such proposed Supplemental Lease to be mailed in the same manner as provided in **Section 1102** hereof with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed Supplemental Lease and shall state that copies of the same are on file in the corporate trust office of the Trustee for inspection by all Owners. If within 60 days or such longer period as may be prescribed by the City following the mailing of such notice, the Owners of not less than 50% in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Lease shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

Section 1203. Opinion of Counsel. In executing or consenting to any Supplemental Lease permitted by this Article, the City and the Trustee shall receive, and shall be fully protected in relying upon, an opinion of counsel addressed to the Trustee and the City stating that the executing of such Supplemental Lease is authorized or permitted by the Lease and this Indenture and the applicable law and will upon the execution and delivery thereof be valid and binding obligations of the parties thereof.

ARTICLE XIII

SATISFACTION AND DISCHARGE OF INDENTURE

Section 1301. Satisfaction and Discharge of this Indenture.

(a) When the principal of and interest on all the Bonds have been paid in accordance with their terms or provision has been made for such payment, as provided in **Section 1302** hereof, and provision also made for paying all other sums payable hereunder and under the Lease, including the reasonable fees and expenses of the Trustee, the City and Paying Agent to the date of retirement of the Bonds, then the right, title and interest of the Trustee in respect hereof shall thereupon cease, determine and be void. Thereupon, the Trustee shall cancel, discharge and release this Indenture and shall upon the written request of the City or the Company execute, acknowledge and deliver to the City such instruments of satisfaction and discharge or release as shall be required to evidence such release and the satisfaction and discharge of this Indenture, and shall assign and deliver to the City (subject to the City's obligations under **Section 11.2** of the Lease) any property at the time subject to this Indenture which may then be in its possession, except amounts in the Bond Fund required to be paid to the Company under **Section 602** hereof and except funds or securities in which such funds are invested held by the Trustee for the payment of the principal of and interest on the Bonds.

(b) The City is hereby authorized to accept a certificate by the Trustee that the whole amount of the principal and interest, if any, so due and payable upon all of the Bonds then Outstanding has been paid or such payment provided for in accordance with **Section 1302** hereof as evidence of satisfaction of

this Indenture, and upon receipt thereof shall cancel and erase the inscription of this Indenture from its records.

Section 1302. Bonds Deemed to be Paid.

(a) Bonds shall be deemed to be paid within the meaning of this Article when payment of the principal of and interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (1) have been made or caused to be made in accordance with the terms thereof, or (2) have been provided for by depositing with the Trustee or other commercial bank or trust company having full trust powers and authorized to accept trusts in the State in trust and irrevocably set aside exclusively for such payment (i) moneys sufficient to make such payment or (ii) Government Securities maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payment, or (3) have been provided for by surrendering the Bonds to the Trustee for cancellation. At such time as Bonds are deemed to be paid hereunder, as aforesaid, they shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of such payment from such moneys or Government Securities.

(b) Notwithstanding the foregoing, in the case of Bonds which by their terms may be redeemed before the stated maturities thereof, no deposit under clause (2) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until, as to all such Bonds which are to be redeemed before their respective stated maturities, proper notice of such redemption shall have been given in accordance with **Article III** hereof or irrevocable instructions shall have been given to the Trustee to give such notice.

(c) Notwithstanding any provision of any other section of this Indenture which may be contrary to the provisions of this Section, all moneys or Government Securities set aside and held in trust pursuant to the provisions of this Section for the payment of Bonds shall be applied to and used solely for the payment of the particular Bonds, with respect to which such moneys and Government Securities have been so set aside in trust.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 1401. Consents and Other Instruments by Owners.

(a) Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in Person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds (other than the assignment of ownership of a Bond) if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken, suffered or omitted under any such instrument, namely:

(i) The fact and date of the execution by any Person of any such instrument may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the Person signing such instrument acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(ii) The fact of ownership of Bonds and the amount or amounts, numbers and other identification of such Bonds, and the date of holding the same shall be proved by the registration books of the City maintained by the Trustee pursuant to **Section 206** hereof.

(b) In determining whether the Owners of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, Bonds owned by the Company shall be disregarded and deemed not to be Outstanding under this Indenture, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded; provided, the foregoing provisions shall not be applicable if the Company is the only Owner of the Bonds. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and the pledgee is not the Company or any affiliate thereof.

Section 1402. Limitation of Rights Under this Indenture. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give any Person other than the parties hereto, and the Owners, if any, any right, remedy or claim under or in respect to this Indenture, this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Owners, as herein provided.

Section 1403. Notices. It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Indenture to be given or filed with the City, the Trustee, the Company or Owners if the same is duly mailed, postage prepaid, sent by overnight delivery or other delivery service, as follows:

(a) To the City:

City of Independence, Missouri
111 E. Maple Avenue
Independence, MO 64050
Attention: City Manager

(b) To the Trustee:

UMB Bank, N.A.
928 Grand Blvd, 12th Floor
Kansas City, MO 64106
Attention: Corporate Trust Department

(c) To the Company:

Wally's Independence MO Owner LLC
1400 S. Highway Drive, Suite 403
Fenton, Missouri 63026
Attn: _____

With a copy to:

Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112
Attention: Curtis J. Petersen

(d) To the Owners if the same is duly mailed by first class, registered or certified mail addressed to each of the Owners of Bonds at the time Outstanding as shown by the bond registration books required by **Section 206** hereof to be kept at the corporate trust office of the Trustee.

All notices given by certified or registered mail as aforesaid shall be deemed fully given as of the date they are so mailed, provided that any of the foregoing given to the Trustee shall be effective only upon receipt. All notices given by overnight delivery or other delivery service shall be deemed fully given as of the date when received. A duplicate copy of each notice, certificate or other communication given hereunder by either the City or the Trustee to the other shall also be given to the Company. The City, the Company and the Trustee may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

Section 1404. Severability. If any provision of this Indenture shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

Section 1405. Execution in Counterparts. This Indenture 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 1406. Governing Law. This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 1407. Electronic Storage. The parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored 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 1408. Electronic Notice to Trustee. The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent in writing or by electronic notice, provided, however, that such instructions or directions shall be signed by an Authorized Company Representative. If the Company elects to give the instructions by electronic notice, the Trustee may deem such instructions controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. Pursuant to the Lease, the Company agrees to assume all risks arising out of the use of such electronic notice to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

IN WITNESS WHEREOF, City of Independence, Missouri, has caused this Indenture to be signed in its name and behalf by its (Interim) City Manager and the seal of the City to be hereunto affixed and attested by the City Clerk, and to evidence its acceptance of the trusts hereby created, the Trustee has caused this Indenture to be signed in its name and behalf by a duly authorized officer, all as of the date first above written.

CITY OF INDEPENDENCE, MISSOURI

By: _____
Name: Lisa Reynolds
Title: Interim City Manager

[SEAL]

ATTEST:

By: _____
Name: Susanne Holland
Title: City Clerk

UMB BANK, N.A.,
as Trustee

[SEAL]

By _____
Name:
Title:

ATTEST:

By _____
Name:
Title:

EXHIBIT A

PROJECT SITE

The following described real estate located in Jackson County, Missouri:

ALL THAT PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23, TOWNSHIP 49, RANGE 32, IN THE CITY OF INDEPENDENCE, JACKSON COUNTY, MISSOURI, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHEAST 1/4; THENCE SOUTH 90° 00' 00" EAST, ALONG THE NORTH LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 272.31 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 40.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF 39TH STREET, AS ESTABLISHED BY DOCUMENT NO. 1456433, RECORDED IN BOOK 11078, PAGE 1452, SAID POINT BEING THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE HEREIN DESCRIBED; THENCE SOUTH 0° 00' 00" WEST, AT RIGHT ANGLES TO SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 343.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 18.45 FEET; THENCE SOUTH 1° 15' 00" EAST, PARALLEL TO THE EAST RIGHT-OF-WAY LINE OF NOLAND ROAD, AS NOW ESTABLISHED, A DISTANCE OF 130.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 5.00 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 200.00 FEET; THENCE SOUTH 90° 00' 00" WEST, A DISTANCE OF 152.81 FEET (DEED = 152.98 FEET), TO A POINT ON THE AFORESAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST (DEED = SOUTH 11° 02' 39" EAST), ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 65.40 FEET; THENCE NORTH 90° 00' 00" EAST, A DISTANCE OF 201.39 FEET; THENCE SOUTH 1° 02' 25" EAST, A DISTANCE OF 355.00 FEET; THENCE NORTH 85° 50' 55" WEST, A DISTANCE OF 140.49 FEET (DEED = 140.92 FEET), TO A POINT ON SAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 7.64 FEET (DEED = SOUTH 11° 02' 39" EAST, A DISTANCE OF 8.29 FEET), TO A POINT THAT IS OPPOSITE AND 155.00 FEET EAST OF STATION 18+50 ON THE CENTERLINE OF NOLAND ROAD; THENCE SOUTH 88° 41' 51" WEST, (DEED = SOUTH 88° 45' 00" WEST), CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 25.00 FEET TO A POINT THAT IS OPPOSITE AND 130 FEET EAST OF STATION 18+50 ON SAID NOLAND ROAD CENTERLINE; THENCE SOUTH 2° 02' 11" EAST CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 124.30 FEET (DEED = SOUTH 1° 15' 00" EAST, A DISTANCE OF 124.24 FEET), TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE ROUTE NO. 1-70, AS NOW ESTABLISHED THAT IS OPPOSITE AND 228.80 FEET NORTHERLY OF STATION 545+60 ON THE CENTERLINE OF SAID 1-70, THENCE SOUTH 84° 21' 11" EAST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 643.04 FEET (DEED = SOUTH 84° 17' 39" EAST, A DISTANCE OF 644.64 FEET) TO A POINT THAT IS OPPOSITE AND 166.30 FEET NORTHERLY OF STATION 552+00 ON THE CENTERLINE OF SAID 1-70; THENCE SOUTH 89° 55' 50" EAST, CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 546.03 FEET (DEED = SOUTH 89° 51' 16" EAST, A DISTANCE OF 545.61 FEET), TO A POINT ON THE WEST LINE OF "BROOKWOOD NO. 2", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE NORTH 1° 15' 58" WEST, ALONG THE WEST LINE OF SAID SUBDIVISION, A DISTANCE OF 785.43 FEET (DEED = NORTH 1° 12' 00" WEST, A

DISTANCE OF 786.12 FEET), TO THE SOUTHEAST CORNER OF LOT 19, "WOODRIDGE", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE SOUTH $89^{\circ} 51' 43''$ WEST, ALONG THE SOUTH LINE OF SAID "WOODRIDGE", A DISTANCE OF 251.04 FEET (DEED = NORTH $90^{\circ} 00' 00''$ WEST, A DISTANCE OF 250.63 FEET), TO AN ANGLE POINT THEREIN; THENCE NORTH $80^{\circ} 01' 00''$ WEST, CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 288.30 FEET TO AN ANGLE POINT THEREIN; THENCE SOUTH $89^{\circ} 47' 57''$ WEST (DEED = NORTH $90^{\circ} 00' 00''$ WEST), CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 286.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF DODGION STREET, AS NOW ESTABLISHED; THENCE NORTH $0^{\circ} 12' 03''$ WEST (DEED = NORTH $0^{\circ} 00' 00''$ WEST), ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 5.00 FEET TO THE SOUTHEAST CORNER OF LOT 34, SAID "WOODRIDGE"; THENCE SOUTH $89^{\circ} 47' 57''$ WEST ALONG THE SOUTH LINE OF SAID LOT 34, A DISTANCE OF 135.40 FEET (DEED = $90^{\circ} 00' 00''$ WEST, A DISTANCE OF 135.00 FEET), TO THE SOUTHWEST CORNER OF SAID LOT 34; THENCE NORTH $0^{\circ} 00' 00''$ EAST, ALONG THE WEST LINE OF SAID "WOODRIDGE" SUBDIVISION, A DISTANCE OF 440.00 FEET TO THE AFORESAID SOUTH RIGHT-OF-WAY LINE OF 39TH STREET; THENCE NORTH $90^{\circ} 00' 00''$ WEST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

PROJECT IMPROVEMENTS

The Project Improvements consist of the following, to the extent paid for in whole with Bond proceeds:

- (1) the demolition of existing improvements and construction of an approximately 54,000 square foot travel center, including fuel pumps, landscaping, parking and other amenities on the Project Site, and
- (2) public improvements relating to the development of the Project Site, including improvements to I-70 on and off ramps, Noland Road, Lynn, Canterbury, and 39th Street, with related signalization, utilities and earthwork (such portion described under this subsection (2) being the “Public Improvements”).

EXHIBIT C

FORM OF BONDS

***THIS BOND OR ANY PORTION HEREOF MAY BE TRANSFERRED, ASSIGNED OR
NEGOTIATED ONLY AS PROVIDED IN THE HEREIN DESCRIBED INDENTURE.***

No. 1

**Not to Exceed
\$52,050,000**

**UNITED STATES OF AMERICA
STATE OF MISSOURI**

**CITY OF INDEPENDENCE, MISSOURI
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BOND
(WALLY'S REDEVELOPMENT PROJECT)
SERIES 2026**

Interest Rate

7.00%

Maturity Date

December 1, 2027

Dated Date

_____, 2026

OWNER:

WALLY'S INDEPENDENCE MO OWNER LLC

MAXIMUM PRINCIPAL AMOUNT:

**NOT TO EXCEED FIFTY-TWO MILLION
FIFTY THOUSAND DOLLARS**

THE CITY OF INDEPENDENCE, MISSOURI, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri (the "City"), for value received, promises to pay, but solely from the source hereinafter referred to, to the Owner named above, or registered assigns thereof, on the Maturity Date shown above, the principal amount shown above, or such lesser amount as may be outstanding hereunder as reflected on **Schedule I** hereto held by the Trustee as provided in the hereinafter referred to Indenture. The City agrees to pay such principal amount to the Owner in any coin or currency of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts, and in like manner to pay to the Owner hereof, either by check or draft mailed to the Owner at a stated address as it appears on the bond registration books of the City kept by the Trustee under the within mentioned Indenture or, in certain situations authorized in the Indenture, by internal bank transfer or by wire transfer to an account in a commercial bank or savings institution located in the continental United States. Interest on the Cumulative Outstanding Principal Amount (as hereinafter defined) at the per annum Interest Rate stated above, payable in arrears on each December 1, commencing on December 1, 2026, and continuing thereafter until the earlier of the date on which said Cumulative Outstanding Principal Amount is paid in full or the Maturity Date. Interest on each advancement of the principal amount of this Bond shall accrue from the date that such advancement is made, computed on the basis of a year of 360 days consisting of 12 months of 30 days each.

As used herein, the term “Cumulative Outstanding Principal Amount” means all Bonds outstanding under the terms of the hereinafter-defined Indenture, as reflected on **Schedule I** hereto maintained by the Trustee.

THIS BOND is one of a duly authorized series of Bonds of the City designated “City of Independence, Missouri, Taxable Industrial Development Revenue Bonds (Wally’s Redevelopment Project), Series 2026,” in the maximum aggregate principal amount of \$52,050,000 (the “Bonds”), to be issued for the purpose of acquiring and improving certain real property located on approximately 20.9 acres near the intersection of Noland Road and Interstate Highway 70 in the City (the “Project Site,” as more fully described on **Exhibit A** to the Lease (defined below)), including the construction and improvement of a commercial facility together with related public improvements (the “Project Improvements”). The City will lease the Project Site and the Project Improvements (collectively, the “Project”) to a private-sector company (the “Company”), under the terms of a Lease Agreement dated as of January 1, 2026 (said Lease Agreement, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “Lease”), between the City and the Company, all pursuant to the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution, the statutes of the State of Missouri, including particularly the Act, the charter of the City and pursuant to proceedings duly had by the Council of the City.

THE BONDS are issued under and are equally and ratably secured and entitled to the protection given by a Trust Indenture dated as of January 1, 2026 (said Trust Indenture, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “Indenture”), between the City and UMB BANK, N.A., Kansas City, Missouri, as trustee (the “Trustee”). *Capitalized terms not defined herein shall have the meanings set forth in the Indenture.*

Reference is hereby made to the Indenture for a description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the City, the Trustee and the Owners, and the terms upon which the Bonds are issued and secured.

THE BONDS are subject to redemption and payment prior to maturity as provided in the Indenture.

THE BONDS, including interest thereon, are special obligations of the City and are payable solely out of the rents, revenues and receipts derived by the City from the Project and the Lease and not from any other fund or source of the City, and are secured by a pledge and assignment of the Project and of such rents, revenues and receipts, including all rentals and other amounts to be received by the City under and pursuant to the Lease, all as provided in the Indenture. The Bonds do not constitute a general obligation of the City or the State of Missouri, and neither the City nor said State shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional, charter or statutory debt limitation or restriction, and are not payable in any manner by taxation. Pursuant to the provisions of the Lease, rental payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Company directly to the Trustee for the account of the City and deposited in a special fund created by the City and designated the “City of Independence, Missouri, Bond Fund – Wally’s Independence MO Owner LLC.”

THE OWNER of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any Event of Default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then Outstanding

may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of this Bond or the Indenture may be made only to the extent and in the circumstances permitted by the Indenture.

THIS BOND is transferable, as provided in the Indenture, only upon the books of the City kept for that purpose at the above-mentioned office of the Trustee by the Owner hereof in Person or by such Person's duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer reasonably satisfactory to the Trustee duly executed by the Owner or such Person's duly authorized attorney, and thereupon a new fully registered Bond or Bonds, in the same aggregate principal amounts, shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The City, the Trustee and any Paying Agent may deem and treat the Person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

THE BONDS are issuable in the form of one fully-registered Bond in the maximum principal amount of \$52,050,000.

THIS BOND shall not be valid or become obligatory for any purposes or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been executed by the Trustee.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and laws of the State of Missouri.

IN WITNESS WHEREOF, the City of Independence, Missouri has caused this Bond to be executed in its name by the manual or facsimile signature of its Mayor or (Interim) City Manager, attested by the manual or facsimile signature of its City Clerk and its corporate seal to be affixed hereto or imprinted hereon, and has caused this Bond to be dated the date set forth above.

CERTIFICATE OF AUTHENTICATION

CITY OF INDEPENDENCE, MISSOURI

This Bond is one of the Bonds
of the issue described in the
within-mentioned Indenture.

By: _____
Interim City Manager

Registration Date: _____

UMB BANK, N.A.,
as Trustee

ATTEST: _____ (Seal)

By _____
Authorized Signatory

City Clerk

SCHEDULE I

TABLE OF CUMULATIVE OUTSTANDING PRINCIPAL AMOUNT

**CITY OF INDEPENDENCE, MISSOURI
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BOND
(WALLY'S REDEVELOPMENT PROJECT)
SERIES 2026**

Date	Principal Amount Advanced	Principal Amount Redeemed	Cumulative Outstanding Principal Amount	Notation Made By

FORM OF ASSIGNMENT

(NOTE RESTRICTIONS ON TRANSFERS)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Print or Typewrite Name, Address and Social Security or
other Taxpayer Identification Number of Transferee

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints
_____ agent to transfer the within Bond on the books kept by the Trustee for
the registration and transfer of Bonds, with full power of substitution in the premises.

Dated: _____.

NOTICE: The signature to this assignment must
correspond with the name as it appears upon the
face of the within Bond in every particular.

PLACE SIGNATURE MEDALLION BELOW:

EXHIBIT D

FORM OF REPRESENTATION LETTER

City of Independence, Missouri
111 E. Maple Avenue
Independence, MO 64050
Attention: City Manager

UMB BANK, N.A., as Trustee
928 Grand Blvd, 12th Floor
Kansas City, MO 64106
Attention: Corporate Trust Department

Re: \$52,050,000 Maximum Principal Amount of Taxable Industrial Development Revenue Bonds (Wally's Redevelopment Project), Series 2026 of the City of Independence, Missouri

Ladies and Gentlemen:

In connection with the purchase of the above-referenced Bonds (the "Bonds"), the undersigned purchaser of the Bonds (the "Purchaser") hereby represents, warrants and agrees as follows:

1. The Purchaser fully understands that (a) the Bonds have been issued under and pursuant to a Trust Indenture dated as of January 1, 2026 (the "Indenture"), between the City of Independence, Missouri (the "City") and UMB Bank, N.A., Kansas City, Missouri, as trustee (the "Trustee"), and (b) the Bonds are payable solely out of certain rents, revenues and receipts to be derived from the leasing or sale of the Project (as defined in the Indenture) to Wally's Independence MO Owner LLC, a Missouri limited liability company (the "Company"), under a Lease Agreement dated as of January 1, 2026 (the "Lease"), between the City and the Company, with certain of such rents, revenues and receipts being pledged and assigned by the City to the Trustee under the Indenture to secure the payment of the principal of and interest on the Bonds.

2. The Purchaser understands that the Bonds have not been registered under the Securities Act of 1933, as amended (the "1933 Act"), or the securities laws of any state and will be sold to the Purchaser in reliance upon certain exemptions from registration and in reliance upon the representations and warranties of the Purchaser set forth herein.

3. The Purchaser understands that the Bonds are transferable only in the manner provided for in the Indenture and discussed below and warrants that it is acquiring the Bonds for its own account with the intent of holding the Bonds as an investment, and the acquisition of the Bonds is not made with a view toward their distribution or for the purpose of offering, selling or otherwise participating in a distribution of the Bonds.

4. The Purchaser agrees not to attempt to offer, sell, hypothecate or otherwise distribute the Bonds to others unless authorized by the terms of the Indenture and upon receipt of any required opinion of counsel acceptable to the City, the Company, the Trustee and the Purchaser that all registration and

disclosure requirements of the Securities and Exchange Commission and all other appropriate federal and Missouri securities laws and the securities law of any other applicable state are complied with.

5. The Company has (a) furnished to the Purchaser such information about itself as the Purchaser deems necessary in order for it to make an informed investment decision with respect to the purchase of the Bonds, (b) made available to the Purchaser, during the course of this transaction, ample opportunity to ask questions of, and to receive answers from, appropriate officers of the City and the terms and conditions of the offering of the Bonds, and (c) provided to the undersigned all additional information which it has requested.

6. The Purchaser acknowledges that no offering document has been prepared in connection with the sale of the Bonds. The Purchaser further acknowledges that it has timely received in satisfactory form and manner all proceedings, certificates, opinions, letters and other documents required to be submitted to the Purchaser pursuant to the Bond Purchase Agreement prior to or on the date of the delivery of and payment for the Bonds, and that the City and the Company have in all respects complied with and satisfied all of their respective obligations to the Purchaser which are required under the Bond Purchase Agreement to be complied with and satisfied on or before such date.

7. The Purchaser is now, and was when it agreed to purchase the Bonds, familiar with the operations of the Company and fully aware of terms and risks of the Bonds and that the Purchaser is relying on its own knowledge and investigation of facts and circumstances relating to the purchase of the Bonds. The Purchaser believes that the Bonds being acquired are a security of the type that the Purchaser wishes to purchase and hold for investment and that the nature and amount thereof are consistent with its investment program.

8. The Purchaser is fully aware of and satisfied with (i) the current status of the title to the Project and any issues related thereto and (ii) the terms, amounts and providers of the insurance maintained pursuant to **Article VII** of the Lease, and the undersigned is purchasing the Bonds with full knowledge of such matters.

9. The Purchaser understands and agrees that the interest on the Bonds *is* subject to federal and state income taxation.

10. The Purchaser hereby directs the Trustee to hold the Bonds in trust for the undersigned pursuant to **Section 208** of the Indenture.

Dated: _____, 20__

[PURCHASER OF BONDS]

By: _____
Name: _____
Title: _____

**CITY OF INDEPENDENCE, MISSOURI,
As Lessor,**

AND

**WALLY’S INDEPENDENCE MO OWNER LLC,
As Lessee**

LEASE AGREEMENT

Dated as of January 1, 2026

Relating to:

**\$52,050,000
(Aggregate Maximum Principal Amount)
City of Independence, Missouri
Taxable Industrial Development Revenue Bonds
(Wally’s Redevelopment Project)
Series 2026**

Certain rights of the City of Independence, Missouri (the “City”), in this Lease Agreement have been pledged and assigned to UMB Bank, N.A., Kansas City, Missouri, as Trustee under the Trust Indenture dated as of January 1, 2026, between the City and the Trustee. Such pledge and assignment does not include the Unassigned Rights (defined in the Indenture).

LEASE AGREEMENT

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	
DEFINITIONS	
Section 1.1. Definitions of Words and Terms.....	2
Section 1.2. Rules of Interpretation	3
Section 1.3. Acceptance of Indenture	3
ARTICLE II	
REPRESENTATIONS	
Section 2.1. Representations by the City	4
Section 2.2. Representations by the Company.....	5
ARTICLE III	
GRANTING PROVISIONS	
Section 3.1. Granting of Leasehold Estate.....	5
Section 3.2. Lease Term	5
Section 3.3. Possession and Use of the Project.....	6
Section 3.4. Title to the Project.....	6
ARTICLE IV	
CONSTRUCTION AND IMPROVEMENT OF THE PROJECT	
Section 4.1. Issuance of the Bonds	6
Section 4.2. Construction and Improvement of the Project.....	7
Section 4.3. Project Costs	7
Section 4.4. Payment for Project Costs.....	7
Section 4.5. Establishment of Completion Date	8
Section 4.6. Surplus or Deficiency in Project Fund.....	8
Section 4.7. Project Property of City	8
Section 4.8. Non-Project Improvements, Machinery and Equipment Property of the Company.....	8
Section 4.9. Environmental Matters.	9
ARTICLE V	
RENT PROVISIONS	
Section 5.1. Basic Rent.....	9
Section 5.2. Additional Rent.....	10
Section 5.3. Obligations of Company Absolute and Unconditional	10
Section 5.4. Prepayment of Basic Rent.....	11

ARTICLE VI

MAINTENANCE, TAXES AND UTILITIES

Section 6.1.	Maintenance and Repairs.....	11
Section 6.2.	Taxes, Assessments and Other Governmental Charges.....	11
Section 6.3.	Utilities.....	12
Section 6.4.	Property Tax Exemption.....	12
Section 6.5.	Administration Costs.	12
Section 6.6.	Sales Tax Exemption.	13

ARTICLE VII

INSURANCE

Section 7.1.	Title Report.....	13
Section 7.2.	Property Insurance	13
Section 7.3.	Commercial General Liability Insurance.....	14
Section 7.4.	Workers' Compensation	14
Section 7.5.	Blanket Insurance Policies; Self-Insurance.....	14

ARTICLE VIII

ALTERATION OF THE PROJECT

Section 8.1.	Additions, Modifications and Improvements to the Project	14
Section 8.2.	Additional Improvements on the Project Site.....	15
Section 8.3.	Permits and Authorizations.....	15
Section 8.4.	Mechanics' Liens.....	15

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 9.1.	Damage or Destruction	16
Section 9.2.	Condemnation.....	17
Section 9.3.	Bondowner Approval.....	18

ARTICLE X

SPECIAL COVENANTS

Section 10.1.	No Warranty of Condition or Suitability by the City; Exculpation and Indemnification .	19
Section 10.2.	Surrender of Possession	19
Section 10.3.	City's Right of Access to the Project.....	19
Section 10.4.	Granting of Easements; Mortgages and Financing Arrangements	19
Section 10.5.	Indemnification of City and Trustee.....	23
Section 10.6.	Depreciation, Investment Tax Credit and Other Tax Benefits.....	24
Section 10.7.	Company to Maintain its Corporate Existence.	24
Section 10.8.	Security Interests.....	24
Section 10.9.	Release of Portions of the Project under Specific Circumstances.	24

ARTICLE XI

OPTION AND OBLIGATION TO PURCHASE THE PROJECT

Section 11.1.	Option to Purchase the Project.....	25
Section 11.2.	Conveyance of the Project.....	26
Section 11.3.	Relative Position of Option and Indenture.....	27
Section 11.4.	Obligation to Purchase the Project.....	27

ARTICLE XII

DEFAULTS AND REMEDIES

Section 12.1.	Events of Default	27
Section 12.2.	Remedies on Default.....	28
Section 12.3.	Survival of Obligations.....	28
Section 12.4.	Performance of the Company's Obligations by the City	28
Section 12.5.	Rights and Remedies Cumulative.....	29
Section 12.6.	Waiver of Breach	29
Section 12.7.	Trustee's Exercise of the City's Remedies	29

ARTICLE XIII

ASSIGNMENT AND SUBLEASE

Section 13.1.	Assignment; Sublease.....	29
Section 13.2.	Assignment of Revenues by City.....	30
Section 13.3.	Prohibition Against Fee Mortgage of Project	30
Section 13.4.	Restrictions on Sale or Encumbrance of Project by City.....	30

ARTICLE XIV

AMENDMENTS, CHANGES AND MODIFICATIONS

Section 14.1.	Amendments, Changes and Modifications	31
---------------	---	----

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 15.1.	Notices.	31
Section 15.2.	City Shall Not Unreasonably Withhold Consents and Approvals	31
Section 15.3.	Net Lease	31
Section 15.4.	Limitation on Liability of City.....	32
Section 15.5.	Governing Law	32
Section 15.6.	Binding Effect.....	32
Section 15.7.	Severability	32
Section 15.8.	Execution in Counterparts.....	32
Section 15.9.	Electronic Storage.....	32
Section 15.10.	Satisfaction of Company's Obligations	32
Section 15.11.	Complete Agreement	32

Signatures and Seal..... 1

Exhibit A - Project Site

Exhibit B - Project Improvements

Exhibit C - Form of Requisition Certificate

Exhibit D - Form of Certificate of Insurance Compliance

Appendix I: PILOT Payments

LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of January 1, 2026 (the “Lease”), is between the **CITY OF INDEPENDENCE, MISSOURI**, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri, as lessor (the “City”), and **WALLY’S INDEPENDENCE MO OWNER LLC**, a limited liability company organized and existing under the laws of the State of Missouri, as lessee, and its successors or assigns, as permitted hereunder (the “Company”);

RECITALS:

1. The City is authorized under Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended (the “Act”), to purchase, construct, extend and improve certain “projects” (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

2. Pursuant to the Act, the City Council passed an ordinance (the “Ordinance”) authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Wally’s Redevelopment Project), Series 2026, in the maximum principal amount of \$52,050,000 (the “Bonds”), for the purpose of acquiring and improving certain real property located on approximately 20.9 acres near the intersection of Noland Road and Interstate Highway 70 in the City (the “Project Site,” as more fully described on **Exhibit A** hereto), including the construction and improvement of a commercial facility on the Project Site together with related public improvements (the “Project Improvements,” as more fully described on **Exhibit B** hereto).

3. Pursuant to the Ordinance, the City is authorized to enter into a Trust Indenture of even date herewith (the “Indenture”) with UMB Bank, N.A., Kansas City, Missouri, as Trustee (the “Trustee”), for the purpose of issuing and securing the Bonds, as therein provided, and to enter into this Lease with the Company under which the City will construct and improve the Project Improvements, and lease the Project Site and the Project Improvements as they may at any time exist (collectively, the “Project”), to the Company in consideration of rental payments by the Company that will be sufficient to pay the principal of and interest on the Bonds and make certain other payments, including payments in lieu of taxes to be made by the Company with respect to the Project.

4. Pursuant to the foregoing, the City desires to lease the Project to the Company and the Company desires to lease the Project from the City, for the rentals and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the City and the Company do hereby represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. In addition to any words and terms defined elsewhere in this Lease and the words and terms defined in **Section 101** of the Indenture which definitions are hereby incorporated herein by reference, and terms defined, the following words and terms as used in this Lease shall have the following meanings:

“Additional Rent” means the additional rental described in **Sections 5.2** and **6.2** of this Lease.

“Basic Rent” means the rental described in **Section 5.1** of this Lease.

“Certificate of Insurance Compliance” means a certificate in substantially the form set forth on **Exhibit D** hereto evidencing the Company’s compliance with the insurance requirements set forth in **Article VII** hereof, fully executed by the Authorized Company Representative and upon which the Trustee may conclusively rely without further investigation or inquiry.

“Environmental Law” means and includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Superfund Amendments and Reauthorization Act of 1986, any other “Superfund” or “Superlien” law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Materials, as now or at any time hereafter in effect.

“Full Insurable Value” means the actual replacement cost of the Project less physical depreciation as determined in accordance with **Section 7.1(a)** hereof.

“Lease Term” means the period from the effective date of this Lease until the expiration thereof pursuant to **Section 3.2** hereof.

“Lender” means any person who from time to time has made a loan to Company which is secured by a Mortgage.

“Mortgage” means any mortgage or deed of trust (together with all related loan documents and security agreements) relating to the Project and permitted pursuant to the provisions of **Section 10.4** hereof or existing prior to the date on which a memorandum of this Lease is recorded.

“Net Proceeds” means, when used with respect to any insurance or condemnation award with respect to the Project, the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including attorneys’ fees, trustee’s fees and any extraordinary expenses of the City and the Trustee) incurred in the collection of such gross proceeds.

“Permitted Encumbrances” means, as of any particular time, as the same may encumber the Project Site, (a) liens for ad valorem taxes and special assessments not then delinquent, (b) the Indenture and this Lease, (c) utility, access and other easements and rights-of-way, mineral rights, restrictions, exceptions and encumbrances that will not materially interfere with or impair the operations being conducted on the Project Site or easements granted to the City, (d) such minor defects, irregularities, encumbrances, easements, mechanic’s liens, rights-of-way and clouds on title as normally exist with respect to properties similar in character to the Project Site and as do not in the aggregate materially

impair the property affected thereby for the purpose for which it was acquired or is held by the City, (e) any Mortgage, (f) any assignment of leases and rents or similar assignment delivered by the Company in favor of a Lender in connection with any future Mortgage (delivered pursuant to **Section 10.4(b)** of this Lease), and (g) any encumbrances shown on a title policy or report included in the transcript of proceedings relating to the Bonds.

“PILOT Payments” means the payments set out on **Appendix I**.

“Plans and Specifications” means the plans and specifications prepared for and showing the Project, as amended by the Company from time to time prior to the Completion Date, the same being duly certified by the Company, and on file with the Company, or with the architect/engineers retained by the Company for the Project, and which shall be available for reasonable inspection by the City, the Trustee and their duly appointed representatives.

“Project Site” means the real property upon which the property comprising the Project is located as more fully described in **Exhibit A**.

“Public Improvements” means that portion of the Project Improvements designated as such on **Exhibit B** hereto.

Section 1.2. Rules of Interpretation.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing Persons shall include firms, associations and corporations, including governmental entities, as well as natural Persons.

(c) Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(d) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.

(e) The Table of Contents and the Article and Section headings of this Lease shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof.

(f) Whenever an item or items are listed after the word “including,” such listing is not intended to be a listing that excludes items not listed.

Section 1.3. Acceptance of Indenture. The Company acknowledges that it has received an executed copy of the Indenture and that it is familiar with the terms and conditions of the Indenture. The Company further covenants that it will comply with all the conditions and covenants contained in the Indenture relating to the Company and the Project, and that it will not take any action which would cause a default thereunder or jeopardize the rights of the Trustee, the City or the Bondowners.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the City. The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) The City is a constitutional charter city and municipal corporation duly organized and validly existing under the laws of the State of Missouri. Under the provisions of the Act, the City has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its governing body, the City has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers;

(b) As of the date of delivery hereof, the City has acquired the Project Site (subject to Permitted Encumbrances) and agrees to construct and improve or cause to be constructed and improved the Project Improvements. The City agrees to lease the Project to the Company and sell the Project to the Company if the Company exercises its option to purchase the Project or upon termination of this Lease as provided for herein, all for the purpose of furthering the public purposes of the Act;

(c) The purchase, construction, extension and improvement of the Project and the leasing of the Project by the City to the Company will further the public purposes of the Act;

(d) To the City's knowledge, no member of the City Council or any other officer of the City has any significant or conflicting interest, financial, employment or otherwise, in the Company or in the transactions contemplated hereby;

(e) To finance the costs of the Project, the City proposes to issue the Bonds which will be scheduled to mature as set forth in **Article II** of the Indenture and will be subject to redemption prior to maturity in accordance with the provisions of **Article III** of the Indenture;

(f) The Bonds are to be issued under and secured by the Indenture, pursuant to which the Project and certain net earnings therefrom, including certain rents, revenues and receipts to be derived by the City from the leasing or sale of the Project (but excluding the Unassigned Rights), will be pledged and assigned to the Trustee as security for payment of the principal of and interest on the Bonds and amounts owing pursuant to the Lease;

(g) The City will not knowingly take any affirmative action that would permit a lien to be placed on the Project or pledge the revenues derived therefrom for any bonds or other obligations, other than the Bonds, except with the written consent of the Authorized Company Representative; and

(h) The City shall have no authority to operate the Project as a business or in any other manner except as the lessor thereof, except subsequent to an Event of Default hereunder.

Section 2.2. Representations by the Company. The Company makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Missouri and is authorized to conduct business in the State of Missouri;

(b) The Company has lawful power and authority to enter into this Lease and to carry out its obligations hereunder and by proper action of its members the Company has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers and representatives;

(c) The execution and delivery of this Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease by the Company will not, to the best of the Company's knowledge, conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restrictions or any agreement or instrument to which the Company is a party or by which it or any of its property is bound, or the Company's organizational documents, or any order, rule or regulation applicable to the Company or any of its property of any court or governmental body, or constitute a default under any of the foregoing, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement to which the Company is a party;

(d) The estimated costs of the construction and improvement of the Project are in accordance with sound engineering and accounting principles;

(e) The Project will comply in all material respects with all presently applicable building and zoning, health, environmental and safety orders and laws and all other applicable laws, rules and regulations; and

(f) The Project is located wholly within the corporate limits of the City of Independence, Missouri.

ARTICLE III

GRANTING PROVISIONS

Section 3.1. Granting of Leasehold Estate. The City hereby exclusively rents, leases and lets the Project to the Company, and the Company hereby rents, leases and hires the Project from the City, subject to Permitted Encumbrances existing as of the date of the execution and delivery hereof, for the rentals and upon and subject to the terms and conditions herein contained.

Section 3.2. Lease Term. This Lease shall become effective upon its delivery, and subject to sooner termination pursuant to the provisions of this Lease, shall have a term commencing as of the date of this Lease and terminating on **December 1, 2027**.

Section 3.3. Possession and Use of the Project.

(a) The City covenants and agrees that as long as neither the City nor the Trustee has exercised any of the remedies set forth in **Section 12.2(b)** following the occurrence and continuance of an Event of Default, the Company shall have sole and exclusive possession of the Project (subject to Permitted Encumbrances and the City's and the Trustee's right of access pursuant to **Section 10.3** hereof) and shall and may peaceably and quietly have, hold and enjoy the Project during the Lease Term. The City covenants and agrees that it will not take any action, other than expressly pursuant to **Article XII** hereof, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project during the Lease Term and will, at the request and expense of the Company, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Project and will defend the Company's enjoyment and possession thereof against all parties.

(b) Subject to the provisions of this Section, the Company shall have the right to use the Project for any lawful purpose allowed by law and contemplated by the Act and this Lease. The Company shall comply in all material respects with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project or to any adjoining public ways, as to the manner of use or the condition of the Project or of adjoining public ways. In the event of demonstrated noncompliance with such statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements the Company will take all reasonable steps to comply with such statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements. The Company shall also comply with the mandatory requirements, rules and regulations of all insurers under the policies carried under the provisions of **Article VII** hereof. The Company shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Company to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the Company shall have the right, at its own cost and expense, to contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer, and during such contest or review the Company may refrain from complying therewith.

Section 3.4. Title to the Project. The City shall be the sole owner of the Project during the Lease Term, except for any portions of the Project released from this Lease pursuant to the terms hereof.

ARTICLE IV

CONSTRUCTION AND IMPROVEMENT OF THE PROJECT

Section 4.1. Issuance of the Bonds. To provide funds for the payment of Project Costs, the City agrees that, upon request of the Company, it will issue, sell and cause to be delivered the Bonds to the purchaser thereof in accordance with the provisions of the Indenture and the Bond Purchase Agreement. The proceeds of the sale of the Bonds, when received, shall be paid over to the Trustee for the account of the City. The Trustee shall promptly deposit such proceeds, when received, as provided in the Indenture, to be used and applied as hereinafter provided in this Lease and in the Indenture. Alternatively, the Trustee may, (pursuant to **Section 208(d)** of the Indenture) endorse the Bonds in an amount equal to the requisition certificates submitted pursuant to **Section 4.4** below. In that event, the

purchaser of the Bonds shall be deemed to have deposited funds with the Trustee in an amount equal to the amount stated in the requisition certificate.

Section 4.2. Construction and Improvement of the Project. The City and the Company agree that the Company, as the agent of the City, shall construct and improve the Project as follows:

(a) The City has acquired the Project Site prior to the execution hereof. Concurrently with the execution of this Lease, (i) a deed and any other necessary instruments of transfer will be delivered to the City and placed of record, and (ii) the commitment for title insurance or ownership and encumbrance report (which may be provided in the form of a copy of the commitment for an owner's or loan policy of title insurance relating to the Company's acquisition of or private financing for the Project) required by **Article VII** hereof will be delivered to the City and the Trustee;

(b) On behalf of the City, the Company will construct and improve the Project Improvements on the Project Site and otherwise improve the Project Site in accordance with the Plans and Specifications. The Company may revise the Plans and Specifications from time to time as it deems necessary to carry out the Project, but revisions that would materially alter the intended purpose of the Project or any major component thereof may be made only with the prior written approval of the City. The Company agrees that the aforesaid construction and improvement will, with such changes and additions as may be made hereunder, result in facilities suitable for use by the Company for its purposes, and that all real and personal property described in the Plans and Specifications, with such changes and additions as may be made hereunder, is desirable and appropriate in connection with the Project. The provisions of this paragraph are in addition to and do not supersede the provisions of **Section 8.2**;

(c) The Company agrees that it will use reasonable efforts to cause the construction and improvement of the Project to be completed as soon as practicable with all reasonable dispatch. In the event such construction and improvement commences prior to the receipt of proceeds from the sale of the Bonds, the Company agrees to advance all funds necessary for such purpose; and

(d) The Public Improvements (but not any other portion of the Project Improvements) may be constructed in or on land that is not part of the Project Site, so long as such land is owned by the City or such Public Improvements are installed in governmentally-held easements or right of way.

Section 4.3. Project Costs. The City hereby agrees to pay for, but solely from the Project Fund, and hereby authorizes and directs the Trustee to pay for, but solely from the Project Fund, all Project Costs upon receipt by the Trustee of a certificate pursuant to **Section 4.4** hereof. The Company may not submit any requisition certificates for Project Costs incurred after the Completion Date. The Company must submit all requisitions for Project Costs incurred before the Completion Date within three months after the Completion Date.

Section 4.4. Payment for Project Costs. All Project Costs as specified in **Section 4.3** hereof shall be paid by the Trustee from the Project Fund as more fully provided in the Indenture, and the City hereby authorizes and directs the Trustee to make disbursements from the Project Fund, upon receipt by the Trustee of certificates in substantially the form attached hereto as **Exhibit C**, signed by an Authorized Company Representative, which disbursements may be recorded via a transaction entry on the trust records held by the Trustee. The Trustee may rely conclusively on any such certificate and shall not be

required to make any independent investigation in connection therewith. The submission of any requisition certificate by an Authorized Company Representative shall constitute unto the Trustee an irrevocable determination that all conditions precedent to the payments requested have been satisfied.

Section 4.5. Establishment of Completion Date. The Completion Date shall be evidenced to the Trustee by a certificate signed by the Authorized Company Representative stating (a) the construction and improvement of the Project has been completed in accordance with the Plans and Specifications, (b) that all costs and expenses incurred in the construction and improvement of the Project have been paid except costs and expenses the payment of which is not yet due or is being retained or contested in good faith by the Company, and (c) amounts to be retained by Trustee with respect to item (b) above. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. The Company and the City agree to cooperate in causing such certificate to be furnished to the Trustee.

Section 4.6. Surplus or Deficiency in Project Fund.

(a) Upon receipt of the certificate described in **Section 4.5** hereof, the Trustee shall, as provided in **Section 504** of the Indenture, transfer any remaining moneys then in the Project Fund to the Bond Fund to be applied as directed by the Company solely to (1) the payment of principal and premium, if any, of the Bonds through the payment (including regularly scheduled principal payments, if any) or redemption thereof at the earliest date permissible under the terms of the Indenture, or (2) at the option of the Company, to the purchase of Bonds at such earlier date or dates as the Company may elect. Any amount so deposited in the Bond Fund may be invested as permitted by **Section 702** of the Indenture.

(b) If the Project Fund shall be insufficient to pay fully all Project Costs and to complete the Project free of liens and encumbrances other than Permitted Encumbrances, the Company shall pay, in cash, the full amount of any such deficiency by making payments thereof directly to the contractors and to the suppliers of materials and services as the same shall become due, and the Company shall save the City and the Trustee whole and harmless from any obligation to pay such deficiency.

Section 4.7. Project Property of City. The Project Site and the Project Improvements, which the Company desires to convey to the City, including all work and materials on the Project Improvements as such work progresses, and all additions or enlargements thereto or thereof, the Project as fully completed, anything under this Lease which becomes, is deemed to be, or constitutes a part of the Project, and the Project as repaired, rebuilt, rearranged, restored or replaced by the Company under the provisions of this Lease, except as otherwise specifically provided herein, shall immediately when erected or installed become the absolute property of the City, subject only to this Lease, the Indenture, any Permitted Encumbrances, and the Mortgage, if any.

Upon completion of all or any portion of the Public Improvements and acceptance by the City or other governmental entity of dedication or other transfer thereof, such Public Improvements shall become the property of the City or such other governmental entity separate and apart from, and shall not be subject to, this Lease. At such point, such Public Improvements shall cease to be a part of the Project.

Section 4.8. Non-Project Improvements, Machinery and Equipment Property of the Company. Any improvements or items of machinery or equipment which do not constitute part of the Project Improvements and the entire purchase price of which is paid for by the Company with the Company's own funds, and no part of the purchase price of which is paid for from funds deposited

pursuant to the terms of this Lease in the Project Fund, shall be the property of the Company and shall not constitute a part of the Project for purposes of **Section 6.4** hereof and therefore are subject to taxation, to the extent otherwise provided by law.

Section 4.9. Environmental Matters. The Company acknowledges that it is responsible for maintaining the Project in compliance with all Environmental Laws. In the event that the Company fails to undertake to comply with any final, non-appealable order issued by any local, state or federal authority under applicable Environmental Law, the City or the Trustee, immediately after notice to the Company, may elect (but shall not be required) to undertake such compliance. Any moneys expended by the City or the Trustee in efforts to comply with any applicable Environmental Law (including the reasonable cost of hiring consultants, undertaking sampling and testing, performing any cleanup necessary or useful in the compliance process and reasonable attorneys' fees) shall be due and payable as Additional Rent hereunder with interest thereon at the average rate of interest per annum on the Bonds, plus two (2) percentage points, from the date such cost is incurred. There shall be unlimited recourse to the Company to the extent of any liability incurred by the City or the Trustee with respect to any breaches of the provisions of this section.

The Company shall and does hereby indemnify the City, the Trustee and the Bondowners and agree to defend and hold them harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs associated incurred in the investigation, defense and settlement of claims) that they may incur, directly or indirectly, as a result of or in connection with the assertion against them or any of them of any claim relating to the presence on, escape or removal from the Project during the term of this Lease of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether such claim is raised before, during or after the term of this Lease, including claims relating to personal injury or damage to property; provided, however, this indemnity shall only relate to claims resulting from the City's ownership of the Project and the Trustee's acceptance of its duties as Trustee hereunder.

ARTICLE V

RENT PROVISIONS

Section 5.1. Basic Rent. The Company covenants and agrees to pay to the Trustee in same day funds for the account of the City during this Lease Term, for deposit in the Bond Fund on or before 10:00 a.m., Trustee's local time, on or before each December 1, commencing December 1, 2026 and continuing until the principal of and interest on the Bonds shall have been fully paid, an amount which, when added to any collected funds then on deposit in the Bond Fund and available on such Payment Date, shall be equal to the total amount payable on each December 1 as interest on the Bonds. On **December 1, 2027** (or such earlier date as the Company may elect or be required to redeem the Bonds), the Company shall also pay an amount equal to all principal then due on the Bonds in connection with such maturity or redemption. All payments of Basic Rent provided for in this Section shall be paid directly to the Trustee and shall be deposited in accordance with the provisions of the Indenture into the Bond Fund and shall be used and applied by the Trustee in the manner and for the purposes set forth in this Lease and the Indenture, provided that if the Company is the Owner of all the Bonds Outstanding, payment of Basic Rent as provided for in this Section may be made via a transaction entry on the trust records held by the Trustee and the Paying Agent consistent with **Section 204(e)** and **Section 208(g)** of the Indenture. Any Basic Rent paid by the Company which exceeds the total amount payable on such payment dates shall be immediately paid to the Company by wire transfer. At its option, on the final Payment Date, the Company may deliver to the Trustee for cancellation Bonds not previously paid and the Company shall

receive a credit against the Basic Rent payable by the Company in an amount equal to the principal amount of the Bonds so tendered for cancellation plus accrued interest thereon.

In furtherance of the foregoing and of **Section 204(e)** and **Section 208(g)** of the Indenture, and notwithstanding any other provision in this Lease, the Indenture or the Bond Purchase Agreement, and provided that the Company is the sole Bondowner, the Company may set-off each Basic Rent payment against the City's obligation to the Company as Bondowner, in lieu of delivery of a payment of Basic Rent on any date on which principal of or interest on the Bonds is payable, without providing notice of such set-off to the Trustee. The Trustee may conclusively rely on the absence of any notice from the Company to the contrary as evidence that such set-off has occurred.

Section 5.2. Additional Rent. The Company shall pay as Additional Rent, within 30 days after receiving an itemized invoice therefor, the following amounts as and when the same become due:

(a) all reasonable fees, charges and expenses, including agent and counsel fees, of the City or the Trustee incurred under the Indenture, this Lease, or any other document entered into in connection with the Bonds, as and when the same become due;

(b) all costs incident to the payment of the principal of and interest on the Bonds as the same becomes due and payable, including all costs and expenses in connection with the call, redemption and payment of all outstanding Bonds;

(c) all reasonable costs which are reasonably incurred in connection with the enforcement of any rights against the Company or the Project or in connection with a failure of the Company to perform its obligations under this Lease or the Indenture by the City, the Trustee or the Bondowners, including counsel fees and expenses;

(d) on each December 1, a PILOT Payment to the City in the amount described on **Appendix I**; and

(e) all other payments of whatever nature which Company has agreed to pay or assume under the provisions of this Lease.

Section 5.3. Obligations of Company Absolute and Unconditional.

(a) The obligations of the Company under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project has been started or completed, or whether the City's title thereto or to any part thereof is defective or nonexistent, and notwithstanding any damage to, loss, theft or destruction of, the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Company's use thereof, the eviction or constructive eviction of the Company, any change in the tax or other laws of the United States of America, the State of Missouri or any political subdivision thereof, any change in the City's legal organization or status, or any default of the City hereunder, and regardless of the invalidity of any action of the City; provided, however, that nothing in this **Section 5.3(a)** or **Section 5.3(b)** is intended or shall be deemed to affect or impair in anyway the rights of the Company to tender Bonds for redemption in satisfaction of Basic Rent as provided in

Section 5.1 and **Section 5.4** hereof, nor the right of the Company to terminate this Lease and repurchase the Project as provided in **Article XI** hereof.

(b) Nothing in this Lease shall be construed to release the City from the performance of any agreement on its part herein contained or as a waiver by the Company of any rights or claims the Company may have against the City under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the City separately, it being the intent of this Lease that the Company shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease (including the obligation to pay Basic Rent and Additional Rent) for the benefit of the Owners and the City. The Company may, however, at its own cost and expense and in its own name or in the name of the City, prosecute or defend any action or proceeding or take any other action involving third Persons which the Company deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the City hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the City in any such action or proceeding if the Company shall so request.

Section 5.4. Prepayment of Basic Rent. The Company may at any time and from time to time prepay a portion of the Basic Rent provided for hereunder (subject to the limitations of **Section 301(a)** of the Indenture relating to the redemption of the Bonds). During such times as the amount held by the Trustee in the Bond Fund shall be sufficient to pay, at the time required, the principal of and interest on all the Bonds then remaining unpaid, the Company shall not be obligated to make payments of Basic Rent under the provisions of this Lease.

Subject to **Section 301(a)** of the Indenture relating to the redemption of Bonds, the Company, at its option, may deliver to the Trustee for cancellation Bonds owned by the Company and not previously paid, and the Company shall receive a credit against amounts payable by the Company for the redemption of Bonds in an amount equal to the principal amount of the Bonds so tendered for cancellation, plus accrued interest thereon.

ARTICLE VI

MAINTENANCE, TAXES AND UTILITIES

Section 6.1. Maintenance and Repairs. Throughout the Lease Term the Company shall, at its own expense, keep the Project in as reasonably safe condition as the operation thereof will permit, and keep the Project in good repair and in good operating condition (reasonable wear, tear, depreciation, and obsolescence excepted), making from time to time all necessary repairs thereto and renewals and replacements thereof it determines to be necessary. Without limiting the generality of the foregoing, the Company shall at all times remain in compliance with all provisions of the City's code relating to maintenance and appearance.

Section 6.2. Taxes, Assessments and Other Governmental Charges.

(a) Subject to subsection (b) of this Section, the Company shall promptly pay and discharge, as the same become due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Project, or any part thereof or interest therein (including the leasehold estate of the Company therein) or any buildings, improvements, machinery and equipment at any time installed thereon by the Company, or the income therefrom, including any new taxes and

assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would impair the security of the Bonds or encumber the City's title to the Project; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in installments, the Company shall be obligated to pay only such installments thereof as become due and payable during the Lease Term.

(b) The Company may, in its own name or in the City's name, contest the validity or amount of any tax, assessment or other governmental charge which the Company is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted at least 10 days before the tax, assessment or other governmental charge complained of becomes delinquent if and provided (1) the Company, before instituting any such contest, gives the City and the Trustee written notice of its intention to do so, (2) the Company diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (3) the Company promptly pays any final judgment enforcing the tax, assessment or other governmental charge so contested and thereafter promptly procures record release or satisfaction thereof. The City agrees to cooperate fully with the Company in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. The Company shall save and hold harmless the City and the Trustee from any costs and expenses the City and the Trustee may incur related to any of the above.

(c) Nothing in this Lease shall be construed to require the Company to make duplicate tax payments. The Company shall receive a credit against any payments in lieu of taxes due under this lease as PILOT Payments to the extent of any ad valorem taxes imposed and paid by the Company with respect to the Project paid pursuant to this Section.

Section 6.3. Utilities. All utilities and utility services used by the Company in, on or about the Project shall be paid for by the Company and shall be contracted for by the Company in the Company's own name (or the name(s) of its affiliates), and the Company shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

Section 6.4. Property Tax Exemption. The City and the Company agree that while the Project is owned by the City and is subject to this Lease, the Project and the leasehold interest of the Company in the Project will be exempt from all *ad valorem* real property taxes by reason of such ownership, and the City agrees that it will (at the expense of the Company) cooperate with the Company to defend such exemption against all parties. Notwithstanding the foregoing, Company will annually pay to the City the payments with respect to the Project set forth in **Appendix I**. Within 30 days of the date of receipt of each PILOT Payment, the City or designated billing/collection agent shall distribute each PILOT Payment among the taxing jurisdictions in proportion to the amount of taxes which would have been paid in each year had the Project not been exempt from taxation.

Section 6.5. Administration Costs. Under Section 100.050 of the Act, the City may require the Company to reimburse the City for its actual costs of issuing the Bonds and administering the plan including costs associated with this Agreement, in an amount of no greater than \$1,000 per year. The City will provide a statement for such costs to the Company not later than November 1 of each year and the Company will reimburse the City for its costs on or before December 31 of each year continuing until December 31 of the year in which this Agreement expires or is terminated.

Section 6.6. Sales Tax Exemption. Upon request of the Company after the issuance of the Bonds, the City will issue a sales tax exemption certificate to the Company for construction materials to be purchased for the Project and the City shall provide such other documentation as may be necessary from time to time to effect said sales tax exemption. The Company shall use the exemption certificate only for the purchase of construction materials to be incorporated into either the Project on the Project Site or the Public Improvements and shall not use the exemption certificate for the purchase of any personal property other than construction materials. The Company shall indemnify and defend the City and its respective officers, employees and agents against and from any and all causes of action or actions in law or equity, liens, claims damages, loss, costs or expenses of any nature whatsoever by any person or entity, arising out of the City's furnishing of the exemption certificate.

ARTICLE VII

INSURANCE

Section 7.1. Title Report. Before conveying title to any real property to the City, the Company will provide a report reasonably acceptable to the City showing the ownership of and encumbrances on the Project Site. Copies of such report shall be provided to the City and the Trustee.

Section 7.2. Property Insurance.

(a) The Company shall at its sole cost and expense obtain and shall maintain throughout the Lease Term, a policy or policies of insurance (including, if appropriate, builder's risk insurance) to keep the Project constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible provisions). The insurance required pursuant to this Section shall be maintained with a generally recognized responsible insurance company or companies authorized to do business in the State of Missouri or generally recognized international insurers or reinsurers with an A.M. Best rating of B+ or the equivalent thereof or better as may be selected by the Company. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the Company as insured and the City and the Trustee shall be named as loss payees, as their respective interests may appear, and shall contain a provision that the issuer of such insurance will provide at least 10 days' advance written notice to, the Company of the cancellation of such insurance. Company agrees it shall immediately forward any notice of cancellation it receives from the issuer of such insurance to the City and Trustee. The Company shall provide the City and the Trustee, on an annual basis, commencing on December 1, 2026 with a Certificate of Insurance Compliance, in the form of **Exhibit D** attached hereto, certifying compliance with this Section and containing copies of the insurance policies required under this Section, or certificates thereof. The Trustee shall be entitled to conclusively rely upon such certificate as to the Company's compliance with the insurance requirements. The Trustee makes no representation as to, and shall have no responsibility for the sufficiency or adequacy of, the insurance.

(b) In the event of loss or damage to the Project, the Net Proceeds of property insurance carried pursuant to this Section shall be applied as provided in **Article IX** of this Lease, or as may be directed by, or on behalf of, the Owners of 100% in principal amount of the Bonds outstanding.

Section 7.3. Commercial General Liability Insurance.

(a) The Company shall at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term general accident and commercial general liability insurance under which the City, the Company and the Trustee shall be named as additional insureds, properly protecting and indemnifying the City and the Trustee, in an amount not less than the limits of liability set by Section 537.610 of the Revised Statutes of Missouri (subject to loss deductible clauses not to exceed \$50,000). The policies of said insurance shall contain a provision that the issuer of such insurance will provide at least 10 days' advance written notice to the Company of the cancellation of such insurance. The Company agrees it shall immediately forward any notice of cancellation it receives from the issuer of such insurance to the City and Trustee. The Company shall provide the City and the Trustee, on an annual basis, commencing on December 1, 2026 with a Certificate of Insurance Compliance, in the form of **Exhibit D** attached hereto, certifying compliance with this Section and containing copies of the insurance policies required under this Section, or certificates thereof. The Trustee shall be entitled to conclusively rely upon such certificate as to the Company's compliance with the insurance requirements. The Trustee makes no representation as to, and shall have no responsibility for the sufficiency or adequacy of, the insurance.

(b) In the event of a public liability occurrence, and subject to the rights of Lender under and pursuant to the terms of the Mortgage (except that no right of the Lender under the Mortgage shall affect the right of the City or the Trustee to the protection and indemnification provided as additional insureds pursuant to subsection(a), above), the Net Proceeds of liability insurance carried pursuant to this Section shall be applied toward the extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

Section 7.4. Workers' Compensation. The Company agrees throughout the Lease Term to maintain or cause to be maintained the Workers' Compensation coverage required by the laws of the State of Missouri.

Section 7.5. Blanket Insurance Policies; Self-Insurance. The Company may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with. Nothing in this Lease shall be construed from prohibiting the Company from self-insuring provided the Company, or in combination with its parent corporation, has a net worth in excess of \$200,000,000, as determined by generally accepted accounting principles.

ARTICLE VIII

ALTERATION OF THE PROJECT

Section 8.1. Additions, Modifications and Improvements to the Project. The Company shall have and is hereby given the right, at its sole cost and expense, to make such additions, modifications and improvements in and to any part of the Project as the Company from time to time may deem necessary or desirable for its business purposes. All additions, modifications and improvements made by the Company pursuant to the authority of this Section shall (a) be made in workmanlike manner and will comply in all material respects with all laws and ordinances applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, be deemed a part of the Project; provided, however, that additions of machinery, equipment and other personal property installed on the Project Site by the Company not purchased or acquired from funds deposited with the

Trustee hereunder and not constituting repairs, renewals or replacements of the Project shall remain the property of the Company and may be removed by the Company. Such property shall be subject to *ad valorem* taxes.

Section 8.2. Additional Improvements on the Project Site. The Company may, at its sole cost and expense, construct on portions of the Project Site not theretofore occupied by buildings or improvements such additional buildings and improvements as the Company from time to time may deem necessary or desirable for its business purposes. All additional buildings and improvements constructed on the Project Site by the Company, and not paid for with Bond proceeds, pursuant to the authority of this Section shall not be included as Project Improvements and, during the life of this Lease, shall remain the property of the Company and may be added to, altered or razed and removed by the Company at any time. All additional buildings and improvements shall be made in a good and workmanlike manner and in strict compliance with all material laws, orders and ordinances applicable thereto and when commenced shall be prosecuted to completion with due diligence. The Company covenants and agrees (a) to make any repairs and restorations required to be made to the Project because of the construction of, addition to, alteration or removal of said additional buildings or improvements, and (b) to promptly and with due diligence either raze and remove or repair, replace or restore any of said additional buildings and improvements as may from time to time be damaged by fire or other casualty. The Company shall pay all *ad valorem* taxes and assessments payable with respect to such additional buildings and improvements which remain the property of the Company. If for any reason the County Assessor determines that such additional buildings and improvements are not subject to *ad valorem* taxes, the Company shall make payments in lieu of taxes in an amount equal to the taxes that would otherwise be due under this Section.

Section 8.3. Permits and Authorizations. The Company shall not do or permit others under its control to do any work on the Project related to any repair, rebuilding, restoration, replacement, modification or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. All such work shall be done in a good and workmanlike manner and in material compliance with all applicable building, zoning and other laws, ordinances, governmental regulations. In the event of demonstrated noncompliance with such laws, ordinances, governmental regulations and requirements the Company will take all reasonable steps to comply with laws, ordinances, governmental regulations and requirements.

Section 8.4. Mechanics' Liens.

(a) The Company will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Project, except Permitted Encumbrances, and the Company shall promptly notify the City of the imposition of such lien of which the Company is aware and shall promptly, at its own expense, take such action as may be necessary to fully discharge or release any such lien. Whenever and as often as any mechanics' or other similar lien is filed against the Project, or any part thereof, purporting to be for or on account of any labor done or materials or services furnished in connection with any work in or about the Project, the Company shall discharge the same of record within 90 days after the date of filing. Notice is hereby given that the City shall not be liable for any labor or materials furnished the Company or anyone claiming by, through or under the Company upon credit, and that, except as may be consented to by the City in a document recorded with the Jackson County Recorder of Deeds, no mechanics' or other similar lien for any such labor, services or materials shall attach to or affect the reversionary or other estate of the City in and to the Project or any part thereof.

(b) Notwithstanding paragraph (a) above, the Company may contest any such mechanics' or other similar lien if the Company (1) within said 90-day period stated above notifies the City and the

Trustee in writing of its intention so to do, (2) diligently prosecutes such contest, (3) at all times effectively stays or prevents any official or judicial sale of the Project, or any part thereof or interest therein, under execution or otherwise, (4) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and (5) thereafter promptly procures record release or satisfaction thereof. The Company may permit the lien so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Company is notified by the City that, in the opinion of counsel, by nonpayment of any such items, the interest of the City in the Project will be subject to loss or forfeiture. In that event, the Company shall promptly, at its own expense, take such action as may be reasonably necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The Company shall save and hold harmless the City from any loss, costs or expenses the City may incur related to any such contest. The Company shall reimburse the City for any expense incurred by it in connection with the imposition of any such lien or in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim. The City shall cooperate fully with the Company in any such contest.

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 9.1. Damage or Destruction.

(a) If the Project is damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the Company, as promptly as practicable, shall either (i) make the determination described in subsection (f) below, or (ii) repair, restore, replace or rebuild the same as nearly as may be practicable to their condition and character immediately prior to such damage or destruction, and so that upon completion of such repairs, restoration, replacement or rebuilding the Project is of a value not less than the value thereof immediately before the occurrence of such damage or destruction or, at the Company's option, construct upon the Project Site new buildings and improvements thereafter together with all new machinery, equipment and fixtures which are either to be attached to or are to be used in connection with the operation or maintenance thereof, provided that (A) the value thereof shall not be less than the value of such destroyed or damaged Project Improvements immediately before the occurrence of such damage or destruction and (B) the nature of such new buildings, improvements, machinery, equipment and fixtures will not impair the character of the Project as an enterprise permitted by the Act.

If the Company elects to construct any such new buildings and improvements, for all purposes of this Lease, any reference to the words "Project Improvements" shall be deemed to also include any such new buildings and improvements and all additions thereto and all replacements and alterations thereof.

Unless the Company makes the determination described in subsection (f) below, the Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss to the Project shall be used to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof. Insurance monies in an amount less than \$1,000,000 may be paid to or retained by the Company to be held in trust and used as provided herein. Insurance monies in any amount of \$1,000,000 or more shall be (i) paid to the Trustee and deposited in the Project Fund and shall be disbursed as provided in **Section 4.4** hereof to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof, or (ii) if determined by the Owners of 100% in principal amount of the Bonds Outstanding, applied as directed by, or on behalf of, such Owners of 100% in principal amount of the Bonds Outstanding. If the Company makes the determination described in subsection (f) below, the Net Proceeds shall be deposited with the Trustee and used to redeem Bonds as provided in subsection (f).

(b) Unless the Company makes the determination described in subsection (f) below, if any of the insurance monies paid by the insurance company as hereinabove provided remain after the completion of such repairs, restoration, replacement or rebuilding, and this Lease has not been terminated, the excess shall be deposited in the Bond Fund, subject to the rights of any Lender under the terms of the Mortgage. Completion of such repairs, restoration, replacement or rebuilding shall be evidenced by a certificate of completion in accordance with the provisions of **Section 4.5** hereof. If the Net Proceeds are insufficient to pay the entire cost of such repairs, restoration, replacement or rebuilding, the Company shall pay the deficiency.

(c) Except as otherwise provided in this Lease, in the event of any such damage by fire or any other casualty, the provisions of this Lease shall be unaffected and the Company shall remain and continue liable for the payment of all Basic Rent and Additional Rent and all other charges required hereunder to be paid by the Company, as though no damage by fire or any other casualty has occurred.

(d) The City and the Company agree that they will cooperate with each other, to such extent as such other party may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of any insurance monies that may be due in the event of, any loss or damage, and that they will execute and deliver to such other parties such instruments as may be required to facilitate the recovery of any insurance monies.

(e) The Company agrees to give prompt notice to the City and the Trustee with respect to all fires and any other casualties occurring in, on, at or about the Project Site which damages a material portion of the Project.

(f) If the Company determines that rebuilding, repairing, restoring or replacing the Project is not practicable or desirable, or if the Company does not have the right under any Mortgage to use any Net Proceeds for repair or restoration of the Project, any Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss shall, after payment of all Additional Rent then due and payable, be paid into the Bond Fund and shall be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same become due, all subject to rights of any Lender under a Mortgage (if any). The Company agrees to be reasonable in exercising its judgment pursuant to this subsection (f). Alternatively, if the Company is the sole owner of the Bonds and it has determined that rebuilding, repairing, restoring or replacing the Project is not practicable or desirable, it may tender Bonds to the Trustee for cancellation in a principal amount equal to the Net Proceeds of the casualty insurance, and retain such proceeds for its own account.

(g) The Company shall not, by reason of its inability to use all or any part of the Project during any period in which the Project is damaged or destroyed or is being repaired, rebuilt, restored or replaced, nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement from the City, the Trustee or the Owners or to any abatement or diminution of the rentals payable by the Company under this Lease or of any other obligations of the Company under this Lease except as expressly provided in this Section.

Section 9.2. Condemnation.

(a) If during the Lease Term, title to, or the temporary use of, all or any part of the Project is condemned by or sold under threat of condemnation to any authority possessing the power of eminent domain, to such extent that the claim or loss resulting from such condemnation is greater than \$1,000,000,

the Company shall, within 90 days after the date of entry of a final order in any eminent domain proceedings granting condemnation or the date of sale under threat of condemnation, notify the City, the Trustee, and any Lender under a Mortgage (if any) in writing as to the nature and extent of such condemnation or loss of title and whether it is practicable and desirable to acquire or construct substitute improvements.

(b) If the Company determines that such substitution is practicable and desirable, the Company shall proceed promptly with and complete with reasonable dispatch the acquisition or construction of such substitute improvements, so as to place the Project in substantially the same condition as existed before the exercise of the said power of eminent domain, including the acquisition or construction of other improvements suitable for the Company's operations at the Project (which improvements will be deemed a part of the Project and available for use and occupancy by the Company without the payment of any rent other than herein provided, to the same extent as if such other improvements were specifically described herein and demised hereby); provided, that such improvements will be acquired by the City subject to no liens, security interests or encumbrances before the lien and/or security interest afforded by the Indenture and this Lease other than Permitted Encumbrances. In such case, any Net Proceeds received from any award or awards with respect to the Project or any part thereof made in such condemnation or eminent domain proceedings, or of the sale proceeds, shall be applied in the same manner as provided in **Section 9.1** hereof (with respect to the receipt of casualty insurance proceeds).

(c) If the Company determines that it is not practicable or desirable to acquire or construct substitute improvements, any Net Proceeds of condemnation awards received by the Company shall, after payment of all Additional Rent then due and payable, be paid into the Bond Fund and shall be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same becomes due and payable, provided that if the Company is the sole owner of the Bonds and it has determined that acquiring and constructing substitute improvements is not practicable or desirable, it may tender Bonds to the Trustee for cancellation in a principal amount equal to the Net Proceeds of the condemnation awards, and retain such proceeds for its own account, all subject to the rights of any Lender under a Mortgage (if any).

(d) The Company shall not, by reason of its inability to use all or any part of the Project during any such period of restoration or acquisition nor by reason of the payment of the costs of such restoration or acquisition, be entitled to any reimbursement from the City, the Trustee or the Owners or to any abatement or diminution of the rentals payable by the Company under this Lease nor of any other obligations hereunder except as expressly provided in this Section.

(e) The City shall cooperate fully with the Company in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof, and shall, to the extent it may lawfully do so, permit the Company to litigate in any such proceeding in the name and on behalf of the City. In no event will the City voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project or any part thereof without the prior written consent of the Company and the Lender.

Section 9.3. Bondowner Approval. Notwithstanding anything to the contrary contained in this **Article IX**, and subject to the rights of the Lender, the proceeds of any insurance received subsequent to a casualty or of any condemnation proceedings (or threats thereof) may prior to the application thereof by the City or the Trustee be applied as directed by the Owners of 100% of the principal amount of Bonds

Outstanding, subject and subordinate to (a) the terms and conditions of the Mortgage; (b) the rights of the City and the Trustee to be paid all their expenses (including attorneys' fees, trustee's fees and any extraordinary expenses of the City and the Trustee) incurred in the collection of such gross proceeds.

ARTICLE X

SPECIAL COVENANTS

Section 10.1. No Warranty of Condition or Suitability by the City; Exculpation and Indemnification. The City makes no warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Company's purposes or needs. The Company releases the City and the Trustee from, agrees that the City and the Trustee shall not be liable for and agrees to hold the City and the Trustee harmless against, any loss or damage to property or any injury to or death of any Person that may be occasioned by any cause whatsoever pertaining to the Project or the Company's use thereof, unless such loss is the result of the City's or the Trustee's gross negligence or willful misconduct. This provision shall survive termination of this Lease.

Section 10.2. Surrender of Possession. Upon accrual of the City's right of re-entry to the extent provided in **Section 12.2(b)** hereof, the Company shall peacefully surrender possession of the Project to the City in good condition and repair, ordinary wear and tear excepted; provided, however, the Company may within 90 days (or such later date as the City may agree to) after the termination of this Lease remove from the Project Site any buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project. All repairs to and restorations of the Project required to be made because of such removal shall be made by and at the sole cost and expense of the Company, and during said 90-day (or extended) period the Company shall bear the sole responsibility for and bear the sole risk of loss for said buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project. All buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and which are not so removed from the Project before the expiration of said period shall be the separate and absolute property of the City.

Section 10.3. City's Right of Access to the Project. The Company agrees that the City and the Trustee and their duly authorized agents shall have the right at reasonable times during business hours, subject to 24 hours' advance written notice and the Company's usual safety and security requirements, to enter upon the Project Site (a) to examine and inspect the Project without interference or prejudice to the Company's operations, (b) as may be reasonably necessary to cause to be completed the purchase and installation provided for in **Section 4.2** hereof, (c) performing such work in and about the Project Site made necessary by reason of the Company's default under any of the provisions of this Lease, and (d) exhibiting the Project to prospective purchasers, lessees or trustees subsequent to an Event of Default.

Section 10.4. Granting of Easements; Mortgages and Financing Arrangements.

(a) Subject to **Sections 10.4(b)** and (c), if no Event of Default under this Lease has happened and is continuing, the Company may at any time or times (i) grant subleases (as permitted in **Section 13.1(b)** hereof), easements, licenses, rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements that are for the direct use of the Project, or part thereof, by the grantee, (ii) release or terminate existing subleases, easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the

Company shall determine, or (iii) incur Permitted Encumbrances. The Company may take such actions and may execute any applicable documents in the Company's own name. No separate signature of or authorization from the City shall be required for the execution and delivery of any such document, although the City agrees to execute and deliver such confirming documents as are described below, under the procedures described below, if the Company chooses to make such a request, provided that no such document shall impose any obligation (monetary or otherwise) on the City or require any representations by the City. All third parties entering into agreements with the Company or receiving delivery of or the benefit of such agreements or documents shall be entitled to rely upon the same as having been executed and delivered by the City, unless such third party has actual or constructive notice, expressly in writing, that the agency herein granted by the City to the Company has been terminated by the City because of an uncured Event of Default hereunder. The City agrees that it will execute and deliver and will cause and direct the Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant, release or terminate any such sublease, easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the City and the Trustee of: (i) a copy of the instrument of grant, release or termination or of the agreement or other arrangement, (ii) a written application signed by an Authorized Company Representative requesting such instrument, and (iii) a certificate executed by an Authorized Company Representative stating that such grant or release is not detrimental to the proper conduct of the business of the Company, will not impair the effective use or interfere with the efficient and economical operation of the Project, will not materially adversely affect the security intended to be given by or under the Indenture and will be a Permitted Encumbrance; *provided that* the City shall not be required to undertake any duties or payment obligations under such instruments and shall make only such representations as it deems appropriate in its sole discretion. If no Event of Default has happened and is continuing beyond any applicable grace period, any payments or other consideration received by the Company for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Company; but, subject to **Sections 10.4(b) and (c)**, upon (i) termination of this Lease for any reason other than the redemption of the Bonds and/or the purchase of the Project by the Company or (ii) the occurrence and continuance of an Event of Default by the Company, all rights then existing of the Company with respect to or under such grant shall inure to the benefit of and be exercisable by the City and the Trustee.

(b) The City acknowledges and agrees that the Company may finance and refinance its rights and interests in the Project, this Lease, and the leasehold estate created hereby with prior notice to but without the consent of the City, provided and upon condition that a duplicate original or certified copy or photostatic copy of each Mortgage, and the note or other obligation secured thereby, is delivered to the City within thirty (30) days after the execution thereof. The Company may mortgage the fee estate held by the City with the consent of the City, not to be unreasonably withheld, conditioned, or delayed. In either case, in connection therewith, the Company shall have the right to assign this Lease, the leasehold estate, any sublease, and any rights in connection therewith, and/or grant liens or security interests therein, to any Lender. Any further sublease or assignment by any Lender shall be subject to the provisions of **Section 13.1(c)**.

(c) With respect to a future Mortgage, upon notice by the Company to the City in writing that it has executed a Mortgage under which it has granted rights in this Lease to a Lender which includes the name and address of such Lender, the following provisions shall apply in respect of each such Lender:

(1) there shall be no merger of this Lease or of the leasehold estate created hereby with the fee title to the Project, notwithstanding that this Lease or said leasehold estate and said fee title shall be owned by the same Person or Persons, without the prior written consent of such Lender;

(2) the City shall serve upon each such Lender (at the address, if any, provided to the City) a copy of each notice of the occurrence of an Event of Default and each notice of termination given to the Company under this Lease, at the same time as such notice is served upon the Company. No such notice to the Company shall be effective unless a copy thereof is thus served upon each Lender (at the address, if any, provided to the City);

(3) each Lender shall have the same period of time which the Company has, after the service of any required notice upon it, within which to remedy or cause to be remedied any payment default under this Lease which is the basis of the notice plus thirty (30) days, and the City shall accept performance by such Lender as timely performance by the Company;

(4) the City may exercise any of its rights or remedies with respect to any other Event of Default by the Company, subject to the rights of each Lender under this **Section 10.4(c)** as to such other events of default. Without limiting the generality of the foregoing, any Lender holding a Mortgage of the fee simple interest or leasehold interest in the Project may cause the sale of the fee simple interest or any leasehold interest of the Company, as applicable, to be sold at foreclosure sale conducted in accordance with applicable law and the terms of the Mortgage, may accept assignment of this Lease in lieu of foreclosure and may appoint a receiver for the Project, all without obtaining the prior written consent of the City (provided that the City's right to exercise remedies under this Lease against any successor in interest shall not be reduced by virtue of such transfer);

(5) upon the occurrence and continuance of an Event of Default by the Company under this Lease, other than a default in the payment of money, the City shall take no action to effect a termination of this Lease by service of a notice or otherwise, without first giving notice thereof to each such Lender and permitting such Lender (or its designee, nominee, assignee, or transferee) a reasonable time within which to remedy such default in the case of an Event of Default which is susceptible of being cured (provided that the period to remedy such event of default shall continue beyond any period set forth in the Lease to effect said cure so long as the Lender (or its designee, nominee, assignee, or transferee) is diligently prosecuting such cure); provided that the Lender (or its designee, nominee, assignee, or transferee) shall pay or cause to be paid to the City and the Trustee all expenses, including reasonable counsel fees, court costs and disbursements incurred by the City or the Trustee in connection with any such default;

(6) such Lenders (and their designees, nominees, assignees, or transferees) shall have the right to enter, possess and use the Project at such reasonable times and manner as are necessary or desirable to effectuate the remedies and enforce their respective rights under the Mortgage(s); and

(7) Any notice sent by the Company to the City and the Trustee pursuant to any provision of this Lease shall also be sent to the Lender.

(d) In connection with the execution of one or more Mortgages, upon the request of the Company, the City agrees to execute such documents as shall be reasonably requested by a Lender and which are usual and customary in connection with the closing of the financing or refinancing pursuant to the Mortgage, provided that the City shall not be required to undertake any duties or payment obligations under such documents and shall make only such representations as it deems appropriate in its sole discretion. The Company agrees to reimburse the City for any and all costs and expenses incurred by the City pursuant to this Section, including reasonable attorneys' fees and expenses, in complying with such request.

(e) Notwithstanding anything contained to the contrary in this Lease, (a) the Company shall have the right to assign this Lease and any subleases to a Lender or to the designee or nominee of a Lender, without the consent of the City, and (b) if a Lender or its designee or nominee shall acquire ownership of the leasehold estate, either following foreclosure of the applicable Mortgage or in liquidation of the indebtedness and in lieu of foreclosure thereof, said Lender or its designee or nominee shall have the further right to further assign this Lease and any subleases and any purchase money mortgage accepted in connection therewith, without the consent of the City and such assignee shall enjoy all rights, powers and privileges granted herein to said Lender; provided, however, that such Lender or its assignee or nominee, or their assignee or nominee, shall assume in writing all rights, duties and obligations of the Company under this Lease.

(f) During the term of any Mortgage, the following provisions shall apply:

(i) this Lease may not be modified, amended, canceled or surrendered by agreement between the City and the Company, without the prior written consent of the applicable Lender;

(ii) if this Lease shall terminate prior to the expiration of the Lease Term, the City shall enter into a new lease for the Project with the applicable Lender or its designee or nominee, for the remainder of the Lease Term, effective as of the date of such termination, at the same rent and upon the same terms, covenants and conditions contained herein, except that such new lease shall not guarantee possession of the Project to the new tenant as against the Company and/or anyone claiming under the Company, and the City, simultaneously with the execution and delivery of such new lease, shall turn over to the new tenant all monies, if any, then held by the City under the Lease on behalf of the Company, on condition that:

(A) The applicable Lender shall make written request for such new lease within thirty (30) days after the date of such termination, and

(B) on the commencement date of the term of the new lease, the applicable Lender shall cure all defaults of the Company under the Lease (susceptible of being cured by such Lender) which remain uncured on that date, and shall pay or cause to be paid all unpaid sums which at such time would have been payable under this Lease but for such termination, and shall pay or cause to be paid to the City on that date all fees, costs, charges and expenses, including, without limitation, reasonable counsel fees, court costs and disbursements, incurred by the City or the Trustee in connection with any such default and termination as well as in connection with the execution and delivery of such new lease;

(iii) if a Lender or its designee or nominee shall become the owner of this Lease either following foreclosure of a Mortgage or in liquidation of the indebtedness and in lieu of foreclosure thereof and said Lender or its designee or nominee shall have assigned this Lease, said Lender or its designee or nominee so assigning shall be released from all liability accruing from and after the date of such assignment.

(g) The City agrees that any requested consent or signature of the City to any Mortgage under this Section (including any related document, including but not limited to documents subordinating the City's fee interest in the Project Site or any portion thereof to a Mortgage) may be given by the (Interim) City Manager, in his or her discretion, without further approval of the City Council. The City agrees that if a Mortgage on the fee interest in the Project Site is granted that this Lease shall be subject

to, and subordinate to, any such Mortgage and that the Lender will not be required to grant any rights of nondisturbance with respect to this Lease.

Section 10.5. Indemnification of City and Trustee. The Company shall indemnify and save and hold harmless the City and the Trustee and their governing body members, officers, agents and employees (collectively, the “Indemnified Parties”) from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys’ fees, by or on behalf of any person, firm or corporation arising from the issuance of the Bonds and the execution of this Lease, the Indenture or any other documents entered into in connection with the Bonds and from the conduct or management of, or from any work or thing done in or on the Project during the Lease Term, and against and from all claims, demands, costs, liabilities, damages or expenses, including attorneys’ fees, arising during the Lease Term from (a) any condition of the Project, (b) any breach or default on the part of the Company in the performance of any of its obligations under this Lease or any related document, (c) any contract entered into by the Company in connection with the purchase, construction, extension or improvement of the Project (including any failure to comply with Section 107.170 of the Missouri Revised Statutes, as amended, with respect to such contract), (d) any act of negligence of the Company or of any of its agents, contractors, servants, employees or licensees, (e) unless the Company has been released from liability pursuant to **Section 13.1(c)**, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company, (f) obtaining any applicable state and local sales and use tax exemptions for materials or goods that become part of the Project, and (g) any claim relating to the presence on, escape or removal from the Project during the term of the Lease of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether such claim arises before, during or after the term of this Lease, including claims relating to personal injury or damage to property; provided, however, the indemnification contained in this **Section 10.5** shall not (i) extend to the City if such claims, demands, costs, liabilities, damages or expenses, including attorneys’ fees, are the result of work being performed at the Project by employees of the City or the result of negligence or willful misconduct by the City (unless relating to a failure to comply with Section 107.170 of the Missouri Revised Statutes, as amended), or (ii) extend to the Trustee if such claims, demands, costs, liabilities, damages or expenses, including attorneys’ fees, are the result of the negligence or willful misconduct of the Trustee or (iii) the performance or failure to perform by the City or the Trustee of its obligations under this Lease or any related documents. Upon notice from the City or the Trustee, the Company shall defend them or either of them in any such action or proceeding. This **Section 10.5** shall survive any termination of this Lease or the satisfaction and discharge of the Indenture.

In case any action shall be brought against one or more of the Indemnified Parties based upon the foregoing indemnification and in respect of which indemnity may be sought against the Company, the Indemnified Parties shall promptly notify the Company in writing and the Company shall promptly assume the defense thereof, including the employment of counsel, the payment of all reasonable expenses and the right to negotiate and consent to settlement. If the Company shall have wrongfully failed to assume the defense of such action, the reasonable fees and expenses of counsel retained by the Indemnified Party shall be paid by the Company. If any of the Indemnified Parties is advised by counsel retained by the Company to defend such action that there may be legal defenses available to it which are adverse to or in conflict with those available to the Company or any other Indemnified Party, and that the defense of such Indemnified Party should be handled by separate counsel, the Company shall not have the right to assume the defense of such Indemnified Party, but shall be responsible for the reasonable fees and expenses of counsel retained by such Indemnified Party in assuming its own defense, provided, such counsel shall be acceptable to the Company. Any one or more of the Indemnified Parties shall have the right to employ 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 Indemnified Party or Indemnified Parties

unless employment of such counsel has been specifically authorized by the Company. The Company shall not be liable for any settlement of any such action effected without its consent by any of the Indemnified Parties, but if settled with the consent of the Company or if there be a final judgment for the plaintiff in any such action against the Company or any of the Indemnified Parties, with or without the consent of the Company, the provided that the Company was given prompt written notice and the ability to assume the defense thereof as required by this paragraph, the Company agrees to indemnify and hold harmless the Indemnified Parties to the extent provided herein.

Section 10.6. Depreciation, Investment Tax Credit and Other Tax Benefits. The City agrees that any depreciation, investment tax credit or any other tax benefits with respect to the Project or any part thereof shall be made available to the Company, and the City will fully cooperate with the Company in any effort by the Company to avail itself of any such depreciation, investment tax credit or other tax benefits.

Section 10.7. Company to Maintain its Corporate Existence. The Company agrees that until the Bonds are paid or payment is provided for in accordance with the terms of the Indenture, it will maintain its corporate existence, and will not dissolve or otherwise dispose of all or substantially all of its assets; provided, however, that the Company may, without violating the agreement contained in this Section, consolidate with or merge into another domestic corporation (i.e., a corporation incorporated and existing under the laws of one of the states of the United States) or permit one or more other domestic corporations to consolidate with or merge into it, or may sell or otherwise transfer to another domestic corporation all or substantially all of its assets as an entirety and thereafter dissolve, provided, the surviving, resulting or transferee corporation either (A) becomes, in connection with the consolidation, merger or sale of assets becomes the Owner of 100% in principal amount of the Bonds outstanding and expressly assumes in writing all of the obligations of the Company contained in this Lease, or (B) if not the Owner of 100% in principal amount of the Bonds outstanding, expressly assumes in writing all the obligations of the Company contained in this Lease; and, further provided, that if not the Owner of 100% in principal amount of the Bonds outstanding, the surviving, resulting or transferee corporation, as the case may be, has a consolidated net worth (after giving effect to said consolidation, merger or transfer) at least (i) equal to or greater than that of the Company immediately prior to said consolidation, merger or transfer, or (ii) \$100,000,000. The term “net worth,” as used in this Section, shall mean the difference obtained by subtracting total liabilities (not including as a liability any capital or surplus item) from total assets of the Company and all of its subsidiaries. In any such consolidation, merger or transfer the Company shall comply with the provisions of **Section 13** hereof to the extent applicable.

Section 10.8. Security Interests. At the written request of the Owner of the Bonds, the City and the Company agree to enter into all instruments (including financing statements and statements of continuation) necessary for perfection of and continuance of the perfection of the security interests of the City and the Trustee in the Project. Upon the written instructions of the Owner of the Bonds, the Trustee, at the Company’s expense, shall file all instruments the Owner of the Bonds shall deem necessary to be filed and shall continue or cause to be continued the liens of such instruments for so long as the Bonds shall be Outstanding. The City and the Company shall cooperate with the Trustee in this regard by executing such continuation statements and providing such information as the Trustee may require to renew such liens.

Section 10.9. Release of Portions of the Project under Specific Circumstances.

(a) In addition to the automatic release of Public Improvements under **Section 4.7** of this Lease, upon completion of any Public Improvements, such Public Improvements and the portion(s) of the Project Site, if any, on which such Public Improvements are located may be, by agreement of the Company and the City, released from this Lease, the Indenture and the other documents relating to the

Bonds, including by execution of documents described in **Section 11.2** sufficient to convey such property to the Company for purposes of dedication to the City.

(b) Any property (including any Public Improvements located thereon) released from this Lease pursuant to subsection (a) above, shall no longer constitute a part of the Project Improvements, the Project Site or the Project from and after such release.

ARTICLE XI

OPTION AND OBLIGATION TO PURCHASE THE PROJECT

Section 11.1. Option to Purchase the Project.

(a) *Purchase of the entire Project.* The Company shall have, and is hereby granted, the option to purchase the Project at any time, upon payment in full of all Bonds then outstanding or provision for their payment having been made pursuant to **Article XIII** of the Indenture. To exercise such option the Company shall give written notice to the City and to the Trustee, and shall specify therein the date of closing such purchase, which date shall be not less than 15 nor more than 90 days from the date such notice is mailed unless otherwise agreed by the Company, the City and the Trustee, and in case of a redemption of the Bonds in accordance with the provisions of the Indenture, the Company shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. Notwithstanding the forgoing, if the City or the Trustee provides notice of its intent to exercise its remedies hereunder (a "Remedies Notice"), the Company shall be deemed to have exercised its repurchase option under this subsection on the 29th day following the issuance of the Remedies Notice without any further action by the Company; provided said notice has not been rescinded by such date (such option to take place on the 29th day following the issuance of the Remedies Notice). The Company may rescind such exercise by providing written notice to the City and the Trustee on or prior to the 29th day following the issuance of the Remedies Notice and by taking such action as may be required to cure the default that led to the giving of the Remedies Notice. The purchase price payable by the Company in the event of its exercise of the option granted in this subsection shall be the sum of the following:

(1) an amount of money which, when added to the amount then on deposit in the Bond Fund, will be sufficient to redeem all the then outstanding Bonds on the earliest redemption date next succeeding the closing date, including, without limitation, principal and interest to accrue to said redemption date and redemption expense; plus

(2) an amount of money equal to the Trustee's agreed to and reasonable fees, charges and expenses under the Indenture accrued and to accrue until such redemption of the Bonds; plus

(3) an amount of money equal to all payments due and payable as PILOT Payments through the end of the calendar year in which the date of purchase occurs; plus

(4) the sum of \$100.00.

At its option, to be exercised at least 5 days prior to the date of closing such purchase, the Company may deliver to the Trustee for cancellation Bonds not previously paid, and the Company shall receive a credit against the purchase price payable by the Company in an amount equal to 100% of the principal amount of the Bonds so delivered for cancellation, plus the accrued interest thereon.

(b) *Purchase of a portion of the Project.* The Company shall have, and is hereby granted, the option to purchase any portion of the Project at any time, upon payment in full of a portion of the Bonds then outstanding or provision for their payment having been made pursuant to **Article XIII** of the Indenture, in the amount described in this subsection. To exercise such option, the Company shall give written notice to the City and to the Trustee, and shall specify therein the date of closing such purchase, which date shall be not less than 15 nor more than 90 days from the date such notice is mailed, and in case of a redemption of Bonds in accordance with the provisions of the Indenture, the Company shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. The purchase price payable by the Company in the event of its exercise of the option granted in this subsection shall be the sum of the following:

(1) the amount of money equal to the portion of the Cumulative Outstanding Principal Amount on the closing date for such purchase that is attributable to the portion of the Project to be removed, which shall be determined by dividing (i) the total Project Costs paid with respect to such portion of the Project under **Section 4.4** hereof, by (ii) the total of all Project Costs paid under **Section 4.4** hereof, and then multiplying such quotient by the Cumulative Outstanding Principal Amount at the time of the closing date for such purchase and rounding such product to the nearest \$1,000, which amount shall be deposited to the Bond Fund and applied to redeem outstanding Bonds in an equal principal amount on the earliest redemption date next succeeding the closing date); plus

(2) an amount of money equal to the Trustee's agreed to and reasonable fees, charges and expenses under the Indenture accrued and to accrue until such redemption of the Bonds; plus

(3) an amount of money equal to all payments due and payable as PILOT Payments, to the extent allocable to the purchased portion of the Project, through the end of the calendar year in which the date of purchase occurs; plus

(4) the sum of \$100.00.

At its option, to be exercised at least 5 days prior to the date of closing such purchase, the Company may deliver to the Trustee for cancellation Bonds not previously paid, and the Company shall receive a credit against the purchase price payable by the Company in an amount equal to 100% of the principal amount of the Bonds so delivered for cancellation, plus the accrued interest thereon.

Section 11.2. Conveyance of the Project. At the closing of the purchase of the Project (or portion thereof) pursuant to this Article, the City will upon receipt of the purchase price deliver to the Company the following:

(a) If the Indenture shall not at the time have been satisfied in full, a release from the Trustee of the Project (or applicable portion) from the lien and/or security interest of the Indenture and this Lease and appropriate termination of financing statements as required under the Uniform Commercial Code; and

(b) Documents, including without limitation a deed as to the Project Site (or applicable portion), conveying to the Company legal title to the Project (or applicable portion), as it then exists, in recordable form, subject to the following: (i) those liens and encumbrances, if any, to which title to the Project was subject when conveyed to the City; (ii) those liens and encumbrances created by the Company or to the creation or suffering of which the Company consented; (iii) those liens and encumbrances resulting from the failure of the Company to

perform or observe any of the agreements on its part contained in this Lease; (iv) Permitted Encumbrances other than the Indenture and this Lease; and (v) if the Project or any part thereof is being condemned, the rights and title of any condemning authority.

Section 11.3. Relative Position of Option and Indenture. The options and obligation to purchase the Project granted to the Company in this Article shall be and remain prior and superior to the Indenture and may be exercised whether or not the Company is in default under this Lease, provided that such default will not result in nonfulfillment of any condition to the exercise of any such option and further provided that all options herein granted shall terminate upon the termination of this Lease.

Section 11.4. Obligation to Purchase the Project. As additional consideration for the Company's use of the Project, the Company hereby agrees to purchase, and the City hereby agrees to sell, the Project upon the occurrence of (a) the expiration of the Lease Term following full payment of the Bonds or provision for payment thereof having been made in accordance with the provisions of the Indenture, and (b) the final payment due for PILOT Payments. The amount of the purchase price under this Section shall be \$100 plus an amount sufficient to redeem all the then Outstanding Bonds, plus accrued interest and the reasonable fees and expenses of the City and the Trustee. If the Company fails to complete the purchase of the Project at the time required by this Section, the City is specifically authorized to convey the Project back to the Company with or without terminating this Lease and, in such case, may unilaterally terminate this Lease by an instrument signed by the City alone.

ARTICLE XII

DEFAULTS AND REMEDIES

Section 12.1. Events of Default. If any one or more of the following events shall occur and be continuing, it is hereby defined as and declared to be and to constitute an "Event of Default" or "default" under this Lease:

(a) Default in the due and punctual payment of Basic Rent for a period of 5 days following written notice to the Company by the City or the Trustee; or

(b) Default in the due and punctual payment of Additional Rent for a period of 30 days following written notice to the Company by the City or the Trustee; or

(c) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the Company's part to be observed or performed, and such default shall continue for 60 days after the City or the Trustee has given the Company written notice specifying such default (or such longer period as shall be reasonably required to cure such default; provided that (1) the Company has commenced such cure within said 60 day period, and (2) the Company diligently prosecutes such cure to completion); or

(d) The Company: (1) admits in writing its inability to pay its debts as they become due; or (2) files a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or files a pleading asking for such relief; or (3) make an assignment for the benefit of creditors; or (4) consents to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or fails to have the appointment of any trustee, receiver or liquidator made without the

Company's consent or acquiescence, vacated or set aside; or (5) is finally adjudicated as bankrupt or insolvent under any federal or state law; or (6) is subject to any proceeding, or suffers the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order or proceeding, if not consented to by it, is not dismissed, vacated, denied, set aside or stayed within 90 days after the day of entry or commencement; or (7) suffers a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside; or

(e) the Company vacates, abandons, ceases operations, fails to occupy or is ejected from the Project Site or any material portion thereof, and the same remains uncared for or abandoned for a period of 180 days; or

(f) The occurrence and continuance of an event of default by the Company under the Redevelopment Agreement between the City and the Company following any applicable notice and grace period provided therein.

Section 12.2. Remedies on Default. If any Event of Default referred to in **Section 12.1** hereof has occurred and continues beyond the period provided to cure, then the City may at the City's election (subject, however, to any restrictions against acceleration of the maturity of the Bonds or termination of this Lease in the Indenture), then or at any time thereafter, and while such default continues, take any one or more of the following actions:

(a) cause all amounts payable with respect to the Bonds for the remainder of the term of this Lease to become due and payable after giving ten (10) days prior written notice thereof to the Company, as provided in the Indenture; or

(b) give the Company written notice of the City's intention to terminate this Lease on a date specified therein, which date shall not be earlier than 30 days after such notice is given, and if all defaults have not then been cured, on the date so specified, the Owners shall tender or be deemed to have tendered the outstanding principal amount of the Bonds for cancellation with instruction that such tender is in lieu of payment in accordance with **Section 11.1** hereof and this Lease shall thereupon be terminated, and the City will promptly convey the Project in accordance with **Section 11.2** hereof.

Section 12.3. Survival of Obligations. The Company covenants and agrees with the City and Owners that those of its obligations under this Lease which by their nature require performance after the end of the term of this Lease, or which are expressly stated herein as intended to survive expiration or termination of this Lease, shall survive the cancellation and termination of this Lease, for any cause.

Section 12.4. Performance of the Company's Obligations by the City. If an Event of Default occurs as a result of any failure by the Company, then the City, or the Trustee in the City's name, may (but shall not be obligated so to do) upon the continuance of such failure on the Company's part for 30 days after written notice of such failure is given to the Company by the City or the Trustee, and without waiving or releasing the Company from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and all reasonable sums so

paid by the City or the Trustee and all necessary incidental reasonable costs and expenses incurred by the City or the Trustee (including, without limitation, attorneys' fees and expenses incurred by the City or the Trustee) in performing such obligations shall be deemed Additional Rent and shall be paid to the City or the Trustee on demand, and if not so paid by the Company, the City or the Trustee shall have the same rights and remedies provided for in **Section 12.2** hereof in the case of default by the Company in the payment of Basic Rent.

Section 12.5. Rights and Remedies Cumulative. The rights and remedies reserved by the Trustee, the City and the Company hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The Trustee, the City and the Company shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

Section 12.6. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the Company of any covenant, agreement or undertaking by the Company, the Trustee or the City may nevertheless accept from the Company any payment or payments hereunder without in any way waiving the Trustee or the City's right to exercise any of its rights and remedies provided for herein with respect to any such breach or breaches of the Company which were in existence at the time such payment or payments were accepted by the Trustee or the City.

Section 12.7. Trustee's Exercise of the City's Remedies. Whenever any Event of Default shall have occurred and be continuing, the Trustee may, but except as otherwise provided in the Indenture shall not be obliged to, exercise any or all of the rights of the City under this Article, upon notice as required of the City unless the City has already given the required notice. In addition, the Trustee shall have available to it all of the remedies prescribed by the Indenture.

ARTICLE XIII

ASSIGNMENT AND SUBLEASE

Section 13.1. Assignment; Sublease.

(a) The Company may assign, transfer, encumber or dispose of this Lease or any interest therein or part thereof for any lawful purpose under the Act. With respect to any assignment, the Company shall comply with the following conditions:

(1) Such assignment shall be in writing, duly executed and acknowledged by the assignor and in proper form for recording;

(2) Such assignment shall include the entire then unexpired term of this Lease; and

(3) A duplicate original of such assignment shall be delivered to the City and the Trustee within 10 days after the execution thereof, together with an assumption agreement, duly executed and acknowledged by the assignee in proper form for recording, by which the assignee

shall assume all of the terms, covenants and conditions of this Lease on the part of the Company to be performed and observed.

(b) The Company shall have the right to sublet all or any part of the Project to a single entity for any lawful purpose under the Act. The Company shall, within 10 days after the delivery thereof, furnish or cause to be furnished to the City and the Trustee a true and correct copy of each such sublease. Any sublease may provide, at the Company's option, that the City's consent shall not be required in respect of any further subletting thereunder if such further subletting is for a similar purpose as the original sublease and is for a purpose permissible under the Act. Nothing in this Lease shall allow the City to disturb the rights of a sublessee to use the Project under the terms and conditions as set forth in such sublessee's sublease with the Company, provided that this sentence shall not limit any remedy that the City may seek to impose on the Company in case of an Event of Default including but not limited to termination of this Lease.

(c) Notwithstanding the foregoing, the right of the Company to assign or sublease any interests in this Lease without the prior written consent of the City shall only apply to assignments made (A) to any entity whose long-term debt, or the long-term debt of an entity controlled by, under common control with or controlling such entity has at least a rating in any of the top three long term debt rating categories by any nationally recognized rating agency; (B) so long as the Company shall remain secondarily liable, to any such entity; or (C) to an entity controlled by or under common control with or controlling the Company, so long as such entity has a net worth of at least \$5,000,000 at the time of such assignment or sublease. For any proposed assignment or transfer, other than those specifically set forth in this Lease, the Company may assign or transfer any interests in this Lease to any entity or person with the City's prior written consent, and such consent shall not be unreasonably withheld, conditioned or delayed. The City shall have the right to grant or withhold its consent to such proposed assignment or transfer in its reasonable discretion after inquiry and the delivery of information by the Company to the City as to whether the proposed assignee or transferee has sufficient financial wherewithal and experience to complete the Project according to the terms of this Lease or any other agreement related to the issuance of the Bonds. If and to the extent that the Company and/or the proposed assignee reasonably demonstrates to the City that the proposed assignee has sufficient experience and a net worth sufficient to complete the Project, then it shall not be deemed "reasonable" for the City to withhold its consent to such proposed assignment or sublease. Any assignee of all the rights of the Company shall agree to be bound by the terms of this Lease and any other documents related to the issuance of the Bonds. Upon such assignment of all the rights of the Company and agreement by the assignee to be bound by the terms of this Lease and any other documents related to the Bonds, the Company shall be released from and have no further obligations under this Lease or any agreement related to the issuance of the Bonds.

Section 13.2. Assignment of Revenues by City. The City shall assign and pledge any rents, revenues and receipts receivable under this Lease, to the Trustee pursuant to the Indenture as security for payment of the principal of, interest and premium, if any, on the Bonds and the Company hereby consents to such pledge and assignment. The City and the Company recognize that the Trustee is a third party creditor beneficiary of this Lease.

Section 13.3. Prohibition Against Fee Mortgage of Project. Except as otherwise set forth in **Section 10.4**, the City shall not mortgage its fee interest in the Project, but may assign its interest in and pledge any moneys receivable under this Lease to the Trustee pursuant to the Indenture as security for payment of the principal of and interest on the Bonds.

Section 13.4. Restrictions on Sale or Encumbrance of Project by City. During this Lease Term, the City agrees that, except to secure the Bonds to be issued pursuant to the Indenture, it will not

sell, assign, encumber, transfer or convey the Project or any interest therein, but may assign its interest in and pledge any moneys receivable under this Lease to the Trustee pursuant to the Indenture as security for payment of the principal of and interest on the Bonds.

ARTICLE XIV

AMENDMENTS, CHANGES AND MODIFICATIONS

Section 14.1. Amendments, Changes and Modifications. Except as otherwise provided in this Lease or in the Indenture, subsequent to the issuance of Bonds and prior to the payment in full of the Bonds (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Lease may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the Trustee, given in accordance with the provisions of the Indenture.

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 15.1. Notices. All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be governed by **Section 1403** of the Indenture.

Section 15.2. City Shall Not Unreasonably Withhold Consents and Approvals. Wherever in this Lease it is provided that the City shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the City shall not unreasonably, arbitrarily or unnecessarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements or schedules; provided, however, that nothing in this Lease shall be interpreted to affect the City's rights to approve or deny any additional project or matter unrelated to the Project subject to zoning, building permit or other regulatory approvals by the City.

Section 15.3. Net Lease. The parties hereto agree (a) that this Lease shall be deemed and construed to be a net lease, (b) that the payments of Basic Rent are designed to provide the City and the Trustee funds adequate in amount to pay all principal of and interest accruing on the Bonds as the same become due and payable, (c) that to the extent that the payments of Basic Rent are not sufficient to provide the City and the Trustee with funds sufficient for the purposes aforesaid, the Company shall be obligated to pay, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Rent, such further sums of money, in cash, as may from time to time be required for such purposes, and (d) that if after the principal of and interest on the Bonds and all costs incident to the payment of the Bonds (including the fees and expenses of the City and the Trustee) have been paid in full the Trustee or the City 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 Company under the terms of this Lease, and except as otherwise provided in this Lease and the Indenture, become the absolute property of and be paid over forthwith to the Company.

Section 15.4. Limitation on Liability of City. No provision, covenant or agreement contained in this Lease, the Indenture or the Bonds, or any obligation herein or therein imposed upon the City, or the breach thereof, shall constitute or give rise to or impose upon the City a pecuniary liability or a charge upon the general credit or taxing powers of the City or the State of Missouri.

Section 15.5. Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State of Missouri.

Section 15.6. Binding Effect. This Lease shall be binding upon and shall inure to the benefit of the City and the Company and their respective successors and assigns.

Section 15.7. Severability. If for any reason any provision of this Lease shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 15.8. Execution in Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 15.9. Electronic Storage and Notice. The parties hereto agree that the transaction described herein may be conducted and related documents may be stored 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. If the Company elects to give instructions by electronic notice to the Trustee, the Trustee may deem such instructions controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Company agrees to assume all risks arising out of the use of such electronic notice to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 15.10. Satisfaction of the Company's Obligations. Any obligation of the Company under this Lease, including, but not limited to, the obligations of the Company to pay Basic Rent, Additional Rent and to maintain insurance as required herein, may be performed by a member of the Company, and such performance by a member of the Company shall be treated as though the obligation were performed by the Company.

Section 15.11 Complete Agreement. THE COMPANY AND THE CITY UNDERSTAND THAT ORAL OR UNEXECUTED 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 COMPANY AND THE CITY FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS THE COMPANY AND THE CITY REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS LEASE, WHICH ARE THE COMPLETE AND EXCLUSIVE STATEMENTS OF THE AGREEMENT BETWEEN THE COMPANY AND THE CITY, EXCEPT AS THE COMPANY AND THE CITY MAY LATER AGREE IN WRITING TO MODIFY THIS LEASE.

Section 15.12. Employee Verification. The Company will comply with and satisfy the requirements of Section 285.530.2, RSMo., as amended, which requires (1) any business entity receiving tax abatement to, by sworn affidavit and provision of documentation, annually affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the business entity receiving tax abatement, and (2) every such business entity to annually sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the entity receiving tax abatement. The Company shall provide such affidavits and documentation to the City on or before December 1 of each year during the term of this Lease, beginning December 1, 2026, and also upon execution of this Lease.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in their respective names by their duly authorized signatories, all as of the date first above written.

CITY OF INDEPENDENCE, MISSOURI

By: _____
Name: Lisa Reynolds
Title: Interim City Manager

[SEAL]

ATTEST:

By: _____
Name: Susanne Holland
Title: City Clerk

WALLY’S INDEPENDENCE MO OWNER LLC,
a Missouri limited liability company

By: _____
Name:
Title:

EXHIBIT A

PROJECT SITE

The following described real estate located in Jackson County, Missouri:

ALL THAT PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23, TOWNSHIP 49, RANGE 32, IN THE CITY OF INDEPENDENCE, JACKSON COUNTY, MISSOURI, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHEAST 1/4; THENCE SOUTH 90° 00' 00" EAST, ALONG THE NORTH LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 272.31 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 40.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF 39TH STREET, AS ESTABLISHED BY DOCUMENT NO. 1456433, RECORDED IN BOOK 11078, PAGE 1452, SAID POINT BEING THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE HEREIN DESCRIBED; THENCE SOUTH 0° 00' 00" WEST, AT RIGHT ANGLES TO SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 343.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 18.45 FEET; THENCE SOUTH 1° 15' 00" EAST, PARALLEL TO THE EAST RIGHT-OF-WAY LINE OF NOLAND ROAD, AS NOW ESTABLISHED, A DISTANCE OF 130.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 5.00 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 200.00 FEET; THENCE SOUTH 90° 00' 00" WEST, A DISTANCE OF 152.81 FEET (DEED = 152.98 FEET), TO A POINT ON THE AFORESAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST (DEED = SOUTH 11° 02' 39" EAST), ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 65.40 FEET; THENCE NORTH 90° 00' 00" EAST, A DISTANCE OF 201.39 FEET; THENCE SOUTH 1° 02' 25" EAST, A DISTANCE OF 355.00 FEET; THENCE NORTH 85° 50' 55" WEST, A DISTANCE OF 140.49 FEET (DEED = 140.92 FEET), TO A POINT ON SAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 7.64 FEET (DEED = SOUTH 11° 02' 39" EAST, A DISTANCE OF 8.29 FEET), TO A POINT THAT IS OPPOSITE AND 155.00 FEET EAST OF STATION 18+50 ON THE CENTERLINE OF NOLAND ROAD; THENCE SOUTH 88° 41' 51" WEST, (DEED = SOUTH 88° 45' 00" WEST), CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 25.00 FEET TO A POINT THAT IS OPPOSITE AND 130 FEET EAST OF STATION 18+50 ON SAID NOLAND ROAD CENTERLINE; THENCE SOUTH 2° 02' 11" EAST CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 124.30 FEET (DEED = SOUTH 1° 15' 00" EAST, A DISTANCE OF 124.24 FEET), TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE ROUTE NO. 1-70, AS NOW ESTABLISHED THAT IS OPPOSITE AND 228.80 FEET NORTHERLY OF STATION 545+60 ON THE CENTERLINE OF SAID 1-70, THENCE SOUTH 84° 21' 11" EAST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 643.04 FEET (DEED = SOUTH 84° 17' 39" EAST, A DISTANCE OF 644.64 FEET) TO A POINT THAT IS OPPOSITE AND 166.30 FEET NORTHERLY OF STATION 552+00 ON THE CENTERLINE OF SAID 1-70; THENCE SOUTH 89° 55' 50" EAST, CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 546.03 FEET (DEED = SOUTH 89° 51' 16" EAST, A DISTANCE OF 545.61 FEET), TO A POINT ON THE WEST LINE OF "BROOKWOOD NO. 2", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE NORTH 1° 15' 58" WEST, ALONG THE WEST LINE OF SAID SUBDIVISION, A DISTANCE OF 785.43 FEET (DEED = NORTH 1° 12' 00" WEST, A

DISTANCE OF 786.12 FEET), TO THE SOUTHEAST CORNER OF LOT 19, "WOODRIDGE", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE SOUTH 89° 51' 43" WEST, ALONG THE SOUTH LINE OF SAID "WOODRIDGE", A DISTANCE OF 251.04 FEET (DEED = NORTH 90° 00' 00" WEST, A DISTANCE OF 250.63 FEET), TO AN ANGLE POINT THEREIN; THENCE NORTH 80° 01' 00" WEST, CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 288.30 FEET TO AN ANGLE POINT THEREIN; THENCE SOUTH 89° 47' 57" WEST (DEED = NORTH 90° 00' 00" WEST), CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 286.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF DODGION STREET, AS NOW ESTABLISHED; THENCE NORTH 0° 12' 03" WEST (DEED = NORTH 0° 00' 00" WEST), ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 5.00 FEET TO THE SOUTHEAST CORNER OF LOT 34, SAID "WOODRIDGE"; THENCE SOUTH 89° 47' 57" WEST ALONG THE SOUTH LINE OF SAID LOT 34, A DISTANCE OF 135.40 FEET (DEED = 90° 00' 00" WEST, A DISTANCE OF 135.00 FEET), TO THE SOUTHWEST CORNER OF SAID LOT 34; THENCE NORTH 0° 00' 00" EAST, ALONG THE WEST LINE OF SAID "WOODRIDGE" SUBDIVISION, A DISTANCE OF 440.00 FEET TO THE AFORESAID SOUTH RIGHT-OF-WAY LINE OF 39TH STREET; THENCE NORTH 90° 00' 00" WEST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

PROJECT IMPROVEMENTS

The Project Improvements consist of the following, to the extent paid for in whole with Bond proceeds:

- (1) the demolition of existing improvements and construction of an approximately 54,000 square foot travel center, including fuel pumps, landscaping, parking and other amenities on the Project Site, and
- (2) public improvements relating to the development of the Project Site, including improvements to I-70 on and off ramps, Noland Road, Lynn, Canterbury, and 39th Street, with related signalization, utilities and earthwork (such portion described under this subsection (2) being the “Public Improvements”).

EXHIBIT C

FORM OF REQUISITION CERTIFICATE

Requisition No. _____
Date: _____

REQUISITION CERTIFICATE

TO: UMB BANK, N.A., AS TRUSTEE UNDER A TRUST INDENTURE DATED AS OF JANUARY 1, 2026, BETWEEN CITY OF INDEPENDENCE, MISSOURI, AND THE TRUSTEE, AND THE LEASE AGREEMENT DATED AS OF JANUARY 1, 2026, BETWEEN CITY OF INDEPENDENCE, MISSOURI AND WALLY'S INDEPENDENCE MO OWNER LLC.

The undersigned Authorized Company Representative hereby states and certifies that:

1. A total of \$ _____ is requested to pay for Project Costs (as defined in the Indenture) of the Project Improvements. The total amount of this requisition and all prior requisitions are as follows:

<u><i>Date of Project Costs</i></u>	<u><i>Amount Submitted in this Requisition</i></u>	<u><i>Requisitions Submitted to Date (Including this Requisition)</i></u>

2. Said Project Costs shall be paid in whole from Bond proceeds in such amounts, to such payees and for such purposes as set forth on **Schedule 1** hereto.

3. Each of the items for which payment is requested are or were desirable and appropriate in connection with the construction and improvement of the Project (as defined in the Trust Indenture), have been properly incurred and are a proper charge against the Project Fund, and have been paid by the Company or are justly due to the Persons whose names and addresses are stated on **Schedule 1**, and have not been the basis of any previous requisition from the Project Fund.

4. As of this date, except for the amounts referred to above, to the best of my knowledge there are no outstanding disputed statements for which payment is requested for labor, wages, materials, supplies or services in connection with the construction and improvement of the Project which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or similar lien upon the Project or any part thereof.

With respect to this disbursement, the undersigned (i) certifies it has reviewed any wire instructions set forth herein to confirm such wire instructions are accurate, (ii) agrees to indemnify and hold harmless the Trustee from and against any and all claim, demand, loss, liability, or expense sustained, including but not limited to attorney fees, and expenses resulting directly or indirectly as a result of making the disbursement requested hereunder, and (iii) agrees it will not seek recourse from the Trustee as a result of losses incurred by it for making the disbursement in accordance with its instructions herein.

WALLY'S INDEPENDENCE MO OWNER LLC

By: _____
Authorized Company Representative

SCHEDULE 1 TO REQUISITION CERTIFICATE

PROJECT COSTS

<u>Payee and Address</u>	<u>Description</u>	<u>Amount</u>
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EXHIBIT D

FORM OF CERTIFICATE OF INSURANCE COMPLIANCE

The undersigned, being the Authorized Company Representative for Wally's Independence MO Owner LLC, as tenant (the "Company"), under a certain Lease Agreement dated as of January 1, 2026, between the City of Independence, Missouri (the "City"), and the Company (the "Lease"), and as beneficiary of the City's Taxable Industrial Development Revenue Bonds (Wally's Redevelopment Project), Series 2026, issued pursuant to a certain Trust Indenture dated as of January 1, 2026 (the "Indenture"), hereby certifies pursuant to Article VII of Lease:

1. All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings set forth in the Lease.

2. The policies of insurance required to in place pursuant to Article VII of the Lease are effective and the premiums with respect thereto have been paid in full as of the date set forth below. Such policies comply with the terms and provisions set forth in Article VII, and the Company is in compliance with the provisions of Article VII.

3. The undersigned will notify the Trustee 10 days prior to any cancellation or material change to such policies; the policies currently in effect have an expiration date of _____, 20__.

4. The Trustee may conclusively rely on this Certificate of Insurance Compliance without further investigation.

5. Attached hereto are insurance certificates showing compliance with the liability and casualty insurance requirements of Article VII of the Lease.

IN WITNESS WHEREOF, the undersigned Authorized Company Representative has signed this Certificate, and the statements of fact made in this Certificate are true and correct.

Authorized Company Representative

Date: _____

ATTACHMENTS:

1. Liability insurance certificate(s)
2. Casualty insurance certificate(s)

Note: all insurance certificates must show the City and the Trustee as additional insureds.

APPENDIX I

PILOT Payments

The Company covenants and agrees to make PILOT Payments to the City on or before each December 1, commencing December 1, 2026, in the amounts, and in the years, set forth below. Any PILOT Payments due under this Lease which are not paid when due shall bear interest at the interest rate imposed by Missouri law on overdue *ad valorem* real estate taxes from the date such payment was first due.

- 1) For calendar year 2026, the PILOT Payment shall be equal to the Taxes Otherwise Due on the Project Site, which shall be equal to the tax charged to the Project Site by Jackson County, Missouri for tax year 2025, after all appeals are settled.
- 2) In each year after 2026, if the Project remains in City ownership, a PILOT Payment shall be made for the Project in the amount equal to the Taxes Otherwise Due on the Project Site plus 50% of the Taxes Otherwise Due on the improvements to the Project Site that are completed as part of the Project, prorated by percentage of completion.

“Taxes Otherwise Due” for purposes of this Appendix I, means the *ad valorem* real property taxes that would have been due for the year were it not for ownership by the City, as calculated by the City from assessed valuation estimates provided by Jackson County, Missouri and using the then-current tax rates of all applicable taxing jurisdictions.

\$52,050,000
(AGGREGATE MAXIMUM PRINCIPAL AMOUNT)
CITY OF INDEPENDENCE, MISSOURI
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS
(WALLY’S REDEVELOPMENT PROJECT)
SERIES 2026

DATED AS OF JANUARY 1, 2026

BOND PURCHASE AGREEMENT

Mayor and City Council
Independence, Missouri

Ladies and Gentlemen:

On _____, 2025, the City of Independence, Missouri (the “City”) published a notice of sale for the above-referenced series of Taxable Industrial Development Revenue Bonds (the “Bonds”). The winning bidder was Wally’s Independence MO Owner LLC, a Missouri limited liability company (“Wally’s”). The Official Bid Form on which the winning bid was submitted allowed Wally’s to designate an entity of its choice to conclude the purchase of the Bonds and enter into the related documents with the City. Wally’s designated itself for such purpose.

On the basis of the representations, and covenants and upon the terms and conditions contained in this Bond Purchase Agreement, Wally’s Independence MO Owner LLC, a Missouri limited liability company (the “Purchaser”), offers to purchase from the City, to be issued by the City, under and pursuant to an ordinance passed by the governing body of the City on December 15, 2025 (the “Ordinance”) and a Trust Indenture dated as of January 1, 2026 (the “Indenture”), by and between the City and UMB Bank, N.A., Kansas City, Missouri, as trustee (the “Trustee”). Capitalized terms not otherwise defined herein shall have the meanings set forth in **Section 101** of the Indenture.

SECTION 1. REPRESENTATIONS AND AGREEMENTS

(a) By the City’s acceptance hereof, the City hereby represents to the Purchaser that:

(1) The City is a constitutional charter city and municipal corporation duly organized and validly existing under the laws of the State of Missouri. The City is authorized under Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended, and its Charter to authorize, issue and deliver the Bonds and to consummate all transactions contemplated by this Bond Purchase Agreement, the Ordinance, the Indenture, the Lease and any and all other agreements relating thereto. The proceeds of the Bonds shall be used to finance the Project for Wally’s Independence MO Owner LLC, a Missouri limited liability company (the “Company”), and to pay for the costs incurred in connection with the issuance of the Bonds;

(2) There is no controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or

affecting in any way the legal organization of the City or its boundaries, or the right or title of any of its officers to their respective offices, or the legality of any official act leading up to the issuance of the Bonds or the constitutionality or validity of the indebtedness represented by the Bonds or the validity of the Bonds, the Ordinance, the Lease or the Indenture; and

(3) Any certificate signed by an authorized representative of the City and delivered to the Purchaser shall be deemed a representation and warranty by the City to such party as to the statements made therein.

(b) The Purchaser represents as follows:

(1) The Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Missouri and is authorized to do business in the State of Missouri;

(2) The execution, delivery and performance of this Bond Purchase Agreement by the Purchaser has been duly authorized by all necessary action of the Purchaser and does not and will not conflict with or result in the breach of any of the terms, conditions or provisions of, or constitute a default under, its organizational documents, any law, court or administrative regulation, decree or order applicable to or binding upon the Purchaser, or, to the best of its knowledge, any agreement, indenture, mortgage, lease or instrument to which the Purchaser is a party or by which it is bound;

(3) When executed and delivered by the Purchaser, this Bond Purchase Agreement will be, and is, a legal, valid and binding obligation, enforceable in accordance with its terms, subject, as to enforcement, to any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally and further subject to the availability of equitable remedies; and

(4) Any certificate signed by an authorized officer or agent of the Purchaser and delivered to the City shall be deemed a representation and warranty by the Purchaser to such party as to the statements made therein.

SECTION 2. PURCHASE, SALE AND DELIVERY OF THE BONDS

On the basis of the representations and covenants contained herein and in the other agreements referred to herein, and subject to the terms and conditions herein set forth and in the Indenture, the Purchaser agrees to purchase from the City and the City agrees to sell to the Purchaser the Bonds on the terms and conditions set forth herein.

The Bonds shall be sold to the Purchaser by the City on the Closing Date (hereinafter defined) upon payment of an amount equal to the Closing Price (hereinafter defined) for the Bonds, which amount shall be deposited in the Project Fund as provided in **Section 502** of the Indenture and shall thereafter on the Closing Date immediately be applied to the payment of Project Costs as provided in **Section 4.4** of the Lease. From time to time after the Closing Date as additional Project Costs are incurred, the Purchaser may make additional payments with respect to the Bonds ("Additional Payments") to the Trustee, which Additional Payments shall be deposited in the Project Fund and applied to the payment of Project Costs and the outstanding principal amount of the Bonds shall increase by each such Additional Payment; provided that the sum of the Closing Price and all such Additional Payments for the Bonds shall not, in the aggregate, exceed \$52,050,000.

As used herein, the term “Closing Date” shall mean January ___, 2026, or such other date as shall be mutually agreed upon by the City and the Purchaser; the term “Closing Price” shall mean, with respect to the Bonds, that certain amount specified in writing by the Purchaser and agreed to by the City as the amount required to fund the initial disbursement from the Project Fund on the Closing Date.

The Bonds shall be issued under and secured as provided in the Ordinance, the Indenture and the Lease authorized thereby and the Bonds shall have the maturity, interest rate and shall be subject to redemption as set forth therein. The delivery of the Bonds shall be made in definitive form as a fully registered bond in the maximum aggregate principal denomination of \$52,050,000; provided, that the principal amount of the Bonds outstanding at any time shall be that amount recorded in the official bond registration records of the Trustee and further provided that interest shall be payable on the Bonds only on the outstanding principal amount of the Bonds, as more fully provided in the Indenture.

The Company agrees to indemnify and hold harmless the City, the Trustee, and any member, officer, official or employee of the City or of the Trustee and any person controlling the Trustee within the meaning of Section 15 of the Securities Act of 1933, as amended (collectively, the “Indemnified Parties”), against any and all losses, claims, damages, liabilities or expenses whatsoever to the extent caused by any violation by the Company of, or failure by the Company to comply with, any federal or state securities laws in connection with the Bonds; provided, however, the indemnification contained in this paragraph shall not extend to such Indemnified Party if such loss, claim, damage, liability or expense is (a) the result of the Indemnified Party’s negligence or willful misconduct, or (b) the Indemnified Party is not following the written instructions of the Owner of the Bonds.

In case any action shall be brought against one or more of the Indemnified Parties based upon the foregoing indemnification and in respect of which indemnity may be sought against the Company, the Indemnified Parties shall promptly notify the Company in writing and the Company shall promptly assume the defense thereof, including the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ 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 Indemnified Party or Indemnified Parties unless employment of such counsel has been specifically authorized by the Company. The Company shall not be liable for any settlement of any such action effected without its consent by any of the Indemnified Parties, but if settled with the consent of the Company or if there be a final judgment for the plaintiff in any such action against the Company or any of the Indemnified Parties, with or without the consent of the Company, then provided that the Company was given prompt written notice and the ability to assume the defense thereof as required by this paragraph, the Company agrees to indemnify and hold harmless the Indemnified Parties to the extent provided herein.

SECTION 3. CONDITIONS TO THE PURCHASER’S OBLIGATIONS

The Purchaser’s obligations hereunder shall be subject to the due performance by the City of the City’s obligations and agreements to be performed hereunder on or prior to the Closing Date and to the accuracy of and compliance with the City’s representations contained herein, as of the date hereof and as of the Closing Date, and are also subject to the following conditions:

- (a) There shall be delivered to the Purchaser on or prior to the Closing Date a duly executed copy of the Ordinance, the Indenture, this Agreement and the Lease and any other instrument contemplated thereby shall be in full force and effect and shall not have been modified or changed except as may have been agreed to in writing by the Purchaser;

(b) The City shall confirm on the Closing Date by a certificate that at and as of the Closing Date the City has taken all action necessary to issue the Bonds and that there is no controversy, suit or other proceeding of any kind pending or threatened wherein any question is raised affecting in any way the legal organization of the City or the legality of any official act shown to have been done in the transcript of proceedings leading up to the issuance of the Bonds, or the constitutionality or validity of the indebtedness represented by the Bonds or the validity of the Bonds or any proceedings in relation to the issuance or sale thereof;

(c) The Company shall execute a certificate, dated the Closing Date, to the effect that (i) no litigation, proceeding or investigation is pending against the Company or its affiliates or, to the knowledge of the Company, threatened which would (A) contest, affect, restrain or enjoin the issuance, validity, execution, delivery or performance of the Bonds, or (B) in any way contest the existence or powers of the Company, (ii) no litigation, proceeding or investigation is pending or, to the knowledge of the Company, threatened against the Company that could reasonably be expected to adversely affect its ability to perform its obligations hereunder, (iii) the representations and warranties of the Company herein were and are true and correct in all material respects and not misleading as of the date made and as of the Closing Date, and (iv) such other matters as are reasonably requested by the other parties in connection with the issuance of the Bonds; and

(d) Receipt by the Purchaser and the Company of an approving opinion from Gilmore & Bell, P.C., in form and substance satisfactory to the Purchaser and the Company.

SECTION 4. THE PURCHASER'S RIGHT TO CANCEL

The Purchaser shall have the right to cancel its obligation hereunder to purchase the Bonds by notifying the City in writing of its election to make such cancellation at any time prior to the Closing Date.

SECTION 5. CONDITIONS OF OBLIGATIONS

The obligations of the parties hereto are subject to the receipt of the approving opinion of Gilmore & Bell, P.C., Bond Counsel, with respect to the validity of the authorization and issuance of the Bonds.

SECTION 6. REPRESENTATIONS AND AGREEMENTS TO SURVIVE DELIVERY

All of the representations and agreements by either party shall remain operative and in full force and effect, and shall survive delivery of the Bonds to the Purchaser.

SECTION 7. PAYMENT OF EXPENSES

The Company shall pay all reasonable expenses and costs to effect the authorization, preparation, issuance, delivery and sale of the Bonds.

SECTION 8. NOTICE

Any notice or other communication to be given to the City under this Agreement may be given by mailing or delivering the same in writing to the address of the City as provided in the Indenture for notices to the City required thereunder; any notice or other communication to be given to the Purchaser or

the Company under this Agreement may be given by delivering the same in writing to the address of the Company as provided in the Indenture for notices to the Company thereunder.

SECTION 9. APPLICABLE LAW; ASSIGNABILITY

This Bond Purchase Agreement shall be governed by the laws of the State of Missouri and may be assigned by the Purchaser to any party to which the Lease is assigned, or otherwise may be assigned with the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

SECTION 10. EXECUTION OF COUNTERPARTS; ELECTRONIC STORAGE

This Bond Purchase Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document. The parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored 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.

[Remainder of this page intentionally left blank]

Very truly yours,

WALLY'S INDEPENDENCE MO OWNER LLC,
a Missouri limited liability company

By: _____
Name:
Title:

Accepted and Agreed to:

CITY OF INDEPENDENCE, MISSOURI

By: _____
Name: Lisa Reynolds
Title: Interim City Manager

[SEAL]

ATTEST:

By: _____
Name: Susanne Holland
Title: City Clerk

BILL NO. 25.125

ORDINANCE NO. 19770

AN ORDINANCE APPROVING A PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT FOR THE WALLY'S REDEVELOPMENT PROJECT; AUTHORIZING THE CITY OF INDEPENDENCE, MISSOURI TO ISSUE TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS IN A PRINCIPAL AMOUNT NOT TO EXCEED \$52,050,000; AND AUTHORIZING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the City of Independence, Missouri (the "City") is a constitutional charter city and municipal corporation of the State of Missouri, duly created, organized and existing under and by virtue of the Constitution and laws of the State of Missouri; and

WHEREAS, the City is authorized under the provisions of Article VI, Section 27 of the Missouri Constitution, as amended, and Sections 100.010 to 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the "Act"), to purchase, construct, extend and improve certain projects (as defined in the Act) for the purposes set forth in the Act and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable; and

WHEREAS, the City, in accordance with Section 100.050 of the Act, has prepared a plan for industrial development (the "Plan") for Wally's Independence MO Owner LLC, a Missouri limited liability company (the "Company"), with respect to a project consisting of (a) the demolition of existing improvements and construction of an approximately 54,000 square foot travel center, including fuel pumps, landscaping, parking and other amenities on approximately 20.9 acres near the intersection of Noland Road and Interstate Highway 70 in Independence, Missouri (the "Project Site"), and (b) public improvements relating to the development of the Project Site, including improvements to I-70 on and off ramps, Noland Road, Lynn, Canterbury, and 39th Street, with related signalization, utilities and earthwork (altogether, the "Project"), notice of the Project was given to the taxing jurisdictions in accordance with Section 100.059.1 of the Act and the City now desires to approve the Plan; and

WHEREAS, the City desires to finance the costs of the Project out of the proceeds of industrial development revenue bonds to be issued under the Act (the "Bonds"); and

WHEREAS, the City has and does hereby find and determine that it is desirable for the economic development of the City and within the public purposes of the Act that the City proceed with the issuance of the Bonds for the purpose described above; and

WHEREAS, Section 10.7 of the City Charter requires that all bonds sold by the City be sold at public sale upon sealed proposals after at least ten days' notice in a newspaper of general circulation in the City; and

WHEREAS, a notice of sale was published in *The Examiner* inviting potential bond purchasers to submit bids for the Bonds and the City has received one bid for the Bonds; and

WHEREAS, the City further finds and determines that it is necessary and desirable in connection with approval of the Plan and the issuance of the Bonds that the City enter into certain documents, and that the City take certain other actions and approve the execution of certain other documents as herein provided;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

Section 1. Promotion of Economic Development. The Council hereby finds and determines that the Project is a commercial project that will promote the economic welfare and the development of the City, and the issuance of the Bonds by the City to pay the costs of the Project will be in furtherance of the public purposes set forth in the Act.

Section 2. Approval of Plan. The Council hereby approves the Plan for an Industrial Development Project attached hereto as *Exhibit A* in accordance with Section 100.050 of the Act.

Section 3. Authorization and Sale of the Bonds. The City is hereby authorized to issue and sell its Taxable Industrial Development Revenue Bonds (Wally's Redevelopment Project), in an aggregate principal amount not to exceed \$52,050,000, for the purpose of providing funds to pay the costs of the Project. The Bonds shall be issued and secured pursuant to the herein authorized Trust Indenture and shall bear such date, shall mature at such time, shall be in such denominations, shall bear interest at such rate, shall be in such form, shall be subject to redemption, shall have such other terms and provisions, shall be issued, executed and delivered in such manner and shall be subject to such provisions, covenants and agreements as are specified in the Trust Indenture upon the execution thereof, and the signatures of the officers of the City executing the Trust Indenture shall constitute conclusive evidence of their approval and the City's approval thereof. The City hereby accepts the bid received from the Company for the sale of the Bonds. The sale of the Bonds to the Company or its designee(s), as the winning bidder at the public sale, at the interest rate set forth in the winning bid and upon the terms set forth in the Trust Indenture is hereby approved.

Section 4. Limited Obligations. The Bonds and the interest thereon shall be limited obligations of the City payable solely out of certain payments, revenues and receipts derived by the City from the herein authorized Lease Agreement, and such payments, revenues and receipts shall be pledged and assigned to the Trustee as security for the payment of the Bonds as provided in the Trust Indenture. The Bonds and the interest thereon shall not be deemed to constitute a debt or liability of the City within the meaning of any constitutional provision, statutory limitation or City Charter provision and shall not constitute a pledge of the full faith and credit of the City. The issuance of the Bonds shall not, directly, indirectly or contingently, obligate the City to levy any form of taxation therefore or to make any appropriation for their payment.

Section 5. Approval and Authorization of Documents. The following documents (the "City Documents") are hereby approved in substantially the forms presented to the Council at this meeting (copies of which documents shall be filed in the records of the City), and the City is hereby authorized to execute and deliver the City Documents with such changes therein as shall be approved by the officials of the City executing such documents, such officials' signatures thereon being conclusive evidence of their approval thereof:

(a) Trust Indenture dated as of the date set forth therein (the "Trust Indenture"), between the City and UMB BANK, N.A., as trustee (the "Trustee"), pursuant to which the Bonds shall be issued and the City shall pledge and assign the payments, revenues and receipts received pursuant to the Lease Agreement to the Trustee for the benefit and security of the owners of the Bonds upon the terms and conditions as set forth in the Trust Indenture;

(b) Lease Agreement dated as of the date set forth therein (the "Lease Agreement"), between the City and the Company, under which the City will provide funds for the construction and improvement of the Project and lease the Project to the Company pursuant to the terms and conditions in the Lease Agreement, in consideration of rental payments by the Company which will be sufficient to pay the principal of, premium, if any, and interest on the Bonds and certain other payments; and

(c) Bond Purchase Agreement dated as of the date set forth therein, between the City and the Company, pursuant to which the Company agrees to purchase the Bonds.

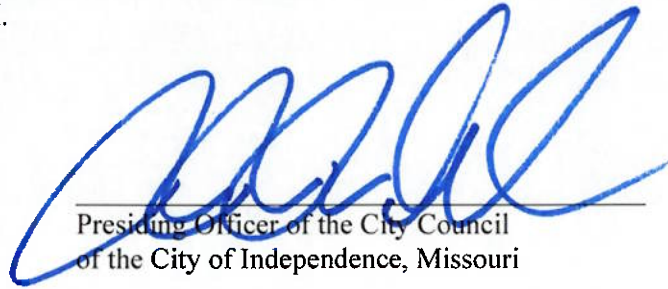
Section 6. Execution of Documents. The Mayor or (Interim) City Manager of the City is hereby authorized and directed to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Indenture. The Mayor and/or (Interim) City Manager of the City is hereby authorized and directed to execute 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, for and on behalf of and as the act and deed of the City. The City Clerk of the City is hereby authorized and directed to attest to and affix the seal of the City to the Bonds and 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.

Section 7. Further Authority. The Mayor, (Interim) City Manager, Director of Finance, City Clerk and other officials, agents and employees of the City as required are hereby authorized and directed to take such further action and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to carry out, comply with and perform the duties of the City with respect to the Bonds and the City Documents, including but not limited to the execution of any financing documents in accordance with the Lease.

Section 8. Effective Date. This Ordinance shall take effect and be in full force as provided by the City Charter.

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PASSED THIS 15th DAY OF Dec, 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:



Interim City Manager

EXHIBIT A

PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT

NOTICE TO TAXING JURISDICTIONS

PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT FOR THE WALLY'S REDEVELOPMENT PROJECT

On behalf of the City of Independence, Missouri (the "City"), please find enclosed a copy of a proposed plan for an industrial development project and cost benefit analysis (the "Plan").

The City Council will consider an ordinance to approve the Plan during the City Council's meeting on December 1, 2025, at 6:00 p.m. in the Council Chambers at City Hall, 111 E. Maple in Independence, Missouri.

The City invites you to submit written comments to the Council on the proposed Plan. All comments will be fairly and duly considered by the City. Comments will also be taken during a public hearing at the City Council meeting referred to above.

A copy of the Plan will be on file in the office of the City Clerk and will be available for public inspection during normal business hours.

Dated: November 6, 2025

Independence City Hall
111 E Maple Ave
Independence, MO 64050

Taxing Jurisdictions -- Distribution List

Independence School District Superintendent 201 N. Forest Ave Independence, MO 64050	Junior College District of Metropolitan Kansas City, Missouri (Metropolitan Community College) Chancellor 3200 Broadway Kansas City, MO 64111
Jackson County Board of Disabled Services 8511 Hillcrest Rd., Suite 300 Kansas City, MO 64138	Mid-Continent Public Library Director 15616 E. Highway 24 Independence, MO 64050-2057
Jackson County County Executive 415 E. 12th Street, 2nd Floor Kansas City, MO 64106	Jackson County Community Mental Health Executive Director 1627 Main Street, Suite 500 Kansas City, MO 64108
Jackson County Assessment Department Truman Courthouse 112 W. Lexington 1st Floor Independence, MO 64050	City of Independence City Clerk 111 E Maple Ave Independence, MO 64050
Jackson County Community Children's Services Fund Executive Director 2345 Grand Blvd., Suite 1450 Kansas City, MO 64108	Jackson County Collections Department Truman Courthouse 112 W. Lexington 1st Floor Independence, MO 64050
Missouri Department of Revenue County Tax Section Merchants/Manufacturers Replacement Tax Fund 301 West High Street Jefferson City, MO 65102-0453	Missouri Department of Revenue County Tax Section State Blind Pension Fund 301 West High Street Jefferson City, MO 65102-0453
Kansas City Zoological District Chair of the Board of Directors 6800 Zoo Drive Kansas City, MO 64132	Noland Road Community Improvement District 4315 South Noland Road, Suite B Independence, MO 64055

CITY OF INDEPENDENCE, MISSOURI

PLAN FOR AN INDUSTRIAL DEVELOPMENT PROJECT

FOR THE

WALLY'S REDEVELOPMENT PROJECT

NOVEMBER 6, 2025

I. PURPOSE OF THIS PLAN

The City Council of the City of Independence, Missouri (the "City") will consider an ordinance approving this plan (the "Chapter 100 Plan") and authorizing the issuance by the City of taxable industrial development revenue bonds in the aggregate principal amount of not to exceed \$52,050,000 (the "Chapter 100 Bonds") with respect to an industrial development project (the "Project") within a redevelopment area to be created pursuant to the Wally's Tax Increment Financing Plan (the "TIF Plan"), which will be considered by the Tax Increment Financing Commission of Independence, Missouri on November 12. The Chapter 100 Bonds will be issued pursuant to the provisions of Sections 100.010 to 100.200 of the Revised Statutes of Missouri, as amended, and Article VI, Section 27(b) of the Missouri Constitution, as amended (collectively, "Chapter 100"). The TIF Plan is for the benefit of Wally's Independence MO Owner LLC, (the "Developer") and provides for the capture of 50% of incremental property tax revenues ("TIF PILOTs") and 50% of incremental sales tax revenues or "economic activity taxes," as well as certain other special revenue sources, to reimburse the Developer for a portion of the costs of implementing the overall development described in the TIF Plan.

The purpose of this Chapter 100 Plan is to provide sales tax exemption on construction materials while maintaining property tax benefits for the Developer similar to what would have been provided in reimbursement under the TIF Plan.

This Chapter 100 Plan has been prepared to satisfy requirements of Chapter 100 and to analyze the potential costs and benefits, including the related tax impact on all affected taxing jurisdictions, of using industrial development revenue bonds to finance the Project.

II. GENERAL DESCRIPTION OF CHAPTER 100 FINANCINGS

General. Chapter 100 authorizes cities, counties, towns and villages to issue industrial development revenue bonds to finance the purchase, construction, extension and improvement of warehouses, distribution facilities, research and development facilities, office industries, agricultural processing industries, service facilities that provide interstate commerce, industrial plants and other commercial facilities.

Issuance and Sale of Bonds. Revenue bonds issued pursuant to Chapter 100 do not require voter approval and are payable solely from revenues received from the project. The municipality issues its bonds and in exchange, the benefited company promises to make payments that are sufficient to pay the principal of and interest on the bonds as they become due. Thus, the municipality merely acts as a conduit for the financing.

Concurrently with the closing of the Chapter 100 Bonds, the owner of the property underlying the project will convey to the City title to such property, to the extent not already owned by the City or another political subdivision. At the same time, the City will lease such property and the project back to the benefited company pursuant to a lease agreement. The lease agreement will require the benefited company, acting on behalf of the City, to use bond proceeds to pay the costs or reimburse the costs of purchasing, constructing and installing the project.

Property Tax Abatement. Under Article X, Section 6 of the Missouri Constitution and Section 137.100 of the Revised Statutes of Missouri, all property of any political subdivision is exempt from taxation. In order to establish the level of property tax abatement at less than 100%, the City and the Developer or its assignee will enter into an agreement to make payments in lieu of taxes ("Chapter 100 PILOTs"). The anticipated amount of Chapter 100 PILOTs to be paid with respect to the Project is shown in the Cost-Benefit Analysis attached hereto. The payments in lieu of taxes are payable by December 1 of

each year, and are distributed to the municipality and to each political subdivision within the Site (defined below) in the same manner and in the same proportion as property taxes would otherwise be distributed under Missouri law.

III. DESCRIPTION OF THE PARTIES

The Developer. The Developer is a limited liability company organized and existing under the laws of the State of Missouri. The Developer is an affiliate of the Wally's brand, which operates travel centers in Pontiac, Illinois and Fenton, Missouri.

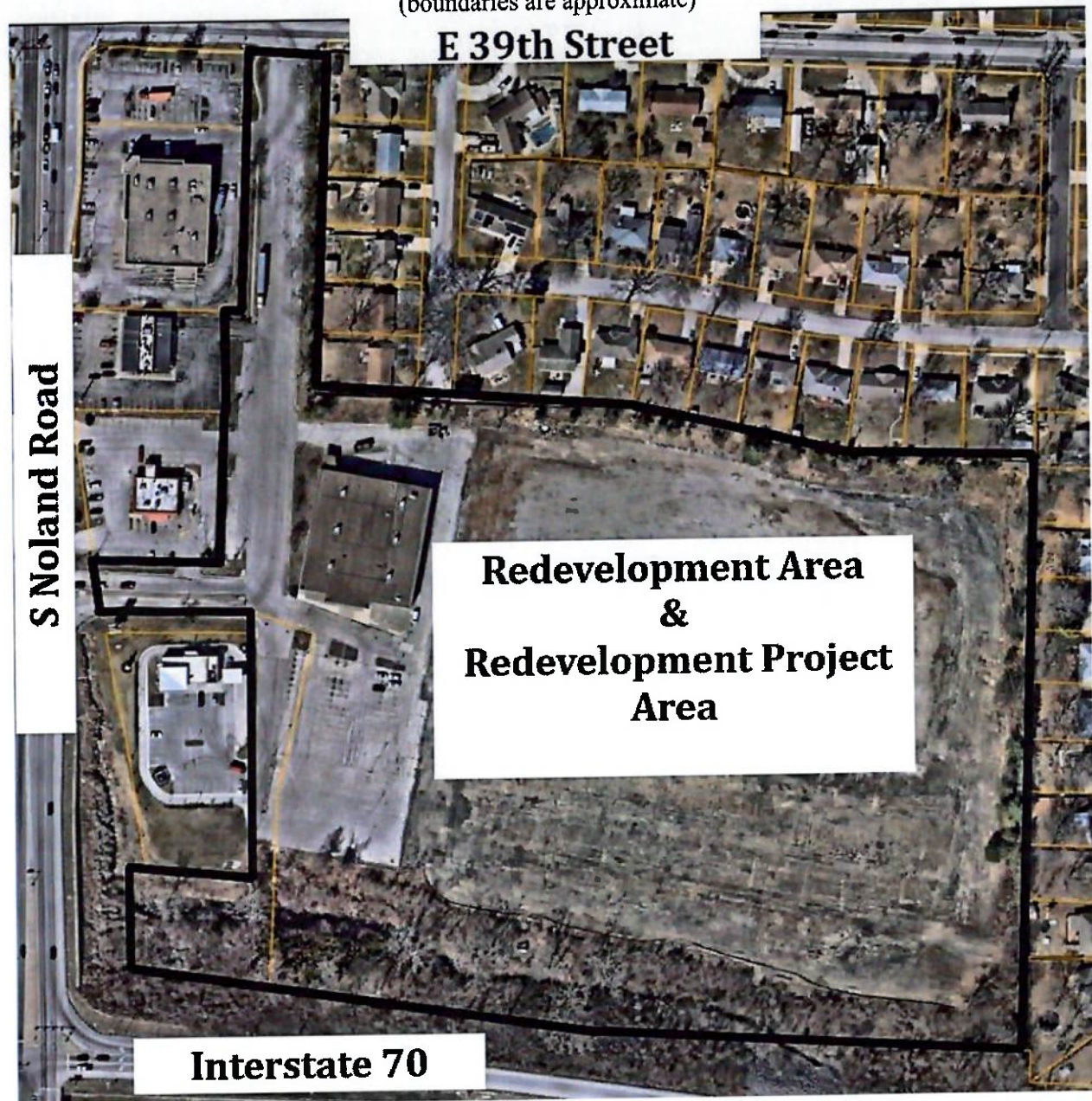
City of Independence, Missouri. The City is a constitutional home rule charter city and municipal corporation organized and existing under the laws of the State of Missouri. The City is authorized and empowered pursuant to the provisions of Chapter 100 to purchase, construct, extend and improve certain projects (as defined in Chapter 100) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes upon such terms and conditions as the City deems advisable.

IV. REQUIREMENTS OF CHAPTER 100

Description of the Project. The Project to be financed by the Chapter 100 Bonds consists of (a) the demolition of existing improvements and construction of an approximately 54,000 square foot travel center, including fuel pumps, landscaping, parking and other amenities on approximately 20.9 acres located near the intersection of Noland Road and Interstate Highway 70 in Independence, Missouri, as shown below (the "Site"), and (b) public improvements relating to the development of the Site, including improvements to I-70 on and off ramps, Noland Road, Lynn, Canterbury, and 39th Street, with related signalization, utilities and earthwork.

[remainder of page intentionally left blank]

Map of Site
(boundaries are approximate)



Estimate of the Costs of the Project. The Project to be financed by the Chapter 100 Bonds is estimated to cost approximately \$52,050,000. Investments in the Project are planned to be made in 2026, and are assumed to be made in such year for purposes of the attached Cost Benefit Analysis. However, actual Project implementation may change the calendar year(s) in which the investments are made.

Source of Funds to be Expended for the Project. The sources of funds to be expended for the Project will be the proceeds of the Chapter 100 Bonds in an aggregate principal amount not to exceed \$52,050,000, to be issued by the City. The Chapter 100 Bonds will be payable solely from the revenues derived by the City from the lease or other disposition of the Project. The Chapter 100 Bonds will not be an indebtedness or general obligation, debt or liability of the City or the State of Missouri.

Statement of the Terms Upon Which the Project is to be Leased or Otherwise Disposed of by the City. The City will hold title to the Site during the completion of the Project. The City will lease the Project to the Company or its designee (the "Tenant") for lease payments equal to the principal and interest payments on the Bonds. Under the terms of the lease agreement the Tenant will have the option to purchase the Project at any time and will have the obligation to purchase the Project at the termination of the lease.

The lease entered into for the Project will be short term, the term of which will be tied to the construction period anticipated for the Project. Upon completion of the Project, the improved Site will be returned to the tax rolls and be subject to the TIF Plan.

Affected Taxing Districts. The Independence School District is the school district, Jackson County, Missouri is the county, the City is the city, and the Junior College District of Metropolitan Kansas City, Missouri is the community college district affected by the Project. There is no fire or ambulance district affected by the Project. The Cost-Benefit Analysis attached hereto for the Project identifies all other taxing districts affected by the Project.

Assessed Valuation. According to the records of the County Assessor, the total equalized assessed value of the Site in 2024 was \$3,152,000, which total equalized assessed value included value attributable to a building which has since been demolished. The 2025 total equalized assessed value of the Site is \$3,518,230; provided, however, the 2025 total equalized assessed value is currently under appeal. The Cost-Benefit Analysis attached hereto assumes a total equalized assessed value of the Site of \$1,708,045, as the same is believed to be a more accurate representation of what the total equalized assessed value of the Site will be when the City takes title to the Site.

The estimated total equalized assessed valuation of the Site after development of the Project is \$9,324,000 (for tax year 2027).

Payments in Lieu of Taxes. Chapter 100 PILOTs will be due during the construction period for the Site and Project in an amount equal to 100% of the taxes that would be due on the Site and 50% of the taxes that would be due on the Project. The purpose of this is to provide a similar benefit as would be provided under the TIF Plan through the capture of TIF PILOTs, effectively providing the incremental property tax benefit that would otherwise be given under the TIF Plan, but in the way of tax abatement as opposed to payments under the TIF Plan (the fact that the merchants' and manufacturers' replacement tax and the blind pension tax can be abated under Chapter 100 but cannot be captured under the TIF Plan make the Chapter 100 abatement slightly more valuable). Upon completion of the Project, the Site and Project will be returned to the tax rolls and become subject to the TIF Plan. Since the Project is anticipated to be started and completed in 2026, the attached Cost-Benefit Analysis shows a Chapter 100 PILOT based solely on the value of the Site. If the Project spans more than one calendar year, an additional Chapter 100 PILOT component will be added for subsequent years calculated as 50% of the taxes that would be due on the Project.

Cost-Benefit Analysis. In compliance with Section 100.050.2(3) of the Revised Statutes of Missouri, this Chapter 100 Plan has been prepared to show the costs and benefits to the City and to other taxing jurisdictions affected by the tax abatements and exemptions of the Projects. A Cost Benefit Analysis for the Project is attached hereto. The tax rates used in this Chapter 100 Plan reflect the rates in effect for the tax year 2025.

V. SALES AND USE TAX EXEMPTIONS

Sales and Use Tax Exemption on Construction Materials. Building materials purchased for the construction of the Project are expected to be exempt from sales and use tax pursuant to the provisions of Section 144.062 of the Revised Statutes of Missouri and the underlying bond documents upon delivery of project exemption certificates by the City. Shown below are estimates based on assumptions relating to the building materials to be purchased for the Project and the associated effects on taxing jurisdictions of the exemption from sales and use tax. Please note that any variance from the assumptions will alter the fiscal impact of the sales and use tax exemptions on the affected taxing jurisdictions.

	Tax Rate	Estimated Sales/Use Tax Revenues Subject to Exemption
State of Missouri	4.225%	\$1,039,456
Jackson County		
General	0.500	123,013
Drug Task Force	0.250	61,506
Sports Complex	0.375	92,259
Zoo District	0.125	30,753
City of Independence		
General Revenue	1.000	246,025
Capital Improvement - Police	0.125	30,753
Proposition PD - Police	0.250	61,506
Fire Protection	0.500	123,013
Streets	0.500	123,013
Parks	0.250	61,506
Storm water	0.250	61,506
Children's Services	0.250	61,506
Noland Road CID	0.750	184,519
Total	9.350%	\$2,300,334

* * *

EXHIBIT A

COST BENEFIT ANALYSIS

The Cost Benefit Analysis shows the anticipated effect of the Project on the taxing jurisdictions affected by the Project. The calendar years shown in the attached Cost Benefit Analysis are for demonstrative purposes only and Project implementation may change the calendar years affected.

**City of Independence, Missouri
(Wally's Redevelopment Project)**

**COST BENEFIT ANALYSIS
PLAN FOR INDUSTRIAL DEVELOPMENT PROJECT**

Table of Contents

Project Assumptions	1
Summary of Cost Benefit Analysis	2
Taxes on Existing Base without Project	3
Projected Taxes after Completion (Post-Chapter 100)	4
Projected Chapter 100 PILOTS	5
Projected Abatement	6

This information is provided based on the factual information and assumptions provided to Gilmore & Bell, P.C. by a party to or a representative of a party to the proposed transaction. This information is intended to provide factual information only and is provided in conjunction with our legal representation. It is not intended as financial advice or a financial recommendation to any party. Gilmore & Bell, P.C. is not a financial advisor or a "municipal advisor" as defined in the Securities Exchange Act of 1934, as amended.

Project Assumptions

♦ Initial year taxes assessed	2026
♦ Assessed Value on Existing Base	\$ 1,708,045
♦ Assessed value at Completion	\$ 9,323,770
♦ Terms of abatement:	
Real property	
Year 1	0%

Summary of Cost Benefit Analysis

Taxing Jurisdiction	Tax Rate	Taxes on Existing Base without Project	Projected Taxes after Completion (Post-Chapter 100)	Projected Chapter 100 PILOTS	Projected Abatement
Board of Disabled Services	0.0728	\$ 1,243	\$ 6,788	\$ 1,243	\$ -
City - Independence	0.6657	11,370	62,068	11,370	-
Independence School District	5.2371	89,452	488,295	89,452	-
Jackson County	0.5556	9,490	51,803	9,490	-
Mental Health	0.0969	1,655	9,035	1,655	-
Metro Junior College	0.1767	3,018	16,475	3,018	-
Mid-Continent Library	0.3119	5,327	29,081	5,327	-
State Blind Pension	0.0300	512	2,797	512	-
Surtax	1.4370	24,545	133,983	24,545	-
	8.5837	\$ 146,613	\$ 800,324	\$ 146,613	\$ -

Taxes on Existing Base without Project

Estimated Assessed Value of Existing Base		\$1,708,045		
Taxing Jurisdiction		Tax Rate per		
		\$100	2026	Total
Board of Disabled Services		0.0728	\$ 1,243	\$ 1,243
City - Independence		0.6657	11,370	11,370
Independence School District		5.2371	89,452	89,452
Jackson County		0.5556	9,490	9,490
Mental Health		0.0969	1,655	1,655
Metro Junior College		0.1767	3,018	3,018
Mid-Continent Library		0.3119	5,327	5,327
State Blind Pension		0.0300	512	512
Surtax		1.4370	24,545	24,545
		8.5837	\$ 146,613	\$146,613

**Projected Taxes After Completion
(Post-Chapter 100)**

Estimated Assessed value at Completion		\$9,323,770
Taxing Jurisdiction		
	Tax Rate per \$100	Total
Board of Disabled Services	0.0728	\$ 6,788
City - Independence	0.6657	62,068
Independence School District	5.2371	488,295
Jackson County	0.5556	51,803
Mental Health	0.0969	9,035
Metro Junior College	0.1767	16,475
Mid-Continent Library	0.3119	29,081
State Blind Pension	0.0300	2,797
Surtax	1.4370	133,983
	<u>8.5837</u>	<u>\$ 800,324</u>
		<u>\$800,324</u>

Projected Chapter 100 PILOTS

Estimated Assessed value at Completion	\$ 1,708,045		
PILOT Payment	100%		
Taxing Jurisdiction	Tax Rate per		Total
	\$100	2026	
Board of Disabled Services	0.0728	\$ 1,243	\$ 1,243
City - Independence	0.6657	11,370	11,370
Independence School District	5.2371	89,452	89,452
Jackson County	0.5556	9,490	9,490
Mental Health	0.0969	1,655	1,655
Metro Junior College	0.1767	3,018	3,018
Mid-Continent Library	0.3119	5,327	5,327
State Blind Pension	0.0300	512	512
Surtax	1.4370	24,545	24,545
	8.5837	\$ 146,613	\$ 146,613

Projected Abatement

Estimated Assessed value at Completion	\$ 1,708,045		
Abatement Percentage	0%		
Taxing Jurisdiction	Tax Rate per		Total
	\$100	2026	
Board of Disabled Services	0.0728	\$ -	-
City - Independence	0.6657	-	-
Independence School District	5.2371	-	-
Jackson County	0.5556	-	-
Mental Health	0.0969	-	-
Metro Junior College	0.1767	-	-
Mid-Continent Library	0.3119	-	-
State Blind Pension	0.0300	-	-
Surtax	1.4370	-	-
	8.5837	\$ -	-

**CITY OF INDEPENDENCE, MISSOURI,
the City**

AND

**UMB BANK, N.A.,
as Trustee**

TRUST INDENTURE

Dated as of January 1, 2026

Relating to:

**\$52,050,000
(Aggregate Maximum Principal Amount)
City of Independence, Missouri
Taxable Industrial Development Revenue Bonds
(Wally's Redevelopment Project)
Series 2026**

TRUST INDENTURE

TABLE OF CONTENTS

	<u>Page</u>
Parties	1
Recitals.....	1
Granting Clauses.....	2

ARTICLE I

DEFINITIONS

Section 101.	Definitions of Words and Terms	3
Section 102.	Rules of Interpretation	7

ARTICLE II

THE BONDS

Section 201.	Title and Amount of Bonds	7
Section 202.	Nature of Obligation	7
Section 203.	Denomination, Number and Dating of the Bonds.....	8
Section 204.	Method and Place of Payment of Bonds.....	8
Section 205.	Execution and Authentication of Bonds	9
Section 206.	Registration, Transfer and Exchange of Bonds.....	9
Section 207.	Persons Deemed Owners of Bonds.....	10
Section 208.	Authorization of the Bonds.....	10
Section 209.	Mutilated, Lost, Stolen or Destroyed Bonds.....	11
Section 210.	Cancellation and Destruction of Bonds Upon Payment.....	12

ARTICLE III

REDEMPTION OF BONDS

Section 301.	Redemption of Bonds	12
Section 302.	Effect of Call for Redemption.....	13
Section 303.	Notice of Redemption.....	13

ARTICLE IV

FORM OF BONDS

Section 401.	Form Generally	13
--------------	----------------------	----

ARTICLE V

CUSTODY AND APPLICATION OF BOND PROCEEDS

Section 501.	Creation of Funds.....	13
--------------	------------------------	----

Section 502.	Deposits into the Project Fund.....	14
Section 503.	Disbursements from the Project Fund.....	14
Section 504.	Completion of the Project.....	14
Section 505.	Deposits into and Disbursements from the Costs of Issuance Fund.....	14
Section 506.	Disposition Upon Acceleration.....	15

ARTICLE VI

REVENUES AND FUNDS

Section 601.	Deposits Into the Bond Fund	15
Section 602.	Application of Moneys in the Bond Fund.....	15
Section 603.	Payments Due on Days Other than Business Days.....	16
Section 604.	Nonpresentment of Bonds.....	16
Section 605.	Repayment to the Company from the Bond Fund	16

ARTICLE VII

SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 701.	Moneys to be Held in Trust.....	16
Section 702.	Investment of Moneys in Project Fund and Bond Fund	17
Section 703.	Record Keeping	17

ARTICLE VIII

GENERAL COVENANTS AND PROVISIONS

Section 801.	Payment of Principal and Interest.....	17
Section 802.	Authority to Execute Indenture and Issue Bonds.....	17
Section 803.	Performance of Covenants.....	18
Section 804.	Instruments of Further Assurance	18
Section 805.	Recordings and Filings	18
Section 806.	Inspection of Project Books.....	18
Section 807.	Enforcement of Rights Under the Lease.....	18

ARTICLE IX

DEFAULT AND REMEDIES

Section 901	Events of Default; Notice; Opportunity to Cure	19
Section 902.	Acceleration of Maturity in Event of Default; Rescission.....	19
Section 903.	Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession.....	20
Section 904.	Appointment of Receivers in Event of Default.....	20
Section 905.	Exercise of Remedies by the Trustee	20
Section 906.	Limitation on Exercise of Remedies by Owners	21
Section 907.	Right of Owners to Direct Proceedings	21
Section 908.	Application of Moneys in Event of Default.....	22
Section 909.	Remedies Cumulative	23
Section 910.	Waivers of Events of Default	23

ARTICLE X

THE TRUSTEE

Section 1001.	Acceptance of the Trusts.....	23
Section 1002.	Fees, Charges and Expenses of the Trustee	26
Section 1003.	Notice to Owners if Default Occurs.....	26
Section 1004.	Intervention by the Trustee	26
Section 1005.	Successor Trustee Upon Merger, Consolidation or Sale.....	26
Section 1006.	Resignation of Trustee	27
Section 1007.	Removal of Trustee	27
Section 1008.	Appointment of Successor Trustee	27
Section 1009.	Vesting of Trusts in Successor Trustee.....	27
Section 1010.	Right of Trustee to Pay Taxes and Other Charges	28
Section 1011.	Trust Estate May be Vested in Co-Trustee.....	28
Section 1012.	Accounting.....	29
Section 1013.	Performance of Duties Under the Lease	29

ARTICLE XI

SUPPLEMENTAL INDENTURES

Section 1101.	Supplemental Indentures Not Requiring Consent of Owners.....	29
Section 1102.	Supplemental Indentures Requiring Consent of Owners.....	29
Section 1103.	Company's Consent to Supplemental Indentures.....	30
Section 1104.	Opinion of Counsel.....	30

ARTICLE XII

SUPPLEMENTAL LEASES

Section 1201.	Supplemental Leases Not Requiring Consent of Owners.....	30
Section 1202.	Supplemental Leases Requiring Consent of Owners.....	31
Section 1203.	Opinion of Counsel.....	31

ARTICLE XIII

SATISFACTION AND DISCHARGE OF INDENTURE

Section 1301.	Satisfaction and Discharge of this Indenture	31
Section 1302.	Bonds Deemed to be Paid.....	32

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 1401.	Consents and Other Instruments by Owners.....	32
Section 1402.	Limitation of Rights Under this Indenture.....	33
Section 1403.	Notices	33
Section 1404.	Severability	34
Section 1405.	Execution in Counterparts.....	34

Section 1406.	Governing Law	34
Section 1407.	Electronic Storage.....	34
Section 1408.	Electronic Notice to Trustee.....	34
	Signatures and Seals	S-1
	Exhibit A – Project Site	
	Exhibit B – Project Improvements	
	Exhibit C – Form of Bonds	
	Exhibit D – Form of Representation Letter	

TRUST INDENTURE

THIS TRUST INDENTURE dated as of January 1, 2026 (the “Indenture”), is between the **CITY OF INDEPENDENCE, MISSOURI**, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri (the “City”), and **UMB BANK, N.A.**, Kansas City, Missouri, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under the laws of the United States of America, with a corporate trust office located in Kansas City, Missouri, as Trustee (the “Trustee”);

RECITALS:

1. The City is authorized and empowered pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200, inclusive, of the Revised Statutes of Missouri, as amended (collectively, the “Act”), to purchase, construct, extend and improve certain “projects” (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or businesses for manufacturing, commercial, research and development, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

2. Pursuant to the Act, the City Council passed an ordinance (the “Ordinance”), authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Wally’s Redevelopment Project), Series 2026, in the maximum principal amount of \$52,050,000 (the “Bonds”), for the purpose of acquiring and improving certain real property located on approximately 20.9 acres near the intersection of Noland Road and Interstate Highway 70 in the City (the “Project Site,” as more fully described on **Exhibit A** hereto), including the construction and improvement of a commercial facility on the Project Site together with related public improvements (the “Project Improvements,” as more fully described on **Exhibit B** hereto).

3. The Ordinance authorizes the City to lease the Project Site and the Project Improvements (collectively, the “Project”) to Wally’s Independence MO Owner LLC, a Missouri limited liability company (the “Company”).

4. Pursuant to the Ordinance, the City is authorized to execute and deliver (a) this Indenture for the purpose of issuing and securing the Bonds, (b) the Lease Agreement of even date herewith (the “Lease”) with the Company, under which the City, as lessor, will, or will cause the Company to, construct and improve the Project and will lease the Project to the Company, as lessee, in consideration of rentals that will be sufficient to pay the principal of and interest on the Bonds and certain payments in lieu of taxes with respect to the Project.

5. All things necessary to make the Bonds, when authenticated by the Trustee and issued as provided in this Indenture, the valid and legally binding obligations of the City, and to constitute this Indenture a valid and legally binding pledge and assignment of the Trust Estate (defined herein) herein made for the security of the payment of the principal of and interest on the Bonds, have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized.

NOW, THEREFORE, THIS TRUST INDENTURE WITNESSETH:

GRANTING CLAUSES

That the City, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Owners thereof, and of other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to secure the payment of the principal of and interest on all of the Bonds issued and outstanding under this Indenture from time to time according to their tenor and effect, and to secure the performance and observance by the City of all the covenants, agreements and conditions herein and in the Bonds contained, does hereby pledge and assign to the Trustee and its successors and assigns until this Indenture has been satisfied and discharged, the property described in paragraphs (a), (b) and (c) below (said property being herein referred to as the "Trust Estate"), to-wit:

(a) Excluding the Unassigned Rights, all right, title and interest in and to the Project together with the tenements, hereditaments, appurtenances, rights, easements, privileges and immunities thereunto belonging or appertaining and, to the extent permissible, all permits, certificates, approvals and authorizations;

(b) Excluding the Unassigned Rights, all right, title and interest of the City in, to and under the Lease, and all rents, revenues and receipts derived by the City from the Project including, without limitation, all rentals and other amounts to be received by the City and paid by the Company under and pursuant to and subject to the provisions of the Lease; and

(c) All moneys and securities from time to time held by or now or hereafter required to be paid to the Trustee under the terms of this Indenture, and any and all other real or personal property of every kind and nature from time to time hereafter, by delivery or by writing of any kind, pledged, assigned or transferred as and for additional security hereunder by the City or by anyone in its behalf, or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

TO HAVE AND TO HOLD, all and singular, the Trust Estate with all rights and privileges hereby pledged and assigned or agreed or intended so to be, to the Trustee and its successors and assigns forever;

IN TRUST NEVERTHELESS, upon the terms and subject to the conditions herein set forth, for the equal and proportionate benefit, protection and security of all Owners from time to time of the Bonds outstanding under this Indenture, without preference, priority or distinction as to lien or otherwise of any of the Bonds over any other of the Bonds except as expressly provided in or permitted by this Indenture;

PROVIDED, HOWEVER, that if the City pays, or causes to be paid, the principal of and interest on the Bonds, at the time and in the manner mentioned in the Bonds, according to the true intent and meaning thereof, or provides for the payment thereof (as provided in **Article XIII** hereof), and pays or causes to be paid to the Trustee all other sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this Indenture and the rights thereby granted shall cease, determine and be void; otherwise, this Indenture shall be and remain in full force and effect.

THIS INDENTURE FURTHER WITNESSETH, and it is hereby expressly declared, covenanted and agreed by and between the parties hereto, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and that all the Trust Estate is to be held and applied under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as

hereinafter expressed, and the City does hereby agree and covenant with the Trustee and with the respective Owners from time to time, as follows:

ARTICLE I

DEFINITIONS

Section 101. Definitions of Words and Terms. In addition to words and terms defined in **Section 1.1** of the Lease, which definitions shall be deemed to be incorporated herein, and terms defined elsewhere in this Indenture, the following words and terms as used in this Indenture shall have the following meanings, unless some other meaning is plainly intended:

“Act” means, collectively, Article VI, Section 27(b) of the Missouri Constitution, as amended, and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended.

“Additional Rent” means the additional rental described in **Sections 5.2** and **6.2** of the Lease.

“Authorized City Representative” means the Mayor, the (Interim) City Manager, the City Clerk or such other person at the time designated to act on behalf of the City as evidenced by written certificate furnished to the Company and the Trustee containing the specimen signature of such person and signed on behalf of the City by its Mayor or (Interim) City Manager. Such certificate may designate an alternate or alternates each of whom shall be entitled to perform all duties of the Authorized City Representative.

“Authorized Company Representative” means the Person at the time designated to act on behalf of the Company as evidenced by written certificate furnished to the City and the Trustee containing the specimen signature of such Person and signed on behalf of the Company by an authorized officer of the Company. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the Authorized Company Representative.

“Basic Rent” means the rental described in **Section 5.1** of the Lease.

“Bond” or **“Bonds”** means the Taxable Industrial Development Revenue Bonds (Wally’s Redevelopment Project), Series 2026, in the maximum aggregate principal amount of \$52,050,000, issued, authenticated and delivered under and pursuant to this Indenture.

“Bond Fund” means the “City of Independence, Missouri, Bond Fund – Wally’s Independence MO Owner LLC” created in **Section 501** of this Indenture.

“Bond Purchase Agreement” means the agreement by that name with respect to the Bonds, dated as of January 1, 2026, by and between the City and the Purchaser.

“Business Day” means any day other than a Saturday or Sunday or legal holiday or a day on which banks located in the city in which the payment office of the Trustee are required or authorized by law to remain closed.

“City” means the City of Independence, Missouri, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri, and its successors and assigns.

“Closing Date” means the date identified in the Bond Purchase Agreement for the initial issuance and delivery of the Bonds.

“Closing Price” means the amount specified in writing by the Purchaser and agreed to by the City as the amount required to pay for the initial issuance of the Bonds on the Closing Date.

“Company” means Wally’s Independence MO Owner LLC, a Missouri limited liability company, and its successors or assigns.

“Completion Date” means the date of execution of the certificate required pursuant to **Section 504** hereof.

“Costs of Issuance Fund” means the “City of Independence, Missouri, Costs of Issuance Fund – Wally’s Independence MO Owner LLC” created in **Section 501** hereof.

“Cumulative Outstanding Principal Amount” means an amount equal to the aggregate of all amounts paid into the Project Fund in accordance with the provisions of this Indenture, the Bond Purchase Agreement and the Lease, as reflected in the bond registration records maintained by the Trustee or in the Table of Cumulative Outstanding Principal Amount set forth in the form of Bond in **Exhibit C** hereto.

“Event of Default” means, with respect to this Indenture, any Event of Default as defined in **Section 901** hereof and, with respect to the Lease, any Event of Default as described in **Section 12.1** of the Lease.

“Government Securities” means direct obligations of, or obligations the payment of principal of and interest on which are unconditionally guaranteed by, the United States of America.

“Indenture” means this Trust Indenture, as from time to time amended and supplemented by Supplemental Indentures in accordance with the provisions of **Article XI** hereof.

“Investment Securities” means any of the following securities:

- (a) Government Securities;
- (b) obligations of the Federal Financing Bank, the Federal Intermediate Credit Corporation, Federal Banks for Cooperatives, Federal Land Banks, and Farmers Home Administration;
- (c) direct and general obligations of any state of the United States of America, to the payment of the principal of and interest on which the full faith and credit of such state is pledged, provided that at the time of their purchase under this Indenture such obligations are rated in either of the two highest rating categories by a nationally-recognized bond rating agency;
- (d) certificates of deposit, whether negotiable or nonnegotiable, and U.S. dollar denominated deposit accounts issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee or any of its affiliates), provided that such certificates of deposit or deposit accounts shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities as are described above in clauses (a) through (c),

inclusive, which shall have a market value at all times at least equal to the principal amount of such certificates of deposit and shall be deposited with the Trustee or a custodian bank, trust company or national banking association. The bank, trust company or national banking association holding each such certificate of deposit required to be so secured shall furnish the Trustee written evidence that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount at least equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking;

(e) shares of a fund registered under the Investment Company Act of 1940, as amended, whose shares are registered under the Securities Act of 1933, as amended, having assets of at least \$100,000,000, and which shares, at the time of purchase, are rated by S&P and Moody's in one of the two highest rating categories (without regard to any refinements or gradation of rating category by numerical modifier or otherwise) assigned by such rating agencies for obligations of that nature; or

(f) any other investment approved in writing by the Authorized City Representative and the Owners of all of the Outstanding Bonds.

"Lease" means the Lease Agreement dated as of January 1, 2026, between the City, as lessor, and the Company, as lessee, as from time to time amended and supplemented by Supplemental Leases in accordance with the provisions thereof and of **Article XII** of this Indenture.

"Lender" has the meaning set forth in the Lease.

"Moody's" means Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, "Moody's" will be deemed to refer to any other nationally recognized securities rating agency designated by the Authorized Company Representative.

"Outstanding" means, when used with reference to Bonds, as of a particular date, all Bonds theretofore authenticated and delivered, except:

(a) Bonds subsequently cancelled by the Trustee or delivered to the Trustee for cancellation;

(b) Bonds deemed to be paid in accordance with the provisions of **Section 1302** hereof; and

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Indenture.

"Owner" or **"Bondowner"** means the registered owner of any Bond as recorded on the bond registration records maintained by the Trustee.

"Paying Agent" means the Trustee and any other bank or trust company designated by this Indenture as paying agent for the Bonds at which the principal of or interest on the Bonds shall be payable.

“Payment Date” means the date on which principal or interest on any Bond, whether at the stated maturity thereof or the redemption date thereof, is payable, which shall be December 1 of each year that the Bonds are Outstanding.

“Person” or **“person”** means an individual, partnership, corporation, business trust, joint stock company, limited liability company, bank, insurance company, unincorporated association, joint venture or other entity of whatever nature.

“Project” means the Project Site and the Project Improvements as they may at any time exist.

“Project Costs” means all costs of construction and improvement of the Project and the Public Improvements and acquisition of the Project Site.

“Project Fund” means the “City of Independence, Missouri, Project Fund – Wally’s Independence MO Owner LLC” created in **Section 501** hereof.

“Project Improvements” means the Public Improvements and all buildings, structures, improvements and fixtures to be purchased, constructed, installed and otherwise improved on the Project Site pursuant to **Article IV** of the Lease and paid for in whole or in part from the proceeds of Bonds, as described in **Exhibit B** attached hereto, and all additions, alterations, modifications and improvements thereof made pursuant to the Lease.

“Project Site” means all of the real estate as described in **Exhibit A** attached hereto and by this reference made a part hereof.

“Purchaser” means the entity identified in the Bond Purchase Agreement as the purchaser of the Bonds.

“Public Improvements” means that portion of the Project Improvements designated as such on **Exhibit B** hereto.

“S&P” means S&P Global Ratings, a division of Standard & Poor’s Financial Services, LLC, its successors and assigns, and if such company is dissolved or liquidated or no longer performs the functions of a securities rating agency, “S&P” will be deemed to refer to any other nationally recognized securities rating agency designated by the Authorized Company Representative.

“State” means the State of Missouri.

“Supplemental Indenture” means any indenture supplemental or amendatory to this Indenture entered into by the City and the Trustee pursuant to **Article XI** hereof.

“Supplemental Lease” means any supplement or amendment to the Lease entered into pursuant to **Article XII** hereof.

“Trust Estate” means the Trust Estate described in the Granting Clauses of this Indenture.

“Trustee” means UMB Bank, N.A., Kansas City, Missouri, a national banking association duly organized and existing and authorized to accept and execute trusts of the character herein set forth under

the laws of the United States of America, and its successor or successors and any other corporation which at the time may be substituted in its place pursuant to and at the time serving as Trustee under this Indenture.

“Unassigned Rights” means (1) the City’s right to receive moneys for its own account, including but not limited to payments in lieu of taxes, (2) the City’s rights to indemnification or to be protected from liabilities by insurance policies required by the Lease, and (3) the rights of the City to provide any consent or approval under the Lease and to enforce provisions of the Lease relating to the completion, condition or use of the Project.

Section 102. Rules of Interpretation.

(a) Unless the context shall otherwise indicate, the words importing the singular number shall include the plural and vice versa, and words importing Persons shall include firms, associations and corporations, including public bodies, as well as natural Persons.

(b) Wherever in this Indenture it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(c) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision.

(d) Whenever an item or items are listed after the word “including”, such listing is not intended to be a listing that excludes items not listed.

(e) The Table of Contents and the Article and Section headings of this Indenture shall not be treated as a part of this Indenture or as affecting the true meaning of the provisions hereof.

ARTICLE II

THE BONDS

Section 201. Title and Amount of Bonds. No Bonds may be issued under this Indenture except in accordance with the provisions of this Article. The Bonds authorized to be issued under this Indenture shall be designated as “City of Independence, Missouri, Taxable Industrial Development Revenue Bonds (Wally’s Redevelopment Project), Series 2026.” The maximum total principal amount of Bonds that may be issued hereunder is hereby expressly limited to \$52,050,000.

Section 202. Nature of Obligation. The Bonds and the interest thereon shall be special obligations of the City payable solely out of the rents, revenues and receipts derived by the City from the Project and the Lease (excluding the Unassigned Rights), and not from any other fund or source of the City. The Bonds are secured by a pledge and assignment of the Trust Estate to the Trustee in favor of the Owners, as provided in this Indenture. The Bonds and the interest thereon shall not constitute general obligations of the City, the State or any political subdivision thereof, and neither the City, the State or related political subdivision thereof shall be liable thereon, and the Bonds shall not constitute an indebtedness within the

meaning of any constitutional, charter or statutory debt limitation or restriction, and are not payable in any manner by taxation.

Section 203. Denomination, Number and Dating of the Bonds.

(a) The Bonds shall be issuable in the form of one fully-registered Bond, in substantially the form set forth in **Exhibit C** hereto, in the denomination of \$0.01 or any multiple thereof.

(b) The Bonds shall be dated by the Trustee as of the date of initial delivery thereof as provided herein. If the Bonds are at any time thereafter transferred, any replacement Bonds shall be dated as of the date of authentication thereof and numbered from 1 upward.

Section 204. Method and Place of Payment of Bonds.

(a) The principal of and interest on the Bonds shall be payable in any coin or currency of the United States of America which on the respective dates of payment thereof is legal tender for payment of public and private debts.

(b) Payment of the principal of the Bonds shall be made upon the presentation and surrender of such Bonds at the payment office of any Paying Agent named in the Bonds. The payment of principal on the Bonds shall be noted on the Bonds on **Schedule I** thereto and the registration books maintained by the Trustee pursuant to **Section 206** hereof. Payment of the interest on the Bonds shall be made by the Trustee on each Payment Date to the Person appearing on the registration books of the Trustee hereinafter provided for as the Owner thereof on the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Payment Date by check or draft mailed to such Owner at such Owner's address as it appears on such registration books.

(c) The Bonds and the original **Schedule I** thereto shall be held by the Trustee in trust, unless otherwise directed in writing by the Owner. If the Bonds are held by the Trustee, the Trustee shall, on each Payment Date, send a revised copy of **Schedule I** via facsimile or other electronic means to the Owner, the Company (if not the Owner) and the City. Absent manifest error, the amounts shown on **Schedule I** as noted by the Trustee shall be conclusive evidence of the principal amount paid on the Bonds.

(d) If there is one Owner of the Bonds, the Trustee is authorized to make the final or any interim payments of principal on such Bonds by internal bank transfer or by electronic transfer to an account at a commercial bank or savings institution designated in writing by such Owner and located in the continental United States. The Trustee is also authorized to make interest payments on such Bonds by internal bank transfer or by electronic transfer to an account at a commercial bank or savings institution designated by such Owner and located in the continental United States.

(e) If the Company is the sole Owner of the Bonds, then the Company may set-off (by book entry or other reasonable means) its obligation to pay Basic Rent to the City as lessee under the Lease against the City's obligations to the Company as the bondholder under this Indenture. The Trustee may conclusively rely on the absence of any notice from the Company to the contrary as evidence that such set-off has occurred. On the final Payment Date, the Company may deliver to the Trustee for cancellation the Bonds and the Company shall receive a credit against the Basic Rent payable by the Company under **Section 5.1** of the Lease in an amount equal to the remaining principal on the Bond so tendered for cancellation plus accrued interest thereon.

Section 205. Execution and Authentication of Bonds.

(a) The Bonds shall be executed on behalf of the City by the manual or facsimile signature of its Mayor or (Interim) City Manager and attested by the manual or facsimile signature of the City Clerk, and shall have the corporate seal of the City affixed thereto or imprinted thereon. If any officer whose signature or facsimile thereof appears on the Bonds ceases to be such officer before the delivery of such Bond, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if such Person had remained in office until delivery. Any Bond may be signed by such Persons as at the actual time of the execution of such Bond are the proper officers to sign such Bond although at the date of such Bond such Persons may not have been such officers.

(b) The Bonds shall have endorsed thereon a Certificate of Authentication substantially in the form set forth in **Exhibit C** hereof, which shall be manually executed by the Trustee. No Bond shall be entitled to any security or benefit under this Indenture or shall be valid or obligatory for any purposes until such Certificate of Authentication has been duly executed by the Trustee. The executed Certificate of Authentication upon any Bond shall be conclusive evidence that such Bond has been duly authenticated and delivered under this Indenture. The Certificate of Authentication on any Bond shall be deemed to have been duly executed if signed by any authorized signatory of the Trustee.

Section 206. Registration, Transfer and Exchange of Bonds.

(a) The Trustee shall keep books for the registration and for the transfer of Bonds as provided in this Indenture.

(b) The Bonds may be transferred only upon the books kept for the registration and transfer of Bonds upon surrender thereof to the Trustee duly endorsed for transfer or accompanied by an assignment duly executed by the Owner or such Owner's attorney or legal representative in such form as shall be satisfactory to the Trustee. In connection with any such transfer of the Bonds, the City and the Trustee shall receive an executed representation letter signed by the proposed assignee in substantially the form of **Exhibit D** hereto. Upon any such transfer, the City shall execute and the Trustee shall authenticate and deliver in exchange for such Bond a new fully registered Bond or Bonds, registered in the name of the transferee, of any denomination or denominations authorized by this Indenture, in an aggregate principal amount equal to the outstanding principal amount of such Bond, of the same maturity and bearing interest at the same rate.

(c) In all cases in which Bonds are exchanged or transferred hereunder the provisions of any legend restrictions on the Bonds shall be complied with and the City shall execute and the Trustee shall authenticate and deliver at the earliest practicable time Bonds in accordance with the provisions of this Indenture. All Bonds surrendered in any such exchange or transfer shall forthwith be cancelled by the Trustee. The City or the Trustee may make a reasonable charge for every such exchange or transfer of Bonds sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, and such charge shall be paid before any such new Bond shall be delivered. Neither the City nor the Trustee shall be required to make any such exchange or transfer of Bonds during the 15 days immediately preceding a Payment Date on the Bonds or, in the case of any proposed redemption of Bonds, during the 15 days immediately preceding the selection of Bonds for such redemption or after such Bonds or any portion thereof has been selected for redemption.

(d) If any Owner fails to provide a certified taxpayer identification number to the Trustee, the Trustee may make a charge against such Owner sufficient to pay any governmental charge required to be

paid as a result of such failure, which amount may be deducted by the Trustee from amounts otherwise payable to such Owner under such Owner's Bond.

(e) The City and Trustee consent to the pledge of the Bonds to any Lender with a Mortgage (as such term is defined in the Lease) on all or any portion of the Project Site.

Section 207. Persons Deemed Owners of Bonds. As to any Bond, the Person in whose name the same is registered as shown on the bond registration books required by **Section 206** hereof shall be deemed and regarded as the absolute owner thereof for all purposes. Payment of or on account of the principal of and interest on any such Bond shall be made only to or upon the order of the Owner thereof or a legal representative thereof. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

Section 208. Authorization of the Bonds.

(a) The Bonds are authorized in the aggregate maximum principal amount of \$52,050,000 for the purpose of providing funds to pay the costs of the Project and the costs of issuing the Bonds, which Bonds shall be designated "City of Independence, Missouri, Taxable Industrial Development Revenue Bonds (Wally's Redevelopment Project), Series 2026." The Bonds shall be dated as provided in **Section 203(b)** hereof, shall become due on **December 1, 2027** (subject to prior redemption as provided in **Article III** hereof) and shall bear interest as specified in **Section 208(f)** hereof, payable on the dates specified in **Section 208(f)** hereof.

(b) The Trustee is hereby designated as the Paying Agent. The Owners of a majority of Bonds then Outstanding may designate a different Paying Agent upon written notice to the City and the Trustee.

(c) The Bonds shall be executed without material variance from the form and in the manner set forth in **Exhibit C** hereto and delivered to the Trustee for authentication. Prior to or simultaneously with the authentication and delivery of the Bonds by the Trustee, there shall be filed with the Trustee electronic copies of the following:

(1) The ordinance passed by the City Council authorizing the issuance of the Bonds and the execution of this Indenture, the Lease, and the Bond Purchase Agreement;

(2) Counterparts of this Indenture, the Lease and the Bond Purchase Agreement;

(3) A representation letter from the Purchaser in substantially the form attached as **Exhibit D** hereto;

(4) A request and authorization to the Trustee on behalf of the City, executed by the Authorized City Representative, to authenticate the Bonds and deliver the same to or at the direction of the Purchaser upon payment to the Trustee, for the account of the City, of the purchase price thereof specified in the Bond Purchase Agreement. The Trustee shall be entitled to conclusively rely upon such request and authorization as to names of the purchaser and the amount of such purchase price;

(5) An opinion of counsel nationally recognized on the subject of municipal bonds to the effect that the Bonds are in proper form and have been duly authorized in accordance with the Constitution and statutes of the State of Missouri, including the Act, and constitute valid and legally binding special obligations of the City; and

(6) Such other certificates, statements, receipts, opinions and documents as the Trustee shall reasonably require for the delivery of the Bonds.

(d) When the documents specified in subsection (c) of this Section have been filed with the Trustee, and when the Bonds have been executed and authenticated as required by this Indenture, the Purchaser shall pay the Closing Price to the Trustee, and the Trustee shall endorse the Bonds in an amount equal to the Closing Price and then either hold the Bonds in trust or if so directed in writing deliver the Bonds to or upon the order of the Purchaser.

(e) Following the initial issuance and delivery of the Bonds, the Company may submit additional requisition certificates in accordance with **Section 4.4** of the Lease, and the Trustee shall, based solely of the amount set forth in the requisition, endorse the Bonds in an amount equal to the amount set forth in each requisition certificate. The date of endorsement of each Principal Amount Advanced (as defined in subsection (g) below) as set forth on **Schedule I** to the Bonds shall be the date of the City's approval of each requisition certificate. The Trustee shall keep a record of the total requisitions submitted, and shall notify the City if the requisitions submitted exceed the maximum Cumulative Outstanding Principal Amount of the Bonds permitted hereunder.

(f) The Bonds shall bear interest at the rate of 7.00% per annum on the Cumulative Outstanding Principal Amount of the Bonds. Such interest shall be payable in arrears on each December 1, commencing on December 1, 2026, and continuing thereafter until the Cumulative Outstanding Principal Amount is paid in full; provided that the aggregate maximum principal amount shall not exceed \$52,050,000 and further provided that the Bonds shall be paid in full no later than **December 1, 2027**. Interest shall be calculated on the basis of a year of 360 days consisting of twelve months of 30 days each.

(g) The Trustee shall keep and maintain a record of the amount deposited or deemed to be deposited into the Project Fund pursuant to the terms of this Indenture as "Principal Amount Advanced" and shall enter the aggregate principal amount of the Bonds then Outstanding on its records as the "Cumulative Outstanding Principal Amount." On each date upon which a portion of the Cumulative Outstanding Principal Amount is paid to the Owners, pursuant to the redemption provisions of this Indenture, the Trustee shall enter on its records the principal amount paid on the Bonds as "Principal Amount Redeemed," and shall enter the then Outstanding principal amount of the Bonds as "Cumulative Outstanding Principal Amount." The records maintained by the Trustee as to amounts deposited into the Project Fund or principal amounts paid on the Bonds shall be the official records of the Cumulative Outstanding Principal Amount for all purposes, absent manifest error, and shall be in substantially the form of the Table of Cumulative Outstanding Principal Amount as set out in the form of Bonds in **Exhibit C** hereto. If any moneys are deposited by the Trustee into the Project Fund, then the Trustee shall provide a statement of receipts and disbursements with respect thereto to the City and the Company upon written request. After the Project has been completed and the certificate of payment of all costs is filed as provided in **Section 504** hereof, the Trustee, upon written request, to the extent it has not already done so pursuant to this Section or **Section 1012** hereof, shall file a final statement of receipts and disbursements with respect thereto with the City and the Company.

Section 209. Mutilated, Lost, Stolen or Destroyed Bonds. If any Bond becomes mutilated, or is lost, stolen or destroyed, the City shall execute and the Trustee shall authenticate and deliver a new Bond of like series, date and tenor as the Bond mutilated lost, stolen or destroyed; provided that, in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, stolen or destroyed Bond, there shall be first furnished to the City and the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee, together with indemnity satisfactory to the Trustee to

save each of the City and the Trustee harmless. If any such Bond has matured, instead of delivering a substitute Bond, the Trustee may pay the same without surrender thereof. Upon the issuance of any substitute Bond, the City and the Trustee may require the payment of an amount sufficient to reimburse the City and the Trustee for any tax or other governmental charge that may be imposed in relation thereto and any other reasonable fees and expenses incurred in connection therewith.

Section 210. Cancellation and Destruction of Bonds Upon Payment.

(a) All Bonds which have been paid or redeemed or which the Trustee has purchased or which have otherwise been surrendered to the Trustee under this Indenture, either at or before maturity shall be cancelled by the Trustee immediately upon the payment, redemption or purchase of such Bonds and the surrender thereof to the Trustee.

(b) All Bonds cancelled under any of the provisions of this Indenture shall be destroyed by the Trustee. The Trustee shall execute a certificate describing the Bonds so destroyed, and shall file executed counterparts of such certificate with the City and the Company.

ARTICLE III

REDEMPTION OF BONDS

Section 301. Redemption of Bonds.

(a) The Bonds are subject to redemption and payment at any time before the stated maturity thereof, at the option of the City, upon written instructions from the Company, (1) in whole, if the Company exercises its option to purchase the Project and deposits an amount sufficient to effect such purchase pursuant to the Lease on the applicable redemption date, or (2) in part, if the Company prepays additional Basic Rent pursuant to the Lease. If only a portion of the Bonds are to be redeemed, (1) Bonds aggregating at least 10% of the maximum aggregate principal amount of Bonds authorized hereunder shall not be subject to redemption and payment before the stated maturity thereof, and (2) the Trustee shall keep a record of the amount of Bonds to remain Outstanding following such redemption. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date.

(b) The Bonds are subject to mandatory redemption, in whole or in part, to the extent of amounts deposited in the Bond Fund pursuant to **Sections 9.1 or 9.2** of the Lease, in the event of substantial damage to or destruction or condemnation of substantially all of the Project. Bonds to be redeemed pursuant to this paragraph shall be called for redemption by the Trustee on the earliest practicable date for which timely notice of redemption may be given as provided hereunder. Any redemption of Bonds pursuant to this paragraph shall be at a redemption price equal to the par value thereof being redeemed, plus accrued interest thereon, without premium or penalty, to the redemption date. Before giving notice of redemption to the Owners pursuant to this paragraph (b), money in an amount equal to the redemption price shall have been deposited in the Bond Fund.

(c) In connection with a redemption under paragraphs (a) or (b) of this Section, at its option, the Company may deliver to the Trustee for cancellation any Bonds owned by the Company and not previously paid, and the Company shall receive a credit against the amounts payable by the Company for

the redemption of such Bonds in an amount equal to the principal amount of the Bonds so tendered for cancellation, plus accrued interest.

Section 302. Effect of Call for Redemption. Before or on the date fixed for redemption, funds, Government Securities, or a combination thereof, shall be placed with the Trustee which are sufficient to pay the Bonds called for redemption and accrued interest thereon, if any, to the redemption date. Upon the happening of the above conditions and appropriate written notice having been given, the Bonds or the portions of the principal amount of Bonds thus called for redemption shall cease to bear interest on the specified redemption date, and shall no longer be entitled to the protection, benefit or security of this Indenture and shall not be deemed to be Outstanding under the provisions of this Indenture. If the Bonds are fully redeemed before maturity and an amount of money equal to the Trustee's and the Paying Agent's agreed to fees and expenses hereunder accrued and to accrue in connection with such redemption is paid or provided for, the City shall, at the Company's direction, deliver to the Company the items described in **Section 11.2** of the Lease.

Section 303. Notice of Redemption. If the Bonds are to be called for redemption as provided in **Section 301(a)** hereof, the Company shall deliver written notice to the City and the Trustee that it has elected to direct the City to redeem all or a portion of the Bonds at least 40 days (10 days if the Company is the Owner) prior to the scheduled redemption date. The Trustee shall then deliver written notice to the Owners at least 30 days (five days if the Company is the Owner) prior to the scheduled redemption date by facsimile and by first-class mail stating the date upon which the Bonds will be redeemed and paid, unless such notice period is waived by the Owners in writing.

ARTICLE IV

FORM OF BONDS

Section 401. Form Generally. The Bonds and the Trustee's Certificate of Authentication to be endorsed thereon shall be issued in substantially the forms set forth in **Exhibit C** hereto. The Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any custom, usage or requirements of law with respect thereto.

ARTICLE V

CUSTODY AND APPLICATION OF BOND PROCEEDS

Section 501. Creation of Funds. There are hereby created and ordered to be established in the custody of the Trustee the following special trust funds in the name of the City:

- (a) "City of Independence, Missouri, Project Fund – Wally's Independence MO Owner LLC" (herein called the "Project Fund");
- (b) "City of Independence, Missouri, Costs of Issuance Fund – Wally's Independence MO Owner LLC" (herein called the "Costs of Issuance Fund"); and

(c) “City of Independence, Missouri, Bond Fund – Wally’s Independence MO Owner LLC” (herein called the “Bond Fund”).

Section 502. Deposits into the Project Fund. The proceeds of the sale of the Bonds (whether actually paid or deemed paid under **Section 208** hereof), including Additional Payments provided for in the Bond Purchase Agreement, when received, excluding such amounts required to be paid into the Bond Fund pursuant to **Section 601** hereof, shall be deposited by the Trustee into the Project Fund. Any money received by the Trustee from any other source for the purpose of purchasing, constructing and improving the Project shall pursuant to any directions from the Person depositing such moneys also be deposited into the Project Fund.

Section 503. Disbursements from the Project Fund.

(a) The moneys in the Project Fund shall be disbursed by the Trustee for the payment of, or reimbursement to the Company (or any other party that has made payment on behalf of the Company) for payment of, Project Costs upon receipt of requisition certificates signed by the Company in accordance with the provisions of **Article IV** of the Lease. The Trustee hereby covenants and agrees to disburse such moneys in accordance with such provisions.

(b) If, pursuant to **Section 208** hereof, the Trustee is deemed to have deposited into the Project Fund the amount specified in the requisition certificates submitted by the Company in accordance with the provisions of **Article IV** of the Lease, the Trustee shall upon endorsement of the Bonds in an equal amount be deemed to have disbursed such funds from the Project Fund to the Company (or such other purchaser designated by the Company) in satisfaction of the requisition certificate.

(c) In paying any requisition under this Section, the Trustee may rely as to the completeness and accuracy of all statements in such requisition certificate if such requisition certificate is signed by the Authorized Company Representative. If the City so requests in writing, a copy of each requisition certificate submitted to the Trustee for payment under this Section shall be promptly provided by the Trustee to the City. The City hereby authorizes and directs the Trustee to make disbursements in the manner and as provided for by the aforesaid provisions of the Lease.

Section 504. Completion of the Project. The completion of the construction and improvement of the Project and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the certificate required by the provisions of **Section 4.5** of the Lease. As soon as practicable after the Completion Date any balance remaining in the Project Fund shall without further authorization be transferred by the Trustee to the Bond Fund and applied as provided in **Section 4.6** of the Lease.

Section 505. Deposits into and Disbursements from the Costs of Issuance Fund. Money deposited by the Company in the Costs of Issuance Fund shall be used solely to pay costs of issuing the Bonds or refunded to the Company as hereinafter provided. The Trustee shall without further authorization disburse from the Costs of Issuance Fund, to the extent available, money sufficient to pay the amounts shown in a closing memorandum or requisition certificate provided to the Trustee on or before the date of delivery of the Bonds, which shall have attached thereto the statements, invoices and related items described in said closing memorandum or requisition certificate. The Trustee may rely conclusively on the amounts due as shown in the closing memorandum or requisition certificate and will not be required to make any independent inspection or investigation in connection therewith. Any of such money not used to pay costs of issuance by the date that is six months after the Closing Date shall be refunded to the Company.

Section 506. Disposition Upon Acceleration. If the principal of the Bonds has become due and payable pursuant to **Section 902** hereof, upon the date of payment by the Trustee of any moneys due as provided in **Article IX** hereof, any balance remaining in the Project Fund shall without further authorization be deposited in the Bond Fund by the Trustee, with advice to the City and to the Company of such action.

ARTICLE VI

REVENUES AND FUNDS

Section 601. Deposits Into the Bond Fund.

(a) The Trustee shall deposit into the Bond Fund, as and when received, (a) all Basic Rent payable by the Company to the City specified in **Section 5.1** of the Lease; (b) any Additional Rent payable by the Company specified in **Section 5.2** of the Lease; (c) any amount in the Project Fund to be transferred to the Bond Fund pursuant to **Section 504** hereof upon completion of the Project or pursuant to **Section 506** hereof upon acceleration of the Bonds; (d) the balance of any Net Proceeds (as defined in the Lease) of condemnation awards or insurance received by the Trustee pursuant to **Article IX** of the Lease; (e) the amounts to be deposited in the Bond Fund pursuant to **Sections 9.1(f)** and **9.2(c)** of the Lease; (f) all interest and other income derived from investments of Bond Fund moneys as provided in **Section 702** hereof; and (g) all other moneys received by the Trustee under and pursuant to any of the provisions of the Lease when accompanied by directions from the Person depositing such moneys that such moneys are to be paid into the Bond Fund.

(b) If the Company is not the sole Owner of the Bonds, the Trustee shall notify the Company in writing, at least 15 days before each date on which a payment is due under **Section 5.1** of the Lease, of the amount that is payable by the Company pursuant to such Section.

Section 602. Application of Moneys in the Bond Fund.

(a) Except as provided in **Section 604** and **Section 908** hereof or in **Section 4.6(a)** of the Lease, moneys in the Bond Fund shall be expended solely for the payment of the principal of and the interest on the Bonds as the same mature and become due or upon the redemption thereof before maturity; provided, however, that any amounts received by the Trustee as Additional Rent under **Section 5.2** of the Lease and deposited to the Bond Fund as provided in **Section 601** above, shall be expended by the Trustee for such items of Additional Rent as they are received or due without further authorization from the City.

(b) The City hereby authorizes and directs the Trustee to withdraw sufficient funds from the Bond Fund to pay the principal of and the interest on the Bonds as the same become due and payable and to make said funds so withdrawn available to the Paying Agent for the purpose of paying said principal and interest. To the extent the Company is the Owner of all of the Bonds Outstanding, payment may be made via transaction entry on the trust records held by Trustee.

(c) Whenever the amount in the Bond Fund from any source whatsoever is sufficient to redeem all of the Bonds Outstanding and to pay interest to accrue thereon before such redemption, the City covenants and agrees, upon request of the Company, to take and cause to be taken the necessary steps to redeem all such Bonds on the next succeeding redemption date for which the required redemption notice may be given or on such later redemption date as may be specified by the Company. The Trustee may use

any moneys in the Bond Fund to redeem a part of the Bonds Outstanding in accordance with and to the extent permitted by **Article III** hereof so long as the Company is not in default with respect to any payments under the Lease and to the extent said moneys are in excess of the amount required for payment of Bonds theretofore matured or called for redemption and past due interest, if any, in all cases when such Bonds have not been presented for payment.

(d) After payment in full of the principal of and interest, if any, on the Bonds (or provision has been made for the payment thereof as provided in this Indenture), and the fees, charges and expenses of the Trustee, the City and any Paying Agent and any other amounts required to be paid under this Indenture and the Lease, all amounts remaining in the Bond Fund shall be paid to the Company upon the expiration or sooner termination of the Lease.

Section 603. Payments Due on Days Other than Business Days. In any case where the date of maturity of principal of or interest, if any, on the Bonds or the date fixed for redemption of any Bonds is not a Business Day, then payment of principal or interest, if any, need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest, if any, shall continue to accrue for the period after such date.

Section 604. Nonpresentment of Bonds. If any Bond is not presented for payment when the principal thereof becomes due, either at maturity or otherwise, or at the date fixed for redemption thereof, if funds sufficient to pay such Bond shall have been made available to the Trustee, all liability of the City to the Owner thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such fund or funds, without liability for interest thereon, for the benefit of the Owner of such Bond who shall thereafter be restricted exclusively to such fund or funds for any claim of whatever nature on his part under this Indenture or on, or with respect to, said Bond. If any Bond is not presented for payment within one year following the date when such Bond becomes due, whether by maturity or otherwise, the Trustee shall without liability for interest thereon repay to the Company the funds theretofore held by it for payment of such Bond, and such Bond shall, subject to the defense of any applicable statute of limitation, thereafter be an unsecured obligation of the Company, and the Owner thereof shall be entitled to look only to the Company for payment, and then only to the extent of the amount so repaid, and the Company shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

Section 605. Repayment to the Company from the Bond Fund. After payment in full of the principal of and interest on the Bonds (or provision has been made for the payment thereof as provided in this Indenture), and the reasonable fees, charges and expenses of the Trustee and the City and any other amounts required to be paid under this Indenture and the Lease, all amounts remaining in the Bond Fund shall be paid to the Company upon the expiration or sooner termination of the Lease.

ARTICLE VII

SECURITY FOR DEPOSITS AND INVESTMENT OF FUNDS

Section 701. Moneys to be Held in Trust. All moneys deposited with or paid to the Trustee for account of the Bond Fund or the Project Fund under any provision of this Indenture, and all moneys deposited with or paid to any Paying Agent under any provision of this Indenture, shall be held by the Trustee or Paying Agent in trust and shall be applied only in accordance with the provisions of this Indenture

and the Lease, and, until used or applied as herein provided, shall constitute part of the Trust Estate and be subject to the lien hereof. Neither the Trustee nor any Paying Agent shall be under any liability for interest on any moneys received hereunder except such as may be agreed upon in writing.

Section 702. Investment of Moneys in Project Fund and Bond Fund. Moneys held in the Project Fund and the Bond Fund shall, pursuant to written direction of the Company, signed by the Authorized Company Representative, be separately invested and reinvested by the Trustee in Investment Securities which mature or are subject to redemption by the Owner before the date such funds will be needed. Moneys in the Costs of Issuance fund shall be held un-invested. If the Company fails to provide written directions concerning investment of moneys held in the Project Fund and the Bond Fund, the Trustee shall invest in such Investment Securities specified in paragraph (e) of the definition of Investment Securities, provided they mature or are subject to redemption before the date such funds will be needed. The Trustee is specifically authorized to implement its automated cash investment system to assure that cash on hand is invested and to charge its normal cash management fees and cash sweep account fees, which may be deducted from income earned on investments; provided that any such fees shall not exceed the interest income on the investment. Any such Investment Securities shall be held by or under the control of the Trustee and shall be deemed at all times a part of the fund in which such moneys are originally held, and the interest accruing thereon and any profit realized from such Investment Securities shall be credited to such fund, and any loss resulting from such Investment Securities shall be charged to such fund. After the Trustee has notice pursuant to **Section 1001(h)** hereof of the existence of an Event of Default, the Trustee shall direct the investment of moneys in the Bond Fund and the Project Fund. The Trustee shall sell and reduce to cash a sufficient amount of such Investment Securities whenever the cash balance in any Fund is insufficient for the purposes of such Fund. In determining the balance in any Fund, investments in such Fund shall be valued at the lower of their original cost or their fair market value as of the most recent Payment Date. The Trustee may make any and all investments permitted by the provisions of this Section through its own bond department or any affiliate or short-term investment department. The Trustee may rely on the investment directions of the Authorized Company Representative as to both the suitability and legality of the directed investments.

Section 703. Record Keeping. The Trustee shall maintain records designed to show compliance with the provisions of this Article and with the provisions of **Article VI** hereof for at least six years after the payment of all of the Outstanding Bonds.

ARTICLE VIII

GENERAL COVENANTS AND PROVISIONS

Section 801. Payment of Principal and Interest. The City covenants and agrees that it will, but solely from the rents, revenues and receipts derived from the Project and the Lease (excluding the Unassigned Rights) as described herein, deposit or cause to be deposited in the Bond Fund sufficient sums payable under the Lease promptly to meet and pay the principal of and the interest on the Bonds as they become due and payable at the place, on the dates and in the manner provided herein and in the Bonds according to the true intent and meaning thereof. Nothing herein shall be construed as requiring the City to operate the Project as a business other than as lessor or to use any funds or revenues from any source other than funds and revenues derived from the Project.

Section 802. Authority to Execute Indenture and Issue Bonds. The City covenants that it is duly authorized under the Constitution and laws of the State to execute this Indenture, to issue the Bonds

and to pledge and assign the Trust Estate in the manner and to the extent herein set forth; that all action on its part for the execution and delivery of this Indenture and the issuance of the Bonds has been duly and effectively taken; that the Bonds in the hands of the Owners thereof are and will be valid and enforceable obligations of the City according to the import thereof.

Section 803. Performance of Covenants. The City covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in the Bonds and in all proceedings of its governing body pertaining thereto. The Trustee may take such action as it deems appropriate to enforce all such covenants, undertakings, stipulations and provisions of the City hereunder.

Section 804. Instruments of Further Assurance. The City covenants that it will do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such Supplemental Indentures and such further acts, instruments, financing statements and other documents as the Trustee may reasonably require for the better pledging and assigning unto the Trustee the property and revenues herein described to the payment of the principal of and interest, if any, on the Bonds. The City covenants and agrees that, except as herein and in the Lease provided, it will not sell, convey, mortgage, encumber or otherwise dispose of any part of the Project or the rents, revenues and receipts derived therefrom or from the Lease, or of its rights under the Lease.

Section 805. Recordings and Filings. The City shall file or cause to be kept and filed all financing statements, and hereby authorizes the Trustee to file or cause to be kept and filed continuation statements with respect to such originally filed financing statements related to this Indenture in order to fully preserve and protect the security of the Owners and the rights of the Trustee hereunder provided a copy of the originally filed financing statement is timely delivered to the Trustee. Unless otherwise notified in writing by the Company or City, the Trustee may conclusively rely upon any originally filed financing statements in filing any continuation statements hereunder. The City will cooperate in causing this Indenture and all Supplemental Indentures, the Lease and all Supplemental Leases and all other security instruments to be recorded and filed in such manner and in such places as may be required by law in order to fully preserve and protect the security of the Owners and the rights of the Trustee hereunder.

Section 806. Inspection of Project Books. The City covenants and agrees that all books and documents in its possession relating to the Project and the rents, revenues and receipts derived from the Project shall at all times be open to inspection by such accountants or other agencies as the Trustee may from time to time designate.

Section 807. Enforcement of Rights Under the Lease. The City covenants and agrees that it will enforce all of its rights and all of the obligations of the Company (at the expense of the Company) under the Lease to the extent necessary to preserve the Project in good repair and reasonably safe operating condition, and to protect the rights of the Trustee and the Owners hereunder with respect to the pledge and assignment of the rents, revenues and receipts coming due under the Lease; provided that, the City and the Trustee, as its assignee, shall refrain from enforcing any such right or obligation (except for the Unassigned Rights, any other rights of the City or the Trustee to receive payments owing to either of them for their own account under the Indenture or the Lease or any other agreement related to the Bonds or for their rights of indemnification or to be protected from liabilities by insurance policies required by the Lease) if so directed in writing by the Owners of 100% of the Outstanding Bonds. The City agrees that the Trustee, as assignee of the rentals and other amounts to be received by the City and paid by the Company under the Lease, or in its name or in the name of the City, may enforce all rights of the City to receive such rentals and other

amounts and all obligations of the Company to pay such rentals and other amounts under and pursuant to the Lease for and on behalf of the Owners, whether or not the City is in default hereunder.

ARTICLE IX

DEFAULT AND REMEDIES

Section 901. Events of Default; Notice; Opportunity to Cure. If any of the following events occur, it is hereby defined as and declared to be and to constitute an "Event of Default":

- (a) Default in the due and punctual payment of the principal on any Bond, whether at the stated maturity or accelerated maturity thereof, or at any date fixed for redemption thereof;
- (b) Default in the due and punctual payment of the interest on any Bond, whether at the stated maturity or accelerated maturity thereof, or at any date fixed for redemption thereof;
- (c) Default as specified in **Section 12.1** of the Lease has occurred; or
- (d) Default in the performance, or breach, of any other covenant or agreement under this Indenture.

No default specified above shall constitute an Event of Default until the City, the Trustee or the Owners of 25% in aggregate principal amount of all Bonds Outstanding has given actual notice of such default by registered or certified mail to the Company, and the Company has had 30 days after receipt of such notice to correct said default or cause said default to be corrected and has not corrected said default or caused said default to be corrected within such period; provided, however, if any such default (other than a default in the payment of any money) is such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the Company or the City (as the case may be) within such period and diligently pursued until the default is corrected.

Section 902. Acceleration of Maturity in Event of Default; Rescission. If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, the Trustee may, and upon the written request of the Owners of not less than 25% in aggregate principal amount of Bonds then Outstanding, shall, by notice in writing delivered to the City and the Company, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable. At any time after such a declaration of acceleration has been made, but before any judgment or decree for payment of money due on any Bonds has been obtained by the Trustee as provided in this Article, the owners of a majority in principal amount of the Bonds Outstanding may, by written notice to the Company and Trustee but with the written consent of the City, rescind and annul such declaration and its consequences if: (a) there is deposited with the Trustee a sum sufficient to pay: (1) all overdue installments of interest on all Bonds; (2) the principal of (and premium, if any, on) any Bonds which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in such Bonds; and (3) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and (b) all events of default, other than

the non-payment of the principal of Bonds which have become due solely by such declaration of acceleration, have been cured or have been waived as provided in **Section 910** of this Indenture.

Section 903. Surrender of Possession of Trust Estate; Rights and Duties of Trustee in Possession. If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** hereof elapses, the City, upon demand of the Trustee, shall forthwith surrender the possession of, and it shall be lawful for the Trustee, by such officer or agent as it may appoint, to take possession of all or any part of the Trust Estate, together with the books, papers and accounts of the City pertaining thereto, and including the rights and the position of the City under the Lease, and to hold, operate and manage the same, and from time to time make all needful repairs and improvements. The Trustee may lease the Project (excluding the Unassigned Rights) or any part thereof, in the name and for account of the City, and collect, receive and sequester the rents, revenues and receipts therefrom, and out of the same and any moneys received from any receiver of any part thereof pay, and set up proper reserves for the payment of all proper costs and expenses of so taking, holding and managing the same, including without limitation (a) reasonable compensation to the Trustee, its agents and counsel, (b) any reasonable charges of the Trustee hereunder, (c) any taxes and assessments and other charges having a lien that is senior to the lien of this Indenture, (d) all expenses of such repairs and improvements and (e) any amounts payable as payments in lieu of tax. The Trustee shall apply the remainder of the moneys so received in accordance with the provisions of **Section 908** hereof. Whenever all that is due upon the Bonds has been paid and all defaults cured, the Trustee shall surrender possession of the Trust Estate to the City, its successors or assigns, the same right of entry, however, to exist upon any subsequent Event of Default. While in possession of such property, the Trustee shall render annually to the City and the Company a summarized statement of receipts and expenditures in connection therewith.

Section 904. Appointment of Receivers in Event of Default. If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Trustee and of the Owners under this Indenture, the Trustee shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Trust Estate or any part thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

Section 905. Exercise of Remedies by the Trustee.

(a) Upon the occurrence of an Event of Default, the Trustee may pursue any available remedy at law or in equity by suit, action, mandamus or other proceeding to enforce the payment of the principal of and interest on the Bonds then Outstanding and all other amounts due hereunder, and to enforce and compel the performance of the duties and obligations of the City or the Company as herein set forth or as set forth in the Lease, respectively.

(b) If an Event of Default has occurred and is continuing after the notice and cure period described in **Section 901** elapses, and if requested to do so by (1) the City (in the case of an Event of Default pursuant to **Section 12.1(b), (c), (d), (e)** or **(f)** of the Lease), or (2) the Owners of 25% in aggregate principal amount of Bonds then Outstanding, and if indemnified as provided in subsection (l) of **Section 1001** hereof, the Trustee shall be obligated to exercise such one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem most expedient and in the interests of the City or the Owners, as the case may be.

(c) All rights of action under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without necessity of joining as plaintiffs or defendants any Owners, and any recovery of judgment shall, subject to the provisions of **Section 908** hereof, be for the equal benefit of all the Owners of the Outstanding Bonds.

Section 906. Limitation on Exercise of Remedies by Owners. No Owner shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless (a) a default has occurred of which the Trustee has been notified as provided in **Section 1001(h)** hereof or of which by said subsection the Trustee is deemed to have notice, (b) such default has become an Event of Default, (c) the Owners of 25% in aggregate principal amount of Bonds then Outstanding have made written request to the Trustee, have offered it reasonable opportunity either to proceed for such reasonable period not to exceed 60 days following such notice and to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name, and have offered to the Trustee indemnity as provided in **Section 1001(i)** hereof, and (d) the Trustee thereafter fails or refuses to exercise the powers herein granted or to institute such action, suit or proceeding in its own name; such notification, request and offer of indemnity are hereby declared in every case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for the appointment of a receiver or for any other remedy hereunder, it being understood and intended that no one or more Owners shall have any right in any manner whatsoever to affect, disturb or prejudice this Indenture by their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Owners of all Bonds then Outstanding. Nothing in this Indenture contained shall, however, affect or impair the right of any Owner to payment of the principal of and interest on any Bond at and after the maturity thereof or the obligation of the City to pay the principal of and interest on each of the Bonds issued hereunder to the respective Owners thereof at the time, place, from the source and in the manner herein and in the Bonds expressed.

Section 907. Right of Owners to Direct Proceedings.

(a) The Owners of a majority in aggregate principal amount of Bonds then Outstanding may, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or for the appointment of a receiver or any other proceedings hereunder; provided that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, including **Section 1001(i)** hereof.

(b) Notwithstanding any provision in this Indenture to the contrary, including paragraph (a) of this Section, the Owners shall not have the right to control or direct any remedies hereunder upon an Event of Default under **Section 12.1(b) or (c)** (in either case, with respect to the Unassigned Rights), **(d), (e) or (f)** of the Lease.

Section 908. Application of Moneys in Event of Default.

(a) All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of any obligations outstanding under the Lease, of the cost and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses, liabilities and advances incurred or made by the Trustee (including any attorneys fees and expenses) or amounts to be paid pursuant to **Section 903** hereof, be deposited in the Bond Fund and all moneys so deposited in the Bond Fund shall be applied as follows:

(1) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

FIRST -- To the payment to the Persons entitled thereto of all installments of interest, if any, then due and payable on the Bonds, in the order in which such installments of interest became due and payable, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege;

SECOND -- To the payment to the Persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due and payable (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then to the payment, ratably, according to the amount of principal due on such date, to the Persons entitled thereto without any discrimination or privilege.

(2) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal and interest, if any, then due and unpaid on all of the Bonds, without preference or priority of principal over interest or of interest over principal or of any installment of interest over any other installment of interest or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Person entitled thereto, without any discrimination or privilege.

(3) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of **Section 910** hereof, then, subject to the provisions of subsection (2) of this Section in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of subsection (1) of this Section.

(b) Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times and from time to time as the Trustee shall determine, having due regard to the amount of such moneys available and which may become available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be a Payment Date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue.

(c) Whenever all of the Bonds and interest thereon, if any, have been paid under the provisions of this Section, and all fees, expenses and charges of the City and the Trustee and any other amounts

required to be paid under this Indenture and the Lease have been paid (including any amounts payable as payments in lieu of tax), any balance remaining in the Bond Fund shall be paid to the Company as provided in **Section 602** hereof.

Section 909. Remedies Cumulative. No remedy by the terms of this Indenture conferred upon or reserved to the Trustee or to the Owners is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Owners hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right, power or remedy accruing upon any Event of Default shall impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein; every such right, power or remedy may be exercised from time to time and as often as may be deemed expedient. If the Trustee has proceeded to enforce any right under this Indenture by the appointment of a receiver, by entry, or otherwise, and such proceedings have been discontinued or abandoned for any reason, or have been determined adversely, then and in every such case the City, the Company, the Trustee and the Owners shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 910. Waivers of Events of Default. The Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest, if any, on Bonds, and only upon the written request of the Owners of at least 50% in aggregate principal amount of all the Bonds then Outstanding, provided, however, that (1) there shall not be waived without the consent of the City an Event of Default hereunder arising from an Event of Default under **Section 12.1(b), (c), (d) (e) or (f)** of the Lease, and (2) there shall not be waived without the consent of the Owners of all the Bonds Outstanding (a) any Event of Default in the payment of the principal of any Outstanding Bonds when due (whether at the date of maturity or redemption specified therein), or (b) any Event of Default in the payment when due of the interest on any such Bonds, unless prior to such waiver or rescission, all arrears of interest, or all arrears of payments of principal when due, as the case may be, and all reasonable expenses of the Trustee and the City (including reasonable attorneys' fees and expenses), in connection with such default, shall have been paid or provided for. In case of any such waiver or rescission, or in case any proceeding taken by the Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the City, the Company, the Trustee and the Owners shall be restored to their former positions, rights and obligations hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereon, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

ARTICLE X

THE TRUSTEE

Section 1001. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture against the Trustee:

(a) The Trustee, before the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. If any Event of Default has occurred and is continuing, subject to **Section 1001(i)** hereof, the Trustee shall exercise such of the rights and

powers vested in it by this Indenture, and shall use the same degree of care and skill in their exercise, as a prudent Person would exercise or use under the circumstances in the conduct of its own affairs.

(b) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, affiliates, attorneys or receivers and shall not be responsible for any misconduct or negligence on the part of any agent, attorney or receiver appointed or chosen by it with due care. The Trustee may conclusively rely upon and act or refrain from acting upon any opinion or advice of counsel, who may be counsel to the City or to the Company, concerning all matters of trust hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such agents, attorneys and receivers as may reasonably be employed in connection with the trusts hereof. The Trustee shall not be responsible for any loss or damage resulting from any action or inaction by it taken or omitted to be taken in good faith in reliance upon such opinion or advice of counsel addressed to the City and the Trustee.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (except with respect to the Certificate of Authentication of the Trustee endorsed on the Bonds), or except as provided in the Lease and particularly **Section 10.8** thereof, for the recording or rerecording, filing or refiling of this Indenture or any security agreement in connection therewith (excluding the continuation of Uniform Commercial Code financing statements), or for insuring the Project or collecting any insurance moneys, or for the validity of the execution by the City of this Indenture or of any Supplemental Indentures or instruments of further assurance, or for the sufficiency of the security of the Bonds. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of funds made by it in accordance with **Article VII** hereof.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated and delivered hereunder. The Trustee, in its individual or any other capacity, may become the Owner or pledgee of Bonds with the same rights that it would have if it were not Trustee. The Trustee shall not be accountable for the use or application by the City or the Company of the proceeds of any of the Bonds or of any money paid to or upon the order of the City or Company under any provision of this Indenture.

(e) The Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, affidavit, letter, telegram or other paper or document provided for under this Indenture believed by it to be genuine and correct and to have been signed, presented or sent by the proper Person or Persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any Person who, at the time of making such request or giving such authority or consent is an Owner, shall be conclusive and binding upon all future Owners of the same Bond and upon Bonds issued in exchange therefor or upon transfer or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, or whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Trustee shall be entitled to rely upon a certificate signed by the Authorized City Representative or an Authorized Company Representative as sufficient evidence of the facts therein contained, and before the occurrence of a default of which the Trustee has been notified as provided in subsection (h) of this Section or of which by said subsection it is deemed to have notice, the Trustee shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure

such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee is under no duty to perform an independent investigation as to any statement or fact contained in any such certificate, opinion or advice it obtains regarding the accuracy or truth of any statement or correctness of any opinion. The Trustee shall not be liable for any action or inaction taken in good faith in reliance on such a certificate or any advice received from counsel, and the Trustee may conclusively rely as to the truth of the statements and the correctness of the opinions or statements expressed therein.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its negligence or willful misconduct. In no event shall the Trustee be liable for consequential damages. The Trustee shall not be liable for any act or omission, in the absence of bad faith, when the Trustee reasonably believes the act or failure to act is authorized and within its powers to perform under the Indenture.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder except failure by the City to cause to be made any of the payments to the Trustee required to be made in **Article VI** hereof, unless the Trustee is specifically notified in writing of such default by the City or by the Owners of at least 25% in aggregate principal amount of all Bonds then Outstanding.

(i) At any and all reasonable times and subject to the Company's reasonable and standard security procedures, the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives may, but shall not be required to, inspect any and all of the Project, and all books, papers and records of the City pertaining to the Project and the Bonds, and to take such memoranda from and in regard thereto as may be desired. The Trustee shall treat all proprietary information of the Company as confidential.

(j) The Trustee shall not be required to give any bond or surety in respect to the execution of its trusts and powers hereunder or otherwise in respect of the Project.

(k) The Trustee may, but shall not be required to, demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required, as a condition of such action by the Trustee deemed desirable for the purpose of establishing the right of the City to the authentication of any Bonds, the withdrawal of any cash, or the taking of any other action by the Trustee.

(l) Notwithstanding anything in the Indenture or the Lease to the contrary, before taking any action under this Indenture other than the payments from moneys on deposit in the Project Fund or the Bond Fund, as provided herein, the Trustee may require that satisfactory indemnity be furnished to it for the reimbursement of all costs and expenses to which it may be put and to protect it against all liability which it may incur in or by reason of such action, except liability which is adjudicated to have resulted from its negligence or willful misconduct by reason of any action so taken.

(m) Notwithstanding any other provision of this Indenture to the contrary, any provision relating to the conduct of, intended to provide authority to act, right to payment of fees and expenses, protection, immunity and indemnification to the Trustee, shall be interpreted to

include any action of the Trustee, whether it is deemed to be in its capacity as Trustee, bond registrar or Paying Agent.

(n) The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds and shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

(o) None of the provisions of this Indenture shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.

Section 1002. Fees, Charges and Expenses of the Trustee. The Trustee shall be entitled to payment of and/or reimbursement for reasonable fees for its ordinary services rendered hereunder and all advances, agent and counsel fees and other ordinary expenses reasonably made or incurred by the Trustee in connection with such ordinary services. If it becomes necessary for the Trustee to perform extraordinary services, it shall be entitled to reasonable extra compensation therefor and to reimbursement for reasonable extraordinary expenses in connection therewith; provided that if such extraordinary services or extraordinary expenses are occasioned by the neglect or willful misconduct of the Trustee, it shall not be entitled to compensation or reimbursement therefor. The Trustee shall be entitled to payment and reimbursement for the reasonable fees and charges of the Trustee as Paying Agent for the Bonds. Pursuant to the provisions of **Section 5.2** of the Lease, the Company has agreed to pay to the Trustee all reasonable fees, charges and expenses of the Trustee under this Indenture. The Trustee agrees that the City shall have no liability for any reasonable fees, charges and expenses of the Trustee, and the Trustee agrees to look only to the Company for the payment of all reasonable fees, charges and expenses of the Trustee and any Paying Agent as provided in the Lease. Upon the occurrence of an Event of Default and during its continuance, the Trustee shall have a lien with right of payment before payment on account of principal of or interest on any Bond, upon all moneys in its possession under any provisions hereof for the foregoing reasonable advances, fees, costs and expenses incurred. The Trustee's right to compensation and indemnification relating to period during which it serves as Trustee hereunder shall survive the satisfaction and discharge of this Indenture or its resignation or removal hereunder and payment in full of the Bonds.

Section 1003. Notice to Owners if Default Occurs. If a default occurs of which the Trustee is by **Section 1001(h)** hereof required to take notice or if notice of default is given as in said subsection (h) provided, then the Trustee shall give written notice thereof to the last known Owners of all Bonds then Outstanding as shown by the bond registration books required by **Section 206** hereof to be kept at the corporate trust office of the Trustee.

Section 1004. Intervention by the Trustee. In any judicial proceeding to which the City is a party and which, in the opinion of the Trustee and its counsel, has a substantial bearing on the interests of Owners, the Trustee may intervene on behalf of Owners and, subject to the provisions of **Section 1001(i)** hereof, shall do so if requested in writing by the Owners of at least 25% of the aggregate principal amount of Bonds then Outstanding.

Section 1005. Successor Trustee Upon Merger, Consolidation or Sale. With the prior written consent of the Company, any corporation or association into which the Trustee may be merged or converted or with or into which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any

merger, conversion, sale, consolidation or transfer to which it is a party, shall be and become successor Trustee hereunder and shall be vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereunder as was its predecessor, without the execution or filing of any instrument or any further act on the part of any of the parties hereto.

Section 1006. Resignation of Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 30 days' written notice to the City, the Company and the Owners, and such resignation shall take effect at the end of such 30 days, or upon the earlier appointment of a successor Trustee by the Owners or by the City; provided, however, that in no event shall the resignation of the Trustee or any successor trustee become effective until such time as a successor trustee has been appointed and has accepted the appointment. If no successor has been appointed and accepted the appointment within 30 days after the giving of such notice of resignation, the Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee. The Trustee's rights to indemnity and to any fees, charges or other amounts due and payable to it shall survive such resignation.

Section 1007. Removal of Trustee. The Trustee may be removed at any time, with or without cause, by an instrument or concurrent instruments in writing (a) delivered to the Trustee, the City and the Company and signed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding, or (b) so long as no Event of Default under this Indenture or the Lease shall have occurred and be continuing, delivered to the Trustee, the Company and the Owners and signed by the City. The Trustee's rights to indemnity and to any fees, charges or other amounts due and payable to it shall survive such removal.

Section 1008. Appointment of Successor Trustee. If the Trustee hereunder resigns or is removed, or otherwise becomes incapable of acting hereunder, or if it is taken under the control of any public officer or officers or of a receiver appointed by a court, a successor Trustee (a) reasonably acceptable to the City may be appointed by the Company (so long as no Event of Default has occurred and is continuing), or (b) reasonably acceptable to the City and the Company may be appointed by the Owners of a majority in aggregate principal amount of Bonds then Outstanding, by an instrument or concurrent instruments in writing; provided, nevertheless, that in case of such vacancy, the City, by an instrument executed and signed by its Mayor or (Interim) City Manager and attested by its City Clerk under its seal, may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed in the manner above provided. Any such temporary Trustee so appointed by the City shall immediately and without further acts be superseded by the successor Trustee so appointed as provided above. Every such Trustee appointed pursuant to the provisions of this Section shall be a trust company or bank in good standing and qualified to accept such trust with a corporate trust office in the State, and having, or whose obligations are guaranteed by a financial institution having, a reported capital, surplus and undivided profits of not less than \$50,000,000. If no successor Trustee has been so appointed and accepted appointment in the manner herein provided, the Trustee or any Owner may petition any court of competent jurisdiction for the appointment of a successor Trustee, until a successor shall have been appointed as above provided.

Section 1009. Vesting of Trusts in Successor Trustee. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the City and the Company an instrument in writing accepting such appointment hereunder, and thereupon such successor shall, without any further act, deed or conveyance, become fully vested with all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of its predecessor and the duties and obligations of such predecessor hereunder shall thereafter cease and terminate; but such predecessor shall, nevertheless, on the written request of the City, execute and deliver an instrument transferring to such successor Trustee all the trusts, powers, rights, obligations, duties, remedies, immunities and privileges of such predecessor hereunder; every predecessor Trustee shall deliver all securities and moneys held by it as Trustee hereunder

to its successor. Should any instrument in writing from the City be required by any predecessor or successor Trustee for more fully and certainly vesting in such successor the trusts, powers, rights, obligations, duties, remedies, immunities and privileges hereby vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

Section 1010. Right of Trustee to Pay Taxes and Other Charges. If any tax, assessment or governmental or other charge upon, or insurance premium with respect to, any part of the Project is not paid as required herein or in the Lease, the Trustee may pay such tax, assessment or governmental charge or insurance premium, without prejudice, however, to any rights of the Trustee or the Owners hereunder arising in consequence of such failure; any amount at any time so paid under this Section, with interest thereon from the date of payment at the rate of 10% per annum, shall become an additional obligation secured by this Indenture, and the same shall be given a preference in payment over any payment of principal of or interest on the Bonds, and shall be paid out of the proceeds of rents, revenues and receipts collected from the Project, if not otherwise caused to be paid; but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by the Owners of at least 25% of the aggregate principal amount of Bonds then Outstanding and shall have been provided adequate funds for the purpose of such payment.

Section 1011. Trust Estate May be Vested in Co-Trustee.

(a) It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the State) denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdiction. It is recognized that in case of litigation under this Indenture or the Lease, and in particular in case of the enforcement of either this Indenture or the Lease upon the occurrence of an Event of Default or if the Trustee deems that by reason of any present or future law of any jurisdiction it cannot exercise any of the powers, rights or remedies herein granted to the Trustee, or take any other action which may be desirable or necessary in connection therewith, it may be necessary or desirable that the Trustee appoint an additional individual or institution as a co-trustee or separate trustee, and the Trustee is hereby authorized to appoint such co-trustee or separate trustee.

(b) If the Trustee appoints an additional individual or institution as a co-trustee or separate trustee (which appointment shall be subject to the approval of the Company), each and every remedy, power, right, claim, demand, cause of action, immunity, title, interest and lien expressed or intended by this Indenture to be exercised by the Trustee with respect thereto shall be exercisable by such co-trustee or separate trustee but only to the extent necessary to enable such co-trustee or separate trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such co-trustee or separate trustee shall run to and be enforceable by either of them.

(c) Should any deed, conveyance or instrument in writing from the City be required by the co-trustee or separate trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to such co-trustee such properties, rights, powers, trusts, duties and obligations, any and all such deeds, conveyances and instruments in writing shall, on request, be executed, acknowledged and delivered by the City.

(d) If any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, all the properties, rights, powers, trusts, duties and obligations of such co-trustee or separate trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such co-trustee or separate trustee.

Section 1012. Accounting. The Trustee shall render an annual accounting for the period ending December 31 of each year, within 90 days following the end of such year, to the City, the Company and to any Owner requesting the same and, upon the request of the City, the Company or any Owner, a monthly accounting to any such party, showing in reasonable detail all financial transactions relating to the Trust Estate during the accounting period and the balance in any funds or accounts created by this Indenture as of the beginning and close of such accounting period.

Section 1013. Performance of Duties Under the Lease. The Trustee hereby accepts and agrees to perform all duties and obligations assigned to it under the Lease.

ARTICLE XI

SUPPLEMENTAL INDENTURES

Section 1101. Supplemental Indentures Not Requiring Consent of Owners. The City and the Trustee may from time to time, without the consent of or notice to any of the Owners, enter into such Supplemental Indenture or Supplemental Indentures as shall not be inconsistent with the terms and provisions hereof, for any one or more of the following purposes:

- (a) To cure any ambiguity or formal defect or omission in this Indenture, or to make any other change which, in the judgment of the Trustee, is not to the material prejudice of the Trustee or the Owners (provided the Trustee is entitled to receive and may conclusively rely upon an opinion of counsel in exercising such judgment);
- (b) To grant to or confer upon the Trustee for the benefit of the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Owners or the Trustee or either of them;
- (c) To more precisely identify any portion of the Project or to add additional property thereto;
- (d) To conform the Indenture to amendments to the Lease made by the City and the Company; or
- (e) To subject to this Indenture additional revenues, properties or collateral.

Section 1102. Supplemental Indentures Requiring Consent of Owners.

(a) Exclusive of Supplemental Indentures covered by **Section 1101** hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding may, from time to time, anything contained in this Indenture to the contrary notwithstanding, consent to and approve the execution by the City and the Trustee of such other Supplemental Indenture or Supplemental Indentures as shall be deemed necessary and desirable by the City for the purpose of modifying, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that without the consent of the Owners of 100% of the principal amount of the Bonds then Outstanding, nothing in this Indenture contained shall permit or be construed as permitting (1) an extension of the maturity or a shortening of the redemption date of the principal of or the interest, if any, on any Bond

issued hereunder, or (2) a reduction in the principal amount of any Bond or the rate of interest thereon, if any, or (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (4) a reduction in the aggregate principal amount of Bonds; for any of which the consent of the Owners of 100% of the principal amount of the affected Bonds then Outstanding is required.

(b) If at the time the City requests the Trustee to enter into any such Supplemental Indenture for any of the purposes of this Section, the Trustee shall cause notice of the proposed execution of such Supplemental Indenture to be mailed to each Owner as shown on the bond registration books required by **Section 206** hereof. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the corporate trust office of the Trustee for inspection by all Owners. If within 60 days or such longer period as may be prescribed by the City following the mailing of such notice, the Owners of not less than a majority in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Indenture shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

Section 1103. Company's Consent to Supplemental Indentures. Anything herein to the contrary notwithstanding, a Supplemental Indenture under this Article that affects any rights of the Company shall not become effective unless and until the Company shall have consented in writing to the execution and delivery of such Supplemental Indenture. The Trustee shall cause notice of the proposed execution and delivery of any Supplemental Indenture (regardless of whether it affects the Company's rights) together with a copy of the proposed Supplemental Indenture to be mailed to the Company at least 15 days prior to the proposed date of execution and delivery of the Supplemental Indenture.

Section 1104. Opinion of Counsel. In executing, or accepting the additional trusts created by, any Supplemental Indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee and the City shall receive, and, shall be fully protected in relying upon, an opinion of counsel addressed and delivered to the Trustee and the City stating that the execution of such Supplemental Indenture is permitted by and in compliance with this Indenture and will, upon the execution and delivery thereof, be a valid and binding obligation of the City. The Trustee may, but shall not be obligated to, enter into any such Supplemental Indenture which affects the Trustee's rights, duties or immunities under this Indenture or otherwise.

ARTICLE XII

SUPPLEMENTAL LEASES

Section 1201. Supplemental Leases Not Requiring Consent of Owners. The City and the Trustee shall, without the consent of or notice to the Owners, consent to the execution of any Supplemental Lease or Supplemental Leases by the City and the Company as may be required (a) by the provisions of the Lease and this Indenture, (b) for the purpose of curing any ambiguity or formal defect or omission in the Lease, (c) so as to more precisely identify the Project or add additional property thereto or (d) in connection with any other change therein which, in the judgment of the Trustee, does not materially and adversely affect the Trustee or security for the Owners (provided the Trustee is entitled to receive and may conclusively rely upon an opinion of counsel in exercising such judgment).

Section 1202. Supplemental Leases Requiring Consent of Owners. Except for Supplemental Leases as provided for in **Section 1201** hereof, neither the City nor the Trustee shall consent to the execution of any Supplemental Lease or Supplemental Leases by the City or the Company without the mailing of notice and the obtaining of the written approval or consent of the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding given and obtained as provided in **Section 1102** hereof. If at any time the City and the Company shall request the consent of the Trustee to any such proposed Supplemental Lease, the Trustee shall cause notice of such proposed Supplemental Lease to be mailed in the same manner as provided in **Section 1102** hereof with respect to Supplemental Indentures. Such notice shall briefly set forth the nature of such proposed Supplemental Lease and shall state that copies of the same are on file in the corporate trust office of the Trustee for inspection by all Owners. If within 60 days or such longer period as may be prescribed by the City following the mailing of such notice, the Owners of not less than 50% in aggregate principal amount of the Bonds Outstanding at the time of the execution of any such Supplemental Lease shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the City from executing the same or from taking any action pursuant to the provisions thereof.

Section 1203. Opinion of Counsel. In executing or consenting to any Supplemental Lease permitted by this Article, the City and the Trustee shall receive, and shall be fully protected in relying upon, an opinion of counsel addressed to the Trustee and the City stating that the executing of such Supplemental Lease is authorized or permitted by the Lease and this Indenture and the applicable law and will upon the execution and delivery thereof be valid and binding obligations of the parties thereof.

ARTICLE XIII

SATISFACTION AND DISCHARGE OF INDENTURE

Section 1301. Satisfaction and Discharge of this Indenture.

(a) When the principal of and interest on all the Bonds have been paid in accordance with their terms or provision has been made for such payment, as provided in **Section 1302** hereof, and provision also made for paying all other sums payable hereunder and under the Lease, including the reasonable fees and expenses of the Trustee, the City and Paying Agent to the date of retirement of the Bonds, then the right, title and interest of the Trustee in respect hereof shall thereupon cease, determine and be void. Thereupon, the Trustee shall cancel, discharge and release this Indenture and shall upon the written request of the City or the Company execute, acknowledge and deliver to the City such instruments of satisfaction and discharge or release as shall be required to evidence such release and the satisfaction and discharge of this Indenture, and shall assign and deliver to the City (subject to the City's obligations under **Section 11.2** of the Lease) any property at the time subject to this Indenture which may then be in its possession, except amounts in the Bond Fund required to be paid to the Company under **Section 602** hereof and except funds or securities in which such funds are invested held by the Trustee for the payment of the principal of and interest on the Bonds.

(b) The City is hereby authorized to accept a certificate by the Trustee that the whole amount of the principal and interest, if any, so due and payable upon all of the Bonds then Outstanding has been paid or such payment provided for in accordance with **Section 1302** hereof as evidence of satisfaction of

this Indenture, and upon receipt thereof shall cancel and erase the inscription of this Indenture from its records.

Section 1302. Bonds Deemed to be Paid.

(a) Bonds shall be deemed to be paid within the meaning of this Article when payment of the principal of and interest thereon to the due date thereof (whether such due date be by reason of maturity or upon redemption as provided in this Indenture, or otherwise), either (1) have been made or caused to be made in accordance with the terms thereof, or (2) have been provided for by depositing with the Trustee or other commercial bank or trust company having full trust powers and authorized to accept trusts in the State in trust and irrevocably set aside exclusively for such payment (i) moneys sufficient to make such payment or (ii) Government Securities maturing as to principal and interest in such amount and at such times as will insure the availability of sufficient moneys to make such payment, or (3) have been provided for by surrendering the Bonds to the Trustee for cancellation. At such time as Bonds are deemed to be paid hereunder, as aforesaid, they shall no longer be secured by or entitled to the benefits of this Indenture, except for the purposes of such payment from such moneys or Government Securities.

(b) Notwithstanding the foregoing, in the case of Bonds which by their terms may be redeemed before the stated maturities thereof, no deposit under clause (2) of the immediately preceding paragraph shall be deemed a payment of such Bonds as aforesaid until, as to all such Bonds which are to be redeemed before their respective stated maturities, proper notice of such redemption shall have been given in accordance with **Article III** hereof or irrevocable instructions shall have been given to the Trustee to give such notice.

(c) Notwithstanding any provision of any other section of this Indenture which may be contrary to the provisions of this Section, all moneys or Government Securities set aside and held in trust pursuant to the provisions of this Section for the payment of Bonds shall be applied to and used solely for the payment of the particular Bonds, with respect to which such moneys and Government Securities have been so set aside in trust.

ARTICLE XIV

MISCELLANEOUS PROVISIONS

Section 1401. Consents and Other Instruments by Owners.

(a) Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Owners may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owners in Person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Bonds (other than the assignment of ownership of a Bond) if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken, suffered or omitted under any such instrument, namely:

(i) The fact and date of the execution by any Person of any such instrument may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the Person signing such instrument acknowledged before him the execution thereof, or by affidavit of any witness to such execution.

(ii) The fact of ownership of Bonds and the amount or amounts, numbers and other identification of such Bonds, and the date of holding the same shall be proved by the registration books of the City maintained by the Trustee pursuant to **Section 206** hereof.

(b) In determining whether the Owners of the requisite principal amount of Bonds Outstanding have given any request, demand, authorization, direction, notice, consent or waiver under this Indenture, Bonds owned by the Company shall be disregarded and deemed not to be Outstanding under this Indenture, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Bonds which the Trustee knows to be so owned shall be so disregarded; provided, the foregoing provisions shall not be applicable if the Company is the only Owner of the Bonds. Notwithstanding the foregoing, Bonds so owned which have been pledged in good faith shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and the pledgee is not the Company or any affiliate thereof.

Section 1402. Limitation of Rights Under this Indenture. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give any Person other than the parties hereto, and the Owners, if any, any right, remedy or claim under or in respect to this Indenture, this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Owners, as herein provided.

Section 1403. Notices. It shall be sufficient service of any notice, request, complaint, demand or other paper required by this Indenture to be given or filed with the City, the Trustee, the Company or Owners if the same is duly mailed, postage prepaid, sent by overnight delivery or other delivery service, as follows:

(a) To the City:

City of Independence, Missouri
111 E. Maple Avenue
Independence, MO 64050
Attention: City Manager

(b) To the Trustee:

UMB Bank, N.A.
928 Grand Blvd, 12th Floor
Kansas City, MO 64106
Attention: Corporate Trust Department

(c) To the Company:

Wally's Independence MO Owner LLC
1400 S. Highway Drive, Suite 403
Fenton, Missouri 63026
Attn: _____

With a copy to:

Polsinelli PC
900 W. 48th Place, Suite 900
Kansas City, MO 64112
Attention: Curtis J. Petersen

(d) To the Owners if the same is duly mailed by first class, registered or certified mail addressed to each of the Owners of Bonds at the time Outstanding as shown by the bond registration books required by **Section 206** hereof to be kept at the corporate trust office of the Trustee.

All notices given by certified or registered mail as aforesaid shall be deemed fully given as of the date they are so mailed, provided that any of the foregoing given to the Trustee shall be effective only upon receipt. All notices given by overnight delivery or other delivery service shall be deemed fully given as of the date when received. A duplicate copy of each notice, certificate or other communication given hereunder by either the City or the Trustee to the other shall also be given to the Company. The City, the Company and the Trustee may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

Section 1404. Severability. If any provision of this Indenture shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

Section 1405. Execution in Counterparts. This Indenture 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 1406. Governing Law. This Indenture shall be governed exclusively by and construed in accordance with the applicable laws of the State.

Section 1407. Electronic Storage. The parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored 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 1408. Electronic Notice to Trustee. The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent in writing or by electronic notice, provided, however, that such instructions or directions shall be signed by an Authorized Company Representative. If the Company elects to give the instructions by electronic notice, the Trustee may deem such instructions controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. Pursuant to the Lease, the Company agrees to assume all risks arising out of the use of such electronic notice to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

IN WITNESS WHEREOF, City of Independence, Missouri, has caused this Indenture to be signed in its name and behalf by its (Interim) City Manager and the seal of the City to be hereunto affixed and attested by the City Clerk, and to evidence its acceptance of the trusts hereby created, the Trustee has caused this Indenture to be signed in its name and behalf by a duly authorized officer, all as of the date first above written.

CITY OF INDEPENDENCE, MISSOURI



[SEAL]

ATTEST:

By: Susanne Holland
Name: Susanne Holland
Title: City Clerk

By: Lisa Reynolds
Name: Lisa Reynolds
Title: Interim City Manager

UMB BANK, N.A.,
as Trustee

[SEAL]

By _____
Name:
Title:

ATTEST:

By _____
Name:
Title:

EXHIBIT A

PROJECT SITE

The following described real estate located in Jackson County, Missouri:

ALL THAT PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23, TOWNSHIP 49, RANGE 32, IN THE CITY OF INDEPENDENCE, JACKSON COUNTY, MISSOURI, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHEAST 1/4; THENCE SOUTH 90° 00' 00" EAST, ALONG THE NORTH LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 272.31 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 40.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF 39TH STREET, AS ESTABLISHED BY DOCUMENT NO. 1456433, RECORDED IN BOOK 11078, PAGE 1452, SAID POINT BEING THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE HEREIN DESCRIBED; THENCE SOUTH 0° 00' 00" WEST, AT RIGHT ANGLES TO SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 343.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 18.45 FEET; THENCE SOUTH 1° 15' 00" EAST, PARALLEL TO THE EAST RIGHT-OF-WAY LINE OF NOLAND ROAD, AS NOW ESTABLISHED, A DISTANCE OF 130.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 5.00 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 200.00 FEET; THENCE SOUTH 90° 00' 00" WEST, A DISTANCE OF 152.81 FEET (DEED = 152.98 FEET), TO A POINT ON THE AFORESAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST (DEED = SOUTH 11° 02' 39" EAST), ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 65.40 FEET; THENCE NORTH 90° 00' 00" EAST, A DISTANCE OF 201.39 FEET; THENCE SOUTH 1° 02' 25" EAST, A DISTANCE OF 355.00 FEET; THENCE NORTH 85° 50' 55" WEST, A DISTANCE OF 140.49 FEET (DEED = 140.92 FEET), TO A POINT ON SAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 7.64 FEET (DEED = SOUTH 11° 02' 39" EAST, A DISTANCE OF 8.29 FEET), TO A POINT THAT IS OPPOSITE AND 155.00 FEET EAST OF STATION 18+50 ON THE CENTERLINE OF NOLAND ROAD; THENCE SOUTH 88° 41' 51" WEST, (DEED = SOUTH 88° 45' 00" WEST), CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 25.00 FEET TO A POINT THAT IS OPPOSITE AND 130 FEET EAST OF STATION 18+50 ON SAID NOLAND ROAD CENTERLINE; THENCE SOUTH 2° 02' 11" EAST CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 124.30 FEET (DEED = SOUTH 1° 15' 00" EAST, A DISTANCE OF 124.24 FEET), TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE ROUTE NO. 1-70, AS NOW ESTABLISHED THAT IS OPPOSITE AND 228.80 FEET NORTHERLY OF STATION 545+60 ON THE CENTERLINE OF SAID 1-70, THENCE SOUTH 84° 21' 11" EAST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 643.04 FEET (DEED = SOUTH 84° 17' 39" EAST, A DISTANCE OF 644.64 FEET) TO A POINT THAT IS OPPOSITE AND 166.30 FEET NORTHERLY OF STATION 552+00 ON THE CENTERLINE OF SAID 1-70; THENCE SOUTH 89° 55' 50" EAST, CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 546.03 FEET (DEED = SOUTH 89° 51' 16" EAST, A DISTANCE OF 545.61 FEET), TO A POINT ON THE WEST LINE OF "BROOKWOOD NO. 2", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE NORTH 1° 15' 58" WEST, ALONG THE WEST LINE OF SAID SUBDIVISION, A DISTANCE OF 785.43 FEET (DEED = NORTH 1° 12' 00" WEST, A

DISTANCE OF 786.12 FEET), TO THE SOUTHEAST CORNER OF LOT 19, "WOODRIDGE", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE SOUTH 89° 51' 43" WEST, ALONG THE SOUTH LINE OF SAID "WOODRIDGE", A DISTANCE OF 251.04 FEET (DEED = NORTH 90° 00' 00" WEST, A DISTANCE OF 250.63 FEET), TO AN ANGLE POINT THEREIN; THENCE NORTH 80° 01' 00" WEST, CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 288.30 FEET TO AN ANGLE POINT THEREIN; THENCE SOUTH 89° 47' 57" WEST (DEED = NORTH 90° 00' 00" WEST), CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 286.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF DODGION STREET, AS NOW ESTABLISHED; THENCE NORTH 0° 12' 03" WEST (DEED = NORTH 0° 00' 00" WEST), ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 5.00 FEET TO THE SOUTHEAST CORNER OF LOT 34, SAID "WOODRIDGE"; THENCE SOUTH 89° 47' 57" WEST ALONG THE SOUTH LINE OF SAID LOT 34, A DISTANCE OF 135.40 FEET (DEED = 90° 00' 00" WEST, A DISTANCE OF 135.00 FEET), TO THE SOUTHWEST CORNER OF SAID LOT 34; THENCE NORTH 0° 00' 00" EAST, ALONG THE WEST LINE OF SAID "WOODRIDGE" SUBDIVISION, A DISTANCE OF 440.00 FEET TO THE AFORESAID SOUTH RIGHT-OF-WAY LINE OF 39TH STREET; THENCE NORTH 90° 00' 00" WEST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

PROJECT IMPROVEMENTS

The Project Improvements consist of the following, to the extent paid for in whole with Bond proceeds:

- (1) the demolition of existing improvements and construction of an approximately 54,000 square foot travel center, including fuel pumps, landscaping, parking and other amenities on the Project Site, and
- (2) public improvements relating to the development of the Project Site, including improvements to I-70 on and off ramps, Noland Road, Lynn, Canterbury, and 39th Street, with related signalization, utilities and earthwork (such portion described under this subsection (2) being the "Public Improvements").

EXHIBIT C

FORM OF BONDS

***THIS BOND OR ANY PORTION HEREOF MAY BE TRANSFERRED, ASSIGNED OR
NEGOTIATED ONLY AS PROVIDED IN THE HEREIN DESCRIBED INDENTURE.***

No. 1

**Not to Exceed
\$52,050,000**

**UNITED STATES OF AMERICA
STATE OF MISSOURI**

**CITY OF INDEPENDENCE, MISSOURI
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BOND
(WALLY'S REDEVELOPMENT PROJECT)
SERIES 2026**

Interest Rate

7.00%

Maturity Date

December 1, 2027

Dated Date

_____, 2026

OWNER:

WALLY'S INDEPENDENCE MO OWNER LLC

MAXIMUM PRINCIPAL AMOUNT:

**NOT TO EXCEED FIFTY-TWO MILLION
FIFTY THOUSAND DOLLARS**

THE CITY OF INDEPENDENCE, MISSOURI, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri (the "City"), for value received, promises to pay, but solely from the source hereinafter referred to, to the Owner named above, or registered assigns thereof, on the Maturity Date shown above, the principal amount shown above, or such lesser amount as may be outstanding hereunder as reflected on **Schedule I** hereto held by the Trustee as provided in the hereinafter referred to Indenture. The City agrees to pay such principal amount to the Owner in any coin or currency of the United States of America which on the date of payment thereof is legal tender for the payment of public and private debts, and in like manner to pay to the Owner hereof, either by check or draft mailed to the Owner at a stated address as it appears on the bond registration books of the City kept by the Trustee under the within mentioned Indenture or, in certain situations authorized in the Indenture, by internal bank transfer or by wire transfer to an account in a commercial bank or savings institution located in the continental United States. Interest on the Cumulative Outstanding Principal Amount (as hereinafter defined) at the per annum Interest Rate stated above, payable in arrears on each December 1, commencing on December 1, 2026, and continuing thereafter until the earlier of the date on which said Cumulative Outstanding Principal Amount is paid in full or the Maturity Date. Interest on each advancement of the principal amount of this Bond shall accrue from the date that such advancement is made, computed on the basis of a year of 360 days consisting of 12 months of 30 days each.

As used herein, the term “Cumulative Outstanding Principal Amount” means all Bonds outstanding under the terms of the hereinafter-defined Indenture, as reflected on **Schedule I** hereto maintained by the Trustee.

THIS BOND is one of a duly authorized series of Bonds of the City designated “City of Independence, Missouri, Taxable Industrial Development Revenue Bonds (Wally’s Redevelopment Project), Series 2026,” in the maximum aggregate principal amount of \$52,050,000 (the “Bonds”), to be issued for the purpose of acquiring and improving certain real property located on approximately 20.9 acres near the intersection of Noland Road and Interstate Highway 70 in the City (the “Project Site,” as more fully described on **Exhibit A** to the Lease (defined below)), including the construction and improvement of a commercial facility together with related public improvements (the “Project Improvements”). The City will lease the Project Site and the Project Improvements (collectively, the “Project”) to a private-sector company (the “Company”), under the terms of a Lease Agreement dated as of January 1, 2026 (said Lease Agreement, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “Lease”), between the City and the Company, all pursuant to the authority of and in full compliance with the provisions, restrictions and limitations of the Constitution, the statutes of the State of Missouri, including particularly the Act, the charter of the City and pursuant to proceedings duly had by the Council of the City.

THE BONDS are issued under and are equally and ratably secured and entitled to the protection given by a Trust Indenture dated as of January 1, 2026 (said Trust Indenture, as amended and supplemented from time to time in accordance with the provisions thereof, being herein called the “Indenture”), between the City and UMB BANK, N.A., Kansas City, Missouri, as trustee (the “Trustee”). *Capitalized terms not defined herein shall have the meanings set forth in the Indenture.*

Reference is hereby made to the Indenture for a description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the City, the Trustee and the Owners, and the terms upon which the Bonds are issued and secured.

THE BONDS are subject to redemption and payment prior to maturity as provided in the Indenture.

THE BONDS, including interest thereon, are special obligations of the City and are payable solely out of the rents, revenues and receipts derived by the City from the Project and the Lease and not from any other fund or source of the City, and are secured by a pledge and assignment of the Project and of such rents, revenues and receipts, including all rentals and other amounts to be received by the City under and pursuant to the Lease, all as provided in the Indenture. The Bonds do not constitute a general obligation of the City or the State of Missouri, and neither the City nor said State shall be liable thereon, and the Bonds shall not constitute an indebtedness within the meaning of any constitutional, charter or statutory debt limitation or restriction, and are not payable in any manner by taxation. Pursuant to the provisions of the Lease, rental payments sufficient for the prompt payment when due of the principal of and interest on the Bonds are to be paid by the Company directly to the Trustee for the account of the City and deposited in a special fund created by the City and designated the “City of Independence, Missouri, Bond Fund – Wally’s Independence MO Owner LLC.”

THE OWNER of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any Event of Default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. In certain events, on the conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Bonds issued under the Indenture and then Outstanding

may become or may be declared due and payable before the stated maturity thereof, together with interest accrued thereon. Modifications or alterations of this Bond or the Indenture may be made only to the extent and in the circumstances permitted by the Indenture.

THIS BOND is transferable, as provided in the Indenture, only upon the books of the City kept for that purpose at the above-mentioned office of the Trustee by the Owner hereof in Person or by such Person's duly authorized attorney, upon surrender of this Bond together with a written instrument of transfer reasonably satisfactory to the Trustee duly executed by the Owner or such Person's duly authorized attorney, and thereupon a new fully registered Bond or Bonds, in the same aggregate principal amounts, shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon payment of the charges therein prescribed. The City, the Trustee and any Paying Agent may deem and treat the Person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes.

THE BONDS are issuable in the form of one fully-registered Bond in the maximum principal amount of \$52,050,000.

THIS BOND shall not be valid or become obligatory for any purposes or be entitled to any security or benefit under the Indenture until the Certificate of Authentication hereon shall have been executed by the Trustee.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by the Constitution and laws of the State of Missouri.

IN WITNESS WHEREOF, the City of Independence, Missouri has caused this Bond to be executed in its name by the manual or facsimile signature of its Mayor or (Interim) City Manager, attested by the manual or facsimile signature of its City Clerk and its corporate seal to be affixed hereto or imprinted hereon, and has caused this Bond to be dated the date set forth above.

CERTIFICATE OF AUTHENTICATION

CITY OF INDEPENDENCE, MISSOURI

This Bond is one of the Bonds
of the issue described in the
within-mentioned Indenture.

By: _____
Interim City Manager

Registration Date: _____

UMB BANK, N.A.,
as Trustee

ATTEST: _____ (Seal)

By _____
Authorized Signatory

City Clerk

SCHEDULE I

TABLE OF CUMULATIVE OUTSTANDING PRINCIPAL AMOUNT

**CITY OF INDEPENDENCE, MISSOURI
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BOND
(WALLY'S REDEVELOPMENT PROJECT)
SERIES 2026**

[illegible]

FORM OF ASSIGNMENT

(NOTE RESTRICTIONS ON TRANSFERS)

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

Print or Typewrite Name, Address and Social Security or
other Taxpayer Identification Number of Transferee

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints
_____ agent to transfer the within Bond on the books kept by the Trustee for
the registration and transfer of Bonds, with full power of substitution in the premises.

Dated: _____.

NOTICE: The signature to this assignment must
correspond with the name as it appears upon the
face of the within Bond in every particular.

PLACE SIGNATURE MEDALLION BELOW:

EXHIBIT D

FORM OF REPRESENTATION LETTER

City of Independence, Missouri
111 E. Maple Avenue
Independence, MO 64050
Attention: City Manager

UMB BANK, N.A., as Trustee
928 Grand Blvd, 12th Floor
Kansas City, MO 64106
Attention: Corporate Trust Department

Re: \$52,050,000 Maximum Principal Amount of Taxable Industrial Development Revenue Bonds (Wally's Redevelopment Project), Series 2026 of the City of Independence, Missouri

Ladies and Gentlemen:

In connection with the purchase of the above-referenced Bonds (the "Bonds"), the undersigned purchaser of the Bonds (the "Purchaser") hereby represents, warrants and agrees as follows:

1. The Purchaser fully understands that (a) the Bonds have been issued under and pursuant to a Trust Indenture dated as of January 1, 2026 (the "Indenture"), between the City of Independence, Missouri (the "City") and UMB Bank, N.A., Kansas City, Missouri, as trustee (the "Trustee"), and (b) the Bonds are payable solely out of certain rents, revenues and receipts to be derived from the leasing or sale of the Project (as defined in the Indenture) to Wally's Independence MO Owner LLC, a Missouri limited liability company (the "Company"), under a Lease Agreement dated as of January 1, 2026 (the "Lease"), between the City and the Company, with certain of such rents, revenues and receipts being pledged and assigned by the City to the Trustee under the Indenture to secure the payment of the principal of and interest on the Bonds.

2. The Purchaser understands that the Bonds have not been registered under the Securities Act of 1933, as amended (the "1933 Act"), or the securities laws of any state and will be sold to the Purchaser in reliance upon certain exemptions from registration and in reliance upon the representations and warranties of the Purchaser set forth herein.

3. The Purchaser understands that the Bonds are transferable only in the manner provided for in the Indenture and discussed below and warrants that it is acquiring the Bonds for its own account with the intent of holding the Bonds as an investment, and the acquisition of the Bonds is not made with a view toward their distribution or for the purpose of offering, selling or otherwise participating in a distribution of the Bonds.

4. The Purchaser agrees not to attempt to offer, sell, hypothecate or otherwise distribute the Bonds to others unless authorized by the terms of the Indenture and upon receipt of any required opinion of counsel acceptable to the City, the Company, the Trustee and the Purchaser that all registration and

disclosure requirements of the Securities and Exchange Commission and all other appropriate federal and Missouri securities laws and the securities law of any other applicable state are complied with.

5. The Company has (a) furnished to the Purchaser such information about itself as the Purchaser deems necessary in order for it to make an informed investment decision with respect to the purchase of the Bonds, (b) made available to the Purchaser, during the course of this transaction, ample opportunity to ask questions of, and to receive answers from, appropriate officers of the City and the terms and conditions of the offering of the Bonds, and (c) provided to the undersigned all additional information which it has requested.

6. The Purchaser acknowledges that no offering document has been prepared in connection with the sale of the Bonds. The Purchaser further acknowledges that it has timely received in satisfactory form and manner all proceedings, certificates, opinions, letters and other documents required to be submitted to the Purchaser pursuant to the Bond Purchase Agreement prior to or on the date of the delivery of and payment for the Bonds, and that the City and the Company have in all respects complied with and satisfied all of their respective obligations to the Purchaser which are required under the Bond Purchase Agreement to be complied with and satisfied on or before such date.

7. The Purchaser is now, and was when it agreed to purchase the Bonds, familiar with the operations of the Company and fully aware of terms and risks of the Bonds and that the Purchaser is relying on its own knowledge and investigation of facts and circumstances relating to the purchase of the Bonds. The Purchaser believes that the Bonds being acquired are a security of the type that the Purchaser wishes to purchase and hold for investment and that the nature and amount thereof are consistent with its investment program.

8. The Purchaser is fully aware of and satisfied with (i) the current status of the title to the Project and any issues related thereto and (ii) the terms, amounts and providers of the insurance maintained pursuant to **Article VII** of the Lease, and the undersigned is purchasing the Bonds with full knowledge of such matters.

9. The Purchaser understands and agrees that the interest on the Bonds *is* subject to federal and state income taxation.

10. The Purchaser hereby directs the Trustee to hold the Bonds in trust for the undersigned pursuant to **Section 208** of the Indenture.

Dated: _____, 20____

[PURCHASER OF BONDS]

By: _____

Name: _____

Title: _____

**CITY OF INDEPENDENCE, MISSOURI,
As Lessor,**

AND

**WALLY'S INDEPENDENCE MO OWNER LLC,
As Lessee**

LEASE AGREEMENT

Dated as of January 1, 2026

Relating to:

**\$52,050,000
(Aggregate Maximum Principal Amount)
City of Independence, Missouri
Taxable Industrial Development Revenue Bonds
(Wally's Redevelopment Project)
Series 2026**

Certain rights of the City of Independence, Missouri (the "City"), in this Lease Agreement have been pledged and assigned to UMB Bank, N.A., Kansas City, Missouri, as Trustee under the Trust Indenture dated as of January 1, 2026, between the City and the Trustee. Such pledge and assignment does not include the Unassigned Rights (defined in the Indenture).

LEASE AGREEMENT

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I	
DEFINITIONS	
Section 1.1. Definitions of Words and Terms.....	2
Section 1.2. Rules of Interpretation	3
Section 1.3. Acceptance of Indenture	3
ARTICLE II	
REPRESENTATIONS	
Section 2.1. Representations by the City	4
Section 2.2. Representations by the Company.....	5
ARTICLE III	
GRANTING PROVISIONS	
Section 3.1. Granting of Leasehold Estate.....	5
Section 3.2. Lease Term	5
Section 3.3. Possession and Use of the Project.....	6
Section 3.4. Title to the Project.....	6
ARTICLE IV	
CONSTRUCTION AND IMPROVEMENT OF THE PROJECT	
Section 4.1. Issuance of the Bonds	6
Section 4.2. Construction and Improvement of the Project	7
Section 4.3. Project Costs	7
Section 4.4. Payment for Project Costs.....	7
Section 4.5. Establishment of Completion Date	8
Section 4.6. Surplus or Deficiency in Project Fund.....	8
Section 4.7. Project Property of City	8
Section 4.8. Non-Project Improvements, Machinery and Equipment Property of the Company	8
Section 4.9. Environmental Matters.	9
ARTICLE V	
RENT PROVISIONS	
Section 5.1. Basic Rent.....	9
Section 5.2. Additional Rent.....	10
Section 5.3. Obligations of Company Absolute and Unconditional.....	10
Section 5.4. Prepayment of Basic Rent.....	11

ARTICLE VI

MAINTENANCE, TAXES AND UTILITIES

Section 6.1.	Maintenance and Repairs.....	11
Section 6.2.	Taxes, Assessments and Other Governmental Charges.....	11
Section 6.3.	Utilities.....	12
Section 6.4.	Property Tax Exemption.....	12
Section 6.5.	Administration Costs.....	12
Section 6.6.	Sales Tax Exemption.....	13

ARTICLE VII

INSURANCE

Section 7.1.	Title Report.....	13
Section 7.2.	Property Insurance.....	13
Section 7.3.	Commercial General Liability Insurance.....	14
Section 7.4.	Workers' Compensation.....	14
Section 7.5.	Blanket Insurance Policies; Self-Insurance.....	14

ARTICLE VIII

ALTERATION OF THE PROJECT

Section 8.1.	Additions, Modifications and Improvements to the Project.....	14
Section 8.2.	Additional Improvements on the Project Site.....	15
Section 8.3.	Permits and Authorizations.....	15
Section 8.4.	Mechanics' Liens.....	15

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 9.1.	Damage or Destruction.....	16
Section 9.2.	Condemnation.....	17
Section 9.3.	Bondowner Approval.....	18

ARTICLE X

SPECIAL COVENANTS

Section 10.1.	No Warranty of Condition or Suitability by the City; Exculpation and Indemnification.....	19
Section 10.2.	Surrender of Possession.....	19
Section 10.3.	City's Right of Access to the Project.....	19
Section 10.4.	Granting of Easements; Mortgages and Financing Arrangements.....	19
Section 10.5.	Indemnification of City and Trustee.....	23
Section 10.6.	Depreciation, Investment Tax Credit and Other Tax Benefits.....	24
Section 10.7.	Company to Maintain its Corporate Existence.....	24
Section 10.8.	Security Interests.....	24
Section 10.9.	Release of Portions of the Project under Specific Circumstances.....	24

ARTICLE XI

OPTION AND OBLIGATION TO PURCHASE THE PROJECT

Section 11.1.	Option to Purchase the Project.....	25
Section 11.2.	Conveyance of the Project	26
Section 11.3.	Relative Position of Option and Indenture.....	27
Section 11.4.	Obligation to Purchase the Project.....	27

ARTICLE XII

DEFAULTS AND REMEDIES

Section 12.1.	Events of Default	27
Section 12.2.	Remedies on Default.....	28
Section 12.3.	Survival of Obligations.....	28
Section 12.4.	Performance of the Company's Obligations by the City	28
Section 12.5.	Rights and Remedies Cumulative	29
Section 12.6.	Waiver of Breach	29
Section 12.7.	Trustee's Exercise of the City's Remedies	29

ARTICLE XIII

ASSIGNMENT AND SUBLEASE

Section 13.1.	Assignment; Sublease	29
Section 13.2.	Assignment of Revenues by City.....	30
Section 13.3.	Prohibition Against Fee Mortgage of Project	30
Section 13.4.	Restrictions on Sale or Encumbrance of Project by City	30

ARTICLE XIV

AMENDMENTS, CHANGES AND MODIFICATIONS

Section 14.1.	Amendments, Changes and Modifications	31
---------------	---	----

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 15.1.	Notices.	31
Section 15.2.	City Shall Not Unreasonably Withhold Consents and Approvals	31
Section 15.3.	Net Lease	31
Section 15.4.	Limitation on Liability of City.....	32
Section 15.5.	Governing Law	32
Section 15.6.	Binding Effect.....	32
Section 15.7.	Severability	32
Section 15.8.	Execution in Counterparts.....	32
Section 15.9.	Electronic Storage.....	32
Section 15.10.	Satisfaction of Company's Obligations	32
Section 15.11.	Complete Agreement	32

Signatures and Seal	1
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Exhibit A - Project Site

Exhibit B - Project Improvements

Exhibit C - Form of Requisition Certificate

Exhibit D - Form of Certificate of Insurance Compliance

Appendix I: PILOT Payments

LEASE AGREEMENT

THIS LEASE AGREEMENT, dated as of January 1, 2026 (the "Lease"), is between the **CITY OF INDEPENDENCE, MISSOURI**, a constitutional charter city and municipal corporation duly organized and existing under the laws of the State of Missouri, as lessor (the "City"), and **WALLY'S INDEPENDENCE MO OWNER LLC**, a limited liability company organized and existing under the laws of the State of Missouri, as lessee, and its successors or assigns, as permitted hereunder (the "Company");

RECITALS:

1. The City is authorized under Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended (the "Act"), to purchase, construct, extend and improve certain "projects" (as defined in the Act) and to issue industrial development revenue bonds for the purpose of providing funds to pay the costs of such projects and to lease or otherwise dispose of such projects to private persons or corporations for manufacturing, commercial, warehousing and industrial development purposes upon such terms and conditions as the City shall deem advisable.

2. Pursuant to the Act, the City Council passed an ordinance (the "Ordinance") authorizing the City to issue its Taxable Industrial Development Revenue Bonds (Wally's Redevelopment Project), Series 2026, in the maximum principal amount of \$52,050,000 (the "Bonds"), for the purpose of acquiring and improving certain real property located on approximately 20.9 acres near the intersection of Noland Road and Interstate Highway 70 in the City (the "Project Site," as more fully described on **Exhibit A** hereto), including the construction and improvement of a commercial facility on the Project Site together with related public improvements (the "Project Improvements," as more fully described on **Exhibit B** hereto).

3. Pursuant to the Ordinance, the City is authorized to enter into a Trust Indenture of even date herewith (the "Indenture") with UMB Bank, N.A., Kansas City, Missouri, as Trustee (the "Trustee"), for the purpose of issuing and securing the Bonds, as therein provided, and to enter into this Lease with the Company under which the City will construct and improve the Project Improvements, and lease the Project Site and the Project Improvements as they may at any time exist (collectively, the "Project"), to the Company in consideration of rental payments by the Company that will be sufficient to pay the principal of and interest on the Bonds and make certain other payments, including payments in lieu of taxes to be made by the Company with respect to the Project.

4. Pursuant to the foregoing, the City desires to lease the Project to the Company and the Company desires to lease the Project from the City, for the rentals and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the receipt and sufficiency of which are hereby acknowledged, the City and the Company do hereby represent, covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions of Words and Terms. In addition to any words and terms defined elsewhere in this Lease and the words and terms defined in **Section 101** of the Indenture which definitions are hereby incorporated herein by reference, and terms defined, the following words and terms as used in this Lease shall have the following meanings:

“Additional Rent” means the additional rental described in **Sections 5.2** and **6.2** of this Lease.

“Basic Rent” means the rental described in **Section 5.1** of this Lease.

“Certificate of Insurance Compliance” means a certificate in substantially the form set forth on **Exhibit D** hereto evidencing the Company’s compliance with the insurance requirements set forth in **Article VII** hereof, fully executed by the Authorized Company Representative and upon which the Trustee may conclusively rely without further investigation or inquiry.

“Environmental Law” means and includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act, the Superfund Amendments and Reauthorization Act of 1986, any other “Superfund” or “Superlien” law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Materials, as now or at any time hereafter in effect.

“Full Insurable Value” means the actual replacement cost of the Project less physical depreciation as determined in accordance with **Section 7.1(a)** hereof.

“Lease Term” means the period from the effective date of this Lease until the expiration thereof pursuant to **Section 3.2** hereof.

“Lender” means any person who from time to time has made a loan to Company which is secured by a Mortgage.

“Mortgage” means any mortgage or deed of trust (together with all related loan documents and security agreements) relating to the Project and permitted pursuant to the provisions of **Section 10.4** hereof or existing prior to the date on which a memorandum of this Lease is recorded.

“Net Proceeds” means, when used with respect to any insurance or condemnation award with respect to the Project, the gross proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all expenses (including attorneys’ fees, trustee’s fees and any extraordinary expenses of the City and the Trustee) incurred in the collection of such gross proceeds.

“Permitted Encumbrances” means, as of any particular time, as the same may encumber the Project Site, (a) liens for ad valorem taxes and special assessments not then delinquent, (b) the Indenture and this Lease, (c) utility, access and other easements and rights-of-way, mineral rights, restrictions, exceptions and encumbrances that will not materially interfere with or impair the operations being conducted on the Project Site or easements granted to the City, (d) such minor defects, irregularities, encumbrances, easements, mechanic’s liens, rights-of-way and clouds on title as normally exist with respect to properties similar in character to the Project Site and as do not in the aggregate materially

impair the property affected thereby for the purpose for which it was acquired or is held by the City, (e) any Mortgage, (f) any assignment of leases and rents or similar assignment delivered by the Company in favor of a Lender in connection with any future Mortgage (delivered pursuant to **Section 10.4(b)** of this Lease), and (g) any encumbrances shown on a title policy or report included in the transcript of proceedings relating to the Bonds.

“PILOT Payments” means the payments set out on **Appendix I**.

“Plans and Specifications” means the plans and specifications prepared for and showing the Project, as amended by the Company from time to time prior to the Completion Date, the same being duly certified by the Company, and on file with the Company, or with the architect/engineers retained by the Company for the Project, and which shall be available for reasonable inspection by the City, the Trustee and their duly appointed representatives.

“Project Site” means the real property upon which the property comprising the Project is located as more fully described in **Exhibit A**.

“Public Improvements” means that portion of the Project Improvements designated as such on **Exhibit B** hereto.

Section 1.2. Rules of Interpretation.

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(b) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing Persons shall include firms, associations and corporations, including governmental entities, as well as natural Persons.

(c) Wherever in this Lease it is provided that either party shall or will make any payment or perform or refrain from performing any act or obligation, each such provision shall, even though not so expressed, be construed as an express covenant to make such payment or to perform, or not to perform, as the case may be, such act or obligation.

(d) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or other subdivision.

(e) The Table of Contents and the Article and Section headings of this Lease shall not be treated as a part of this Lease or as affecting the true meaning of the provisions hereof.

(f) Whenever an item or items are listed after the word “including,” such listing is not intended to be a listing that excludes items not listed.

Section 1.3. Acceptance of Indenture. The Company acknowledges that it has received an executed copy of the Indenture and that it is familiar with the terms and conditions of the Indenture. The Company further covenants that it will comply with all the conditions and covenants contained in the Indenture relating to the Company and the Project, and that it will not take any action which would cause a default thereunder or jeopardize the rights of the Trustee, the City or the Bondowners.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the City. The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) The City is a constitutional charter city and municipal corporation duly organized and validly existing under the laws of the State of Missouri. Under the provisions of the Act, the City has lawful power and authority to enter into the transactions contemplated by this Lease and to carry out its obligations hereunder. By proper action of its governing body, the City has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers;

(b) As of the date of delivery hereof, the City has acquired the Project Site (subject to Permitted Encumbrances) and agrees to construct and improve or cause to be constructed and improved the Project Improvements. The City agrees to lease the Project to the Company and sell the Project to the Company if the Company exercises its option to purchase the Project or upon termination of this Lease as provided for herein, all for the purpose of furthering the public purposes of the Act;

(c) The purchase, construction, extension and improvement of the Project and the leasing of the Project by the City to the Company will further the public purposes of the Act;

(d) To the City's knowledge, no member of the City Council or any other officer of the City has any significant or conflicting interest, financial, employment or otherwise, in the Company or in the transactions contemplated hereby;

(e) To finance the costs of the Project, the City proposes to issue the Bonds which will be scheduled to mature as set forth in **Article II** of the Indenture and will be subject to redemption prior to maturity in accordance with the provisions of **Article III** of the Indenture;

(f) The Bonds are to be issued under and secured by the Indenture, pursuant to which the Project and certain net earnings therefrom, including certain rents, revenues and receipts to be derived by the City from the leasing or sale of the Project (but excluding the Unassigned Rights), will be pledged and assigned to the Trustee as security for payment of the principal of and interest on the Bonds and amounts owing pursuant to the Lease;

(g) The City will not knowingly take any affirmative action that would permit a lien to be placed on the Project or pledge the revenues derived therefrom for any bonds or other obligations, other than the Bonds, except with the written consent of the Authorized Company Representative; and

(h) The City shall have no authority to operate the Project as a business or in any other manner except as the lessor thereof, except subsequent to an Event of Default hereunder.

Section 2.2. Representations by the Company. The Company makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Missouri and is authorized to conduct business in the State of Missouri;

(b) The Company has lawful power and authority to enter into this Lease and to carry out its obligations hereunder and by proper action of its members the Company has been duly authorized to execute and deliver this Lease, acting by and through its duly authorized officers and representatives;

(c) The execution and delivery of this Lease, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Lease by the Company will not, to the best of the Company's knowledge, conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restrictions or any agreement or instrument to which the Company is a party or by which it or any of its property is bound, or the Company's organizational documents, or any order, rule or regulation applicable to the Company or any of its property of any court or governmental body, or constitute a default under any of the foregoing, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Company under the terms of any instrument or agreement to which the Company is a party;

(d) The estimated costs of the construction and improvement of the Project are in accordance with sound engineering and accounting principles;

(e) The Project will comply in all material respects with all presently applicable building and zoning, health, environmental and safety orders and laws and all other applicable laws, rules and regulations; and

(f) The Project is located wholly within the corporate limits of the City of Independence, Missouri.

ARTICLE III

GRANTING PROVISIONS

Section 3.1. Granting of Leasehold Estate. The City hereby exclusively rents, leases and lets the Project to the Company, and the Company hereby rents, leases and hires the Project from the City, subject to Permitted Encumbrances existing as of the date of the execution and delivery hereof, for the rentals and upon and subject to the terms and conditions herein contained.

Section 3.2. Lease Term. This Lease shall become effective upon its delivery, and subject to sooner termination pursuant to the provisions of this Lease, shall have a term commencing as of the date of this Lease and terminating on **December 1, 2027**.

Section 3.3. Possession and Use of the Project.

(a) The City covenants and agrees that as long as neither the City nor the Trustee has exercised any of the remedies set forth in **Section 12.2(b)** following the occurrence and continuance of an Event of Default, the Company shall have sole and exclusive possession of the Project (subject to Permitted Encumbrances and the City's and the Trustee's right of access pursuant to **Section 10.3** hereof) and shall and may peaceably and quietly have, hold and enjoy the Project during the Lease Term. The City covenants and agrees that it will not take any action, other than expressly pursuant to **Article XII** hereof, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project during the Lease Term and will, at the request and expense of the Company, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Project and will defend the Company's enjoyment and possession thereof against all parties.

(b) Subject to the provisions of this Section, the Company shall have the right to use the Project for any lawful purpose allowed by law and contemplated by the Act and this Lease. The Company shall comply in all material respects with all statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements of all federal, state, local and other governments or governmental authorities, now or hereafter applicable to the Project or to any adjoining public ways, as to the manner of use or the condition of the Project or of adjoining public ways. In the event of demonstrated noncompliance with such statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements the Company will take all reasonable steps to comply with such statutes, laws, ordinances, orders, judgments, decrees, regulations, directions and requirements. The Company shall also comply with the mandatory requirements, rules and regulations of all insurers under the policies carried under the provisions of **Article VII** hereof. The Company shall pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed as a result of, the failure of the Company to comply with the provisions of this Section. Notwithstanding any provision contained in this Section, however, the Company shall have the right, at its own cost and expense, to contest or review by legal or other appropriate procedures the validity or legality of any such governmental statute, law, ordinance, order, judgment, decree, regulation, direction or requirement, or any such requirement, rule or regulation of an insurer, and during such contest or review the Company may refrain from complying therewith.

Section 3.4. Title to the Project. The City shall be the sole owner of the Project during the Lease Term, except for any portions of the Project released from this Lease pursuant to the terms hereof.

ARTICLE IV

CONSTRUCTION AND IMPROVEMENT OF THE PROJECT

Section 4.1. Issuance of the Bonds. To provide funds for the payment of Project Costs, the City agrees that, upon request of the Company, it will issue, sell and cause to be delivered the Bonds to the purchaser thereof in accordance with the provisions of the Indenture and the Bond Purchase Agreement. The proceeds of the sale of the Bonds, when received, shall be paid over to the Trustee for the account of the City. The Trustee shall promptly deposit such proceeds, when received, as provided in the Indenture, to be used and applied as hereinafter provided in this Lease and in the Indenture. Alternatively, the Trustee may, (pursuant to **Section 208(d)** of the Indenture) endorse the Bonds in an amount equal to the requisition certificates submitted pursuant to **Section 4.4** below. In that event, the

purchaser of the Bonds shall be deemed to have deposited funds with the Trustee in an amount equal to the amount stated in the requisition certificate.

Section 4.2. Construction and Improvement of the Project. The City and the Company agree that the Company, as the agent of the City, shall construct and improve the Project as follows:

(a) The City has acquired the Project Site prior to the execution hereof. Concurrently with the execution of this Lease, (i) a deed and any other necessary instruments of transfer will be delivered to the City and placed of record, and (ii) the commitment for title insurance or ownership and encumbrance report (which may be provided in the form of a copy of the commitment for an owner's or loan policy of title insurance relating to the Company's acquisition of or private financing for the Project) required by **Article VII** hereof will be delivered to the City and the Trustee;

(b) On behalf of the City, the Company will construct and improve the Project Improvements on the Project Site and otherwise improve the Project Site in accordance with the Plans and Specifications. The Company may revise the Plans and Specifications from time to time as it deems necessary to carry out the Project, but revisions that would materially alter the intended purpose of the Project or any major component thereof may be made only with the prior written approval of the City. The Company agrees that the aforesaid construction and improvement will, with such changes and additions as may be made hereunder, result in facilities suitable for use by the Company for its purposes, and that all real and personal property described in the Plans and Specifications, with such changes and additions as may be made hereunder, is desirable and appropriate in connection with the Project. The provisions of this paragraph are in addition to and do not supersede the provisions of **Section 8.2**;

(c) The Company agrees that it will use reasonable efforts to cause the construction and improvement of the Project to be completed as soon as practicable with all reasonable dispatch. In the event such construction and improvement commences prior to the receipt of proceeds from the sale of the Bonds, the Company agrees to advance all funds necessary for such purpose; and

(d) The Public Improvements (but not any other portion of the Project Improvements) may be constructed in or on land that is not part of the Project Site, so long as such land is owned by the City or such Public Improvements are installed in governmentally-held easements or right of way.

Section 4.3. Project Costs. The City hereby agrees to pay for, but solely from the Project Fund, and hereby authorizes and directs the Trustee to pay for, but solely from the Project Fund, all Project Costs upon receipt by the Trustee of a certificate pursuant to **Section 4.4** hereof. The Company may not submit any requisition certificates for Project Costs incurred after the Completion Date. The Company must submit all requisitions for Project Costs incurred before the Completion Date within three months after the Completion Date.

Section 4.4. Payment for Project Costs. All Project Costs as specified in **Section 4.3** hereof shall be paid by the Trustee from the Project Fund as more fully provided in the Indenture, and the City hereby authorizes and directs the Trustee to make disbursements from the Project Fund, upon receipt by the Trustee of certificates in substantially the form attached hereto as **Exhibit C**, signed by an Authorized Company Representative, which disbursements may be recorded via a transaction entry on the trust records held by the Trustee. The Trustee may rely conclusively on any such certificate and shall not be

required to make any independent investigation in connection therewith. The submission of any requisition certificate by an Authorized Company Representative shall constitute unto the Trustee an irrevocable determination that all conditions precedent to the payments requested have been satisfied.

Section 4.5. Establishment of Completion Date. The Completion Date shall be evidenced to the Trustee by a certificate signed by the Authorized Company Representative stating (a) the construction and improvement of the Project has been completed in accordance with the Plans and Specifications, (b) that all costs and expenses incurred in the construction and improvement of the Project have been paid except costs and expenses the payment of which is not yet due or is being retained or contested in good faith by the Company, and (c) amounts to be retained by Trustee with respect to item (b) above. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. The Company and the City agree to cooperate in causing such certificate to be furnished to the Trustee.

Section 4.6. Surplus or Deficiency in Project Fund.

(a) Upon receipt of the certificate described in **Section 4.5** hereof, the Trustee shall, as provided in **Section 504** of the Indenture, transfer any remaining moneys then in the Project Fund to the Bond Fund to be applied as directed by the Company solely to (1) the payment of principal and premium, if any, of the Bonds through the payment (including regularly scheduled principal payments, if any) or redemption thereof at the earliest date permissible under the terms of the Indenture, or (2) at the option of the Company, to the purchase of Bonds at such earlier date or dates as the Company may elect. Any amount so deposited in the Bond Fund may be invested as permitted by **Section 702** of the Indenture.

(b) If the Project Fund shall be insufficient to pay fully all Project Costs and to complete the Project free of liens and encumbrances other than Permitted Encumbrances, the Company shall pay, in cash, the full amount of any such deficiency by making payments thereof directly to the contractors and to the suppliers of materials and services as the same shall become due, and the Company shall save the City and the Trustee whole and harmless from any obligation to pay such deficiency.

Section 4.7. Project Property of City. The Project Site and the Project Improvements, which the Company desires to convey to the City, including all work and materials on the Project Improvements as such work progresses, and all additions or enlargements thereto or thereof, the Project as fully completed, anything under this Lease which becomes, is deemed to be, or constitutes a part of the Project, and the Project as repaired, rebuilt, rearranged, restored or replaced by the Company under the provisions of this Lease, except as otherwise specifically provided herein, shall immediately when erected or installed become the absolute property of the City, subject only to this Lease, the Indenture, any Permitted Encumbrances, and the Mortgage, if any.

Upon completion of all or any portion of the Public Improvements and acceptance by the City or other governmental entity of dedication or other transfer thereof, such Public Improvements shall become the property of the City or such other governmental entity separate and apart from, and shall not be subject to, this Lease. At such point, such Public Improvements shall cease to be a part of the Project.

Section 4.8. Non-Project Improvements, Machinery and Equipment Property of the Company. Any improvements or items of machinery or equipment which do not constitute part of the Project Improvements and the entire purchase price of which is paid for by the Company with the Company's own funds, and no part of the purchase price of which is paid for from funds deposited

pursuant to the terms of this Lease in the Project Fund, shall be the property of the Company and shall not constitute a part of the Project for purposes of **Section 6.4** hereof and therefore are subject to taxation, to the extent otherwise provided by law.

Section 4.9. Environmental Matters. The Company acknowledges that it is responsible for maintaining the Project in compliance with all Environmental Laws. In the event that the Company fails to undertake to comply with any final, non-appealable order issued by any local, state or federal authority under applicable Environmental Law, the City or the Trustee, immediately after notice to the Company, may elect (but shall not be required) to undertake such compliance. Any moneys expended by the City or the Trustee in efforts to comply with any applicable Environmental Law (including the reasonable cost of hiring consultants, undertaking sampling and testing, performing any cleanup necessary or useful in the compliance process and reasonable attorneys' fees) shall be due and payable as Additional Rent hereunder with interest thereon at the average rate of interest per annum on the Bonds, plus two (2) percentage points, from the date such cost is incurred. There shall be unlimited recourse to the Company to the extent of any liability incurred by the City or the Trustee with respect to any breaches of the provisions of this section.

The Company shall and does hereby indemnify the City, the Trustee and the Bondowners and agree to defend and hold them harmless from and against all loss, cost, damage and expense (including, without limitation, reasonable attorneys' fees and costs associated incurred in the investigation, defense and settlement of claims) that they may incur, directly or indirectly, as a result of or in connection with the assertion against them or any of them of any claim relating to the presence on, escape or removal from the Project during the term of this Lease of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether such claim is raised before, during or after the term of this Lease, including claims relating to personal injury or damage to property; provided, however, this indemnity shall only relate to claims resulting from the City's ownership of the Project and the Trustee's acceptance of its duties as Trustee hereunder.

ARTICLE V

RENT PROVISIONS

Section 5.1. Basic Rent. The Company covenants and agrees to pay to the Trustee in same day funds for the account of the City during this Lease Term, for deposit in the Bond Fund on or before 10:00 a.m., Trustee's local time, on or before each December 1, commencing December 1, 2026 and continuing until the principal of and interest on the Bonds shall have been fully paid, an amount which, when added to any collected funds then on deposit in the Bond Fund and available on such Payment Date, shall be equal to the total amount payable on each December 1 as interest on the Bonds. On **December 1, 2027** (or such earlier date as the Company may elect or be required to redeem the Bonds), the Company shall also pay an amount equal to all principal then due on the Bonds in connection with such maturity or redemption. All payments of Basic Rent provided for in this Section shall be paid directly to the Trustee and shall be deposited in accordance with the provisions of the Indenture into the Bond Fund and shall be used and applied by the Trustee in the manner and for the purposes set forth in this Lease and the Indenture, provided that if the Company is the Owner of all the Bonds Outstanding, payment of Basic Rent as provided for in this Section may be made via a transaction entry on the trust records held by the Trustee and the Paying Agent consistent with **Section 204(e)** and **Section 208(g)** of the Indenture. Any Basic Rent paid by the Company which exceeds the total amount payable on such payment dates shall be immediately paid to the Company by wire transfer. At its option, on the final Payment Date, the Company may deliver to the Trustee for cancellation Bonds not previously paid and the Company shall

receive a credit against the Basic Rent payable by the Company in an amount equal to the principal amount of the Bonds so tendered for cancellation plus accrued interest thereon.

In furtherance of the foregoing and of **Section 204(e)** and **Section 208(g)** of the Indenture, and notwithstanding any other provision in this Lease, the Indenture or the Bond Purchase Agreement, and provided that the Company is the sole Bondowner, the Company may set-off each Basic Rent payment against the City's obligation to the Company as Bondowner, in lieu of delivery of a payment of Basic Rent on any date on which principal of or interest on the Bonds is payable, without providing notice of such set-off to the Trustee. The Trustee may conclusively rely on the absence of any notice from the Company to the contrary as evidence that such set-off has occurred.

Section 5.2. Additional Rent. The Company shall pay as Additional Rent, within 30 days after receiving an itemized invoice therefor, the following amounts as and when the same become due:

(a) all reasonable fees, charges and expenses, including agent and counsel fees, of the City or the Trustee incurred under the Indenture, this Lease, or any other document entered into in connection with the Bonds, as and when the same become due;

(b) all costs incident to the payment of the principal of and interest on the Bonds as the same becomes due and payable, including all costs and expenses in connection with the call, redemption and payment of all outstanding Bonds;

(c) all reasonable costs which are reasonably incurred in connection with the enforcement of any rights against the Company or the Project or in connection with a failure of the Company to perform its obligations under this Lease or the Indenture by the City, the Trustee or the Bondowners, including counsel fees and expenses;

(d) on each December 1, a PILOT Payment to the City in the amount described on **Appendix I**; and

(e) all other payments of whatever nature which Company has agreed to pay or assume under the provisions of this Lease.

Section 5.3. Obligations of Company Absolute and Unconditional.

(a) The obligations of the Company under this Lease to make payments of Basic Rent and Additional Rent on or before the date the same become due, and to perform all of its other obligations, covenants and agreements hereunder shall be absolute and unconditional, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Project has been started or completed, or whether the City's title thereto or to any part thereof is defective or nonexistent, and notwithstanding any damage to, loss, theft or destruction of, the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Company's use thereof, the eviction or constructive eviction of the Company, any change in the tax or other laws of the United States of America, the State of Missouri or any political subdivision thereof, any change in the City's legal organization or status, or any default of the City hereunder, and regardless of the invalidity of any action of the City; provided, however, that nothing in this **Section 5.3(a)** or **Section 5.3(b)** is intended or shall be deemed to affect or impair in anyway the rights of the Company to tender Bonds for redemption in satisfaction of Basic Rent as provided in

Section 5.1 and **Section 5.4** hereof, nor the right of the Company to terminate this Lease and repurchase the Project as provided in **Article XI** hereof.

(b) Nothing in this Lease shall be construed to release the City from the performance of any agreement on its part herein contained or as a waiver by the Company of any rights or claims the Company may have against the City under this Lease or otherwise, but any recovery upon such rights and claims shall be had from the City separately, it being the intent of this Lease that the Company shall be unconditionally and absolutely obligated to perform fully all of its obligations, agreements and covenants under this Lease (including the obligation to pay Basic Rent and Additional Rent) for the benefit of the Owners and the City. The Company may, however, at its own cost and expense and in its own name or in the name of the City, prosecute or defend any action or proceeding or take any other action involving third Persons which the Company deems reasonably necessary in order to secure or protect its right of possession, occupancy and use hereunder, and in such event the City hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the City in any such action or proceeding if the Company shall so request.

Section 5.4. Prepayment of Basic Rent. The Company may at any time and from time to time prepay a portion of the Basic Rent provided for hereunder (subject to the limitations of **Section 301(a)** of the Indenture relating to the redemption of the Bonds). During such times as the amount held by the Trustee in the Bond Fund shall be sufficient to pay, at the time required, the principal of and interest on all the Bonds then remaining unpaid, the Company shall not be obligated to make payments of Basic Rent under the provisions of this Lease.

Subject to **Section 301(a)** of the Indenture relating to the redemption of Bonds, the Company, at its option, may deliver to the Trustee for cancellation Bonds owned by the Company and not previously paid, and the Company shall receive a credit against amounts payable by the Company for the redemption of Bonds in an amount equal to the principal amount of the Bonds so tendered for cancellation, plus accrued interest thereon.

ARTICLE VI

MAINTENANCE, TAXES AND UTILITIES

Section 6.1. Maintenance and Repairs. Throughout the Lease Term the Company shall, at its own expense, keep the Project in as reasonably safe condition as the operation thereof will permit, and keep the Project in good repair and in good operating condition (reasonable wear, tear, depreciation, and obsolescence excepted), making from time to time all necessary repairs thereto and renewals and replacements thereof it determines to be necessary. Without limiting the generality of the foregoing, the Company shall at all times remain in compliance with all provisions of the City's code relating to maintenance and appearance.

Section 6.2. Taxes, Assessments and Other Governmental Charges.

(a) Subject to subsection (b) of this Section, the Company shall promptly pay and discharge, as the same become due, all taxes and assessments, general and special, and other governmental charges of any kind whatsoever that may be lawfully taxed, charged, levied, assessed or imposed upon or against or be payable for or in respect of the Project, or any part thereof or interest therein (including the leasehold estate of the Company therein) or any buildings, improvements, machinery and equipment at any time installed thereon by the Company, or the income therefrom, including any new taxes and

assessments not of the kind enumerated above to the extent that the same are lawfully made, levied or assessed in lieu of or in addition to taxes or assessments now customarily levied against real or personal property, and further including all utility charges, assessments and other general governmental charges and impositions whatsoever, foreseen or unforeseen, which if not paid when due would impair the security of the Bonds or encumber the City's title to the Project; provided that with respect to any special assessments or other governmental charges that are lawfully levied and assessed which may be paid in installments, the Company shall be obligated to pay only such installments thereof as become due and payable during the Lease Term.

(b) The Company may, in its own name or in the City's name, contest the validity or amount of any tax, assessment or other governmental charge which the Company is required to bear, pay and discharge pursuant to the terms of this Article by appropriate legal proceedings instituted at least 10 days before the tax, assessment or other governmental charge complained of becomes delinquent if and provided (1) the Company, before instituting any such contest, gives the City and the Trustee written notice of its intention to do so, (2) the Company diligently prosecutes any such contest, at all times effectively stays or prevents any official or judicial sale therefor, under execution or otherwise, and (3) the Company promptly pays any final judgment enforcing the tax, assessment or other governmental charge so contested and thereafter promptly procures record release or satisfaction thereof. The City agrees to cooperate fully with the Company in connection with any and all administrative or judicial proceedings related to any tax, assessment or other governmental charge. The Company shall save and hold harmless the City and the Trustee from any costs and expenses the City and the Trustee may incur related to any of the above.

(c) Nothing in this Lease shall be construed to require the Company to make duplicate tax payments. The Company shall receive a credit against any payments in lieu of taxes due under this lease as PILOT Payments to the extent of any ad valorem taxes imposed and paid by the Company with respect to the Project paid pursuant to this Section.

Section 6.3. Utilities. All utilities and utility services used by the Company in, on or about the Project shall be paid for by the Company and shall be contracted for by the Company in the Company's own name (or the name(s) of its affiliates), and the Company shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

Section 6.4. Property Tax Exemption. The City and the Company agree that while the Project is owned by the City and is subject to this Lease, the Project and the leasehold interest of the Company in the Project will be exempt from all *ad valorem* real property taxes by reason of such ownership, and the City agrees that it will (at the expense of the Company) cooperate with the Company to defend such exemption against all parties. Notwithstanding the foregoing, Company will annually pay to the City the payments with respect to the Project set forth in **Appendix I**. Within 30 days of the date of receipt of each PILOT Payment, the City or designated billing/collection agent shall distribute each PILOT Payment among the taxing jurisdictions in proportion to the amount of taxes which would have been paid in each year had the Project not been exempt from taxation.

Section 6.5. Administration Costs. Under Section 100.050 of the Act, the City may require the Company to reimburse the City for its actual costs of issuing the Bonds and administering the plan including costs associated with this Agreement, in an amount of no greater than \$1,000 per year. The City will provide a statement for such costs to the Company not later than November 1 of each year and the Company will reimburse the City for its costs on or before December 31 of each year continuing until December 31 of the year in which this Agreement expires or is terminated.

Section 6.6. Sales Tax Exemption. Upon request of the Company after the issuance of the Bonds, the City will issue a sales tax exemption certificate to the Company for construction materials to be purchased for the Project and the City shall provide such other documentation as may be necessary from time to time to effect said sales tax exemption. The Company shall use the exemption certificate only for the purchase of construction materials to be incorporated into either the Project on the Project Site or the Public Improvements and shall not use the exemption certificate for the purchase of any personal property other than construction materials. The Company shall indemnify and defend the City and its respective officers, employees and agents against and from any and all causes of action or actions in law or equity, liens, claims damages, loss, costs or expenses of any nature whatsoever by any person or entity, arising out of the City's furnishing of the exemption certificate.

ARTICLE VII

INSURANCE

Section 7.1. Title Report. Before conveying title to any real property to the City, the Company will provide a report reasonably acceptable to the City showing the ownership of and encumbrances on the Project Site. Copies of such report shall be provided to the City and the Trustee.

Section 7.2. Property Insurance.

(a) The Company shall at its sole cost and expense obtain and shall maintain throughout the Lease Term, a policy or policies of insurance (including, if appropriate, builder's risk insurance) to keep the Project constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State of Missouri in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible provisions). The insurance required pursuant to this Section shall be maintained with a generally recognized responsible insurance company or companies authorized to do business in the State of Missouri or generally recognized international insurers or reinsurers with an A.M. Best rating of B+ or the equivalent thereof or better as may be selected by the Company. All such policies of insurance pursuant to this Section, and all renewals thereof, shall name the Company as insured and the City and the Trustee shall be named as loss payees, as their respective interests may appear, and shall contain a provision that the issuer of such insurance will provide at least 10 days' advance written notice to, the Company of the cancellation of such insurance. Company agrees it shall immediately forward any notice of cancellation it receives from the issuer of such insurance to the City and Trustee. The Company shall provide the City and the Trustee, on an annual basis, commencing on December 1, 2026 with a Certificate of Insurance Compliance, in the form of **Exhibit D** attached hereto, certifying compliance with this Section and containing copies of the insurance policies required under this Section, or certificates thereof. The Trustee shall be entitled to conclusively rely upon such certificate as to the Company's compliance with the insurance requirements. The Trustee makes no representation as to, and shall have no responsibility for the sufficiency or adequacy of, the insurance.

(b) In the event of loss or damage to the Project, the Net Proceeds of property insurance carried pursuant to this Section shall be applied as provided in **Article IX** of this Lease, or as may be directed by, or on behalf of, the Owners of 100% in principal amount of the Bonds outstanding.

Section 7.3. Commercial General Liability Insurance.

(a) The Company shall at its sole cost and expense maintain or cause to be maintained at all times during the Lease Term general accident and commercial general liability insurance under which the City, the Company and the Trustee shall be named as additional insureds, properly protecting and indemnifying the City and the Trustee, in an amount not less than the limits of liability set by Section 537.610 of the Revised Statutes of Missouri (subject to loss deductible clauses not to exceed \$50,000). The policies of said insurance shall contain a provision that the issuer of such insurance will provide at least 10 days' advance written notice to the Company of the cancellation of such insurance. The Company agrees it shall immediately forward any notice of cancellation it receives from the issuer of such insurance to the City and Trustee. The Company shall provide the City and the Trustee, on an annual basis, commencing on December 1, 2026 with a Certificate of Insurance Compliance, in the form of **Exhibit D** attached hereto, certifying compliance with this Section and containing copies of the insurance policies required under this Section, or certificates thereof. The Trustee shall be entitled to conclusively rely upon such certificate as to the Company's compliance with the insurance requirements. The Trustee makes no representation as to, and shall have no responsibility for the sufficiency or adequacy of, the insurance.

(b) In the event of a public liability occurrence, and subject to the rights of Lender under and pursuant to the terms of the Mortgage (except that no right of the Lender under the Mortgage shall affect the right of the City or the Trustee to the protection and indemnification provided as additional insureds pursuant to subsection(a), above), the Net Proceeds of liability insurance carried pursuant to this Section shall be applied toward the extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

Section 7.4. Workers' Compensation. The Company agrees throughout the Lease Term to maintain or cause to be maintained the Workers' Compensation coverage required by the laws of the State of Missouri.

Section 7.5. Blanket Insurance Policies; Self-Insurance. The Company may satisfy any of the insurance requirements set forth in this Article by using blanket policies of insurance, provided each and all of the requirements and specifications of this Article respecting insurance are complied with. Nothing in this Lease shall be construed from prohibiting the Company from self-insuring provided the Company, or in combination with its parent corporation, has a net worth in excess of \$200,000,000, as determined by generally accepted accounting principles.

ARTICLE VIII

ALTERATION OF THE PROJECT

Section 8.1. Additions, Modifications and Improvements to the Project. The Company shall have and is hereby given the right, at its sole cost and expense, to make such additions, modifications and improvements in and to any part of the Project as the Company from time to time may deem necessary or desirable for its business purposes. All additions, modifications and improvements made by the Company pursuant to the authority of this Section shall (a) be made in workmanlike manner and will comply in all material respects with all laws and ordinances applicable thereto, (b) when commenced, be prosecuted to completion with due diligence, and (c) when completed, be deemed a part of the Project; provided, however, that additions of machinery, equipment and other personal property installed on the Project Site by the Company not purchased or acquired from funds deposited with the

Trustee hereunder and not constituting repairs, renewals or replacements of the Project shall remain the property of the Company and may be removed by the Company. Such property shall be subject to *ad valorem* taxes.

Section 8.2. Additional Improvements on the Project Site. The Company may, at its sole cost and expense, construct on portions of the Project Site not theretofore occupied by buildings or improvements such additional buildings and improvements as the Company from time to time may deem necessary or desirable for its business purposes. All additional buildings and improvements constructed on the Project Site by the Company, and not paid for with Bond proceeds, pursuant to the authority of this Section shall not be included as Project Improvements and, during the life of this Lease, shall remain the property of the Company and may be added to, altered or razed and removed by the Company at any time. All additional buildings and improvements shall be made in a good and workmanlike manner and in strict compliance with all material laws, orders and ordinances applicable thereto and when commenced shall be prosecuted to completion with due diligence. The Company covenants and agrees (a) to make any repairs and restorations required to be made to the Project because of the construction of, addition to, alteration or removal of said additional buildings or improvements, and (b) to promptly and with due diligence either raze and remove or repair, replace or restore any of said additional buildings and improvements as may from time to time be damaged by fire or other casualty. The Company shall pay all *ad valorem* taxes and assessments payable with respect to such additional buildings and improvements which remain the property of the Company. If for any reason the County Assessor determines that such additional buildings and improvements are not subject to *ad valorem* taxes, the Company shall make payments in lieu of taxes in an amount equal to the taxes that would otherwise be due under this Section.

Section 8.3. Permits and Authorizations. The Company shall not do or permit others under its control to do any work on the Project related to any repair, rebuilding, restoration, replacement, modification or addition to the Project, or any part thereof, unless all requisite municipal and other governmental permits and authorizations shall have been first procured. All such work shall be done in a good and workmanlike manner and in material compliance with all applicable building, zoning and other laws, ordinances, governmental regulations. In the event of demonstrated noncompliance with such laws, ordinances, governmental regulations and requirements the Company will take all reasonable steps to comply with laws, ordinances, governmental regulations and requirements.

Section 8.4. Mechanics' Liens.

(a) The Company will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the Project, except Permitted Encumbrances, and the Company shall promptly notify the City of the imposition of such lien of which the Company is aware and shall promptly, at its own expense, take such action as may be necessary to fully discharge or release any such lien. Whenever and as often as any mechanics' or other similar lien is filed against the Project, or any part thereof, purporting to be for or on account of any labor done or materials or services furnished in connection with any work in or about the Project, the Company shall discharge the same of record within 90 days after the date of filing. Notice is hereby given that the City shall not be liable for any labor or materials furnished the Company or anyone claiming by, through or under the Company upon credit, and that, except as may be consented to by the City in a document recorded with the Jackson County Recorder of Deeds, no mechanics' or other similar lien for any such labor, services or materials shall attach to or affect the reversionary or other estate of the City in and to the Project or any part thereof.

(b) Notwithstanding paragraph (a) above, the Company may contest any such mechanics' or other similar lien if the Company (1) within said 90-day period stated above notifies the City and the

Trustee in writing of its intention so to do, (2) diligently prosecutes such contest, (3) at all times effectively stays or prevents any official or judicial sale of the Project, or any part thereof or interest therein, under execution or otherwise, (4) promptly pays or otherwise satisfies any final judgment adjudging or enforcing such contested lien claim and (5) thereafter promptly procures record release or satisfaction thereof. The Company may permit the lien so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Company is notified by the City that, in the opinion of counsel, by nonpayment of any such items, the interest of the City in the Project will be subject to loss or forfeiture. In that event, the Company shall promptly, at its own expense, take such action as may be reasonably necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The Company shall save and hold harmless the City from any loss, costs or expenses the City may incur related to any such contest. The Company shall reimburse the City for any expense incurred by it in connection with the imposition of any such lien or in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim. The City shall cooperate fully with the Company in any such contest.

ARTICLE IX

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 9.1. Damage or Destruction.

(a) If the Project is damaged or destroyed by fire or any other casualty, whether or not covered by insurance, the Company, as promptly as practicable, shall either (i) make the determination described in subsection (f) below, or (ii) repair, restore, replace or rebuild the same as nearly as may be practicable to their condition and character immediately prior to such damage or destruction, and so that upon completion of such repairs, restoration, replacement or rebuilding the Project is of a value not less than the value thereof immediately before the occurrence of such damage or destruction or, at the Company's option, construct upon the Project Site new buildings and improvements thereafter together with all new machinery, equipment and fixtures which are either to be attached to or are to be used in connection with the operation or maintenance thereof, provided that (A) the value thereof shall not be less than the value of such destroyed or damaged Project Improvements immediately before the occurrence of such damage or destruction and (B) the nature of such new buildings, improvements, machinery, equipment and fixtures will not impair the character of the Project as an enterprise permitted by the Act.

If the Company elects to construct any such new buildings and improvements, for all purposes of this Lease, any reference to the words "Project Improvements" shall be deemed to also include any such new buildings and improvements and all additions thereto and all replacements and alterations thereof.

Unless the Company makes the determination described in subsection (f) below, the Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss to the Project shall be used to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof. Insurance monies in an amount less than \$1,000,000 may be paid to or retained by the Company to be held in trust and used as provided herein. Insurance monies in any amount of \$1,000,000 or more shall be (i) paid to the Trustee and deposited in the Project Fund and shall be disbursed as provided in **Section 4.4** hereof to pay the cost of repairing, restoring, replacing or rebuilding the Project or any part thereof, or (ii) if determined by the Owners of 100% in principal amount of the Bonds Outstanding, applied as directed by, or on behalf of, such Owners of 100% in principal amount of the Bonds Outstanding. If the Company makes the determination described in subsection (f) below, the Net Proceeds shall be deposited with the Trustee and used to redeem Bonds as provided in subsection (f).

(b) Unless the Company makes the determination described in subsection (f) below, if any of the insurance monies paid by the insurance company as hereinabove provided remain after the completion of such repairs, restoration, replacement or rebuilding, and this Lease has not been terminated, the excess shall be deposited in the Bond Fund, subject to the rights of any Lender under the terms of the Mortgage. Completion of such repairs, restoration, replacement or rebuilding shall be evidenced by a certificate of completion in accordance with the provisions of **Section 4.5** hereof. If the Net Proceeds are insufficient to pay the entire cost of such repairs, restoration, replacement or rebuilding, the Company shall pay the deficiency.

(c) Except as otherwise provided in this Lease, in the event of any such damage by fire or any other casualty, the provisions of this Lease shall be unaffected and the Company shall remain and continue liable for the payment of all Basic Rent and Additional Rent and all other charges required hereunder to be paid by the Company, as though no damage by fire or any other casualty has occurred.

(d) The City and the Company agree that they will cooperate with each other, to such extent as such other party may reasonably require, in connection with the prosecution or defense of any action or proceeding arising out of, or for the collection of any insurance monies that may be due in the event of, any loss or damage, and that they will execute and deliver to such other parties such instruments as may be required to facilitate the recovery of any insurance monies.

(e) The Company agrees to give prompt notice to the City and the Trustee with respect to all fires and any other casualties occurring in, on, at or about the Project Site which damages a material portion of the Project.

(f) If the Company determines that rebuilding, repairing, restoring or replacing the Project is not practicable or desirable, or if the Company does not have the right under any Mortgage to use any Net Proceeds for repair or restoration of the Project, any Net Proceeds of casualty insurance required by **Article VII** hereof received with respect to such damage or loss shall, after payment of all Additional Rent then due and payable, be paid into the Bond Fund and shall be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same become due, all subject to rights of any Lender under a Mortgage (if any). The Company agrees to be reasonable in exercising its judgment pursuant to this subsection (f). Alternatively, if the Company is the sole owner of the Bonds and it has determined that rebuilding, repairing, restoring or replacing the Project is not practicable or desirable, it may tender Bonds to the Trustee for cancellation in a principal amount equal to the Net Proceeds of the casualty insurance, and retain such proceeds for its own account.

(g) The Company shall not, by reason of its inability to use all or any part of the Project during any period in which the Project is damaged or destroyed or is being repaired, rebuilt, restored or replaced, nor by reason of the payment of the costs of such rebuilding, repairing, restoring or replacing, be entitled to any reimbursement from the City, the Trustee or the Owners or to any abatement or diminution of the rentals payable by the Company under this Lease or of any other obligations of the Company under this Lease except as expressly provided in this Section.

Section 9.2. Condemnation.

(a) If during the Lease Term, title to, or the temporary use of, all or any part of the Project is condemned by or sold under threat of condemnation to any authority possessing the power of eminent domain, to such extent that the claim or loss resulting from such condemnation is greater than \$1,000,000,

the Company shall, within 90 days after the date of entry of a final order in any eminent domain proceedings granting condemnation or the date of sale under threat of condemnation, notify the City, the Trustee, and any Lender under a Mortgage (if any) in writing as to the nature and extent of such condemnation or loss of title and whether it is practicable and desirable to acquire or construct substitute improvements.

(b) If the Company determines that such substitution is practicable and desirable, the Company shall proceed promptly with and complete with reasonable dispatch the acquisition or construction of such substitute improvements, so as to place the Project in substantially the same condition as existed before the exercise of the said power of eminent domain, including the acquisition or construction of other improvements suitable for the Company's operations at the Project (which improvements will be deemed a part of the Project and available for use and occupancy by the Company without the payment of any rent other than herein provided, to the same extent as if such other improvements were specifically described herein and demised hereby); provided, that such improvements will be acquired by the City subject to no liens, security interests or encumbrances before the lien and/or security interest afforded by the Indenture and this Lease other than Permitted Encumbrances. In such case, any Net Proceeds received from any award or awards with respect to the Project or any part thereof made in such condemnation or eminent domain proceedings, or of the sale proceeds, shall be applied in the same manner as provided in **Section 9.1** hereof (with respect to the receipt of casualty insurance proceeds).

(c) If the Company determines that it is not practicable or desirable to acquire or construct substitute improvements, any Net Proceeds of condemnation awards received by the Company shall, after payment of all Additional Rent then due and payable, be paid into the Bond Fund and shall be used to redeem Bonds on the earliest practicable redemption date or to pay the principal of any Bonds as the same becomes due and payable, provided that if the Company is the sole owner of the Bonds and it has determined that acquiring and constructing substitute improvements is not practicable or desirable, it may tender Bonds to the Trustee for cancellation in a principal amount equal to the Net Proceeds of the condemnation awards, and retain such proceeds for its own account, all subject to the rights of any Lender under a Mortgage (if any).

(d) The Company shall not, by reason of its inability to use all or any part of the Project during any such period of restoration or acquisition nor by reason of the payment of the costs of such restoration or acquisition, be entitled to any reimbursement from the City, the Trustee or the Owners or to any abatement or diminution of the rentals payable by the Company under this Lease nor of any other obligations hereunder except as expressly provided in this Section.

(e) The City shall cooperate fully with the Company in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any part thereof, and shall, to the extent it may lawfully do so, permit the Company to litigate in any such proceeding in the name and on behalf of the City. In no event will the City voluntarily settle or consent to the settlement of any prospective or pending condemnation proceedings with respect to the Project or any part thereof without the prior written consent of the Company and the Lender.

Section 9.3. Bondowner Approval. Notwithstanding anything to the contrary contained in this **Article IX**, and subject to the rights of the Lender, the proceeds of any insurance received subsequent to a casualty or of any condemnation proceedings (or threats thereof) may prior to the application thereof by the City or the Trustee be applied as directed by the Owners of 100% of the principal amount of Bonds

Outstanding, subject and subordinate to (a) the terms and conditions of the Mortgage; (b) the rights of the City and the Trustee to be paid all their expenses (including attorneys' fees, trustee's fees and any extraordinary expenses of the City and the Trustee) incurred in the collection of such gross proceeds.

ARTICLE X

SPECIAL COVENANTS

Section 10.1. No Warranty of Condition or Suitability by the City; Exculpation and Indemnification. The City makes no warranty, either express or implied, as to the condition of the Project or that it will be suitable for the Company's purposes or needs. The Company releases the City and the Trustee from, agrees that the City and the Trustee shall not be liable for and agrees to hold the City and the Trustee harmless against, any loss or damage to property or any injury to or death of any Person that may be occasioned by any cause whatsoever pertaining to the Project or the Company's use thereof, unless such loss is the result of the City's or the Trustee's gross negligence or willful misconduct. This provision shall survive termination of this Lease.

Section 10.2. Surrender of Possession. Upon accrual of the City's right of re-entry to the extent provided in **Section 12.2(b)** hereof, the Company shall peacefully surrender possession of the Project to the City in good condition and repair, ordinary wear and tear excepted; provided, however, the Company may within 90 days (or such later date as the City may agree to) after the termination of this Lease remove from the Project Site any buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project. All repairs to and restorations of the Project required to be made because of such removal shall be made by and at the sole cost and expense of the Company, and during said 90-day (or extended) period the Company shall bear the sole responsibility for and bear the sole risk of loss for said buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and not constituting part of the Project. All buildings, improvements, furniture, trade fixtures, machinery and equipment owned by the Company and which are not so removed from the Project before the expiration of said period shall be the separate and absolute property of the City.

Section 10.3. City's Right of Access to the Project. The Company agrees that the City and the Trustee and their duly authorized agents shall have the right at reasonable times during business hours, subject to 24 hours' advance written notice and the Company's usual safety and security requirements, to enter upon the Project Site (a) to examine and inspect the Project without interference or prejudice to the Company's operations, (b) as may be reasonably necessary to cause to be completed the purchase and installation provided for in **Section 4.2** hereof, (c) performing such work in and about the Project Site made necessary by reason of the Company's default under any of the provisions of this Lease, and (d) exhibiting the Project to prospective purchasers, lessees or trustees subsequent to an Event of Default.

Section 10.4. Granting of Easements; Mortgages and Financing Arrangements.

(a) Subject to **Sections 10.4(b)** and (c), if no Event of Default under this Lease has happened and is continuing, the Company may at any time or times (i) grant subleases (as permitted in **Section 13.1(b)** hereof), easements, licenses, rights-of-way (including the dedication of public highways) and other rights or privileges in the nature of easements that are for the direct use of the Project, or part thereof, by the grantee, (ii) release or terminate existing subleases, easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the

Company shall determine, or (iii) incur Permitted Encumbrances. The Company may take such actions and may execute any applicable documents in the Company's own name. No separate signature of or authorization from the City shall be required for the execution and delivery of any such document, although the City agrees to execute and deliver such confirming documents as are described below, under the procedures described below, if the Company chooses to make such a request, provided that no such document shall impose any obligation (monetary or otherwise) on the City or require any representations by the City. All third parties entering into agreements with the Company or receiving delivery of or the benefit of such agreements or documents shall be entitled to rely upon the same as having been executed and delivered by the City, unless such third party has actual or constructive notice, expressly in writing, that the agency herein granted by the City to the Company has been terminated by the City because of an uncured Event of Default hereunder. The City agrees that it will execute and deliver and will cause and direct the Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant, release or terminate any such sublease, easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the City and the Trustee of: (i) a copy of the instrument of grant, release or termination or of the agreement or other arrangement, (ii) a written application signed by an Authorized Company Representative requesting such instrument, and (iii) a certificate executed by an Authorized Company Representative stating that such grant or release is not detrimental to the proper conduct of the business of the Company, will not impair the effective use or interfere with the efficient and economical operation of the Project, will not materially adversely affect the security intended to be given by or under the Indenture and will be a Permitted Encumbrance; *provided that* the City shall not be required to undertake any duties or payment obligations under such instruments and shall make only such representations as it deems appropriate in its sole discretion. If no Event of Default has happened and is continuing beyond any applicable grace period, any payments or other consideration received by the Company for any such grant or with respect to or under any such agreement or other arrangement shall be and remain the property of the Company; but, subject to **Sections 10.4(b) and (c)**, upon (i) termination of this Lease for any reason other than the redemption of the Bonds and/or the purchase of the Project by the Company or (ii) the occurrence and continuance of an Event of Default by the Company, all rights then existing of the Company with respect to or under such grant shall inure to the benefit of and be exercisable by the City and the Trustee.

(b) The City acknowledges and agrees that the Company may finance and refinance its rights and interests in the Project, this Lease, and the leasehold estate created hereby with prior notice to but without the consent of the City, provided and upon condition that a duplicate original or certified copy or photostatic copy of each Mortgage, and the note or other obligation secured thereby, is delivered to the City within thirty (30) days after the execution thereof. The Company may mortgage the fee estate held by the City with the consent of the City, not to be unreasonably withheld, conditioned, or delayed. In either case, in connection therewith, the Company shall have the right to assign this Lease, the leasehold estate, any sublease, and any rights in connection therewith, and/or grant liens or security interests therein, to any Lender. Any further sublease or assignment by any Lender shall be subject to the provisions of **Section 13.1(c)**.

(c) With respect to a future Mortgage, upon notice by the Company to the City in writing that it has executed a Mortgage under which it has granted rights in this Lease to a Lender which includes the name and address of such Lender, the following provisions shall apply in respect of each such Lender:

(1) there shall be no merger of this Lease or of the leasehold estate created hereby with the fee title to the Project, notwithstanding that this Lease or said leasehold estate and said fee title shall be owned by the same Person or Persons, without the prior written consent of such Lender;

(2) the City shall serve upon each such Lender (at the address, if any, provided to the City) a copy of each notice of the occurrence of an Event of Default and each notice of termination given to the Company under this Lease, at the same time as such notice is served upon the Company. No such notice to the Company shall be effective unless a copy thereof is thus served upon each Lender (at the address, if any, provided to the City);

(3) each Lender shall have the same period of time which the Company has, after the service of any required notice upon it, within which to remedy or cause to be remedied any payment default under this Lease which is the basis of the notice plus thirty (30) days, and the City shall accept performance by such Lender as timely performance by the Company;

(4) the City may exercise any of its rights or remedies with respect to any other Event of Default by the Company, subject to the rights of each Lender under this **Section 10.4(c)** as to such other events of default. Without limiting the generality of the foregoing, any Lender holding a Mortgage of the fee simple interest or leasehold interest in the Project may cause the sale of the fee simple interest or any leasehold interest of the Company, as applicable, to be sold at foreclosure sale conducted in accordance with applicable law and the terms of the Mortgage, may accept assignment of this Lease in lieu of foreclosure and may appoint a receiver for the Project, all without obtaining the prior written consent of the City (provided that the City's right to exercise remedies under this Lease against any successor in interest shall not be reduced by virtue of such transfer);

(5) upon the occurrence and continuance of an Event of Default by the Company under this Lease, other than a default in the payment of money, the City shall take no action to effect a termination of this Lease by service of a notice or otherwise, without first giving notice thereof to each such Lender and permitting such Lender (or its designee, nominee, assignee, or transferee) a reasonable time within which to remedy such default in the case of an Event of Default which is susceptible of being cured (provided that the period to remedy such event of default shall continue beyond any period set forth in the Lease to effect said cure so long as the Lender (or its designee, nominee, assignee, or transferee) is diligently prosecuting such cure); provided that the Lender (or its designee, nominee, assignee, or transferee) shall pay or cause to be paid to the City and the Trustee all expenses, including reasonable counsel fees, court costs and disbursements incurred by the City or the Trustee in connection with any such default;

(6) such Lenders (and their designees, nominees, assignees, or transferees) shall have the right to enter, possess and use the Project at such reasonable times and manner as are necessary or desirable to effectuate the remedies and enforce their respective rights under the Mortgage(s); and

(7) Any notice sent by the Company to the City and the Trustee pursuant to any provision of this Lease shall also be sent to the Lender.

(d) In connection with the execution of one or more Mortgages, upon the request of the Company, the City agrees to execute such documents as shall be reasonably requested by a Lender and which are usual and customary in connection with the closing of the financing or refinancing pursuant to the Mortgage, provided that the City shall not be required to undertake any duties or payment obligations under such documents and shall make only such representations as it deems appropriate in its sole discretion. The Company agrees to reimburse the City for any and all costs and expenses incurred by the City pursuant to this Section, including reasonable attorneys' fees and expenses, in complying with such request.

(e) Notwithstanding anything contained to the contrary in this Lease, (a) the Company shall have the right to assign this Lease and any subleases to a Lender or to the designee or nominee of a Lender, without the consent of the City, and (b) if a Lender or its designee or nominee shall acquire ownership of the leasehold estate, either following foreclosure of the applicable Mortgage or in liquidation of the indebtedness and in lieu of foreclosure thereof, said Lender or its designee or nominee shall have the further right to further assign this Lease and any subleases and any purchase money mortgage accepted in connection therewith, without the consent of the City and such assignee shall enjoy all rights, powers and privileges granted herein to said Lender; provided, however, that such Lender or its assignee or nominee, or their assignee or nominee, shall assume in writing all rights, duties and obligations of the Company under this Lease.

(f) During the term of any Mortgage, the following provisions shall apply:

(i) this Lease may not be modified, amended, canceled or surrendered by agreement between the City and the Company, without the prior written consent of the applicable Lender;

(ii) if this Lease shall terminate prior to the expiration of the Lease Term, the City shall enter into a new lease for the Project with the applicable Lender or its designee or nominee, for the remainder of the Lease Term, effective as of the date of such termination, at the same rent and upon the same terms, covenants and conditions contained herein, except that such new lease shall not guarantee possession of the Project to the new tenant as against the Company and/or anyone claiming under the Company, and the City, simultaneously with the execution and delivery of such new lease, shall turn over to the new tenant all monies, if any, then held by the City under the Lease on behalf of the Company, on condition that:

(A) The applicable Lender shall make written request for such new lease within thirty (30) days after the date of such termination, and

(B) on the commencement date of the term of the new lease, the applicable Lender shall cure all defaults of the Company under the Lease (susceptible of being cured by such Lender) which remain uncured on that date, and shall pay or cause to be paid all unpaid sums which at such time would have been payable under this Lease but for such termination, and shall pay or cause to be paid to the City on that date all fees, costs, charges and expenses, including, without limitation, reasonable counsel fees, court costs and disbursements, incurred by the City or the Trustee in connection with any such default and termination as well as in connection with the execution and delivery of such new lease;

(iii) if a Lender or its designee or nominee shall become the owner of this Lease either following foreclosure of a Mortgage or in liquidation of the indebtedness and in lieu of foreclosure thereof and said Lender or its designee or nominee shall have assigned this Lease, said Lender or its designee or nominee so assigning shall be released from all liability accruing from and after the date of such assignment.

(g) The City agrees that any requested consent or signature of the City to any Mortgage under this Section (including any related document, including but not limited to documents subordinating the City's fee interest in the Project Site or any portion thereof to a Mortgage) may be given by the (Interim) City Manager, in his or her discretion, without further approval of the City Council. The City agrees that if a Mortgage on the fee interest in the Project Site is granted that this Lease shall be subject

to, and subordinate to, any such Mortgage and that the Lender will not be required to grant any rights of nondisturbance with respect to this Lease.

Section 10.5. Indemnification of City and Trustee. The Company shall indemnify and save and hold harmless the City and the Trustee and their governing body members, officers, agents and employees (collectively, the "Indemnified Parties") from and against all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, by or on behalf of any person, firm or corporation arising from the issuance of the Bonds and the execution of this Lease, the Indenture or any other documents entered into in connection with the Bonds and from the conduct or management of, or from any work or thing done in or on the Project during the Lease Term, and against and from all claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, arising during the Lease Term from (a) any condition of the Project, (b) any breach or default on the part of the Company in the performance of any of its obligations under this Lease or any related document, (c) any contract entered into by the Company in connection with the purchase, construction, extension or improvement of the Project (including any failure to comply with Section 107.170 of the Missouri Revised Statutes, as amended, with respect to such contract), (d) any act of negligence of the Company or of any of its agents, contractors, servants, employees or licensees, (e) unless the Company has been released from liability pursuant to **Section 13.1(c)**, any act of negligence of any assignee or sublessee of the Company, or of any agents, contractors, servants, employees or licensees of any assignee or sublessee of the Company, (f) obtaining any applicable state and local sales and use tax exemptions for materials or goods that become part of the Project, and (g) any claim relating to the presence on, escape or removal from the Project during the term of the Lease of any hazardous substance or other material regulated by any applicable Environmental Law, or compliance with any applicable Environmental Law, whether such claim arises before, during or after the term of this Lease, including claims relating to personal injury or damage to property; provided, however, the indemnification contained in this **Section 10.5** shall not (i) extend to the City if such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are the result of work being performed at the Project by employees of the City or the result of negligence or willful misconduct by the City (unless relating to a failure to comply with Section 107.170 of the Missouri Revised Statutes, as amended), or (ii) extend to the Trustee if such claims, demands, costs, liabilities, damages or expenses, including attorneys' fees, are the result of the negligence or willful misconduct of the Trustee or (iii) the performance or failure to perform by the City or the Trustee of its obligations under this Lease or any related documents. Upon notice from the City or the Trustee, the Company shall defend them or either of them in any such action or proceeding. This **Section 10.5** shall survive any termination of this Lease or the satisfaction and discharge of the Indenture.

In case any action shall be brought against one or more of the Indemnified Parties based upon the foregoing indemnification and in respect of which indemnity may be sought against the Company, the Indemnified Parties shall promptly notify the Company in writing and the Company shall promptly assume the defense thereof, including the employment of counsel, the payment of all reasonable expenses and the right to negotiate and consent to settlement. If the Company shall have wrongfully failed to assume the defense of such action, the reasonable fees and expenses of counsel retained by the Indemnified Party shall be paid by the Company. If any of the Indemnified Parties is advised by counsel retained by the Company to defend such action that there may be legal defenses available to it which are adverse to or in conflict with those available to the Company or any other Indemnified Party, and that the defense of such Indemnified Party should be handled by separate counsel, the Company shall not have the right to assume the defense of such Indemnified Party, but shall be responsible for the reasonable fees and expenses of counsel retained by such Indemnified Party in assuming its own defense, provided, such counsel shall be acceptable to the Company. Any one or more of the Indemnified Parties shall have the right to employ 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 Indemnified Party or Indemnified Parties

unless employment of such counsel has been specifically authorized by the Company. The Company shall not be liable for any settlement of any such action effected without its consent by any of the Indemnified Parties, but if settled with the consent of the Company or if there be a final judgment for the plaintiff in any such action against the Company or any of the Indemnified Parties, with or without the consent of the Company, the provided that the Company was given prompt written notice and the ability to assume the defense thereof as required by this paragraph, the Company agrees to indemnify and hold harmless the Indemnified Parties to the extent provided herein.

Section 10.6. Depreciation, Investment Tax Credit and Other Tax Benefits. The City agrees that any depreciation, investment tax credit or any other tax benefits with respect to the Project or any part thereof shall be made available to the Company, and the City will fully cooperate with the Company in any effort by the Company to avail itself of any such depreciation, investment tax credit or other tax benefits.

Section 10.7. Company to Maintain its Corporate Existence. The Company agrees that until the Bonds are paid or payment is provided for in accordance with the terms of the Indenture, it will maintain its corporate existence, and will not dissolve or otherwise dispose of all or substantially all of its assets; provided, however, that the Company may, without violating the agreement contained in this Section, consolidate with or merge into another domestic corporation (i.e., a corporation incorporated and existing under the laws of one of the states of the United States) or permit one or more other domestic corporations to consolidate with or merge into it, or may sell or otherwise transfer to another domestic corporation all or substantially all of its assets as an entirety and thereafter dissolve, provided, the surviving, resulting or transferee corporation either (A) becomes, in connection with the consolidation, merger or sale of assets becomes the Owner of 100% in principal amount of the Bonds outstanding and expressly assumes in writing all of the obligations of the Company contained in this Lease, or (B) if not the Owner of 100% in principal amount of the Bonds outstanding, expressly assumes in writing all the obligations of the Company contained in this Lease; and, further provided, that if not the Owner of 100% in principal amount of the Bonds outstanding, the surviving, resulting or transferee corporation, as the case may be, has a consolidated net worth (after giving effect to said consolidation, merger or transfer) at least (i) equal to or greater than that of the Company immediately prior to said consolidation, merger or transfer, or (ii) \$100,000,000. The term "net worth," as used in this Section, shall mean the difference obtained by subtracting total liabilities (not including as a liability any capital or surplus item) from total assets of the Company and all of its subsidiaries. In any such consolidation, merger or transfer the Company shall comply with the provisions of **Section 13** hereof to the extent applicable.

Section 10.8. Security Interests. At the written request of the Owner of the Bonds, the City and the Company agree to enter into all instruments (including financing statements and statements of continuation) necessary for perfection of and continuance of the perfection of the security interests of the City and the Trustee in the Project. Upon the written instructions of the Owner of the Bonds, the Trustee, at the Company's expense, shall file all instruments the Owner of the Bonds shall deem necessary to be filed and shall continue or cause to be continued the liens of such instruments for so long as the Bonds shall be Outstanding. The City and the Company shall cooperate with the Trustee in this regard by executing such continuation statements and providing such information as the Trustee may require to renew such liens.

Section 10.9. Release of Portions of the Project under Specific Circumstances.

(a) In addition to the automatic release of Public Improvements under **Section 4.7** of this Lease, upon completion of any Public Improvements, such Public Improvements and the portion(s) of the Project Site, if any, on which such Public Improvements are located may be, by agreement of the Company and the City, released from this Lease, the Indenture and the other documents relating to the

Bonds, including by execution of documents described in **Section 11.2** sufficient to convey such property to the Company for purposes of dedication to the City.

(b) Any property (including any Public Improvements located thereon) released from this Lease pursuant to subsection (a) above, shall no longer constitute a part of the Project Improvements, the Project Site or the Project from and after such release.

ARTICLE XI

OPTION AND OBLIGATION TO PURCHASE THE PROJECT

Section 11.1. Option to Purchase the Project.

(a) *Purchase of the entire Project.* The Company shall have, and is hereby granted, the option to purchase the Project at any time, upon payment in full of all Bonds then outstanding or provision for their payment having been made pursuant to **Article XIII** of the Indenture. To exercise such option the Company shall give written notice to the City and to the Trustee, and shall specify therein the date of closing such purchase, which date shall be not less than 15 nor more than 90 days from the date such notice is mailed unless otherwise agreed by the Company, the City and the Trustee, and in case of a redemption of the Bonds in accordance with the provisions of the Indenture, the Company shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. Notwithstanding the forgoing, if the City or the Trustee provides notice of its intent to exercise its remedies hereunder (a "Remedies Notice"), the Company shall be deemed to have exercised its repurchase option under this subsection on the 29th day following the issuance of the Remedies Notice without any further action by the Company; provided said notice has not been rescinded by such date (such option to take place on the 29th day following the issuance of the Remedies Notice). The Company may rescind such exercise by providing written notice to the City and the Trustee on or prior to the 29th day following the issuance of the Remedies Notice and by taking such action as may be required to cure the default that led to the giving of the Remedies Notice. The purchase price payable by the Company in the event of its exercise of the option granted in this subsection shall be the sum of the following:

- (1) an amount of money which, when added to the amount then on deposit in the Bond Fund, will be sufficient to redeem all the then outstanding Bonds on the earliest redemption date next succeeding the closing date, including, without limitation, principal and interest to accrue to said redemption date and redemption expense; plus
- (2) an amount of money equal to the Trustee's agreed to and reasonable fees, charges and expenses under the Indenture accrued and to accrue until such redemption of the Bonds; plus
- (3) an amount of money equal to all payments due and payable as PILOT Payments through the end of the calendar year in which the date of purchase occurs; plus
- (4) the sum of \$100.00.

At its option, to be exercised at least 5 days prior to the date of closing such purchase, the Company may deliver to the Trustee for cancellation Bonds not previously paid, and the Company shall receive a credit against the purchase price payable by the Company in an amount equal to 100% of the principal amount of the Bonds so delivered for cancellation, plus the accrued interest thereon.

(b) *Purchase of a portion of the Project.* The Company shall have, and is hereby granted, the option to purchase any portion of the Project at any time, upon payment in full of a portion of the Bonds then outstanding or provision for their payment having been made pursuant to **Article XIII** of the Indenture, in the amount described in this subsection. To exercise such option, the Company shall give written notice to the City and to the Trustee, and shall specify therein the date of closing such purchase, which date shall be not less than 15 nor more than 90 days from the date such notice is mailed, and in case of a redemption of Bonds in accordance with the provisions of the Indenture, the Company shall make arrangements satisfactory to the Trustee for the giving of the required notice of redemption. The purchase price payable by the Company in the event of its exercise of the option granted in this subsection shall be the sum of the following:

(1) the amount of money equal to the portion of the Cumulative Outstanding Principal Amount on the closing date for such purchase that is attributable to the portion of the Project to be removed, which shall be determined by dividing (i) the total Project Costs paid with respect to such portion of the Project under **Section 4.4** hereof, by (ii) the total of all Project Costs paid under **Section 4.4** hereof, and then multiplying such quotient by the Cumulative Outstanding Principal Amount at the time of the closing date for such purchase and rounding such product to the nearest \$1,000, which amount shall be deposited to the Bond Fund and applied to redeem outstanding Bonds in an equal principal amount on the earliest redemption date next succeeding the closing date); plus

(2) an amount of money equal to the Trustee's agreed to and reasonable fees, charges and expenses under the Indenture accrued and to accrue until such redemption of the Bonds; plus

(3) an amount of money equal to all payments due and payable as PILOT Payments, to the extent allocable to the purchased portion of the Project, through the end of the calendar year in which the date of purchase occurs; plus

(4) the sum of \$100.00.

At its option, to be exercised at least 5 days prior to the date of closing such purchase, the Company may deliver to the Trustee for cancellation Bonds not previously paid, and the Company shall receive a credit against the purchase price payable by the Company in an amount equal to 100% of the principal amount of the Bonds so delivered for cancellation, plus the accrued interest thereon.

Section 11.2. Conveyance of the Project. At the closing of the purchase of the Project (or portion thereof) pursuant to this Article, the City will upon receipt of the purchase price deliver to the Company the following:

(a) If the Indenture shall not at the time have been satisfied in full, a release from the Trustee of the Project (or applicable portion) from the lien and/or security interest of the Indenture and this Lease and appropriate termination of financing statements as required under the Uniform Commercial Code; and

(b) Documents, including without limitation a deed as to the Project Site (or applicable portion), conveying to the Company legal title to the Project (or applicable portion), as it then exists, in recordable form, subject to the following: (i) those liens and encumbrances, if any, to which title to the Project was subject when conveyed to the City; (ii) those liens and encumbrances created by the Company or to the creation or suffering of which the Company consented; (iii) those liens and encumbrances resulting from the failure of the Company to

perform or observe any of the agreements on its part contained in this Lease; (iv) Permitted Encumbrances other than the Indenture and this Lease; and (v) if the Project or any part thereof is being condemned, the rights and title of any condemning authority.

Section 11.3. Relative Position of Option and Indenture. The options and obligation to purchase the Project granted to the Company in this Article shall be and remain prior and superior to the Indenture and may be exercised whether or not the Company is in default under this Lease, provided that such default will not result in nonfulfillment of any condition to the exercise of any such option and further provided that all options herein granted shall terminate upon the termination of this Lease.

Section 11.4. Obligation to Purchase the Project. As additional consideration for the Company's use of the Project, the Company hereby agrees to purchase, and the City hereby agrees to sell, the Project upon the occurrence of (a) the expiration of the Lease Term following full payment of the Bonds or provision for payment thereof having been made in accordance with the provisions of the Indenture, and (b) the final payment due for PILOT Payments. The amount of the purchase price under this Section shall be \$100 plus an amount sufficient to redeem all the then Outstanding Bonds, plus accrued interest and the reasonable fees and expenses of the City and the Trustee. If the Company fails to complete the purchase of the Project at the time required by this Section, the City is specifically authorized to convey the Project back to the Company with or without terminating this Lease and, in such case, may unilaterally terminate this Lease by an instrument signed by the City alone.

ARTICLE XII

DEFAULTS AND REMEDIES

Section 12.1. Events of Default. If any one or more of the following events shall occur and be continuing, it is hereby defined as and declared to be and to constitute an "Event of Default" or "default" under this Lease:

(a) Default in the due and punctual payment of Basic Rent for a period of 5 days following written notice to the Company by the City or the Trustee; or

(b) Default in the due and punctual payment of Additional Rent for a period of 30 days following written notice to the Company by the City or the Trustee; or

(c) Default in the due observance or performance of any other covenant, agreement, obligation or provision of this Lease on the Company's part to be observed or performed, and such default shall continue for 60 days after the City or the Trustee has given the Company written notice specifying such default (or such longer period as shall be reasonably required to cure such default; provided that (1) the Company has commenced such cure within said 60 day period, and (2) the Company diligently prosecutes such cure to completion); or

(d) The Company: (1) admits in writing its inability to pay its debts as they become due; or (2) files a petition in bankruptcy or for reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code as now or in the future amended or any other similar present or future federal or state statute or regulation, or files a pleading asking for such relief; or (3) make an assignment for the benefit of creditors; or (4) consents to the appointment of a trustee, receiver or liquidator for all or a major portion of its property or fails to have the appointment of any trustee, receiver or liquidator made without the

Company's consent or acquiescence, vacated or set aside; or (5) is finally adjudicated as bankrupt or insolvent under any federal or state law; or (6) is subject to any proceeding, or suffers the entry of a final and non-appealable court order, under any federal or state law appointing a trustee, receiver or liquidator for all or a major part of its property or ordering the winding-up or liquidation of its affairs, or approving a petition filed against it under the Bankruptcy Code, as now or in the future amended, which order or proceeding, if not consented to by it, is not dismissed, vacated, denied, set aside or stayed within 90 days after the day of entry or commencement; or (7) suffers a writ or warrant of attachment or any similar process to be issued by any court against all or any substantial portion of its property, and such writ or warrant of attachment or any similar process is not contested, stayed, or is not released within 60 days after the final entry, or levy or after any contest is finally adjudicated or any stay is vacated or set aside; or

(e) the Company vacates, abandons, ceases operations, fails to occupy or is ejected from the Project Site or any material portion thereof, and the same remains uncared for or abandoned for a period of 180 days; or

(f) The occurrence and continuance of an event of default by the Company under the Redevelopment Agreement between the City and the Company following any applicable notice and grace period provided therein.

Section 12.2. Remedies on Default. If any Event of Default referred to in **Section 12.1** hereof has occurred and continues beyond the period provided to cure, then the City may at the City's election (subject, however, to any restrictions against acceleration of the maturity of the Bonds or termination of this Lease in the Indenture), then or at any time thereafter, and while such default continues, take any one or more of the following actions:

(a) cause all amounts payable with respect to the Bonds for the remainder of the term of this Lease to become due and payable after giving ten (10) days prior written notice thereof to the Company, as provided in the Indenture; or

(b) give the Company written notice of the City's intention to terminate this Lease on a date specified therein, which date shall not be earlier than 30 days after such notice is given, and if all defaults have not then been cured, on the date so specified, the Owners shall tender or be deemed to have tendered the outstanding principal amount of the Bonds for cancellation with instruction that such tender is in lieu of payment in accordance with **Section 11.1** hereof and this Lease shall thereupon be terminated, and the City will promptly convey the Project in accordance with **Section 11.2** hereof.

Section 12.3. Survival of Obligations. The Company covenants and agrees with the City and Owners that those of its obligations under this Lease which by their nature require performance after the end of the term of this Lease, or which are expressly stated herein as intended to survive expiration or termination of this Lease, shall survive the cancellation and termination of this Lease, for any cause.

Section 12.4. Performance of the Company's Obligations by the City. If an Event of Default occurs as a result of any failure by the Company, then the City, or the Trustee in the City's name, may (but shall not be obligated so to do) upon the continuance of such failure on the Company's part for 30 days after written notice of such failure is given to the Company by the City or the Trustee, and without waiving or releasing the Company from any obligation hereunder, as an additional but not exclusive remedy, make any such payment or perform any such obligation, and all reasonable sums so

paid by the City or the Trustee and all necessary incidental reasonable costs and expenses incurred by the City or the Trustee (including, without limitation, attorneys' fees and expenses incurred by the City or the Trustee) in performing such obligations shall be deemed Additional Rent and shall be paid to the City or the Trustee on demand, and if not so paid by the Company, the City or the Trustee shall have the same rights and remedies provided for in **Section 12.2** hereof in the case of default by the Company in the payment of Basic Rent.

Section 12.5. Rights and Remedies Cumulative. The rights and remedies reserved by the Trustee, the City and the Company hereunder and those provided by law shall be construed as cumulative and continuing rights. No one of them shall be exhausted by the exercise thereof on one or more occasions. The Trustee, the City and the Company shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Lease, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

Section 12.6. Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the Company of any covenant, agreement or undertaking by the Company, the Trustee or the City may nevertheless accept from the Company any payment or payments hereunder without in any way waiving the Trustee or the City's right to exercise any of its rights and remedies provided for herein with respect to any such breach or breaches of the Company which were in existence at the time such payment or payments were accepted by the Trustee or the City.

Section 12.7. Trustee's Exercise of the City's Remedies. Whenever any Event of Default shall have occurred and be continuing, the Trustee may, but except as otherwise provided in the Indenture shall not be obliged to, exercise any or all of the rights of the City under this Article, upon notice as required of the City unless the City has already given the required notice. In addition, the Trustee shall have available to it all of the remedies prescribed by the Indenture.

ARTICLE XIII

ASSIGNMENT AND SUBLEASE

Section 13.1. Assignment; Sublease.

(a) The Company may assign, transfer, encumber or dispose of this Lease or any interest therein or part thereof for any lawful purpose under the Act. With respect to any assignment, the Company shall comply with the following conditions:

(1) Such assignment shall be in writing, duly executed and acknowledged by the assignor and in proper form for recording;

(2) Such assignment shall include the entire then unexpired term of this Lease; and

(3) A duplicate original of such assignment shall be delivered to the City and the Trustee within 10 days after the execution thereof, together with an assumption agreement, duly executed and acknowledged by the assignee in proper form for recording, by which the assignee

shall assume all of the terms, covenants and conditions of this Lease on the part of the Company to be performed and observed.

(b) The Company shall have the right to sublet all or any part of the Project to a single entity for any lawful purpose under the Act. The Company shall, within 10 days after the delivery thereof, furnish or cause to be furnished to the City and the Trustee a true and correct copy of each such sublease. Any sublease may provide, at the Company's option, that the City's consent shall not be required in respect of any further subletting thereunder if such further subletting is for a similar purpose as the original sublease and is for a purpose permissible under the Act. Nothing in this Lease shall allow the City to disturb the rights of a sublessee to use the Project under the terms and conditions as set forth in such sublessee's sublease with the Company, provided that this sentence shall not limit any remedy that the City may seek to impose on the Company in case of an Event of Default including but not limited to termination of this Lease.

(c) Notwithstanding the foregoing, the right of the Company to assign or sublease any interests in this Lease without the prior written consent of the City shall only apply to assignments made (A) to any entity whose long-term debt, or the long-term debt of an entity controlled by, under common control with or controlling such entity has at least a rating in any of the top three long term debt rating categories by any nationally recognized rating agency; (B) so long as the Company shall remain secondarily liable, to any such entity; or (C) to an entity controlled by or under common control with or controlling the Company, so long as such entity has a net worth of at least \$5,000,000 at the time of such assignment or sublease. For any proposed assignment or transfer, other than those specifically set forth in this Lease, the Company may assign or transfer any interests in this Lease to any entity or person with the City's prior written consent, and such consent shall not be unreasonably withheld, conditioned or delayed. The City shall have the right to grant or withhold its consent to such proposed assignment or transfer in its reasonable discretion after inquiry and the delivery of information by the Company to the City as to whether the proposed assignee or transferee has sufficient financial wherewithal and experience to complete the Project according to the terms of this Lease or any other agreement related to the issuance of the Bonds. If and to the extent that the Company and/or the proposed assignee reasonably demonstrates to the City that the proposed assignee has sufficient experience and a net worth sufficient to complete the Project, then it shall not be deemed "reasonable" for the City to withhold its consent to such proposed assignment or sublease. Any assignee of all the rights of the Company shall agree to be bound by the terms of this Lease and any other documents related to the issuance of the Bonds. Upon such assignment of all the rights of the Company and agreement by the assignee to be bound by the terms of this Lease and any other documents related to the Bonds, the Company shall be released from and have no further obligations under this Lease or any agreement related to the issuance of the Bonds.

Section 13.2. Assignment of Revenues by City. The City shall assign and pledge any rents, revenues and receipts receivable under this Lease, to the Trustee pursuant to the Indenture as security for payment of the principal of, interest and premium, if any, on the Bonds and the Company hereby consents to such pledge and assignment. The City and the Company recognize that the Trustee is a third party creditor beneficiary of this Lease.

Section 13.3. Prohibition Against Fee Mortgage of Project. Except as otherwise set forth in **Section 10.4**, the City shall not mortgage its fee interest in the Project, but may assign its interest in and pledge any moneys receivable under this Lease to the Trustee pursuant to the Indenture as security for payment of the principal of and interest on the Bonds.

Section 13.4. Restrictions on Sale or Encumbrance of Project by City. During this Lease Term, the City agrees that, except to secure the Bonds to be issued pursuant to the Indenture, it will not

sell, assign, encumber, transfer or convey the Project or any interest therein, but may assign its interest in and pledge any moneys receivable under this Lease to the Trustee pursuant to the Indenture as security for payment of the principal of and interest on the Bonds.

ARTICLE XIV

AMENDMENTS, CHANGES AND MODIFICATIONS

Section 14.1. Amendments, Changes and Modifications. Except as otherwise provided in this Lease or in the Indenture, subsequent to the issuance of Bonds and prior to the payment in full of the Bonds (or provision for the payment thereof having been made in accordance with the provisions of the Indenture), this Lease may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the Trustee, given in accordance with the provisions of the Indenture.

ARTICLE XV

MISCELLANEOUS PROVISIONS

Section 15.1. Notices. All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be governed by **Section 1403** of the Indenture.

Section 15.2. City Shall Not Unreasonably Withhold Consents and Approvals. Wherever in this Lease it is provided that the City shall, may or must give its approval or consent, or execute supplemental agreements or schedules, the City shall not unreasonably, arbitrarily or unnecessarily withhold or refuse to give such approvals or consents or refuse to execute such supplemental agreements or schedules; provided, however, that nothing in this Lease shall be interpreted to affect the City's rights to approve or deny any additional project or matter unrelated to the Project subject to zoning, building permit or other regulatory approvals by the City.

Section 15.3. Net Lease. The parties hereto agree (a) that this Lease shall be deemed and construed to be a net lease, (b) that the payments of Basic Rent are designed to provide the City and the Trustee funds adequate in amount to pay all principal of and interest accruing on the Bonds as the same become due and payable, (c) that to the extent that the payments of Basic Rent are not sufficient to provide the City and the Trustee with funds sufficient for the purposes aforesaid, the Company shall be obligated to pay, and it does hereby covenant and agree to pay, upon demand therefor, as Additional Rent, such further sums of money, in cash, as may from time to time be required for such purposes, and (d) that if after the principal of and interest on the Bonds and all costs incident to the payment of the Bonds (including the fees and expenses of the City and the Trustee) have been paid in full the Trustee or the City 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 Company under the terms of this Lease, and except as otherwise provided in this Lease and the Indenture, become the absolute property of and be paid over forthwith to the Company.

Section 15.4. Limitation on Liability of City. No provision, covenant or agreement contained in this Lease, the Indenture or the Bonds, or any obligation herein or therein imposed upon the City, or the breach thereof, shall constitute or give rise to or impose upon the City a pecuniary liability or a charge upon the general credit or taxing powers of the City or the State of Missouri.

Section 15.5. Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State of Missouri.

Section 15.6. Binding Effect. This Lease shall be binding upon and shall inure to the benefit of the City and the Company and their respective successors and assigns.

Section 15.7. Severability. If for any reason any provision of this Lease shall be determined to be invalid or unenforceable, the validity and enforceability of the other provisions hereof shall not be affected thereby.

Section 15.8. Execution in Counterparts. This Lease may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

Section 15.9. Electronic Storage and Notice. The parties hereto agree that the transaction described herein may be conducted and related documents may be stored 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. If the Company elects to give instructions by electronic notice to the Trustee, the Trustee may deem such instructions controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Company agrees to assume all risks arising out of the use of such electronic notice to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 15.10. Satisfaction of the Company's Obligations. Any obligation of the Company under this Lease, including, but not limited to, the obligations of the Company to pay Basic Rent, Additional Rent and to maintain insurance as required herein, may be performed by a member of the Company, and such performance by a member of the Company shall be treated as though the obligation were performed by the Company.

Section 15.11 Complete Agreement. THE COMPANY AND THE CITY UNDERSTAND THAT ORAL OR UNEXECUTED 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 COMPANY AND THE CITY FROM MISUNDERSTANDING OR DISAPPOINTMENT, ANY AGREEMENTS THE COMPANY AND THE CITY REACH COVERING SUCH MATTERS ARE CONTAINED IN THIS LEASE, WHICH ARE THE COMPLETE AND EXCLUSIVE STATEMENTS OF THE AGREEMENT BETWEEN THE COMPANY AND THE CITY, EXCEPT AS THE COMPANY AND THE CITY MAY LATER AGREE IN WRITING TO MODIFY THIS LEASE.

Section 15.12. Employee Verification. The Company will comply with and satisfy the requirements of Section 285.530.2, RSMo., as amended, which requires (1) any business entity receiving tax abatement to, by sworn affidavit and provision of documentation, annually affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the business entity receiving tax abatement, and (2) every such business entity to annually sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the entity receiving tax abatement. The Company shall provide such affidavits and documentation to the City on or before December 1 of each year during the term of this Lease, beginning December 1, 2026, and also upon execution of this Lease.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in their respective names by their duly authorized signatories, all as of the date first above written.

CITY OF INDEPENDENCE, MISSOURI



[SEAL]

By: _____

Name: Lisa Reynolds

Title: Interim City Manager

ATTEST:

By: Susanne Holland

Name: Susanne Holland

Title: City Clerk

WALLY'S INDEPENDENCE MO OWNER LLC,
a Missouri limited liability company

By: _____
Name:
Title:

EXHIBIT A

PROJECT SITE

The following described real estate located in Jackson County, Missouri:

ALL THAT PART OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23, TOWNSHIP 49, RANGE 32, IN THE CITY OF INDEPENDENCE, JACKSON COUNTY, MISSOURI, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SOUTHEAST 1/4; THENCE SOUTH 90° 00' 00" EAST, ALONG THE NORTH LINE OF SAID SOUTHEAST 1/4, A DISTANCE OF 272.31 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 40.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF 39TH STREET, AS ESTABLISHED BY DOCUMENT NO. 1456433, RECORDED IN BOOK 11078, PAGE 1452, SAID POINT BEING THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND TO BE HEREIN DESCRIBED; THENCE SOUTH 0° 00' 00" WEST, AT RIGHT ANGLES TO SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 343.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 18.45 FEET; THENCE SOUTH 1° 15' 00" EAST, PARALLEL TO THE EAST RIGHT-OF-WAY LINE OF NOLAND ROAD, AS NOW ESTABLISHED, A DISTANCE OF 130.00 FEET; THENCE NORTH 90° 00' 00" WEST, A DISTANCE OF 5.00 FEET; THENCE SOUTH 0° 00' 00" WEST, A DISTANCE OF 200.00 FEET; THENCE SOUTH 90° 00' 00" WEST, A DISTANCE OF 152.81 FEET (DEED = 152.98 FEET), TO A POINT ON THE AFORESAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST (DEED = SOUTH 11° 02' 39" EAST), ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 65.40 FEET; THENCE NORTH 90° 00' 00" EAST, A DISTANCE OF 201.39 FEET; THENCE SOUTH 1° 02' 25" EAST, A DISTANCE OF 355.00 FEET; THENCE NORTH 85° 50' 55" WEST, A DISTANCE OF 140.49 FEET (DEED = 140.92 FEET), TO A POINT ON SAID EAST RIGHT-OF-WAY LINE OF NOLAND ROAD; THENCE SOUTH 11° 06' 41" EAST, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 7.64 FEET (DEED = SOUTH 11° 02' 39" EAST, A DISTANCE OF 8.29 FEET), TO A POINT THAT IS OPPOSITE AND 155.00 FEET EAST OF STATION 18+50 ON THE CENTERLINE OF NOLAND ROAD; THENCE SOUTH 88° 41' 51" WEST, (DEED = SOUTH 88° 45' 00" WEST), CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 25.00 FEET TO A POINT THAT IS OPPOSITE AND 130 FEET EAST OF STATION 18+50 ON SAID NOLAND ROAD CENTERLINE; THENCE SOUTH 2° 02' 11" EAST CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 124.30 FEET (DEED = SOUTH 1° 15' 00" EAST, A DISTANCE OF 124.24 FEET), TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF INTERSTATE ROUTE NO. 1-70, AS NOW ESTABLISHED THAT IS OPPOSITE AND 228.80 FEET NORTHERLY OF STATION 545+60 ON THE CENTERLINE OF SAID 1-70, THENCE SOUTH 84° 21' 11" EAST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 643.04 FEET (DEED = SOUTH 84° 17' 39" EAST, A DISTANCE OF 644.64 FEET) TO A POINT THAT IS OPPOSITE AND 166.30 FEET NORTHERLY OF STATION 552+00 ON THE CENTERLINE OF SAID 1-70; THENCE SOUTH 89° 55' 50" EAST, CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 546.03 FEET (DEED = SOUTH 89° 51' 16" EAST, A DISTANCE OF 545.61 FEET), TO A POINT ON THE WEST LINE OF "BROOKWOOD NO. 2", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE NORTH 1° 15' 58" WEST, ALONG THE WEST LINE OF SAID SUBDIVISION, A DISTANCE OF 785.43 FEET (DEED = NORTH 1° 12' 00" WEST, A

DISTANCE OF 786.12 FEET). TO THE SOUTHEAST CORNER OF LOT 19, "WOODRIDGE", A SUBDIVISION OF LAND IN INDEPENDENCE, JACKSON COUNTY, MISSOURI; THENCE SOUTH 89° 51' 43" WEST, ALONG THE SOUTH LINE OF SAID "WOODRIDGE", A DISTANCE OF 251.04 FEET (DEED = NORTH 90° 00' 00" WEST, A DISTANCE OF 250.63 FEET), TO AN ANGLE POINT THEREIN; THENCE NORTH 80° 01' 00" WEST, CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 288.30 FEET TO AN ANGLE POINT THEREIN; THENCE SOUTH 89° 47' 57" WEST (DEED = NORTH 90° 00' 00" WEST), CONTINUING ALONG SAID SOUTH LINE OF "WOODRIDGE" SUBDIVISION, A DISTANCE OF 286.00 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF DODGION STREET, AS NOW ESTABLISHED; THENCE NORTH 0° 12' 03" WEST (DEED = NORTH 0° 00' 00" WEST), ALONG SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 5.00 FEET TO THE SOUTHEAST CORNER OF LOT 34, SAID "WOODRIDGE"; THENCE SOUTH 89° 47' 57" WEST ALONG THE SOUTH LINE OF SAID LOT 34, A DISTANCE OF 135.40 FEET (DEED = 90° 00' 00" WEST, A DISTANCE OF 135.00 FEET), TO THE SOUTHWEST CORNER OF SAID LOT 34; THENCE NORTH 0° 00' 00" EAST, ALONG THE WEST LINE OF SAID "WOODRIDGE" SUBDIVISION, A DISTANCE OF 440.00 FEET TO THE AFORESAID SOUTH RIGHT-OF-WAY LINE OF 39TH STREET; THENCE NORTH 90° 00' 00" WEST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

PROJECT IMPROVEMENTS

The Project Improvements consist of the following, to the extent paid for in whole with Bond proceeds:

- (1) the demolition of existing improvements and construction of an approximately 54,000 square foot travel center, including fuel pumps, landscaping, parking and other amenities on the Project Site, and
- (2) public improvements relating to the development of the Project Site, including improvements to I-70 on and off ramps, Noland Road, Lynn, Canterbury, and 39th Street, with related signalization, utilities and earthwork (such portion described under this subsection (2) being the "Public Improvements").

EXHIBIT C

FORM OF REQUISITION CERTIFICATE

Requisition No. _____
Date: _____

REQUISITION CERTIFICATE

TO: UMB BANK, N.A., AS TRUSTEE UNDER A TRUST INDENTURE DATED AS OF JANUARY 1, 2026, BETWEEN CITY OF INDEPENDENCE, MISSOURI, AND THE TRUSTEE, AND THE LEASE AGREEMENT DATED AS OF JANUARY 1, 2026, BETWEEN CITY OF INDEPENDENCE, MISSOURI AND WALLY'S INDEPENDENCE MO OWNER LLC.

The undersigned Authorized Company Representative hereby states and certifies that:

1. A total of \$_____ is requested to pay for Project Costs (as defined in the Indenture) of the Project Improvements. The total amount of this requisition and all prior requisitions are as follows:

<u><i>Date of Project Costs</i></u>	<u><i>Amount Submitted in this Requisition</i></u>	<u><i>Requisitions Submitted to Date (Including this Requisition)</i></u>

2. Said Project Costs shall be paid in whole from Bond proceeds in such amounts, to such payees and for such purposes as set forth on **Schedule 1** hereto.

3. Each of the items for which payment is requested are or were desirable and appropriate in connection with the construction and improvement of the Project (as defined in the Trust Indenture), have been properly incurred and are a proper charge against the Project Fund, and have been paid by the Company or are justly due to the Persons whose names and addresses are stated on **Schedule 1**, and have not been the basis of any previous requisition from the Project Fund.

4. As of this date, except for the amounts referred to above, to the best of my knowledge there are no outstanding disputed statements for which payment is requested for labor, wages, materials, supplies or services in connection with the construction and improvement of the Project which, if unpaid, might become the basis of a vendors', mechanics', laborers' or materialmen's statutory or similar lien upon the Project or any part thereof.

With respect to this disbursement, the undersigned (i) certifies it has reviewed any wire instructions set forth herein to confirm such wire instructions are accurate, (ii) agrees to indemnify and hold harmless the Trustee from and against any and all claim, demand, loss, liability, or expense sustained, including but not limited to attorney fees, and expenses resulting directly or indirectly as a result of making the disbursement requested hereunder, and (iii) agrees it will not seek recourse from the Trustee as a result of losses incurred by it for making the disbursement in accordance with its instructions herein.

WALLY'S INDEPENDENCE MO OWNER LLC

By: _____
Authorized Company Representative

SCHEDULE 1 TO REQUISITION CERTIFICATE

PROJECT COSTS

<u>Payee and Address</u>	<u>Description</u>	<u>Amount</u>
--------------------------	--------------------	---------------

EXHIBIT D

FORM OF CERTIFICATE OF INSURANCE COMPLIANCE

The undersigned, being the Authorized Company Representative for Wally's Independence MO Owner LLC, as tenant (the "Company"), under a certain Lease Agreement dated as of January 1, 2026, between the City of Independence, Missouri (the "City"), and the Company (the "Lease"), and as beneficiary of the City's Taxable Industrial Development Revenue Bonds (Wally's Redevelopment Project), Series 2026, issued pursuant to a certain Trust Indenture dated as of January 1, 2026 (the "Indenture"), hereby certifies pursuant to Article VII of Lease:

1. All capitalized terms used in this Certificate and not otherwise defined herein shall have the meanings set forth in the Lease.

2. The policies of insurance required to in place pursuant to Article VII of the Lease are effective and the premiums with respect thereto have been paid in full as of the date set forth below. Such policies comply with the terms and provisions set forth in Article VII, and the Company is in compliance with the provisions of Article VII.

3. The undersigned will notify the Trustee 10 days prior to any cancellation or material change to such policies; the policies currently in effect have an expiration date of _____, 20__.

4. The Trustee may conclusively rely on this Certificate of Insurance Compliance without further investigation.

5. Attached hereto are insurance certificates showing compliance with the liability and casualty insurance requirements of Article VII of the Lease.

IN WITNESS WHEREOF, the undersigned Authorized Company Representative has signed this Certificate, and the statements of fact made in this Certificate are true and correct.

Authorized Company Representative

Date: _____

ATTACHMENTS:

1. Liability insurance certificate(s)
2. Casualty insurance certificate(s)

Note: all insurance certificates must show the City and the Trustee as additional insureds.

APPENDIX I

PILOT Payments

The Company covenants and agrees to make PILOT Payments to the City on or before each December 1, commencing December 1, 2026, in the amounts, and in the years, set forth below. Any PILOT Payments due under this Lease which are not paid when due shall bear interest at the interest rate imposed by Missouri law on overdue *ad valorem* real estate taxes from the date such payment was first due.

- 1) For calendar year 2026, the PILOT Payment shall be equal to the Taxes Otherwise Due on the Project Site, which shall be equal to the tax charged to the Project Site by Jackson County, Missouri for tax year 2025, after all appeals are settled.
- 2) In each year after 2026, if the Project remains in City ownership, a PILOT Payment shall be made for the Project in the amount equal to the Taxes Otherwise Due on the Project Site plus 50% of the Taxes Otherwise Due on the improvements to the Project Site that are completed as part of the Project, prorated by percentage of completion.

“Taxes Otherwise Due” for purposes of this Appendix I, means the *ad valorem* real property taxes that would have been due for the year were it not for ownership by the City, as calculated by the City from assessed valuation estimates provided by Jackson County, Missouri and using the then-current tax rates of all applicable taxing jurisdictions.

\$52,050,000
(AGGREGATE MAXIMUM PRINCIPAL AMOUNT)
CITY OF INDEPENDENCE, MISSOURI
TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS
(WALLY'S REDEVELOPMENT PROJECT)
SERIES 2026

DATED AS OF JANUARY 1, 2026

BOND PURCHASE AGREEMENT

Mayor and City Council
Independence, Missouri

Ladies and Gentlemen:

On _____, 2025, the City of Independence, Missouri (the "City") published a notice of sale for the above-referenced series of Taxable Industrial Development Revenue Bonds (the "Bonds"). The winning bidder was Wally's Independence MO Owner LLC, a Missouri limited liability company ("Wally's"). The Official Bid Form on which the winning bid was submitted allowed Wally's to designate an entity of its choice to conclude the purchase of the Bonds and enter into the related documents with the City. Wally's designated itself for such purpose.

On the basis of the representations, and covenants and upon the terms and conditions contained in this Bond Purchase Agreement, Wally's Independence MO Owner LLC, a Missouri limited liability company (the "Purchaser"), offers to purchase from the City, to be issued by the City, under and pursuant to an ordinance passed by the governing body of the City on December 15, 2025 (the "Ordinance") and a Trust Indenture dated as of January 1, 2026 (the "Indenture"), by and between the City and UMB Bank, N.A., Kansas City, Missouri, as trustee (the "Trustee"). Capitalized terms not otherwise defined herein shall have the meanings set forth in **Section 101** of the Indenture.

SECTION 1. REPRESENTATIONS AND AGREEMENTS

(a) By the City's acceptance hereof, the City hereby represents to the Purchaser that:

(1) The City is a constitutional charter city and municipal corporation duly organized and validly existing under the laws of the State of Missouri. The City is authorized under Article VI, Section 27(b) of the Missouri Constitution and Sections 100.010 through 100.200 of the Revised Statutes of Missouri, as amended, and its Charter to authorize, issue and deliver the Bonds and to consummate all transactions contemplated by this Bond Purchase Agreement, the Ordinance, the Indenture, the Lease and any and all other agreements relating thereto. The proceeds of the Bonds shall be used to finance the Project for Wally's Independence MO Owner LLC, a Missouri limited liability company (the "Company"), and to pay for the costs incurred in connection with the issuance of the Bonds;

(2) There is no controversy, suit or other proceeding of any kind pending or threatened wherein or whereby any question is raised or may be raised, questioning, disputing or

affecting in any way the legal organization of the City or its boundaries, or the right or title of any of its officers to their respective offices, or the legality of any official act leading up to the issuance of the Bonds or the constitutionality or validity of the indebtedness represented by the Bonds or the validity of the Bonds, the Ordinance, the Lease or the Indenture; and

(3) Any certificate signed by an authorized representative of the City and delivered to the Purchaser shall be deemed a representation and warranty by the City to such party as to the statements made therein.

(b) The Purchaser represents as follows:

(1) The Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Missouri and is authorized to do business in the State of Missouri;

(2) The execution, delivery and performance of this Bond Purchase Agreement by the Purchaser has been duly authorized by all necessary action of the Purchaser and does not and will not conflict with or result in the breach of any of the terms, conditions or provisions of, or constitute a default under, its organizational documents, any law, court or administrative regulation, decree or order applicable to or binding upon the Purchaser, or, to the best of its knowledge, any agreement, indenture, mortgage, lease or instrument to which the Purchaser is a party or by which it is bound;

(3) When executed and delivered by the Purchaser, this Bond Purchase Agreement will be, and is, a legal, valid and binding obligation, enforceable in accordance with its terms, subject, as to enforcement, to any applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting the enforcement of creditors' rights generally and further subject to the availability of equitable remedies; and

(4) Any certificate signed by an authorized officer or agent of the Purchaser and delivered to the City shall be deemed a representation and warranty by the Purchaser to such party as to the statements made therein.

SECTION 2. PURCHASE, SALE AND DELIVERY OF THE BONDS

On the basis of the representations and covenants contained herein and in the other agreements referred to herein, and subject to the terms and conditions herein set forth and in the Indenture, the Purchaser agrees to purchase from the City and the City agrees to sell to the Purchaser the Bonds on the terms and conditions set forth herein.

The Bonds shall be sold to the Purchaser by the City on the Closing Date (hereinafter defined) upon payment of an amount equal to the Closing Price (hereinafter defined) for the Bonds, which amount shall be deposited in the Project Fund as provided in **Section 502** of the Indenture and shall thereafter on the Closing Date immediately be applied to the payment of Project Costs as provided in **Section 4.4** of the Lease. From time to time after the Closing Date as additional Project Costs are incurred, the Purchaser may make additional payments with respect to the Bonds ("Additional Payments") to the Trustee, which Additional Payments shall be deposited in the Project Fund and applied to the payment of Project Costs and the outstanding principal amount of the Bonds shall increase by each such Additional Payment; provided that the sum of the Closing Price and all such Additional Payments for the Bonds shall not, in the aggregate, exceed \$52,050,000.

As used herein, the term "Closing Date" shall mean January ___, 2026, or such other date as shall be mutually agreed upon by the City and the Purchaser; the term "Closing Price" shall mean, with respect to the Bonds, that certain amount specified in writing by the Purchaser and agreed to by the City as the amount required to fund the initial disbursement from the Project Fund on the Closing Date.

The Bonds shall be issued under and secured as provided in the Ordinance, the Indenture and the Lease authorized thereby and the Bonds shall have the maturity, interest rate and shall be subject to redemption as set forth therein. The delivery of the Bonds shall be made in definitive form as a fully registered bond in the maximum aggregate principal denomination of \$52,050,000; provided, that the principal amount of the Bonds outstanding at any time shall be that amount recorded in the official bond registration records of the Trustee and further provided that interest shall be payable on the Bonds only on the outstanding principal amount of the Bonds, as more fully provided in the Indenture.

The Company agrees to indemnify and hold harmless the City, the Trustee, and any member, officer, official or employee of the City or of the Trustee and any person controlling the Trustee within the meaning of Section 15 of the Securities Act of 1933, as amended (collectively, the "Indemnified Parties"), against any and all losses, claims, damages, liabilities or expenses whatsoever to the extent caused by any violation by the Company of, or failure by the Company to comply with, any federal or state securities laws in connection with the Bonds; provided, however, the indemnification contained in this paragraph shall not extend to such Indemnified Party if such loss, claim, damage, liability or expense is (a) the result of the Indemnified Party's negligence or willful misconduct, or (b) the Indemnified Party is not following the written instructions of the Owner of the Bonds.

In case any action shall be brought against one or more of the Indemnified Parties based upon the foregoing indemnification and in respect of which indemnity may be sought against the Company, the Indemnified Parties shall promptly notify the Company in writing and the Company shall promptly assume the defense thereof, including the employment of counsel, the payment of all expenses and the right to negotiate and consent to settlement. Any one or more of the Indemnified Parties shall have the right to employ 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 Indemnified Party or Indemnified Parties unless employment of such counsel has been specifically authorized by the Company. The Company shall not be liable for any settlement of any such action effected without its consent by any of the Indemnified Parties, but if settled with the consent of the Company or if there be a final judgment for the plaintiff in any such action against the Company or any of the Indemnified Parties, with or without the consent of the Company, then provided that the Company was given prompt written notice and the ability to assume the defense thereof as required by this paragraph, the Company agrees to indemnify and hold harmless the Indemnified Parties to the extent provided herein.

SECTION 3. CONDITIONS TO THE PURCHASER'S OBLIGATIONS

The Purchaser's obligations hereunder shall be subject to the due performance by the City of the City's obligations and agreements to be performed hereunder on or prior to the Closing Date and to the accuracy of and compliance with the City's representations contained herein, as of the date hereof and as of the Closing Date, and are also subject to the following conditions:

- (a) There shall be delivered to the Purchaser on or prior to the Closing Date a duly executed copy of the Ordinance, the Indenture, this Agreement and the Lease and any other instrument contemplated thereby shall be in full force and effect and shall not have been modified or changed except as may have been agreed to in writing by the Purchaser;

(b) The City shall confirm on the Closing Date by a certificate that at and as of the Closing Date the City has taken all action necessary to issue the Bonds and that there is no controversy, suit or other proceeding of any kind pending or threatened wherein any question is raised affecting in any way the legal organization of the City or the legality of any official act shown to have been done in the transcript of proceedings leading up to the issuance of the Bonds, or the constitutionality or validity of the indebtedness represented by the Bonds or the validity of the Bonds or any proceedings in relation to the issuance or sale thereof;

(c) The Company shall execute a certificate, dated the Closing Date, to the effect that (i) no litigation, proceeding or investigation is pending against the Company or its affiliates or, to the knowledge of the Company, threatened which would (A) contest, affect, restrain or enjoin the issuance, validity, execution, delivery or performance of the Bonds, or (B) in any way contest the existence or powers of the Company, (ii) no litigation, proceeding or investigation is pending or, to the knowledge of the Company, threatened against the Company that could reasonably be expected to adversely affect its ability to perform its obligations hereunder, (iii) the representations and warranties of the Company herein were and are true and correct in all material respects and not misleading as of the date made and as of the Closing Date, and (iv) such other matters as are reasonably requested by the other parties in connection with the issuance of the Bonds; and

(d) Receipt by the Purchaser and the Company of an approving opinion from Gilmore & Bell, P.C., in form and substance satisfactory to the Purchaser and the Company.

SECTION 4. THE PURCHASER'S RIGHT TO CANCEL

The Purchaser shall have the right to cancel its obligation hereunder to purchase the Bonds by notifying the City in writing of its election to make such cancellation at any time prior to the Closing Date.

SECTION 5. CONDITIONS OF OBLIGATIONS

The obligations of the parties hereto are subject to the receipt of the approving opinion of Gilmore & Bell, P.C., Bond Counsel, with respect to the validity of the authorization and issuance of the Bonds.

SECTION 6. REPRESENTATIONS AND AGREEMENTS TO SURVIVE DELIVERY

All of the representations and agreements by either party shall remain operative and in full force and effect, and shall survive delivery of the Bonds to the Purchaser.

SECTION 7. PAYMENT OF EXPENSES

The Company shall pay all reasonable expenses and costs to effect the authorization, preparation, issuance, delivery and sale of the Bonds.

SECTION 8. NOTICE

Any notice or other communication to be given to the City under this Agreement may be given by mailing or delivering the same in writing to the address of the City as provided in the Indenture for notices to the City required thereunder; any notice or other communication to be given to the Purchaser or

the Company under this Agreement may be given by delivering the same in writing to the address of the Company as provided in the Indenture for notices to the Company thereunder.

SECTION 9. APPLICABLE LAW; ASSIGNABILITY

This Bond Purchase Agreement shall be governed by the laws of the State of Missouri and may be assigned by the Purchaser to any party to which the Lease is assigned, or otherwise may be assigned with the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.

SECTION 10. EXECUTION OF COUNTERPARTS; ELECTRONIC STORAGE

This Bond Purchase Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document. The parties agree that the transaction described herein may be conducted and related documents may be sent, received or stored 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.

[Remainder of this page intentionally left blank]

Very truly yours,

WALLY'S INDEPENDENCE MO OWNER LLC,
a Missouri limited liability company

By: _____
Name:
Title:

Accepted and Agreed to:

CITY OF INDEPENDENCE, MISSOURI

[SEAL]



ATTEST:

By:

Susanne Holland
Name: Susanne Holland
Title: City Clerk

By:

Lisa Reynolds
Name: Lisa Reynolds
Title: Interim City Manager

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

25-124 **2R** An ordinance supporting the formation of the Wally's Transportation Development District and approving a cooperative agreement. **2R Item passes 7-0 Ord. No. 19771**

Recommendations:

Staff recommends approval.

Background:

The Wally's Tax Increment Financing Plan (the "Redevelopment Plan") was submitted for consideration by Wally's Independence MO Owner LLC (the "Developer"). The proposed Redevelopment Area, which contains approximately 20.9 acres, is generally bounded by E. 39th Street and E. 39th Terrace to the north, S. Dodgion Avenue and S. Hocker Avenue to the east, Interstate Highway 70 to the south, and S. Noland Road to the west.

Part of the Redevelopment Plan calls for the formation of a transportation development district overlapping the Redevelopment Area to impose a 1.0% sales tax on the Redevelopment Area to increase revenues for repayment of costs authorized under the Redevelopment Plan. The Developer has submitted a petition in the Circuit Court of Jackson County for formation of the Wally's Transportation Development District (the "TDD"). This ordinance authorizes the City to file a response in support of formation of the TDD and to enter into a cooperative agreement with the TDD once formed.

Emergency Justification:**Fiscal Impact:****Council Action:**

**Department /
Contact**

Community Development /

REVIEWERS

Tom Scannell

Melissa Cabrera

Jeremy Cover
Charlie Dissell
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. 3. TDD Ordinance - TDD Support and Cooperative Agreement
2. TDD Support Documents - Cooperative Agreement (TDD)
3. Ord. No. 19771

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE SUPPORTING THE FORMATION OF THE WALLY'S
TRANSPORTATION DEVELOPMENT DISTRICT AND APPROVING A
COOPERATIVE AGREEMENT.

WHEREAS, in connection with the Wally's Tax Increment Financing Plan (the "TIF Plan"), which designated a 20.9-acre area generally bounded by E. 39th Street and E. 39th Terrace to the north, S. Dodgion Avenue and S. Hocker Avenue to the east, Interstate Highway 70 to the south, and S. Noland Road to the west, as a "Redevelopment Area," Wally's Independence MO Owner LLC (the "Developer") filed a petition (the "TDD Petition") in the Circuit Court of Jackson County, Missouri (the "Court") to form the Wally's Transportation Development District (the "TDD") with boundaries overlapping the Redevelopment Area in accordance with Sections 238.200 to 238.275 of the Revised Statutes of Missouri (the "TDD Act");

WHEREAS, the City of Independence, Missouri (the "City") will constitute a "local transportation authority" with respect to such portion of the project described in the TDD Petition that is not intended to be merged into the state highways and transportation system;

WHEREAS, the formation of the TDD and the authorization of the TDD to impose a 1.0% sales tax within the boundaries of the Redevelopment Area will assist in the payment of redevelopment project costs under the TIF Plan and will lessen the burden on the City and other taxing jurisdictions under the TIF Plan; and

WHEREAS, the City Council now desires to approve certain actions in support of the TDD Petition, including the execution of a cooperative agreement with the TDD.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, AS FOLLOWS:

SECTION 1. The City hereby expresses its support for the formation of the TDD through the TDD Petition. The City staff, the City's special legal counsel, and other appropriate City officials are hereby authorized to take such actions as are deemed appropriate to support the TDD Petition, including the filing of an answer with the Court evidencing the City's support for the TDD Petition.

SECTION 2. The City is authorized to enter into a cooperative agreement (the "Cooperative Agreement"), in substantially the form attached hereto as Exhibit A, and the City is hereby authorized to execute and deliver the Cooperative Agreement with such changes therein as shall be approved by the officials of the City executing such document, such officials' signatures thereon being conclusive evidence of their approval thereof.

SECTION 3. The City staff, the City's special legal counsel, and other appropriate City officials are hereby authorized to take any and all actions as may be deemed necessary or convenient to carry out and comply with the intent of this Ordinance, and to execute and deliver for and on behalf of the City all certificates, instruments, and agreements or other documents as may be necessary, desirable, convenient, or proper to perform all matters authorized herein.

SECTION 4. It is hereby declared to be the intention of the City Council that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the City Council intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

SECTION 5. This ordinance shall take effect and be in full force as set forth in the City Charter.

[remainder of page intentionally left blank]

PASSED ON 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:

Interim City Manager

EXHIBIT A

COOPERATIVE AGREEMENT

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (this “Agreement”) is made and entered into as of _____, 2025, by and among the **CITY OF INDEPENDENCE, MISSOURI**, a constitutional charter city organized and existing under the laws of the State of Missouri (the “City”), the **WALLY’S TRANSPORTATION DEVELOPMENT DISTRICT**, a transportation development district and political subdivision of the State of Missouri (the “TDD”), and **WALLY’S INDEPENDENCE MO OWNER LLC**, a Missouri limited liability company (the “Developer” and collectively with the City and the TDD, the “Parties”).

RECITALS:

A. On _____, 202____, the Circuit Court of Jackson County, Missouri entered a Judgment and Order establishing the TDD.

B. The Board of Directors of the TDD has passed resolutions authorizing the TDD to execute this Agreement and the City Council has adopted an ordinance authorizing the City to execute this Agreement.

C. The Developer has authorized its execution of this Agreement by appropriate company action.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained in this Agreement, the Parties agree as follows:

Section 1. Definitions. Unless otherwise defined herein, capitalized terms shall have the meanings set forth in the Redevelopment Agreement dated as of _____, 202____ by and between the City and the Developer, as may be amended from time to time (the “*Redevelopment Agreement*”).

Section 2. Authority of the City. The City has the full lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

Section 3. [Reserved].

Section 4. Authority of the TDD. The TDD has the full lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary TDD proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the TDD, enforceable in accordance with its terms.

Section 5. Authority of the Developer. The Developer has the full lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and the Agreement has been duly and validly authorized and approved by all necessary Developer proceedings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

Section 6. Construction of the District Projects.

(a) The Parties acknowledge that the TDD Project is included in the Redevelopment Project and the Work to be completed in accordance with the terms of the Redevelopment Agreement.

(b) Notwithstanding **Section 6(a)**, above, the Parties acknowledge that the City shall be responsible for completion of the Corridor Improvement Project in accordance with Section 5.5 of the Redevelopment Agreement.

Section 7. Approval, Maintenance and Transfer of the TDD Project.

(a) The City, as the applicable local transportation authority under the TDD Act, hereby approves the portion of the TDD Project that is not intended to be merged into the state highways and transportation system (the “Local Portion”) for purposes of the TDD Act; provided, however, that such approval is not effective as any approval required under the Municipal Code, does not exempt the Developer from any zoning or site plan review process required by the Municipal Code and does not constitute the City’s approval of any documents comprising the Approved Site Plans.

(b) The Developer and the TDD will cooperate to obtain approval from the Missouri Highways and Transportation Commission of any portions of the TDD Project that are intended to be merged into the state highways and transportation system, including compliance with Section 238.225 of the TDD Act and any requirements set forth by the Missouri Highways and Transportation Commission for such purpose.

(c) The Local Portion shall be built to the plans and specifications that are approved by the City in accordance with the Municipal Code and the Redevelopment Agreement. All portions of the TDD Project built in City rights-of-way or on City-owned property will be maintained by the City after the provisions of this subsection have been satisfied. Upon completion of all or any portion of the Local Portion, the Developer shall deliver to the City a completion certificate signed by a representative of the engineering firm responsible for the design of the improvements, certifying that the TDD Project, or portion thereof, has been completed in accordance with the final plans and specifications as approved by the City, and a certificate signed by Developer certifying that all sums due to the contractor with respect to the TDD Project, or portion thereof, have been paid. At or after delivery of such certificates, the Developer shall deliver appropriate documentation conveying the applicable portion(s) of the TDD Project to the City.

Section 8. [Reserved].

Section 9. TDD Revenues.

(a) The TDD has passed a resolution to, and has received voter approval to, impose the TDD Sales Tax.

(b) The TDD and the City expect the TDD Sales Tax to be collected by the Missouri Department of Revenue. The TDD shall cooperate with the Missouri Department of Revenue in all respects and as necessary for the collection by the Missouri Department of Revenue of the TDD Sales Tax and direct remittance of the proceeds of the TDD Sales Tax to the TDD.

(c) The TDD Revenues (consisting of the TDD Sales Tax) shall be received by the TDD and applied, subject to annual appropriation by the TDD, as provided in Section 6.2 of the Redevelopment Agreement.

(d) The TDD shall: (i) maintain the Wally's Transportation Development District Sales Tax Trust Fund (the "TDD Sales Tax Account") for deposit of all proceeds of the TDD Sales Tax received by the TDD and pay any reasonable bank fees; (ii) maintain the TDD's checkbook, write checks, and arrange for check signatures by authorized TDD officers for payment of TDD-approved expenditures; and (iii) keep accurate records of the TDD Revenues collected and distributed in accordance with this Agreement and the Redevelopment Agreement.

(e) The TDD shall prepare or cause to be prepared financial statements, budgets and reports, and file the same, as and when required under the TDD Act and Section 105.145, RSMo.

(f) The TDD shall take all actions necessary for enforcement of the TDD Sales Tax. The TDD may prosecute or defend any action, lawsuit or proceeding or take any other action involving third persons that the TDD deems reasonably necessary to secure the payment of the TDD Sales Tax. The Developer covenants to cooperate and take all reasonable actions necessary to assist the TDD in the enforcement of the TDD Sales Tax.

(g) The TDD hereby consents and agrees that 50% of the incremental revenues generated by the TDD Sales Tax shall constitute EATS and, pursuant to Section 99.845 of the TIF Act, be transferred to or at the direction of the City for deposit into the EATS Account of the Special Allocation Fund.

(h) So long as any TIF Obligations or other amounts payable from TDD Revenues pursuant to the Redevelopment Agreement are outstanding, the TDD Sales Tax may not be repealed or reduced. Nothing in this Agreement shall require the imposition of the TDD Sales Tax after the expiration of the voted authority for imposition of the same or beyond the authorized term of the TDD.

(i) TDD Project costs shall be eligible for reimbursement upon acceptance by the TDD of a signed certification of such costs in the form set out in Exhibit D to the Redevelopment Agreement. The TDD hereby appoints the City as its agent to review and approve each such Certificate of Reimbursable Redevelopment Project Costs in accordance with the terms of Section 4.2 of the Redevelopment Agreement. The City shall provide to the TDD and the TDD shall keep records of all Certificates of Reimbursable Redevelopment Project Costs approved by the City that include any costs approved as an "Amount Eligible for Payment from TDD Revenues," the total amount of costs so approved, and the amounts that, at any time, have been approved but have not yet been reimbursed.

(j) The TDD agrees to cause the officer of the TDD at any time charged with the responsibility of formulating budget proposals to include in the budget proposal submitted to the TDD for each fiscal year a request for an appropriation of TDD Revenues for application pursuant to the Financing Agreement and the Bond Indenture, if any, and Section 6.2 of the Redevelopment Agreement.

Section 10. Financing of the District Projects.

(a) The TDD Project is expected to be financed through the issuance of the TIF Obligations, as contemplated by the Redevelopment Agreement. The TDD shall enter into the Financing Agreement, and, subject to annual appropriation with respect to sales tax revenues, shall transfer and apply the TDD Revenues in the manner required by the Financing Agreement and the Indenture, as the means of paying the applicable portions of debt service on the TIF Obligations. The Parties agree that the Indenture will include a mechanism to ensure that TDD Revenues are allocated to the payment of the portion of the TIF Obligations that are eligible under the TDD Act to be paid from TDD Revenues.

(b) While any TIF Obligations are outstanding, the TDD shall not separately issue any bonds, notes or other obligations and shall not pledge any TDD Revenues that have been pledged to TIF

Obligations to the repayment of any obligation senior to or on parity with the TIF Obligations (provided that a subordinate pledge may be made while the TIF Obligations are outstanding only if allowed under the Financing Agreement and consented to by the Developer).

(c) If TIF Obligations are not outstanding the TDD Revenues will be made available to finance the TDD Project pursuant to Section 6.2 of the Redevelopment Agreement.

(d) If TIF Obligations are outstanding but a portion of the TDD Revenues are not pledged to the TIF Obligations, the remaining TDD Revenues will be made available to finance the TDD Project pursuant to Section 6.2 of the Redevelopment Agreement.

Section 11. [Reserved].

Section 12. Continuing Existence of the TDD. The TDD will not take any action to dissolve the TDD until all TIF Obligations and other amounts payable from TDD Revenues are satisfied, unless otherwise consented to by the Developer and the City (unless the term of the TDD expires during such time, in which case the TDD may take appropriate action to wind up its affairs).

Section 13. District Administration. To ensure proper administration of the TDD, the TDD shall engage a law firm or another entity experienced in the administration of special taxing districts and reasonably acceptable to and selected and approved by the Boards of Directors of the TDD, and reasonably acceptable to the City Manager, to assist in the administration of the affairs of the TDD.

Section 14. Severability. If any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

Section 15. Waiver. Any Party's failure at any time hereafter to require strict performance by any other Party, as applicable, of any provision of this Agreement shall not waive, affect or diminish any right of a Party thereafter to demand strict compliance and performance therewith.

Section 16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

Section 17. Anti-Israel Discrimination. Pursuant to Section 34.600, RSMo., the Developer certifies it is not currently engaged in and shall not, for the duration of this Agreement, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or 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.

Section 18. No Partnership. It is expressly understood that the parties are not now, nor will they be, engaged in a joint venture, partnership or any other form of business relationship except as expressly set forth herein, and that no party shall be responsible for the conduct, warranties, guarantees, acts, errors, omissions, debts, obligations or undertaking of any kind or nature of the other in performance of this Agreement.

Section 19. Further Acts. The Parties agree to perform or cause to be performed any and all such further acts as may be reasonably necessary to fulfill the terms and conditions of this Agreement,

subject to any necessary legislative approvals, and provided that this shall not obligate the City to make any particular legislative or administrative approval.

Section 20. Modification. This Agreement shall not be amended, modified or canceled without the written consent of all parties to this Agreement.

Section 21. Governing Law. This Agreement shall be construed and governed in accordance with the law of the State of Missouri.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City, the TDD and the Developer have caused this Agreement to be executed in their respective names and the City and the TDD have caused their respective seals to be affixed thereto, and attested as to the date first above written.

CITY OF INDEPENDENCE, MISSOURI

By: _____
Lisa Reynolds, Interim City Manager

(SEAL)

ATTEST:

Susanne Holland, City Clerk

**WALLY’S TRANSPORTATION
DEVELOPMENT DISTRICT**

By: _____
_____, Executive Director

(SEAL)

Attest:

_____, Secretary

WALLY’S INDEPENDENCE MO OWNER LLC,
a Missouri limited liability company

By: _____
Name:
Its:

EXHIBIT A

DESCRIPTION OF TDD PROJECT

The TDD Project includes the “Project” described in the petition for formation of the TDD.

BILL NO. 25.124
ORDINANCE NO. 19771

AN ORDINANCE SUPPORTING THE FORMATION OF THE WALLY'S
TRANSPORTATION DEVELOPMENT DISTRICT AND APPROVING A
COOPERATIVE AGREEMENT.

WHEREAS, in connection with the Wally's Tax Increment Financing Plan (the "TIF Plan"), which designated a 20.9-acre area generally bounded by E. 39th Street and E. 39th Terrace to the north, S. Dodgion Avenue and S. Hocker Avenue to the east, Interstate Highway 70 to the south, and S. Noland Road to the west, as a "Redevelopment Area," Wally's Independence MO Owner LLC (the "Developer") filed a petition (the "TDD Petition") in the Circuit Court of Jackson County, Missouri (the "Court") to form the Wally's Transportation Development District (the "TDD") with boundaries overlapping the Redevelopment Area in accordance with Sections 238.200 to 238.275 of the Revised Statutes of Missouri (the "TDD Act");

WHEREAS, the City of Independence, Missouri (the "City") will constitute a "local transportation authority" with respect to such portion of the project described in the TDD Petition that is not intended to be merged into the state highways and transportation system;

WHEREAS, the formation of the TDD and the authorization of the TDD to impose a 1.0% sales tax within the boundaries of the Redevelopment Area will assist in the payment of redevelopment project costs under the TIF Plan and will lessen the burden on the City and other taxing jurisdictions under the TIF Plan; and

WHEREAS, the City Council now desires to approve certain actions in support of the TDD Petition, including the execution of a cooperative agreement with the TDD.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF INDEPENDENCE, AS FOLLOWS:

SECTION 1. The City hereby expresses its support for the formation of the TDD through the TDD Petition. The City staff, the City's special legal counsel, and other appropriate City officials are hereby authorized to take such actions as are deemed appropriate to support the TDD Petition, including the filing of an answer with the Court evidencing the City's support for the TDD Petition.

SECTION 2. The City is authorized to enter into a cooperative agreement (the "Cooperative Agreement"), in substantially the form attached hereto as Exhibit A, and the City is hereby authorized to execute and deliver the Cooperative Agreement with such changes therein as shall be approved by the officials of the City executing such document, such officials' signatures thereon being conclusive evidence of their approval thereof.

SECTION 3. The City staff, the City's special legal counsel, and other appropriate City officials are hereby authorized to take any and all actions as may be deemed necessary or convenient to carry out and comply with the intent of this Ordinance, and to execute and deliver for and on behalf of the City all certificates, instruments, and agreements or other documents as may be necessary, desirable, convenient, or proper to perform all matters authorized herein.

SECTION 4. It is hereby declared to be the intention of the City Council that each and every part, section and subsection of this Ordinance shall be separate and severable from each and every other part, section and subsection hereof and that the City Council intends to adopt each said part, section and subsection separately and independently of any other part, section and subsection. In the event that any part, section or subsection of this Ordinance shall be determined to be or to have been unlawful or unconstitutional, the remaining parts, sections and subsections shall be and remain in full force and effect, unless the court making such finding shall determine that the valid portions standing alone are incomplete and are incapable of being executed in accord with the legislative intent.

SECTION 5. This ordinance shall take effect and be in full force as set forth in the City Charter.

[remainder of page intentionally left blank]

PASSED ON THIS 15th DAY OF Dec, 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:


Interim City Manager

EXHIBIT A

COOPERATIVE AGREEMENT

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (this "Agreement") is made and entered into as of _____, 2025, by and among the **CITY OF INDEPENDENCE, MISSOURI**, a constitutional charter city organized and existing under the laws of the State of Missouri (the "*City*"), the **WALLY'S TRANSPORTATION DEVELOPMENT DISTRICT**, a transportation development district and political subdivision of the State of Missouri (the "*TDD*"), and **WALLY'S INDEPENDENCE MO OWNER LLC**, a Missouri limited liability company (the "*Developer*" and collectively with the City and the TDD, the "*Parties*").

RECITALS:

A. On _____, 202__, the Circuit Court of Jackson County, Missouri entered a Judgment and Order establishing the TDD.

B. The Board of Directors of the TDD has passed resolutions authorizing the TDD to execute this Agreement and the City Council has adopted an ordinance authorizing the City to execute this Agreement.

C. The Developer has authorized its execution of this Agreement by appropriate company action.

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained in this Agreement, the Parties agree as follows:

Section 1. Definitions. Unless otherwise defined herein, capitalized terms shall have the meanings set forth in the Redevelopment Agreement dated as of _____, 202__ by and between the City and the Developer, as may be amended from time to time (the "*Redevelopment Agreement*").

Section 2. Authority of the City. The City has the full lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

Section 3. [Reserved].

Section 4. Authority of the TDD. The TDD has the full lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and this Agreement has been duly and validly authorized and approved by all necessary TDD proceedings, findings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the TDD, enforceable in accordance with its terms.

Section 5. Authority of the Developer. The Developer has the full lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and the Agreement has been duly and validly authorized and approved by all necessary Developer proceedings and actions. Accordingly, this Agreement constitutes the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms.

Section 6. Construction of the District Projects.

(a) The Parties acknowledge that the TDD Project is included in the Redevelopment Project and the Work to be completed in accordance with the terms of the Redevelopment Agreement.

(b) Notwithstanding **Section 6(a)**, above, the Parties acknowledge that the City shall be responsible for completion of the Corridor Improvement Project in accordance with Section 5.5 of the Redevelopment Agreement.

Section 7. Approval, Maintenance and Transfer of the TDD Project.

(a) The City, as the applicable local transportation authority under the TDD Act, hereby approves the portion of the TDD Project that is not intended to be merged into the state highways and transportation system (the "Local Portion") for purposes of the TDD Act; provided, however, that such approval is not effective as any approval required under the Municipal Code, does not exempt the Developer from any zoning or site plan review process required by the Municipal Code and does not constitute the City's approval of any documents comprising the Approved Site Plans.

(b) The Developer and the TDD will cooperate to obtain approval from the Missouri Highways and Transportation Commission of any portions of the TDD Project that are intended to be merged into the state highways and transportation system, including compliance with Section 238.225 of the TDD Act and any requirements set forth by the Missouri Highways and Transportation Commission for such purpose.

(c) The Local Portion shall be built to the plans and specifications that are approved by the City in accordance with the Municipal Code and the Redevelopment Agreement. All portions of the TDD Project built in City rights-of-way or on City-owned property will be maintained by the City after the provisions of this subsection have been satisfied. Upon completion of all or any portion of the Local Portion, the Developer shall deliver to the City a completion certificate signed by a representative of the engineering firm responsible for the design of the improvements, certifying that the TDD Project, or portion thereof, has been completed in accordance with the final plans and specifications as approved by the City, and a certificate signed by Developer certifying that all sums due to the contractor with respect to the TDD Project, or portion thereof, have been paid. At or after delivery of such certificates, the Developer shall deliver appropriate documentation conveying the applicable portion(s) of the TDD Project to the City.

Section 8. [Reserved].

Section 9. TDD Revenues.

(a) The TDD has passed a resolution to, and has received voter approval to, impose the TDD Sales Tax.

(b) The TDD and the City expect the TDD Sales Tax to be collected by the Missouri Department of Revenue. The TDD shall cooperate with the Missouri Department of Revenue in all respects and as necessary for the collection by the Missouri Department of Revenue of the TDD Sales Tax and direct remittance of the proceeds of the TDD Sales Tax to the TDD.

(c) The TDD Revenues (consisting of the TDD Sales Tax) shall be received by the TDD and applied, subject to annual appropriation by the TDD, as provided in Section 6.2 of the Redevelopment Agreement.

(d) The TDD shall: (i) maintain the Wally's Transportation Development District Sales Tax Trust Fund (the "TDD Sales Tax Account") for deposit of all proceeds of the TDD Sales Tax received by the TDD and pay any reasonable bank fees; (ii) maintain the TDD's checkbook, write checks, and arrange for check signatures by authorized TDD officers for payment of TDD-approved expenditures; and (iii) keep accurate records of the TDD Revenues collected and distributed in accordance with this Agreement and the Redevelopment Agreement.

(e) The TDD shall prepare or cause to be prepared financial statements, budgets and reports, and file the same, as and when required under the TDD Act and Section 105.145, RSMo.

(f) The TDD shall take all actions necessary for enforcement of the TDD Sales Tax. The TDD may prosecute or defend any action, lawsuit or proceeding or take any other action involving third persons that the TDD deems reasonably necessary to secure the payment of the TDD Sales Tax. The Developer covenants to cooperate and take all reasonable actions necessary to assist the TDD in the enforcement of the TDD Sales Tax.

(g) The TDD hereby consents and agrees that 50% of the incremental revenues generated by the TDD Sales Tax shall constitute EATS and, pursuant to Section 99.845 of the TIF Act, be transferred to or at the direction of the City for deposit into the EATS Account of the Special Allocation Fund.

(h) So long as any TIF Obligations or other amounts payable from TDD Revenues pursuant to the Redevelopment Agreement are outstanding, the TDD Sales Tax may not be repealed or reduced. Nothing in this Agreement shall require the imposition of the TDD Sales Tax after the expiration of the voted authority for imposition of the same or beyond the authorized term of the TDD.

(i) TDD Project costs shall be eligible for reimbursement upon acceptance by the TDD of a signed certification of such costs in the form set out in Exhibit D to the Redevelopment Agreement. The TDD hereby appoints the City as its agent to review and approve each such Certificate of Reimbursable Redevelopment Project Costs in accordance with the terms of Section 4.2 of the Redevelopment Agreement. The City shall provide to the TDD and the TDD shall keep records of all Certificates of Reimbursable Redevelopment Project Costs approved by the City that include any costs approved as an "Amount Eligible for Payment from TDD Revenues," the total amount of costs so approved, and the amounts that, at any time, have been approved but have not yet been reimbursed.

(j) The TDD agrees to cause the officer of the TDD at any time charged with the responsibility of formulating budget proposals to include in the budget proposal submitted to the TDD for each fiscal year a request for an appropriation of TDD Revenues for application pursuant to the Financing Agreement and the Bond Indenture, if any, and Section 6.2 of the Redevelopment Agreement.

Section 10. Financing of the District Projects.

(a) The TDD Project is expected to be financed through the issuance of the TIF Obligations, as contemplated by the Redevelopment Agreement. The TDD shall enter into the Financing Agreement, and, subject to annual appropriation with respect to sales tax revenues, shall transfer and apply the TDD Revenues in the manner required by the Financing Agreement and the Indenture, as the means of paying the applicable portions of debt service on the TIF Obligations. The Parties agree that the Indenture will include a mechanism to ensure that TDD Revenues are allocated to the payment of the portion of the TIF Obligations that are eligible under the TDD Act to be paid from TDD Revenues.

(b) While any TIF Obligations are outstanding, the TDD shall not separately issue any bonds, notes or other obligations and shall not pledge any TDD Revenues that have been pledged to TIF

Obligations to the repayment of any obligation senior to or on parity with the TIF Obligations (provided that a subordinate pledge may be made while the TIF Obligations are outstanding only if allowed under the Financing Agreement and consented to by the Developer).

(c) If TIF Obligations are not outstanding the TDD Revenues will be made available to finance the TDD Project pursuant to Section 6.2 of the Redevelopment Agreement.

(d) If TIF Obligations are outstanding but a portion of the TDD Revenues are not pledged to the TIF Obligations, the remaining TDD Revenues will be made available to finance the TDD Project pursuant to Section 6.2 of the Redevelopment Agreement.

Section 11. [Reserved].

Section 12. Continuing Existence of the TDD. The TDD will not take any action to dissolve the TDD until all TIF Obligations and other amounts payable from TDD Revenues are satisfied, unless otherwise consented to by the Developer and the City (unless the term of the TDD expires during such time, in which case the TDD may take appropriate action to wind up its affairs).

Section 13. District Administration. To ensure proper administration of the TDD, the TDD shall engage a law firm or another entity experienced in the administration of special taxing districts and reasonably acceptable to and selected and approved by the Boards of Directors of the TDD, and reasonably acceptable to the City Manager, to assist in the administration of the affairs of the TDD.

Section 14. Severability. If any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

Section 15. Waiver. Any Party's failure at any time hereafter to require strict performance by any other Party, as applicable, of any provision of this Agreement shall not waive, affect or diminish any right of a Party thereafter to demand strict compliance and performance therewith.

Section 16. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

Section 17. Anti-Israel Discrimination. Pursuant to Section 34.600, RSMo., the Developer certifies it is not currently engaged in and shall not, for the duration of this Agreement, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or 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.

Section 18. No Partnership. It is expressly understood that the parties are not now, nor will they be, engaged in a joint venture, partnership or any other form of business relationship except as expressly set forth herein, and that no party shall be responsible for the conduct, warranties, guarantees, acts, errors, omissions, debts, obligations or undertaking of any kind or nature of the other in performance of this Agreement.

Section 19. Further Acts. The Parties agree to perform or cause to be performed any and all such further acts as may be reasonably necessary to fulfill the terms and conditions of this Agreement,

subject to any necessary legislative approvals, and provided that this shall not obligate the City to make any particular legislative or administrative approval.

Section 20. Modification. This Agreement shall not be amended, modified or canceled without the written consent of all parties to this Agreement.

Section 21. Governing Law. This Agreement shall be construed and governed in accordance with the law of the State of Missouri.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City, the TDD and the Developer have caused this Agreement to be executed in their respective names and the City and the TDD have caused their respective seals to be affixed thereto, and attested as to the date first above written.



(SEAL)

ATTEST:

Susanne Holland

Susanne Holland, City Clerk

CITY OF INDEPENDENCE, MISSOURI

By:

Lisa Reynolds

Lisa Reynolds, Interim City Manager

**WALLY’S TRANSPORTATION
DEVELOPMENT DISTRICT**

By: _____
_____, Executive Director

(SEAL)

Attest:

_____, Secretary

WALLY’S INDEPENDENCE MO OWNER LLC,
a Missouri limited liability company

By: _____
Name:
Its:

EXHIBIT A

DESCRIPTION OF TDD PROJECT

The TDD Project includes the “Project” described in the petition for formation of the TDD.

City of Independence

AGENDA ITEM COVER SHEET

Agenda Title:

25-127 **1R** An ordinance finding, determining and declaring the necessity of acquiring general utility easements and temporary construction and grading easements for the Woodbury Drainage Improvements Project (Project No. 132401); authorizing the negotiation and eminent domain proceedings if necessary; approving the plans and specifications for the project; authorizing the use of experts as needed; authorizing and directing the execution of documents and the payment of funds to property owners or others holding property rights, in conjunction with the project. **1R Read**

Recommendations:

Council approval is recommended.

Background:

Approval of this ordinance will allow City Staff to proceed with easement acquisitions for the Woodbury Drainage Improvements Project (No. 132401). This project in the Crackerneck Watershed will address historic flooding caused by stormwater in the area generally located at East 25th Street South & South Woodbury Street. Planned improvements to mitigate this flooding include the installation of new and larger stormwater inlets and conduits. There have been two public meetings held regarding these planned improvements which have resulted in the construction plans and associated elements.

This is a budgeted capital project.

Emergency Justification:**Fiscal Impact:**

The estimated potential fiscal impact to the City for the acquisition of these easements is \$50,000. Funding for the Woodbury Drainage Improvements Project (No. 132401) is included in the FY 2024 budget (page 182), under Account No. 132401-C-0587058-5406.

Council Action:

Department / Contact	Municipal Services /
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REVIEWERS

Mike Jackson
Melissa Cabrera
Jeremy Cover
Lisa Reynolds
Susanne Holland

ATTACHMENTS:

1. Woodbury Drainage Improvements Ordinance - Project No. 132401
2. Woodbury Drainage Improvements - Project Location

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE FINDING, DETERMINING AND DECLARING THE NECESSITY OF ACQUIRING GENERAL UTILITY EASEMENTS AND TEMPORARY CONSTRUCTION AND GRADING EASEMENTS FOR THE WOODBURY DRAINAGE IMPROVEMENTS PROJECT (PROJECT NO. 132401); AUTHORIZING THE NEGOTIATION AND EMINENT DOMAIN PROCEEDINGS IF NECESSARY; APPROVING THE PLANS AND SPECIFICATIONS FOR THE PROJECT; AUTHORIZING THE USE OF EXPERTS AS NEEDED; AUTHORIZING AND DIRECTING THE EXECUTION OF DOCUMENTS AND THE PAYMENT OF FUNDS TO PROPERTY OWNERS OR OTHERS HOLDING PROPERTY RIGHTS, IN CONJUNCTION WITH THE PROJECT.

WHEREAS, the City Council of the City of Independence, Missouri, pursuant to advice and recommendation of the Municipal Services Director, deems it necessary, advisable and in the public interest to obtain general utility easements and temporary construction easements in accordance with the plans and specifications as approved for construction, operation and maintenance of The Woodbury Drainage Improvements Project (No. 132401), together with all appurtenances, thereto, along, over, under, upon, across and through certain tracts of land within Independence, Jackson County, Missouri; and,

WHEREAS, the City has authority by virtue of Section 82.240 of the Revised Statutes of the State of Missouri, 1969, as amended, and Section 1.3 and 1.4 of the Charter of the City of Independence, Missouri, revised August 8, 1978, to acquire private property by eminent domain proceedings for any public or municipal use, including the uses or purposes stated herein.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF INDEPENDENCE, MISSOURI, AS FOLLOWS:

SECTION 1. That it is hereby found, determined and declared that it is necessary for the purpose of construction, operation and maintenance of The Woodbury Drainage Improvements Project (No. 132401) for the City of Independence, Missouri, to acquire by purchase or eminent domain proceedings general utility easements and temporary construction and grading easements for such public improvements, including, but not limited to, the right to construct curbs, drives, trails, sidewalks and storm sewers, together with all appurtenances thereunto belonging along, over, under, upon, across and through the following described tracts of land, all of which are situated in Independence, Jackson County, Missouri; to wit:

Tract 1

General Utility Easement

All that part of said vacated Woodbury Avenue, more particularly described as follows:

Ordinance1

The East 5 feet of the said 25 foot vacated Woodbury Avenue.

The above described parcel contains 711.80 sq. ft. or 0.016 acres, more or less.

Temporary Construction Easement

All that part of said Lot 26 and said vacated Woodbury Avenue, more particularly described as follows:

Beginning at the Northeast corner of said Lot 26; thence S87°25'16"E along the North property line, being the North line of said vacated Woodbury Avenue, a distance of 20.00 feet; thence S01°52'35"W a distance of 142.36 feet to a point on the Northerly right-of-way line for East 25th Street, as now established; thence N87°25'16"W along said Northerly right-of-way, a distance of 95.04 feet to the Southwest corner of said Lot 26; thence leaving said Northerly right-of-way line N01°53'34"E along the West property line of said Lot 26, a distance of 8.86 feet; thence leaving said West property line S88°07'25"E a distance of 65.04 feet; thence N01°55'23"E a distance of 25.35 feet; thence S87°25'16"E a distance of 20 feet; thence N01°51'26"E a distance of 82.08 feet; thence N35°22'36"W a distance of 16.52 feet to a point on the East line of said Lot 26, being the West line of said vacated Woodbury Avenue; thence N01°52'35"E along said East line of said Lot 26, a distance of 12.26 feet to the Point of Beginning.

The above described parcel contains 2,912.21 sq. ft. or 0.067 acres, more or less.

Tract 2:

General Utility Easement

All that part of said Lot 12 in said "FRELING ORCHARD ACRES", more particularly described as follows:

The West 15 feet of the South 130 feet of said Lot 12.

The above described parcel contains 1,950.00 sq. ft. or 0.045 acres, more or less.

Temporary Construction Easement

All that part of said Lot 12 in said "FRELING ORCHARD ACRES", more particularly described as follows:

Commencing at the Northwest corner of said Lot 12; thence S01°52'35"W along the West property line, being the West line of said Lot 12, a distance of 7.60 feet to the Point of Beginning; thence leaving said West property line S88°07'25"E a distance of 35.00 feet; thence S01°52'35"W a distance of 144.62 feet to a point on the South property line, being the South line of said Lot 12; thence N88°07'25"W along said South property line, a distance of 20.00 feet; thence leaving said South property line N01°52'35"E a distance of 130.00 feet; thence

N88°07'25"W a distance of 15.00 feet to a point on said West property line; thence N01°52'35"E along said West property line, a distance of 14.62 feet to the Point of Beginning.

The above described parcel contains 3,111.77 sq. ft. or 0.07 acres, more or less.

Tract 3:

Temporary Construction Easement

All that part of said Lot 23 in said "KING'S HIGHWAY ADDITION", more particularly described as follows:

Commencing at the Northeast corner of said Lot 23; thence S02°17'24"W along the East line of said Lot 23, being the East property line, a distance of 105.87 feet to the Point of Beginning; thence continuing along said East line, S02°17'24"W a distance of 19.59 feet to a point on an existing storm drainage easement, as recorded in book 310 at page 1615; thence leaving said East line, S53°22'41"W and along said existing storm drainage easement, a distance of 25.70 feet to a point on the South line of said Lot 23, being the South property line; thence leaving said existing storm drainage easement, N88°07'25"W and along said South line, a distance of 25.67 feet; thence leaving said South line, N54°06'04"E a distance of 58.10 feet to the Point of Beginning.

The above described parcel contains 652.59 sq. ft. or 0.015 acres, more or less.

Tract 4:

Temporary Construction Easement – 1

All that part of said Lot 24 in said "KING'S HIGHWAY ADDITION", more particularly described as follows:

Commencing at the Northwest corner of said Lot 24; thence S87°25'16"E along the North line of said Lot 24, being the Southerly right-of-way line for E. 25th Street, as now established, a distance of 29.49 feet to the Point of Beginning; thence continuing along said North line, S87°25'16"E a distance of 27.14 feet; thence leaving said North line, S03°15'16"W a distance of 20.70 feet; thence N86°38'39"W a distance of 27.09 feet; thence N03°06'40"E a distance of 20.33 feet to the Point of Beginning.

The above described parcel contains 556.32 sq. ft. or 0.013 acres, more or less.

Temporary Construction Easement – 2

All that part of said Lot 24 in said "KING'S HIGHWAY ADDITION", more particularly described as follows:

Commencing at the Southwest corner of said Lot 24; thence N02°17'24"E along the West line of said Lot 24, being the West property line, a distance of 15.25 feet to a point on an existing storm

drainage easement, as recorded in book 310 at page 1617, and the Point of Beginning; thence continuing along said West property line, N02°17'24"E a distance of 20.34 feet; thence leaving said West property line, N52°01'05"E a distance of 84.40 feet to a point on the East property line, being the East line of said Lot 24; thence S01°54'12"W along said East property line, a distance of 14.84 feet to a point on said existing storm drainage easement; thence leaving said East property line, S49°19'48"W and along said existing storm drainage easement, a distance of 88.13 to the Point of Beginning.

The above described parcel contains 1,136.45 sq. ft. or 0.026 acres, more or less.

Temporary Construction Easement – 3

All that part of said Lot 24 in said "KING'S HIGHWAY ADDITION", more particularly described as follows:

Commencing at the Southwest corner of said Lot 24; thence S88°07'25"E along the South line of said Lot 24, being the South property line, a distance of 5.68 feet to a point on an existing storm drainage easement, as recorded in book 310 at page 1617, and the Point of Beginning; thence leaving said South property line, N49°19'48"E and along said existing storm drainage easement a distance of 80.55 feet to a point on the East property line, being the East line of said Lot 24; thence leaving said existing storm drainage easement, S01°54'12"W and along said East property line, a distance of 19.30 feet; thence leaving said East property line, S54°06'04"W a distance of 57.42 feet to a point on said South property line; thence N88°07'25"W along said South property line, a distance of 13.95 feet to the Point of Beginning.

The above described parcel contains 817.77 sq. ft. or 0.019 acres, more or less.

Tract 5

General Utility Easement – 1

All that part of said Lot 25 in said "KING'S HIGHWAY ADDITION", more particularly described as follows:

Commencing at the Northeast corner of said Lot 25; thence N87°25'16"W along the North line of said Lot 25, being the Southerly right-of-way line for E. 25th Street, as now established, a distance of 14.95 feet to a point on an existing storm drainage easement, as recorded in book 310 at page 1617 and the Point of Beginning; thence leaving said North line S49°19'48"W, along said existing storm drainage easement, a distance of 6.96 feet; thence leaving said existing storm drainage easement N43°51'31"W a distance of 6.92 feet to a point on said Southerly right-of-way line; thence S87°25'16"E along said Southerly right-of-way line, a distance of 10.08 feet to the Point of Beginning.

The above described parcel contains 24.03 sq. ft. or 0.001 acres, more or less.

General Utility Easement - 2

All that part of said Lot 25 in said "KING'S HIGHWAY ADDITION", more particularly described as follows:

Commencing at the Northeast corner of said Lot 25; thence S01°52'35"W along the East line of said Lot 25, being the Westerly right-of-way line for S. Woodbury Street, as now established, a distance of 6.96 feet to a point on an existing storm drainage easement, as recorded in book 310 at page 1617 and the Point of Beginning; thence continuing along said Westerly right-of-way line S01°52'35"W a distance of 17.65 feet; thence leaving said Westerly right-of-way line N43°49'17"W a distance of 13.02 feet to a point on said existing storm drainage easement; thence N49°19'48"W along said existing storm drainage easement, a distance of 12.65 feet to the Point of Beginning.

The above described parcel contains 82.22 sq. ft. or 0.002 acres, more or less.

Temporary Construction Easement – 1

All that part of said Lot 25 in said "KING'S HIGHWAY ADDITION", more particularly described as follows:

Commencing at the Northeast corner of said Lot 25; thence N88°25'16"W along the North line of said Lot 25, being the Southerly right-of-way line for E. 25th Street, as now established, a distance of 14.95 feet to a point on an existing storm drainage easement, as recorded in book 310 at page 1617; thence S49°19'48"W along said existing storm drainage easement, a distance of 6.96 feet to the Point of Beginning; thence continuing along said existing storm drainage easement, S49°19'48"W a distance of 89.11 feet to a point on the West property line, being the West line of said Lot 25; thence N01°54'12"E along said West property line, a distance of 30.97 feet; thence leaving said West property line S88°05'48"E a distance of 16.81 feet; thence N48°04'42"E a distance of 46.59 feet; thence N87°25'16"W a distance of 50.43 feet to a point on said West property line; thence N01°54'12"E along said West property line, a distance of 2.00 feet to a point on said Southerly right-of-way line; thence S87°25'16"E along said Southerly right-of-way line, a distance of 60.67 feet to the Point of Beginning.

The above described parcel contains 1,205.14 sq. ft. or 0.027 acres, more or less.

Temporary Construction Easement – 2

All that part of said Lot 25 in said "KING'S HIGHWAY ADDITION", more particularly described as follows:

Commencing at the Northeast corner of said Lot 25; thence S01°52'35"W along the East line of said Lot 25, being the Westerly right-of-way line for S. Woodbury Street, as now established, a distance of 6.96 feet to a point on an existing storm drainage easement, as recorded in book 310 at page 1617; thence continuing along said Westerly right-of-way, S01°52'35"W a distance of 17.65 feet to the Point of Beginning; continuing along said Westerly right-of-way, S01°52'35"W a distance of 54.75 feet; thence leaving said Westerly right-of-way, N88°12'55"W a distance of 54.99 feet; thence S52°12'51"W a distance of 39.95 feet to a point on the West property line,

being the West line of said Lot 25; thence N01°54'12"E along said West property line, a distance of 19.30 feet to a point on said existing storm drainage easement; thence leaving said West property line N49°19'48"E along said existing storm drainage easement, a distance of 103.72 feet; thence S43°49'17"E leaving said existing storm drainage easement, a distance of 13.02 feet to the Point of Beginning.

The above described parcel contains 3,148.79 sq. ft. or 0.07 acres, more or less.

Tract 6

Temporary Construction Easement

All that part of said Lot 1 in said "RICE'S RESURVEY OF LOT 1, SCHRIEBER RESURVEY", more particularly described as follows:

The West 19.00 feet of the North 60.00 feet of said Lot 1, also the West 6.00 feet of the South 67.00 feet of said Lot 1.

The above described parcel contains 1,542.00 sq. ft. or 0.035 acres, more or less.

Tract 7

General Utility Easement

All that part of said Lot 11 in said "TAUBMAN-CHILES MANOR", more particularly described as follows:

Commencing at the Southeast corner of Lot 25 in "KING'S HIGHWAY ADDITION", a subdivision in Independence, recorded as no. 546136 in plat book 13 at page 1, and being a point on the North line of said Lot 11, being 25 feet West of the Northeast corner of said Lot 11; thence N88°07'25"W along the said North line of said Lot 11, a distance of 151.53 feet to the Point of Beginning; thence leaving said North line, S54°06'04"W a distance of 25.39 feet; thence S19°05'02"W a distance of 118.76 feet to a point on the South property line of said Parent Parcel; thence N88°07'25"W along said South property line, a distance of 15.70 feet; thence leaving said South property line, N19°05'02"E a distance of 135.04 feet to a point on said North line of said Lot 11; thence S88°07'25"E along said North line, a distance of 30.95 feet to the Point of Beginning.

The above described parcel contains 2,144.26 sq. ft. or 0.049 acres, more or less.

Temporary Construction Easement – 1

All that part of said Lot 11 in said "TAUBMAN-CHILES MANOR", more particularly described as follows:

Commencing at the Southeast corner of Lot 25 in "KING'S HIGHWAY ADDITION", a subdivision in Independence, recorded as no. 546136 in plat book 13 at page 1, and being a point on the North line of said Lot 11, being 25 feet West of the Northeast corner of said Lot 11; thence N88°07'25"W along the said North line of said Lot 11, a distance of 149.16 feet to the Point of Beginning; thence leaving said North line, S36°22'52"W a distance of 15.00 feet; thence S05°12'17"W a distance of 68.78 feet; thence N89°09'37"E a distance of 97.86 feet; thence S48°11'53"E a distance of 43.22 feet; thence S86°07'07"E a distance of 30.77 feet to a point on the West right-of-way line for South Woodbury Street, as now established; thence S01°52'35"W along said West right-of-way, a distance of 12.01 feet; thence leaving said West right-of-way, N86°07'07"W a distance of 35.32 feet; thence N48°11'53"W a distance of 42.66 feet; thence S89°09'37"W a distance of 105.32 feet; thence S00°05'06"E a distance of 35.43 feet to a point on the South property line; thence N88°07'25"W along said South property line, a distance of 34.73 feet; thence leaving said South property line, N19°05'02"E a distance of 118.76 feet; thence N54°06'04"E a distance of 25.39 feet to a point on said North line of said Lot 11; thence S88°07'25"E along said North line, a distance of 2.37 feet to the Point of Beginning.

The above described parcel contains 5,029.57 sq. ft. or 0.115 acres, more or less.

Temporary Construction Easement – 2

All that part of said Lot 11 in said "TAUBMAN-CHILES MANOR", more particularly described as follows:

Commencing at the Southeast corner of Lot 25 in "KING'S HIGHWAY ADDITION", a subdivision in Independence, recorded as no. 546136 in plat book 13 at page 1, and being a point on the North line of said Lot 11, being 25 feet West of the Northeast corner of said Lot 11; thence N88°07'25"W along the said North line of said Lot 11, a distance of 182.48 feet to the Point of Beginning; thence leaving said North line, S19°05'02"W a distance of 135.04 feet to a point on the South property line; thence N88°07'25"W and along said South property line, a distance of 11.15 feet; thence leaving said South property line, N11°03'46"E a distance of 49.51 feet; thence N24°07'26"E a distance of 86.57 feet to a point on said North line of said Lot 11; thence S88°07'25"E along said North line, a distance of 10.42 feet to the Point of Beginning.

The above described parcel contains 1,875.02 sq. ft. or 0.043 acres, more or less.

Tract 9

General Utility Easement

All that part of said Lot 11 in said "TAUBMAN-CHILES MANOR", more particularly described as follows:

Commencing at the Southeast corner of said Lot 11; thence N88°07'25"W along the South line of said Lot 11, a distance of 285.00 feet to a point on the West property line of said Parent Parcel; thence leaving said South property line, N01°52'35"E along said West property line of said Parent Parcel, a distance of 91.00 feet to the Point of Beginning; thence continuing along

said West property line of said Parent Parcel, N01°52'35"E a distance of 19.46 feet; thence leaving said West property line of said Parent Parcel, N52°56'46"E a distance of 29.88 feet; thence N07°08'42"E a distance of 86.92 feet to a point on the North property line of said Parent Parcel; thence S88°07'25"E along said North property line of said Parent Parcel, a distance of 30.12 feet; thence leaving said North property line of said Parent Parcel, S07°08'35"W a distance of 102.36 feet; thence S52°56'46"W a distance of 36.38 feet; thence N88°07'25"W a distance of 23.65 feet to the Point of Beginning.

The above described parcel contains 4,062.94 sq. ft. or 0.093 acres, more or less.

Temporary Construction Easement – 1

All that part of said Lot 11 in said "TAUBMAN-CHILES MANOR", more particularly described as follows:

Commencing at the Southeast corner of said Lot 11; thence N88°07'25"W along the South line of said Lot 11, a distance of 285.00 feet to a point on the West property line of said Parent Parcel; thence leaving said South property line of said Parent Parcel, N01°52'35"E along said West property line of said Parent Parcel, a distance of 91.00 feet; thence leaving said West property line of said Parent Parcel, S88°07'25"E a distance of 23.65 feet to the Point of Beginning; thence N52°56'46"E a distance of 36.38 feet; thence N07°08'35"E a distance of 102.36 feet to a point on the North property line of said Parent Parcel; thence S88°07'25"E along said North property line of said Parent Parcel, a distance of 10.04 feet; thence leaving said North property line of said Parent Parcel, S07°08'33"W a distance of 107.50 feet; thence S52°56'46"W a distance of 28.23 feet; thence N88°07'25"W a distance of 15.91 feet to the Point of Beginning.

The above described parcel contains 5,029.57 sq. ft. or 0.115 acres, more or less.

Temporary Construction Easement – 2

All that part of said Lot 11 in said "TAUBMAN-CHILES MANOR", more particularly described as follows:

Commencing at the Southeast corner of said Lot 11; thence N88°07'25"W along the South line of said Lot 11, a distance of 285.00 feet to a point on the West property line of said Parent Parcel; thence leaving said South property line of said Parent Parcel, N01°52'35"E along said West property line of said Parent Parcel, a distance of 110.46 feet to the Point of Beginning; thence continuing N01°52'35"E along said West property line of said Parent Parcel, a distance of 12.85 feet; thence leaving said West property line of said Parent Parcel, N52°56'46"W a distance of 17.57 feet; thence N07°08'48"E a distance of 81.77 feet to a point on the North property line of said Parent Parcel; thence S88°07'25"E and along said North property line of said Parent Parcel, a distance of 10.04 feet; thence leaving said North property line of said Parent Parcel, S07°08'42"W a distance of 86.92 feet; thence S52°56'46"W a distance of 29.88 feet to the Point of Beginning.

The above described parcel contains 1,372.28 sq. ft. or 0.031 acres, more or less.

Tract 13

Temporary Construction Easement

All that part of said Lot 7, more particularly described as follows:

Beginning at the Southeast corner of said Lot 7; thence N87°25'16"W along the South property line of said Lot 7, a distance of 25.00 feet; thence leaving said South line, N01°52'35"E a distance of 24.00 feet; thence S87°25'16"E a distance of 25.00 feet to a point on the East property line of said Lot 7; thence S01°52'35"W along said East line of said Lot 7, a distance of 24.00 feet to the Point of Beginning.

The above described parcel contains 600.00 sq. ft. or 0.014 acres, more or less.

SECTION 2. That the City Manager and his designates are hereby authorized and directed to negotiate with the owners of the properties herein described for the purchase of general utility easements and temporary construction and grading easements relating to said lands.

SECTION 3. That in the event of failure to negotiate the proper compensation to be paid for such general utility easements and temporary construction and grading easements and the acquisition thereof by purchase, the City Counselor and his designates are hereby authorized and directed to institute eminent domain proceedings for the purpose of acquiring such general utility easements and temporary construction and grading easements in the manner provided by law.

SECTION 4. That the City Manager is hereby authorized to request proposals, if required, for surveys, appraisals, and necessary title reports for said property.

SECTION 5. That the improvements herein referred to shall be of the nature described herein and shall be done in accordance with the plans and specifications as completed, hereby approved, and on file in the office of the Municipal Services Director.

SECTION 6. That the City Manager of the City of Independence, Missouri, is hereby authorized and directed to execute necessary documents, to pay and disburse funds, within appropriations authorized for this project, to property owners, others holding property rights and escrow agents pursuant to negotiated agreements for purchase of said general utility easements and temporary construction and grading easements, all in accordance with established acquisition procedure and approved appraisals.

PASSED THIS _____ DAY OF _____, 2026, 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

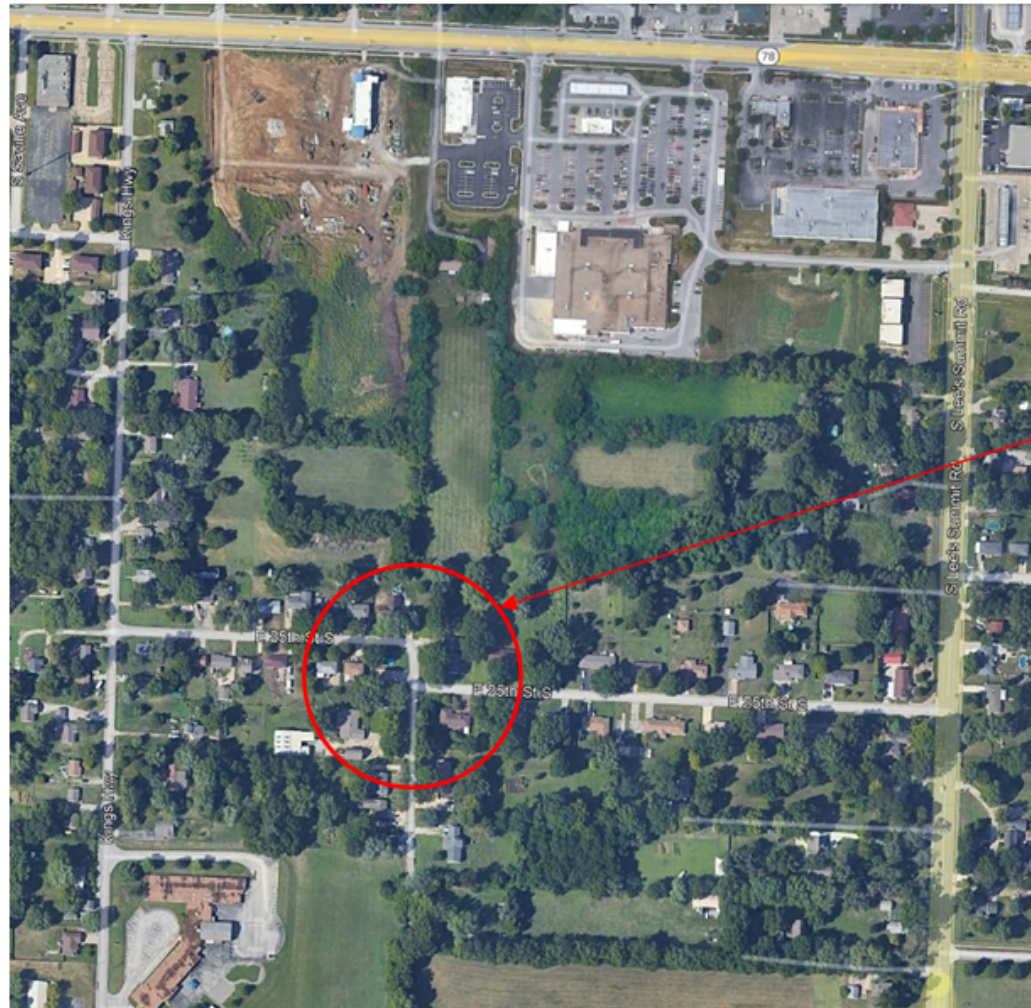
APPROVED – FORM AND LEGALITY:

City Counselor

REVIEWED BY:

City Manager

Woodbury Drainage Improvements Project (No. 132401)



Project Location

Figure 1