

DEVELOPER AGREEMENT

THIS DEVELOPER AGREEMENT (“Agreement”) is entered into this _____ day of _____, 2023, by and between the City of Republic Missouri (“City”) and the Green County Reorganized School District No. 3, also known as the Republic R-III School District (“Developer”). 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 in Greene County, Missouri, and

WHEREAS, Developer is a Missouri School District and political subdivision of the State of Missouri, and

WHEREAS, Developer currently owns or has a legally enforceable contract to acquire interest in real property located at or near 2654 North Commercial Avenue in Republic, Missouri, more specifically described and/or identified in the document(s) attached hereto and labeled “**Exhibit A**”, the entirety of which is expressly incorporated herein, (the “Property”), and

WHEREAS, Developer is in the process of planning and/or constructing improvements to the Property that will benefit the public by, among other things, serving as the site for a new Intermediate School where fifth and sixth grade education will be provided to the City’s young residents, and

WHEREAS, in order for Developer to construct the new Intermediate School as planned, certain public improvements need to be constructed on the Property, and

WHEREAS, the Parties desire to partner on the construction of a portion of the public improvements Developer is making to the Property, which will ultimately serve to benefit the public within the provisions of § 70.220, RSMo. by providing education and other educational opportunities, 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 mutually 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 fulfill all terms contained herein.
2. Public Improvements:
 - a. Scope of Work Under This Agreement: In exchange for Developer’s promises herein, City agrees that it shall perform the following work under this Agreement (hereafter, the “Public Improvements” and the “Work”):
 - i. City shall plan, coordinate, and install the water main line (the “Water Main Line”) that will enable City to provide potable water service to the Property with sufficient capacity to meet the anticipated demand projected for the Property.
 - ii. Installation of the Water Main Line shall include the looping of other or additional water system(s), if any, as deemed applicable or necessary by City.

- iii. The Water Main Line shall be located within the utility easement(s) granted by Developer pursuant to paragraph 6 of this Agreement, so long as such location is consistent with the final infrastructure plans, as approved by the City. To the extent the final approved infrastructure plans indicate the Water Main Line must be installed outside the utility easement(s) area granted by Developer referenced herein, such easements shall be amended to ensure the area fully encompasses the location of the Water Main Line, at the cost of Developer.
 - iv. All specifications for the Water Main Line shall be established, determined and documented in the Final Approved Infrastructure Plans.
- b. Construction Period and Cost Estimates:
- i. City's construction of the Public Improvements shall be completed by no later than December 31, 2024, unless otherwise modified by written amendment to this Agreement executed by the Parties. City's completion of the Public Improvements by the date set forth herein is expressly contingent upon Developer's timely delivery to the City of all engineering and other infrastructure plans required for City to perform its obligations under this Agreement.
 - ii. Developer shall have sixty (60) days after the execution of this Agreement to deliver engineering plans and other applicable infrastructure plans, signed and sealed, to the City. City shall then have ten (10) business days to review the completed engineering drawings and respond to Developer with any questions, suggestions, and/or changes.
 - iii. Once all questions, suggestions, and/or changes have been fully addressed and agreed upon by the Parties ("Final Plans"), an estimate of the construction costs for the Public Improvements ("Estimated Costs") will be provided by City to Developer.
 - iv. Any Estimated Costs provided by City to Developer shall not be binding on the Parties. The actual costs incurred by City, as more fully addressed in paragraph 3 below, shall be the amount Developer is required to reimburse to City under this Agreement.
 - v. Nothing contained in this paragraph or this Agreement shall be construed to restrict City's right to construct the Public Improvements at any time prior to the expiration of the Construction Period or to continue constructing the Public Improvements after the Construction Period, so long as City is making substantial and continuing progress toward completion of the Public Improvements. Further, the Construction Period shall be extended as necessary to accommodate delayed progress of the Public Improvements due to changes in work, any act or omissions of Developer or its employees, agents, or representatives that are contrary to this Agreement or any other cause that is not reasonably foreseen or beyond the control of City, its subcontractors, or suppliers including, but not limited to acts of God, acts of a government authority, natural or manmade disaster, delay in the transportation or shortages of materials or equipment, abnormal weather conditions or labor disputes.
- c. Work Required for Public Improvements: Unless otherwise specified in this Agreement or as modified by written amendment executed by the Parties, City will be the sole judge of the work required to fully and properly complete construction of the Public Improvements and meet any other obligations of the City under this Agreement, including but not limited to, the work to be performed, the contractors or subcontractors hired to do the work being performed, the engineer(s) selected, the construction methods used, the

equipment, materials and supplies to be used, and providers of such equipment, materials and supplies.

- 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 the purpose of performing its work under this Agreement. and shall provide sufficient competent personnel to visit and inspect the worksite(s) and work being performed. City, and its employees, workers, subcontractors, suppliers, and authorized representatives who access the worksite(s) located on the Property shall comply with Developer's applicable Policies regarding visitors to Developer's property, which include Policies C-130-P, C-150-P, C-155-P, C-165-P, C-170-P, E-130-P, F-235-P, and F-250-P (labeled "**Exhibit B**" attached hereto and expressly incorporated herein).

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(d) below, and pursuant to the terms set forth below, Developer shall be solely responsible for the direct costs of the Public Improvements, which includes but is not necessarily limited to cost of grading, aggregate, fill materials, line and piping materials, concrete, fire hydrants, and all other apparatuses necessary or appropriate to the installation of Water Main line in accord with industry standards.
 - i. Although City will initially pay for the Public Improvement Costs, Developer shall be responsible to reimburse City for all such costs.
 - ii. The Parties agree the costs to be reimbursed by Developer for the Public Improvements include the following: (1) Actual costs incurred by City for the material expenses of the Public Improvements, (2) Actual expenses and costs incurred by City for the labor of workers or entities not employed by City, specifically including but not necessarily limited to contractors and subcontractors, (3) Actual expenses and costs incurred by City for the rental of equipment and/or tools not owned by City, (4) Actual expenses and costs associated with utilities necessary or utilized in performing the Work, (5) Actual expenses and costs of transportation incurred in performing the Work, (6) Actual taxes incurred in connection with performing the Work as well as all other fees and costs incurred in ensuring compliance with local, state, and federal public works laws and regulations as it pertains to performing the Work, and (7) Actual expenses and costs for all other services and facilities necessary for the execution and completion of the Work.
 - iii. The Parties agree that if the City's "actual expenses and costs" to be incurred exceed the City's estimated expenses and costs, City shall notify Developer as soon as reasonably practical so the Parties can discuss alternatives (such alternatives shall be in accordance with all applicable City Standards and Specifications) in an effort to prevent the actual expenses and costs from exceeding the estimated expenses and costs, and/or to mitigate any such increase.
 - iv. Electrical, Gas, Telecommunication: All costs related to electrical, gas, or telecommunication for the Property shall be the sole responsibility of Developer.

- c. Invoicing:
- i. City will invoice Developer on or about the fifteenth (15th) day of every month for the actual costs incurred by City for expenses allowed under this Agreement.
 - ii. Each invoice will contain documentation supporting the amount of the invoice and the actual costs incurred by City.
 - iii. Developer will have twenty (20) days following receipt of any such invoice to obtain the reasonable approval of such invoice from its design professional, and an additional twenty (20) days thereafter to pay City the approved amount(s) due, as shown on the invoice and approved by Developer's design professional.
 - iv. In the event Developer's design professional reject(s) an invoice for cause shown, or alternatively, in the event Developer objects to the amount of any invoice or reasonably believes additional supporting documentation is required, then Developer shall notify City as soon as practicable but prior to the due date of said invoice and the Parties shall work in good faith to correct any errors or resolve any dispute.
 - v. If Developer does not pay any invoice from City to Developer in accordance with the above, subject to Developer's right to reject or object to an invoice, City has the right to stop all work under this Agreement until the amount(s) due and owing are remitted to City.
 - vi. Developer will be allowed to keep a ten percent (10%) retainage on all invoices billed to Developer by City. Said retainage will be noted by City in invoices sent to Developer and tracked by City. Said retainage will be completely payable by Developer to City after the Public Improvements are installed by City and after invoiced by City and payable under this paragraph.
- d. City Personnel Costs: City will not invoice or attempt to collect any payment from Developer under this Agreement for the labor costs of City's own personnel required to plan, coordinate, and install the Work, including, but not limited to 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.
- e. 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, to determine the lowest price qualified provider of materials and/or services. In so doing, City will abide by all local, state, and federal laws and regulations, including those regarding public works projects. 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.
- f. 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.

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 will neither have nor gain any ownership or other interest in the Public Improvements by way of or under this Agreement.
6. Easements: Developer agrees to execute any easements and/or rights-of-way reasonably required by City, including the coordination and execution of any easements with third party property owners, in order to satisfactorily complete the Work. Prior to construction, Developer shall provide to City, at no cost to City, any such easements, including, if applicable, any temporary construction easements required for third party property owners, necessary for City to perform the Work. The Parties agree that City may need further easements and/or rights-of-way that allow for the successful completion of the Public Improvements, including potential extensions. In such event, the Parties agree to negotiate in good faith to allow City to acquire further easements from Developer to extend the Public Improvements to adjoining properties in the future if determined to be required. Should any easements and/or rights-of-way under this Agreement not be in use and no longer necessary for the Parties to complete the Work, the City agrees to take all steps necessary to vacate said easements and/or rights-of-way within ninety (90) days of being notified by the Developer of its desire to vacate the easements and/or rights-of-way executed pursuant to this Agreement. The Parties agree and understand such vacation requires multiple steps, including a public hearing, a hearing and recommendation before the City's Planning and Zoning Commission, and further that any vacation of an easement right by the City is expressly contingent upon approval by the City Council through an adopted Ordinance.
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 of City's actual costs in the Public Improvements up to and including the date of termination.
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. If Developer elects to terminate under this provision, Developer shall be responsible to City for all of City's actual costs in the Public Improvements up to and including the date of termination.

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. The Parties may also agree to, but are not required to, mutually participate in mediation. 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.
13. Liability: Developer acknowledges and agrees that the type of work to be performed under this Agreement may cause temporary damage to the Property. City agrees to restore or repair any such damage to the Property caused by City, its workers, subcontractors, or representatives in the course of completing the Public Improvements. For purposes of this section, the final Public Improvements constructed in accordance with the Final Plans shall not be considered "damages" to the Property. Each party shall have and maintain during the term of this Agreement sufficient property, liability, property damage, and other types of insurance to protect against any damages that may be incurred during the course of construction of the Public Improvements.
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 benefits afforded to Developer under this Agreement shall run with the Property and shall be enforceable by and for the benefit of any and all successor owners of the Property without further consideration to or consent by the City. 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.
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. The City agrees to obtain approval(s) of its City Council for the allocation of estimated funds as well as any other contingencies necessary to fulfill its obligations under this Agreement prior to or concurrent with execution of the Amendment. 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/Description of the Property;
 - c. Exhibit B – Specified Applicable School District Policies;
 - d. Final Infrastructure Plans, once approved; and
 - e. Any other properly executed amendments or addendums hereto.
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
 213 North Main Street
 Republic, Missouri 65738

To Developer:

Republic R-III School District
 Attn: Dr. Matt Pearce
 636 North Main Street
 Republic, MO 65738

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

Republic R-III School District

CITY OF REPUBLIC

(Signature)

David Cameron, City Administrator

(Printed Name)

(Date)

(Title)

Attest: Laura Burbridge, City Clerk

(Date)

(Date)

Approved as to Form:

Megan McCullough, City Attorney

(Date)

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