

DEVELOPER AGREEMENT

THIS DEVELOPER AGREEMENT (“Agreement”) is entered into this _____ day of _____, 2023, by and between the City of Republic Missouri (“City”) and 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

WHEREAS, Developer is currently the owner of or has a valid contract to purchase real property in the City of Republic located at the 900 Block of North Main Street, legally described in the preliminary improvement plans labeled “Exhibit A” attached hereto and incorporated by reference into this Agreement, (“Property”), and is in the process of developing a new commercial area on the Property in order to facilitate new development, and

WHEREAS, the Parties have recognized the opportunity to partner on the construction of a queuing road for the Republic School System, benefiting the City’s overall transportation system, and

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

WHEREAS, the purpose of this Agreement is to memorialize the Parties’ agreed upon respective responsibilities for improvements on or to the Property benefiting the City’s transportation system, as set forth in the Final Plans.

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.
2. Public Improvements:
 - a. Work Under This Agreement: In exchange for Developer’s promises herein, City agrees that it shall provide for, arrange, construct, complete, plan, or coordinate the public improvements described in this Agreement (“Public Improvements”).
 - b. Construction Period and Cost Estimates: The Parties agree that City’s construction of the Public Improvements cannot be reasonably determined until completed engineering plans are delivered to City. Developer agrees to provide complete signed and sealed engineering drawings to City within sixty (60) days after the execution of this Agreement. 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. Once all the questions, suggestions, and/or changes have been fully addressed and agreed upon by the Parties (“Final Plans”), a timeline as to the completion of this Agreement (“Construction Period”), along with an estimate of the construction costs for the Public Improvements (“Estimated Costs”), shall be set by a written amendment to this Agreement signed by the Parties (“Amendment”). If the Amendment is not entered into by the Parties within 180 days after the execution of the Agreement, this Agreement shall terminate without liability on any Party. Any Estimated Costs provided by City to Developer shall not be binding on the Parties. The actual costs incurred by City, as contemplated in paragraph 3 below, shall be the amount Developer is required to reimburse to City under this Agreement. Nothing contained herein 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. Road Improvements: The Parties may elect to work together in the installation, planning, and coordination for queuing roadway improvements to the Property according to the Approved Final Plans (“Road Improvements”), prior to the expiration of the Construction Period. City has the sole discretion to determine whether such Road improvements are practical and appropriate, in light of the totality of the circumstances presented, to make such allocation of City resources. Road Improvements will be located on the Property, as depicted on the Approved Final Plans. City hereby represents and warrants that it has the power and authority to make the Road Improvements if elected by both parties. (“Road Improvements” are included within the scope of “Public Improvements” herein).
- d. Work Performed: City will be the sole judge of the work required to fully and properly complete 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 to be performed, the engineer(s) selected, the construction methods used, equipment, materials and supplies to be used, the location and quality of the work.
- e. Site Access: At all times during the course of this Agreement, Developer and/or its authorized representatives shall have access to the worksite(s) and shall provide sufficient competent personnel to visit and inspect the worksite(s) and work being

performed. City, its workers, subcontractors, suppliers, and representatives shall have access to the worksite(s) at all times during the course of this Agreement.

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: City shall be solely responsible for the direct costs of the Public Improvements, namely, grading, aggregate, fill materials, and stormwater (piping and installation). Developer shall be responsible for all costs associated with asphalt for the Road Improvements, as outlined below in sub-paragraph (i).
 - i. Asphalt: City will initially pay the cost of asphalt materials and labor for the Road Improvements. Although City will initially pay for such costs, Developer shall be responsible for reimbursement to City for such costs. The Parties agree the actual costs to be reimbursed to City by Developer for the asphalt materials and labor shall include the actual costs incurred by City for asphalt materials used toward the Road Improvements and the actual expenses incurred by City for (1) the labor of non-City employees including contractors and subcontractors, (2) transportation, (3) taxes, (4) ensuring compliance with local, state, and federal public works laws and regulations, and (5) all other services and facilities necessary for the execution and completion of the Road Improvements.
 - ii. Electrical, Gas, Telecommunication: All costs related to electrical, gas, or telecommunication for the Property shall be the sole responsibility of Developer.
- c. Invoicing: After materials have been purchased and/or work has commenced under this Agreement, 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. Developer shall have twenty (20) days following receipt of any such invoice to obtain the reasonable approval of such invoice from its engineer, and twenty (20) days thereafter to pay City such approved invoice. Lien waivers executed by any non-City payee shall be delivered to Developer at the same time Developer pays City in accordance with the above. If Developer does not pay any invoice from City to Developer in accordance with the above, City has the right to stop all work under this Agreement. Developer will be allowed to keep a twenty percent (20%) retainage on all materials billed by 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 Administrative Personnel: 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.

- 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 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. Developer will be provided by City with all bids and/or quotes once they are opened to the public in accordance with the 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 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 perform the work contemplated by this Agreement and in order for City to perform said work on the Property. Prior to construction, Developer shall provide to City, at no cost to City, any such easements, including any temporary construction easements required for third party property owners to perform the work contemplated by this Agreement. The Parties agree that City may need further easements and/or rights-of-way that allow for the extension of the Public Improvements. 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 contemplated by this Agreement, the City agrees to take all steps necessary to vacate said easements and/or rights-of-way within 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 approval by the City Council through an 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. Termination of this Agreement shall be the sole remedy of Developer for any default by City under this Agreement.
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 City is the prevailing party in any litigation or formal dispute resolution (i.e., binding arbitration or third-party mediation) arising out of or relating to this Agreement,

City shall be entitled to recover from Developer all reasonable attorneys' fees and expenses incurred in connection with such litigation and/or dispute resolution.

13. Liability: Developer acknowledges and agrees that the type of work to be performed under this Agreement may cause temporary or permanent damage to the Property, and Developer agrees the City shall not be liable for any damages caused to the Property in the course of completing the Public Improvements. Nothing in this Agreement shall generally be construed to create or impose any liability on the part of City for any direct, special, indirect, liquidated, or consequential damages.
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. 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 – Preliminary Improvement Plans;
 - c. Final Plans, once approved;
 - d. The Amendment, as referenced in paragraph 2(b) of this Agreement; 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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