

DEVELOPER AGREEMENT

THIS DEVELOPER AGREEMENT ("Agreement") is entered into this ____ day of _____, 2020, by and between the City of Republic Missouri ("City") and Convoy of Hope, ("Developer"). City and Developer are sometimes referred to herein individually as a ("Party") and 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 registered foreign nonprofit corporation, and

WHEREAS, Developer is currently the owner of real property in the City of Republic commonly located at the end of West Carnahan Street in the former Trogon Industrial Park, legally described in Exhibit A attached hereto and incorporated by reference into this Agreement, ("Property"), and is in the process of developing a business campus on the Property in order to facilitate new commercial development, and

WHEREAS, in order for Developer to fully develop the Property, certain public improvements need to be constructed on the Property, and

WHEREAS, City recognizes the need to encourage development in the City of Republic and desires to participate and facilitate the development of Property to the extent the City has available resources.

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

1. Ability to Contract: Developer warrants that it has the ownership interest in the Property required to enter into this Agreement and fulfill the terms contained herein.
2. Public Improvements:
 - a. Work under this Agreement: In exchange for Developer's promises herein, the City agrees that it shall provide for, arrange, construct, complete, plan, or coordinate the public improvements (the "Public Improvements ") as described in Section 2(c) (Water Improvements) below.
 - b. Construction Period: The parties agree that the City's construction period will be completed no later than December 31, 2020 ("Construction Period"), provided the Developer has completed all of the necessary improvements required by City to be installed prior to September 15, 2020 for the Public Improvements contained in this agreement. City has provided Developer with a labor and equipment pay structure of City and a cost estimate in Exhibit D, attached hereto and incorporated by reference into this Agreement. Any cost estimate provided by City to Developer

shall not be binding on either party. Nothing contained herein shall be construed to restrict the City's right to construct the Public Improvements (as defined herein) at any time prior to the expiration of the Construction Period or continue constructing the Public Improvements after the Construction Period as long as the 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 another government authority, natural or manmade disaster, delay in the transportation or shortages of materials or equipment, abnormal weather conditions or labor disputes.

- c. Water Improvements: City shall plan, coordinate and install all necessary water lines, systems and facilities, according to the final engineering plans as contained in Exhibit B, as modified by Section 3(a)(iv), attached hereto and incorporated by reference into this Agreement as determined by City and Developer for the City to provide potable water service to the Property having sufficient capacity to meet the anticipated demand for uses permitted under the then current Property zoning classification. City agrees to provide said water service to the Property no later than the expiration of the Construction Period. Developer and the City shall work together to plan and coordinate the installation of such water service infrastructure, including, without limitation, determining the location(s) on the Property that Developer and future users shall tap into said water main. Said water improvements shall be located within the utility easements or public rights-of-way granted by Developer to City pursuant to the Easements paragraph of this Agreement.
 - d. Utilities: Developer will be responsible for the planning, coordination, and/or installation of all other utility improvements ("Utility Improvements") on the Property.
 - e. Work Performed: City will be the sole judge of the work needed to be performed to complete this Agreement, including but not limited to, the work to be performed, the contractors or subcontractors hired to do the work, the engineer hired, the construction methods used, the location of the work, equipment used, the quality of the work, and the selection of the materials and supplies to be used.
 - f. Site Access: Developer and its representatives shall have access at all times to the work site on the Property and shall provide sufficient competent personnel to visit and inspect the work site during the course of this Agreement to determine the work and manner of it being performed. City, its workers, subcontractors, suppliers and representatives shall have access at all times to the work site.
3. Costs of the Public Improvements:

a. Payments:

- i. Developer will be responsible for all costs for the engineering plans and/or construction drawings for the Public Improvements in this Agreement. Any engineering plans and/or construction drawings are subject to rejection, revision, or approval by City as reasonably necessary, in the City's opinion, to complete the Public Improvements in this Agreement.
- ii. City will initially pay for the cost of the Public Improvements subject to this Agreement.
- iii. City shall be reimbursed by Developer all the actual hard costs incurred by City for the total length in the Public Improvements shown on Exhibit C, attached hereto and incorporated by reference into this Agreement, in the highlighted blue in color, including, but not limited to, materials, labor, including contractor and subcontractors, equipment, tools, water, utilities, transportation, taxes, local, state, and federal public works laws and regulations and all other services and facilities necessary for the execution and completion of the Public Improvements pursuant to this Agreement. Payment by Developer to City under this paragraph shall be made within 30 days after City has completed all the Public Improvements and after Developer is invoiced for the Public Improvements by City.
- iv. In order to better serve the area on and around the Property for future development, City will install the Public Improvements as recommended by the City's Public Works Department. Said proposed installation is shown on Exhibit C, attached hereto and incorporated by reference into this Agreement, in the highlighted red in color. City has the right to change the location of the Public Improvements as long as the changes will still serve the Water Improvements needed by Developer as outlined in Section 2(c). City shall be responsible for the costs of the Public Improvements to extend the water main in excess of the total length contained in Exhibit C as highlighted in the color blue to better serve the area for future development.
- v. 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 to determine the lowest price qualified provider of materials and/or services. City will abide by all local, state, and federal laws and regulations including those regarding public works projects. Developer will be provided by City with all bids and/or quotes once they are opened in accordance with applicable law. Once the bids and/or quotes are provided to Developer, Developer will have three business days to provide City in writing with any legally justifiable reason why the lowest bidder pursuant to the current purchasing policy approved by the City Council or associated

Administrative Policies would not be acceptable. If Developer provides City with a legally justifiable reason in writing why the lowest bidder is not the most responsible or responsive bidder, City will move to the next lowest responsible bidder as determined by City and Developer.

- b. Funds Deposits: Developer agrees that any funds remitted to City under this Agreement may be commingled by the City with other funds deposited by the City from other sources. Further, any funds remitted by the Developer will gain no interest and the City shall determine where said funds are to be deposited.
4. Ownership in Work: Developer will have and will gain no ownership or other interest in Public Improvements in this Agreement.
5. Easements: Developer agrees to execute any easements and/or rights-of-way reasonably required by City in order to perform the work contemplated by this Agreement and in order for City to provide future maintenance on said work on the Property after the work is completed. Said easements will be provided by Developer to City at no cost and shall be made before the City commences work under this Agreement. City and Developer agree that City may need further easements and/or rights-of-way that allow for the extension of the Public Improvements contained in this Agreement. City and Developer 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.
6. 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. A violation of this provision renders this Agreement void. Any federal regulations and applicable provisions in Section 105.450 et seq., RSMo. shall not be violated.
7. Entire Agreement: This Agreement contains the entire Agreement between the Parties and supersedes all prior and contemporaneous written or oral agreements. This Agreement may not be modified or amended other than in writing as agreed to by the Parties.
8. Default by Developer and Termination: If through any cause, the Developer shall fail to fulfill in timely and proper manner Developer's obligations under this Agreement, become insolvent, or if Developer shall violate any of the covenants, agreements or stipulations of this Agreement, the City shall deliver written notice of the same to Developer and if such failure or violation is not cured within ten days thereafter (or such longer period of time as is reasonably necessary so long as Developer begins to cure such failure or violation within such ten-day period and thereafter diligently pursues the same to completion), the City shall thereupon have the right to terminate this Agreement by giving at least five 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.
9. Default by City and Termination: If through any cause the City shall fail to fulfill in timely and proper manner City's obligations under this Agreement, become insolvent, or if City shall violate any of the covenants, agreements or stipulations of this Agreement, the

Developer shall deliver written notice of the same to City and if such failure or violation is not cured within ten days thereafter (or such longer period of time as is reasonably necessary so long as City begins to cure such failure or violation within such ten-day period and thereafter diligently pursues the same to completion), the Developer shall thereupon have the right to terminate this Agreement by giving at least five 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. Termination of this Agreement shall be the sole remedy for any default by City under this Agreement.

10. 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.
11. Dispute: In the event that the City is the prevailing party in any litigation arising out of or relating to this Agreement, the City shall be entitled to all reasonable attorneys' fees and expenses incurred.
12. Liability: Nothing in this Agreement shall be construed to create any liability on behalf of the City for any direct, special, indirect, liquidated, punitive, or consequential damages. Developer agrees that the type of work to be performed under this Agreement will cause damage to Developer's Property and Developer agrees that the City shall not be liable for any damages caused to the Property outside of that necessary to complete the Public Improvements contemplated by this Agreement.
13. Independent Contractor: The Parties to this Agreement are separate and independent from each other. This Agreement shall not be construed as creating any type of joint venture or partnership between the Parties.
14. 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.
15. Survival: This Agreement shall be binding upon and inure to the benefit of the parties hereto 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 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 either 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.

16. Headings: The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning thereof.
17. Whereas Clauses: The “Whereas” clauses stated above are incorporated herein by reference.
18. Assignment: This Agreement may not be assigned by any party without the prior written consent of the other parties.
19. Sovereign Immunity: In no event shall any language or requirement in this Agreement be construed as or constitute a waiver or limitation of City’s defenses with regard to sovereign immunity, governmental immunity, or official immunity under federal or state constitutions, statutes, and/or laws.
20. 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.
21. Contingent Upon Funds and Approval: This Agreement is contingent upon the City having sufficient funds available for the subject of this Agreement. Developer shall have no right of action against City in the event City is unable to perform its obligations under this Agreement as a result of insufficient funds. Further, this Agreement is subject to and conditioned upon approval by ordinance by the City Council.
22. Contract Documents: The Agreement shall consist of the following:
 - a. This Agreement;
 - b. Exhibit A – Legal description;
 - c. Exhibit B - Final engineering plans;
 - d. Exhibit C – Developer’s water main plans showing Developer’s proposed waterline location and responsibility in blue highlight and City’s proposed waterline location and responsibility in red highlights;
 - e. Exhibit D - Labor and equipment pay structure of City and Cost Estimate.
23. 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 deposited in the United States Mail, Registered or Certified, with postage thereon prepaid as follows:

to the City: City of Republic, Missouri
 Attn: City Administrator
 213 North Main Street
 Republic, Missouri 65738

to Developer: Convoy of Hope
2847 S Ingram Mill Rd, Ste A100
Springfield MO 65804

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CITY OF REPUBLIC

David Cameron, City Administrator

Attest: Laura Burbridge, City Clerk

Approved as to Form:

Scott Ison, City Attorney

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