

DEVELOPER AGREEMENT

THIS DEVELOPER AGREEMENT ("Agreement") is entered into by and between the City of Republic Missouri ("City") and S6 Tiger Creek, LLC ("Developer") as of the latest date shown with the signatures affixed hereto below. City and Developer are sometimes referred to herein individually as the "Party" or collectively as the "Parties."

WITNESSETH:

WHEREAS, City is a municipal corporation and charter city located in Greene County, Missouri; and

WHEREAS, Developer is a Missouri limited liability company; and

WHEREAS, Developer currently owns or has a legally enforceable contract to acquire interest in real property comprising the Tiger Creek residential subdivision generally located at the northwest corner of State Highway ZZ and East Hines Street in Republic, Missouri (the "Property"), more specifically described/identified in the document(s) attached hereto and labeled "**Exhibit A**", the entirety of which is expressly incorporated herein; and

WHEREAS, Developer is in the process of developing a residential subdivision known as Tiger Creek on the Property; and

WHEREAS, Phase 1 of Tiger Creek has received an Infrastructure Construction Permit for water-main improvements, and the Parties have identified an opportunity to upsize specified portions of the permitted water main from eight-inch (8") to twelve-inch (12") pipe as generally shown on Exhibit B, consisting of approximately 1,075 linear feet of Phase 1 water main otherwise required as eight-inch (8") main (collectively, the "City-Funded 12-Inch Improvements"); and

WHEREAS, the separate approximately 180 linear feet of twelve-inch (12") water main identified in Exhibit B as required by the Phase 1 approved plans is not part of the City-Funded 12-Inch Improvements and remains Developer's responsibility; and

WHEREAS, City has determined that the City-Funded 12-Inch Improvements will provide independent municipal water-system benefits, including increased capacity, redundancy, reliability, advance future water-system improvements, and avoid later replacement or parallel infrastructure; and

WHEREAS, the purpose of this Agreement is to memorialize the Parties' agreed upon respective responsibilities for the improvements to the Property as detailed more further herein.

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the Parties agree as follows:

1. Ability to Contract: Developer represents and warrants that it has the ability to enter into this Agreement and holds all ownership interest in the Property required to execute this Agreement and to fulfill all terms contained herein. City represents and warrants that it has the ability to enter into this Agreement and to fulfill all terms contained herein.
2. Public Improvements:

- a. Scope of Work Under This Agreement: The Parties agree to the following allocation of responsibility for the work under this Agreement (hereafter, the “Public Improvements” and/or the “Work”):
 - i. Developer shall construct and install the Phase 1 water-main improvements in accordance with the Infrastructure Construction Permit, the Final Plans, applicable City requirements, and this Agreement, including the Phase 1 City-Funded 12-Inch Improvements identified in Exhibit B.
 - ii. All specifications for the Public Improvements shall be established, determined and documented in the Final Plans.
 - iii. Nothing in this Agreement waives, reduces, replaces, or modifies any obligation imposed upon Developer or the Property by Chapter 410 of the Municipal Code, the Infrastructure Construction Permit, approved development or construction plans, applicable City standards, the City’s adopted Water System Master Plan, or applicable law, except for the specific City cost participation expressly stated in this Agreement. City is not responsible for any cost that applicable law or an existing City requirement requires Developer to bear.
- b. Construction Period and Cost Estimates:
 - i. City’s material purchases and Developer’s construction obligations under this Agreement are limited to the Public Improvements shown in the Final Plans and the materials and cost allocations identified in Exhibit C.
 - ii. The City-approved Phase 1 infrastructure plans are the “Final Plans” for purposes of this Agreement.
 - iii. Before execution of this Agreement, Exhibit C shall identify the materials City will purchase, the estimated City expenditures.
 - iv. City shall not order materials, make any reimbursement under paragraph 3(b)(iii), authorize City-funded Work, or otherwise incur or commit City funds under this Agreement unless paragraphs 22 and 25 are satisfied.
 - v. Developer is responsible for timely construction and completion of the Public Improvements in accordance with the Infrastructure Construction Permit, Final Plans, applicable City requirements, and this Agreement. City is not responsible for Developer’s construction means, methods, sequencing, supervision, labor, contractors, or subcontractors.
- c. Work Required for Public Improvements: Unless otherwise specified in this Agreement, or as modified by written amendment duly executed by the Parties, Developer shall be responsible for construction of the Public Improvements, including its contractors and subcontractors, construction means and methods, equipment, labor, sequencing, supervision, and installation. City retains all inspection, approval, regulatory, and acceptance authority provided by the Municipal Code, the Infrastructure Construction Permit, approved plans, City standards, and applicable law.
- d. Site Access: At all times during the course of this Agreement, the City, including its employees, workers, subcontractors, suppliers, and other authorized representatives, shall have reasonable access to the Property for inspection,

delivery, coordination, and performance of City's obligations under this Agreement. At all times during the course of this Agreement, Developer, including its employees, workers, subcontractors, suppliers, and authorized representatives, shall have reasonable access to the Property, and shall provide sufficient competent personnel to inspect the Property and the work being performed thereon.

3. Costs of the Public Improvements:

- a. Engineering Plans Costs: Developer shall be solely responsible for all costs of the engineering plans and/or construction drawings for the Public Improvements.

Any engineering plans and/or construction drawings are subject to rejection, revision, or approval by City, in its sole discretion/opinion, as reasonably necessary to complete the Public Improvements.

- b. Public Improvements Costs: Subject to the exception(s) set forth in paragraph 3(c) below, and pursuant to the terms set forth below, except for the City expenditures expressly identified in this paragraph and Exhibit C, Developer is responsible for all costs of the subdivision and Public Improvements otherwise imposed on Developer by the Municipal Code, Infrastructure Construction Permit, approved plans, City standards, or applicable law.

- i. Developer shall purchase and pay for the eight-inch (8") waterline and associated fittings required for Phase 1.
- ii. City shall purchase the twelve-inch (12") waterline and associated fittings for the Phase 1 City-Funded 12-Inch Improvements identified in Exhibits B and C. Developer shall pay all installation costs except the incremental costs City will reimburse under paragraph 3(b)(iii). Developer shall be solely responsible for the cost of all materials associated with the separate approximately 180 linear feet of twelve-inch (12") water main required by the Phase 1 approved plans.
- iii. City shall reimburse Developer for the actual, documented incremental costs attributable solely to the City-Funded 12-Inch Improvements as follows: (1) the additional wages and fringe benefits required by paragraph 3(f) (the "Prevailing Wage Differential"), not to exceed \$5,274.69; and (2) the cost of additional aggregate required solely because of the twelve-inch (12") upsize (the "Additional Aggregate Cost"), not to exceed \$2,351.25. The Prevailing Wage Differential equals the difference between the wages and fringe benefits otherwise payable for the same labor and those required by the applicable prevailing-wage determination. Each reimbursement request must include certified payroll sufficient to verify the Prevailing Wage Differential and aggregate tickets and other records sufficient to verify the Additional Aggregate Cost. City will not reimburse any other installation costs under this paragraph.
- iv. Electrical, Gas, Telecommunication: All costs related to electrical, gas, or telecommunication for the Property shall be the sole responsibility of Developer.
- v. City is not required to purchase materials not identified in Exhibit C or otherwise incur expenditures beyond those expressly authorized by this Agreement. Nothing in this Agreement requires City to pay for an

improvement or cost that the Municipal Code, Infrastructure Construction Permit, approved plans, the City's adopted Water System Master Plan, or applicable law requires Developer to provide at Developer's expense.

- c. City Administrative Personnel Costs: City will not invoice or attempt to collect any payment from Developer under this Agreement for the labor costs of City's administrative personnel which include the City Administrator/Deputy City Administrator, BUILDS Administrator/Assistant Administrator, BUILDS Public Works and Inspector personnel, or Finance personnel. Further, City agrees not to bill Developer under this Agreement for labor costs of the City Attorney unless allowed under this Agreement.
- d. Purchasing Policy: City will use the current Purchasing Policy approved by the City Council and associated Administrative Policies in order to facilitate request for proposals, request for qualifications, request for bids, or written quotes, if applicable, using the procurement method and award criteria required by the Purchasing Policy and applicable law. In so doing, City will abide by all local, state, and federal laws and regulations, including those regarding public works projects.

Upon request by Developer, City will provide Developer with copies of all bids and/or quotes received in connection with the work being performed under this Agreement once those records are open records under the Missouri Sunshine Law, Chapter 610, RSMo, and other applicable law. In the event Developer determines it has a legally justifiable reason to oppose City's utilization of any responding entity, such as by objecting to competence of said entity, Developer may, within three (3) business days of receiving a copy/copies of the bid(s), provide City notice of its objection or other opposition in writing. City is not required to accept or reject any response based on the opposition of Developer, and will at all times comply with applicable law.

- e. Funds Deposits: Developer agrees that any funds remitted to City under this Agreement belong to the City on receipt. Under no circumstances will any funds paid by Developer to the City be construed as belonging to Developer or being held in trust or for the benefit of Developer, and such payments shall be deposited and/or used for such public purposes as the City determines within its lawful discretion.
- f. Public Works Compliance: If § 107.170, RSMo, applies to any part of the Work, Developer shall, before commencing that Work, furnish any required payment bond in an amount fixed by City and with sufficient sureties acceptable to City.

If §§ 290.210 through 290.340, RSMo, apply, Developer and its contractors and subcontractors shall comply with all applicable prevailing-wage requirements for the City-Funded 12-Inch Improvements, including the applicable wage determination and required payroll, affidavit, and compliance documentation. Developer shall separately track the labor performed on the City-Funded 12-Inch Improvements and shall provide the records required to show compliance with this paragraph and support reimbursement under paragraph 3(b)(iii).

- 4. Tax Consequences: No warranty or representation of any kind as to the tax consequences, potential or actual, if any, is made by the Parties under this Agreement or in connection with this Agreement.

5. Ownership in Public Improvements: Developer is responsible for and bears the risk of loss to all City-purchased materials after delivery to the job site and until City formally accepts the installed Public Improvements.

The Phase 1 Public Improvements shall be dedicated to and accepted by City through the applicable Final Plat and acceptance process after all required improvements are complete and all acceptance requirements are satisfied.

City inspection, testing, or approval during construction does not constitute final acceptance.

6. Easements: No separate utility easement is required under this Agreement. The Phase 1 Public Improvements will be dedicated to and accepted by City under paragraph 5.
7. Conflict of Interest: No salaried officer or employee of the City, and no member of the City Council, shall have a financial interest, direct or indirect, in this Agreement.
8. Entire Agreement: This Agreement contains the entire agreement between the Parties and supersedes all prior and contemporaneous written or oral agreements unless excluded herein. This Agreement may not be modified or amended other than in writing signed by the Parties.
9. Default by Developer and Termination: If, through any cause, Developer shall default on its obligations under this Agreement by (1) failing to timely fulfill its duties defined herein, (2) violating any of the covenants, agreements or stipulations herein, or (3) becoming insolvent, City shall deliver written notice of the default to Developer. If Developer fails to cure the default within thirty (30) days of receiving notice from City (or such longer period of time as is reasonably necessary to effect a cure, provided Developer initiates efforts to cure the default as soon as practicably possible and continues pursuit of the same to completion), then City shall have the right to terminate this Agreement by giving at least five (5) business days prior written notice of such termination, specifying the effective date thereof. If City elects to terminate under this provision, Developer shall be responsible to City for all amounts then due under this Agreement and all actual, documented costs and damages reasonably incurred by City as a result of Developer's default, including costs to protect, store, relocate, complete, repair, or correct the Public Improvements.
10. Default by City and Termination: If, through any cause, City shall default on its obligations under this Agreement by (1) failing to timely fulfill its duties defined herein, (2) violating any of the covenants, agreements or stipulations herein, or (3) becoming insolvent, Developer shall deliver written notice of the default to City. If City fails to cure the default within thirty (30) days of receiving notice from Developer (or such longer period of time as is reasonably necessary to effect a cure, provided City initiates efforts to cure the default as soon as practicably possible and continues pursuit of the same to completion), then Developer shall have the right to terminate this Agreement by giving at least five (5) business days prior written notice of such termination, specifying the effective date thereof.
11. Jurisdiction and Venue: This Agreement shall be taken and deemed to have been fully executed and made by the parties herein and governed by the laws of the State of Missouri for all purposes and intents. Venue under this Agreement or any disputes that come from it shall be in the Circuit Court of Greene County, Missouri.

12. Dispute: In the event of any dispute arising out of or relating to this Agreement, the Parties agree to meet and confer in good faith in an effort to resolve the dispute prior to commencing any litigation. If the dispute is not resolved by meeting and conferring, the Parties shall participate in nonbinding mediation as a condition precedent to litigation. The Party requesting mediation shall provide written notice to the other Party. The Parties shall mutually select a mediator and mediate within forty-five (45) days after notice, unless otherwise agreed in writing. Each Party shall bear its own attorneys' fees and costs for mediation, and the Parties shall share the mediator's fees and expenses equally. The mediation requirement is satisfied when mediation is completed. If a Party fails or refuses to participate after reasonable written notice, the other Party has satisfied this requirement. In the event of any litigation and/or dispute resolution arising out of or related to this Agreement, each party will be responsible for its own costs.

Nothing in this paragraph prohibits a Party from seeking temporary or emergency injunctive relief necessary to preserve the status quo or prevent immediate and irreparable harm.

13. Liability: Developer acknowledges and agrees that the type of work to be performed under this Agreement may cause temporary damage to the Property.

Developer is responsible for construction means and methods, site safety, protection and storage of materials, restoration of property disturbed by Developer's Work, and loss or damage arising from the construction by Developer and its employees, contractors, subcontractors, agents, and representatives.

For purposes of this section, the final Public Improvements (including the water-main improvements) constructed in accordance with the Final Plans shall not be considered "damages" to the Property.

Developer shall maintain, and shall require its contractors and subcontractors to maintain, all insurance required by applicable law, the Infrastructure Construction Permit, and applicable City construction requirements, and shall provide satisfactory evidence of coverage before performing the Work. To the fullest extent permitted by law, Developer shall indemnify, defend, and hold harmless City and its officers and employees from claims, damages, losses, liabilities, liens, and expenses to the extent arising from the negligent or wrongful acts or omissions of Developer or its contractors, subcontractors, employees, agents, or representatives while performing the Work. Nothing in this paragraph waives or limits any immunity or defense available to City.

14. Independent Contractor: The Parties to this Agreement are entirely separate and independent from each other. This Agreement shall not be construed as creating any type of joint venture or partnership between the Parties.

15. Execution: The Parties agree that signatures transmitted by facsimile or scanned and emailed shall have the legal effect of original signatures. In addition to facsimile or scanned and email signatures, this Agreement may be executed by the Parties in accordance with the applicable version of the Uniform Electronic Transactions Act ("UETA") and the Electronic Signatures in Global and National Commerce Act ("ESIGN"). The Parties hereto

agree to conduct transactions by electronic means and hereby affirmatively consent to use electronic records to memorialize and execute this Agreement and any alterations thereto. At the request of any party, the Parties shall promptly exchange executed original counterparts of this Agreement or any amendment.

16. Survival: This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns as provided in this Agreement.

The Parties acknowledge and agree that the rights and obligations under this Agreement intended to benefit or burden the Property shall bind permitted successor owners to the extent enforceable under applicable law; provided, however, that no sale, conveyance, transfer, or assignment will release Developer from any reimbursement, construction, or other obligation under this Agreement unless City expressly releases Developer in writing or applicable law requires otherwise.

The Parties acknowledge and agree that at the request of any party, a memorandum of this Agreement shall be duly executed by the Parties and recorded in the real estate records of Greene County, Missouri; provided, however, this Agreement shall be binding and enforceable as between the City and any current or future owner of the Property without recording thereof.

17. Headings: The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning thereof.
18. Whereas Clauses: The “whereas” clauses stated above are incorporated by reference as though fully set forth herein, and shall be considered material terms of this Agreement.
19. Assignment: This Agreement may not be assigned by any party without the prior written consent of all Parties, and no assignment or transfer by Developer will release Developer from its obligations unless City expressly agrees in writing.
20. Public Entity and Officer Immunity and Defenses: In no event shall the language or requirements of this Agreement constitute or be construed as a waiver or limitation of any rights or defenses with regard to applicable sovereign, governmental, official, or any individual immunities and any other protections or defenses as provided by federal and state constitutions, statutes, and laws. The procurement and maintenance of insurance shall not be construed as waiving any such defense otherwise available.
21. Severability Clause: A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section, or part, of this Agreement shall not affect the validity of the remaining parts to this Agreement.
22. Contingent Upon Funds and Approval: This Agreement is expressly contingent and conditioned upon (1) the allocation of sufficient funds for City to use toward its obligations under this Agreement, and (2) the approval of the City Council for the City of Republic, Missouri, by duly executed Ordinance.

City shall not order materials, make any reimbursement under paragraph 3(b)(iii), or otherwise commit City funds under this Agreement unless sufficient funds are lawfully appropriated and available and all applicable approval and procurement requirements are satisfied.

Developer acknowledges and agrees it has no standing or right of action against City in the event City is unable to perform its obligations under this Agreement as a result of insufficient funds or disapproval by its City Council.

23. Supplemental Agreements/Additional Action: The Parties agree to cooperate fully, to execute any supplemental agreements, and to take other additional actions reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
24. Waiver: The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.
25. Contract Documents: The Agreement shall consist of the following:
- a. This Developer Agreement, fully executed;
 - b. Exhibit A – Identification/Legal Description of the Property;
 - c. Exhibit B – Tiger Creek Water Main Upgrade Plan, identifying the City-Funded 12-Inch Improvements, consisting of approximately 1,075 linear feet in Phase 1, and separately identifying the approximately 180 linear feet of twelve-inch (12") Phase 1 water main excluded from City funding under this Agreement;
 - d. Exhibit C – Final Materials List and Cost Allocation, identifying twelve-inch (12") materials for the City-Funded 12-Inch Improvements funded by City and the estimated City material expenditure;
 - e. The Final Plans;
 - f. Exhibit D – Applicable wage determination for the City-Funded 12-Inch Improvements, if required under §§ 290.210 through 290.340, RSMo; and
 - g. Any other properly executed amendments or addenda hereto.

The 2021 Water Master Plan Update and its CIP exhibit are supporting planning materials only and are not Contract Documents unless expressly incorporated by a duly authorized written amendment.

If a Contract Document conflicts with another Contract Document, this Agreement controls the Parties' cost allocation and contractual responsibilities, and the Final Plans and applicable City standards control technical design and construction requirements.

26. Notices: Any notice, request or demand provided for in this Agreement shall be deemed to have been given when the same shall have been personally delivered to the following offices or when notice is received after being deposited in the United States Mail, Registered or Certified, with postage thereon prepaid as follows:

To City:

City of Republic, Missouri
Attn: City Administrator

To Developer:

[DEVELOPER LEGAL NAME]
[ATTN:]

4221 S. Wilson’s Creek Blvd.
Republic, Missouri 65738

[DEVELOPER ADDRESS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the last date shown for the Parties’ signatures below.

S6 Tiger Creek, LLC

CITY OF REPUBLIC

Name/Title:

Colten Harris, City Administrator

Date: _____

Date: _____

Attest:

Laura Burbridge, City Clerk

Date: _____

Approved as to Form:

Justin T. Rogers, City Attorney

Date: _____