

We will continue to broadcast the Redevelopment Agency meetings electronically on Zoom. If you choose to attend, please wear a face covering.

PUBLIC NOTICE:

The Grantsville City Redevelopment Agency will hold a regular meeting at 6:30 p.m. on Wednesday, March 17, 2021 at 429 East Main Street, Grantsville, UT 84029. The agenda is as follows:

ROLL CALL

AGENDA:

1. Summary Action Items:
 - a. Approval of Minutes
 - b. Approval of Bills
2. Consideration of Resolution 2021-05RDA approving an agreement with Sunroc and Northpoint Development, LLC for design and construction of a sewer line and related infrastructure for the Lakeview Business Park.
3. Adjourn.

Christine Webb
Agency Secretary

In compliance with the Americans with Disability Act, Grantsville City will accommodate reasonable requests to assist persons with disabilities to participate in meetings. Requests for assistance may be made by calling City Hall (435) 884-3411 at least 3 days in advance of a meeting.

This will be an electronic meeting through ZOOM. To view the meeting:

Join Zoom Meeting

<https://us02web.zoom.us/j/82849523362>

Meeting ID: 828 4952 3362

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CERTIFICATE OF POSTING: This agenda was posted on the Grantsville City Hall Notice Boards, the State Public Notice website at www.utah.gov/pmn/index.html, and the Grantsville City website at www.grantsvilleut.gov. Notification was sent to the Tooele Transcript Bulletin.

March 17, 2021

**Redevelopment Agency
Meeting**

Information Packet

AGENDA ITEM #1

Summary Action Items:

- a. Approval of Minutes from the
February 17, 2021 RDA Meeting.
- b. Approval of Bills

**MINUTES OF THE REGULAR MEETING OF THE GRANTSVILLE CITY
REDEVELOPMENT AGENCY, HELD ON FEBRUARY 17, 2021 ONLINE AS A ZOOM
MEETING. THE MEETING BEGAN AT 6:45 P.M.**

Chairman and Board Members Present:

Chairman Brent Marshall
Krista Sparks
Scott Stice
Jeff Hutchins, on Zoom
Jewel Allen
Darrin Rowberry

Appointed Officers and Employees Present:

Christine Webb, Agency Secretary
Brett Coombs, Agency Attorney
Sherrie Broadbent, Finance Director
Timm Dixon, City Engineer
James Waltz, Public Works

Citizens and Guests Present:

Ruth Hibler

AGENDA:

1. Summary Action Items:

- a. Approval of Minutes from the February 3, 2021 Special Meeting
- b. Approval of Bills

Mayor Marshall explained we did not receive any bills. There were only minutes to be approved.

Motion: Board Member Allen made a motion to approve the minutes.

Second: Board Member Rowberry seconded the motion.

Vote: The vote was as follows: Darrin Rowberry, "Aye", Jewel Allen, "Aye", Jeff Hutchins, "Aye", Scott Stice, "Aye", and Krista Sparks, "Aye". The motion carried.

2. Adjourn.

Motion: Board Member Sparks made a motion to adjourn. Board Member Stice seconded the motion. The meeting was adjourned at 6:46 p.m.

AGENDA ITEM #2

Consideration of Resolution 2021-05RDA approving an agreement with Sunroc and Northpoint Development, LLC for design and construction of a sewer line and related infrastructure for the Lakeview Business Park.

**GRANTSVILLE CITY REDEVELOPMENT AGENCY
RESOLUTION NO. 2021-05RDA**

**A RESOLUTION APPROVING AN AGREEMENT WITH SUNROC AND NORTHPOINT
DEVELOPMENT, LLC FOR DESIGN AND CONSTRUCTION OF A SEWER LINE AND
RELATED INFRASTRUCTURE FOR THE LAKEVIEW BUSINESS PARK**

Be it enacted and ordained by the City Council of Grantsville City, Utah as follows:

WHEREAS, the Board has entered into various agreements related to development of the Lakeview Business Park (the “Park”); and

WHEREAS, the Board, in cooperation with NorthPoint Development, LLC (“NorthPointe”), has determined that a new sewer main line is necessary to transport wastewater for the Park; and

WHEREAS, NorthPoint, as developer of the Park, has authority and control over construction of the sewer line and can select whichever contractor it determines can provide the necessary services; and

WHEREAS, NorthPoint selected Sunroc (“Sunroc”); and

WHEREAS, the Grantsville City Redevelopment Agency hereby determines that it is in the best interest of the Agency to approve the agreement between NorthPoint and Sunroc, attached as “Exhibit A”, with the Board to pay Sunroc the total sum of \$3,051,878.00 from tax increment dedicated to the project.

**NOW THEREFORE, BE IT RESOLVED BY THE REDEVELOPMENT AGENCY
OF GRANTSVILLE CITY, STATE OF UTAH, AS FOLLOWS:**

Section 1. Construction Agreement. The Grantsville City Redevelopment Agency hereby approves the A104 Contract for Construction of a Sewer Main Line, attached as Exhibit “A”, and authorizes the Chairman to sign it.

Section 2. Severability Clause. If any part or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Resolution and all provisions, clauses and words of this Resolution shall be severable.

ADOPTED AND PASSED BY THE REDEVELOPMENT AGENCY OF
GRANTSVILLE CITY, THIS 17TH DAY OF MARCH, 2021.

BY ORDER OF THE
GRANTSVILLE CITY REDEVELOPMENT AGENCY

By Chairman Brent K. Marshall

ATTEST

Christine Webb, Agency Recorder



AIA® Document A104™ – 2017

Standard Abbreviated Form of Agreement Between Owner and Contractor

AGREEMENT made as of the 17 day of March in the year 2021
(In words, indicate day, month and year.) BETWEEN the
Owner:

(Name, legal status, address and other information)
NorthPoint Development, LLC
4825 NW 41ST Street, Suite 500
Riverside, MO 64150

As to project funding and payment;
Grantsville Redevelopment Agency
429 E. Main Street
Grantsville, UT 84029

As to Section 9.15 Indemnification, any reference to Owner
shall include Grantsville Redevelopment Agency.

and the Contractor:

Sunroc
730 North 1500 West
Orem, UT 84057

For the following Project:

Lakeview Business Park, Sewer Line Work
350 South Sheep Lane
Grantsville, UT 84074

The Architect:

(Name, legal status, address and other information)

Dominion Engineering Associates, L.C
5684 S. Green Street
Murray, Utah 84123

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

TABLE OF ARTICLES

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ARTICLE 1 THE WORK OF THIS CONTRACT

The Contractor shall execute the Work described in the Contract Documents and reasonably inferable therefrom, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

☐

The date of this Agreement.

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- ☐ A date set forth in a notice to proceed issued by the Owner.
- ☒ Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

REFERENCE EXHIBIT A – ITEM 2

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 Substantial Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check the appropriate box and complete the necessary information.)

- ☐ Not later than REFERENCE EXHIBIT A – ITEM 3 calendar days from the date of commencement of the Work.
- ☒ By the following date: REFERENCE EXHIBIT A – ITEM 3

§ 2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates: REFERENCE EXHIBIT A – ITEM 3

(Table deleted)

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.5.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

- ☒ Stipulated Sum, in accordance with Section 3.2 below
- ☐ Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below
- ☐ Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

(Based on the selection above, complete Section 3.2, 3.3 or 3.4 below.)

§ 3.2 The Stipulated Sum shall be REFERENCE EXHIBIT A – ITEM 4, subject to additions and deductions as provided in the Contract Documents.

§ 3.2.1 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

REFERENCE EXHIBIT A – ITEM 5

§ 3.2.2 Unit prices, if any: REFERENCE EXHIBIT A – ITEM 7

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(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)

(Table deleted)

§ 3.2.3 Allowances, if any, included in the stipulated sum: REFERENCE EXHIBIT A – ITEM 6

(Identify each allowance.)

(Table deleted)

§ 3.3 Cost of the Work Plus Contractor's Fee

§ 3.3.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.3.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

REFERENCE EXHIBIT A – ITEM 4

§ 3.4 Cost of the Work Plus Contractor's Fee With a Guaranteed Maximum Price

§ 3.4.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.4.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the Fee for changes in the Work.)

REFERENCE EXHIBIT A – ITEM 4

§ 3.4.3 Guaranteed Maximum Price

§ 3.4.3.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed REFERENCE EXHIBIT A – ITEM 4, subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

(Insert specific provisions if the Contractor is to participate in any savings.)

§ 3.4.3.1.1 General conditions as well as any Work Self-performed by the Contractor, shall be completed on a lump sum basis and shall not exceed the amount indicated on EXHIBIT B – SCHEDULE OF VALUES. Should a change occur which requires additional General Conditions, or self-performed Work, such costs shall be paid at a mutually agreed upon amount prior to proceeding with the change.

§ 3.4.3.1.2 Construction workers directly employed by the Contractor to perform the construction of the Work at the site or, at off-site workshops, shall be included in the Cost of the Work under Section 3.4.3.1.1, unless specifically approved by the Owner.

§ 3.4.3.1.3 Contractor shall adequately staff the project with supervisory and administrative personnel to fulfill the Contractors' contractual obligations outlined herein. Whether such personnel is engaged at the project site at factories, workshops, or on the road, in expediting the production or transportation of materials or equipment required for the Work, such costs shall be included in the Cost of the Work under Section 3.4.3.1.1, unless specifically approved by the Owner.

§ 3.4.3.1.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, shall be included in the Cost of the Work under Section 3.4.3.1.1, unless specifically approved by the Owner.

§ 3.4.3.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, shall be included in the Cost of the Work under Section 3.4.3.1.1, unless specifically approved by the Owner.

§ 3.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

REFERENCE EXHIBIT A – ITEM 5

§ 3.4.3.3 Unit Prices, if any: REFERENCE EXHIBIT A – ITEM 7
(Identify the item and state the unit price and the quantity limitations, if any, to which the unit price will be applicable.)

(Table deleted)

§ 3.4.3.4 Allowances, if any, included in the Guaranteed Maximum Price: REFERENCE EXHIBIT A – ITEM 6
(Identify each allowance.)

(Table deleted)

§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

REFERENCE EXHIBIT A – ITEM 4

§ 3.4.3.6 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.4.3.7 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.

§ 3.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

REFERENCE EXHIBIT A – ITEM 4

ARTICLE 4 PAYMENT

§ 4.1 Progress Payments

§ 4.1.1 Based upon Applications for Payment submitted to the Owner by the Contractor and Certificates for Payment, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. In addition to other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable statutes of the State where Project is located: (i) A duly executed and acknowledged Contractor's Sworn Statement showing all Subcontractors with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor in the Application for Payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all Subcontractors and, where appropriate, from lower tier subcontractors; and (ii) Duly executed waivers of mechanics' and material suppliers' liens from the Contractor and all such Subcontractors, establishing payment or satisfaction of the payment requested by the Contractor in the Application for Payment.

§ 4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

REFERENCE EXHIBIT A – ITEM 8

Init.

§ 4.1.3 N/A

(Federal, state or local laws may require payment within a certain period of time.)

§ 4.1.4 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment and any terms for reduction of retainage during the course of the Work. The amount of retainage may be limited by governing law.)

REFERENCE EXHIBIT A – ITEM 8

§ 4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

Wall Street Journal LIBOR plus 3%

§ 4.2 Final Payment

§ 4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price; and
- .3 a final Certificate for Payment has been issued by the Owner in accordance with Section 15.7.1.
- .4 the Contractor has submitted (a) all deliverables required by the Contract Documents and (b) a final certificate for payment has been issued by the Architect.

§ 4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the final Certificate for Payment, or as follows:

REFERENCE EXHIBIT A – ITEM 8**ARTICLE 5 DISPUTE RESOLUTION****§ 5.1 Binding Dispute Resolution**

For any claim subject to, but not resolved by, mediation pursuant to Section 21.5, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- ☒ [X] Arbitration pursuant to Section 21.6 of this Agreement
- ☐ [] Litigation in a court of competent jurisdiction
- ☐ [] Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, claims will be resolved in a court of competent jurisdiction.

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

§ 6.1 The Contract Documents are defined in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

Init.

§ 6.1.1 The Agreement is this executed AIA Document A104™–2017, Standard Abbreviated Form of Agreement Between Owner and Contractor.

§ 6.1.2 N/A

§ 6.1.3 The Supplementary and other Conditions of the Contract: REFERENCE EXHIBIT A – ITEM 10

(Table deleted)

§ 6.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

REFERENCE EXHIBIT C

(Table deleted)

§ 6.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

REFERENCE EXHIBIT C

(Table deleted)

§ 6.1.6 The Addenda, if any: REFERENCE EXHIBIT C

(Table deleted)

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are enumerated in this Article 6.

(Paragraphs deleted)

(Table deleted)

(Paragraphs deleted)

ARTICLE 7 GENERAL PROVISIONS

§ 7.1 The Contract Documents

The Contract Documents are enumerated in Article 6 and consist of this Agreement (including, if applicable, Supplementary and other Conditions of the Contract), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Owner. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 7.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 7.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 7.4 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective

professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 7.5 Ownership and use of Drawings, Specifications and Other Instruments of Service

§ 7.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 7.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 7.6 and 7.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 7.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 7.7 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 7.8 Severability

The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 7.9 Notice

§ 7.9.1 Except as otherwise provided in Section 7.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering Notice in electronic format such as name, title and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

REFERENCE EXHIBIT A – ITEM 9

§ 7.9.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 7.10 Relationship of the Parties

Where the Contract is based on the Cost of the Work plus the Contractor's Fee, with or without a Guaranteed Maximum Price, the Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 8 OWNER

§ 8.1 Information and Services Required of the Owner

§ 8.1.1 Prior to commencement of the Work, at the written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 8.1.1, the Contract Time shall be extended appropriately.

§ 8.1.2 The Owner shall furnish all necessary surveys and a legal description of the site.

§ 8.1.3 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 8.1.4 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

§ 8.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 8.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. The Owner may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 21.

ARTICLE 9 CONTRACTOR

§ 9.1 Review of Contract Documents and Field Conditions by Contractor

§ 9.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 9.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.2, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Owner any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a

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request for information in such form as the Architect and/or Owner may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 9.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect and/or Owner may require.

§ 9.2 Supervision and Construction Procedures

§ 9.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.

§ 9.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

§ 9.3 Labor and Materials

§ 9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 9.3.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ 9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and/or Owner and in accordance with a Modification.

§ 9.4 Warranty

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 15.6.3.

§ 9.5 Taxes

The Contractor shall pay sales, consumer, use, and other similar taxes that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 9.6 Permits, Fees, Notices, and Compliance with Laws

§ 9.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 9.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or

lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 9.7 Allowances

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

§ 9.8 Contractor's Construction Schedules

§ 9.8.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 9.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner.

§ 9.9 Submittals

§ 9.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect and/or Owner Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect and/or Owner reasonable time for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

§ 9.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 9.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Architect and/or Owner will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect and/or Owner will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract Documents. The Architect and/or Owner's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect and/or Owner will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 9.10 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 9.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

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§ 9.12 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus material from and about the Project.

§ 9.13 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 9.14 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Architect and/or Owner. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Owner.

§ 9.15 Indemnification

§ 9.15.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.15.1.

§ 9.15.2 In claims against any person or entity indemnified under this Section 9.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 9.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 10 ARCHITECT

§ 10.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract. Owner reserves the right to review Pay Applications, Certificates of Substantial Completion and other matters of Contract Administration in lien of the Architect.

§ 10.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 10.3 The Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 10.4 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 10.5 Based on the Architect's evaluations of the Work and of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 10.6 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 10.7 The Architect will review and approve or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 10.8 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes, and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

§ 10.9 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

ARTICLE 11 SUBCONTRACTORS

§ 11.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site.

§ 11.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Architect and/or Owner of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Architect and/or Owner has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 11.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Architect and/or Owner, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner.

ARTICLE 12 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 12.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 12.2 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's activities with theirs as required by the Contract Documents.

§ 12.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a Separate Contractor because of delays, improperly timed activities, or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a Separate Contractor.

ARTICLE 13 CHANGES IN THE WORK

§ 13.1 By appropriate Modification, changes in the Work may be accomplished after execution of the Contract. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Architect and/or Owner, and Contractor, or by written Construction Change Directive signed by the Owner. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 13.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Architect and/or Owner, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Owner will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Owner will prepare a Change Order.

§ 13.3 The Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner and shall not proceed to implement the change in the Work.

§ 13.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Architect and/or Owner promptly and before conditions are disturbed.

ARTICLE 14 TIME

§ 14.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing this Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 14.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 14.3 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 14.4 The date of Substantial Completion is the date certified by the Architect and/or Owner in accordance with Section 15.6.3.

§ 14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) changes ordered in the Work; (2) by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control; or (3) by other causes that the

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Contractor asserts, and the Owner determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Owner may determine, subject to the provisions of Article 21.

ARTICLE 15 PAYMENTS AND COMPLETION

§ 15.1 Schedule of Values

§ 15.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to Section 3.2 or 3.4, the Contractor shall submit a schedule of values to the Owner before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Owner. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment. REFERENCE EXHIBIT B – SCHEDULE OF VALUES.

§ 15.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 15.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 15.2 Control Estimate

§ 15.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 3.3, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

§ 15.2.2 The Control Estimate shall include:

- .1 the documents enumerated in Article 6, including all Modifications thereto;
- .2 a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- .4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment the Owner's occupancy requirements, and the date of Substantial Completion; and
- .5 a list of any contingency amounts included in the Control Estimate for further development of design and construction.

§ 15.2.3 When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 15.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 15.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner of any inconsistencies between the Control Estimate and the revised Contract Documents.

§ 15.3 Applications for Payment

§ 15.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and/or Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 15.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner and/or Architect require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 15.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which

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the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 15.3.2 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 15.3.3 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 15.3.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

§ 15.4 Certificates for Payment

§ 15.4.1 The Owner will, within seven days after receipt of the Contractor's Application for Payment, either issue a Certificate for Payment, with a copy to the Contractor, for such amount as the Owner determines is properly due, or notify the Contractor of the reasons for withholding certification in whole or in part as provided in Section 15.4.3.

§ 15.4.2 The issuance of a Certificate for Payment will constitute a representation to the Owner, based on the evaluations of the Work and the data in the Application for Payment, that, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications.

§ 15.4.3 The Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Owner's opinion the representations to the Owner required by Section 15.4.2 cannot be made. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Contractor and Owner as provided in Section 15.4.1. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Owner's opinion to protect from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 9.2.2, because of

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 15.4.4 When either party disputes the Owner's decision regarding a Certificate for Payment under Section 15.4.3, in whole or in part, that party may submit a Claim in accordance with Article 21.

§ 15.5 Progress Payments

§ 15.5.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to

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the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner.

§ 15.5.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 15.5.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 15.5.4 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 15.6 Substantial Completion

§ 15.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 15.6.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and/or Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 15.6.3 Upon receipt of the Contractor's list, the Architect and/or Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect and/or Owner determines that the Work or designated portion thereof is substantially complete, the Architect and/or Owner will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 15.6.4 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 15.7 Final Completion and Final Payment

§ 15.7.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and/or Owner will promptly make such inspection and, when the Architect and/or Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will promptly issue a final Certificate for Payment on the basis of the Architect and/or Owner's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Owner's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 15.7.2 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ 15.7.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from

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- .1 liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 15.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

§ 16.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 16.1.2 and 16.1.3. The Contractor may make a claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.15.

§ 16.2 Hazardous Materials and Substances

§ 16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Architect and/or Owner of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 16.2.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact, the material or substance presents the risk of bodily injury or death as described in Section 16.2.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 16.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

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ARTICLE 17 INSURANCE AND BONDS

§ 17.1 Contractor's Insurance

§ 17.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in EXHIBIT D – INSURANCE REQUIREMENTS.

(Paragraphs deleted)

§ 17.1.14 Other Insurance Provided by the Contractor

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

(Table deleted)

REFERENCE EXHIBIT D – INSURANCE REQUIREMENTS

§ 17.2 Owner's Insurance

§ 17.2.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 17.2.2 Property Insurance

§ 17.2.2.1 The Owner, unless specified differently within EXHIBIT D – INSURANCE REQUIREMENTS, shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 17.2.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ 17.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section 17.2.2.1 or, if necessary, replace the insurance policy required under Section 17.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 18.4.

§ 17.2.2.3 If the insurance required by this Section 17.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ 17.2.2.4 If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 18.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ 17.2.2.5 Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Section 17.2.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by this Section 17.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ 17.2.2.6 Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 17.2.2, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the

insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 17.2.2.7 Waiver of Subrogation

REFERENCE EXHIBIT D – INSURANCE REQUIREMENTS.

(Paragraphs deleted)

§ 17.2.3 Other Insurance Provided by the Owner

(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

(Table deleted)

REFERENCE EXHIBIT D – INSURANCE REQUIREMENTS.

§ 17.3 Performance Bond and Payment Bond

§ 17.3.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract.

§ 17.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 18 CORRECTION OF WORK

§ 18.1 The Contractor shall promptly correct Work rejected by the Architect and/or Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed, or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 15.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

§ 18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

§ 18.4 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

ARTICLE 19 MISCELLANEOUS PROVISIONS

§ 19.1 Assignment of Contract

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to an affiliate or a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 19.2 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.6.

§ 19.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect and/or Owner timely notice of when and where tests and inspections are to be made so that the Architect and/or Owner may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 19.4 The Owner's representative:

(Name, address, email address and other information)

Jeffrey Nelson, Project Manager- jnelson@northpointkc.com

NorthPoint Development, LLC
4825 NW 41st Street, Suite 500
Riverside, MO 64150

§ 19.5 The Contractor's representative:

(Name, address, email address and other information)

Sunroc
Mark Wimmer, Vice President
mwimmer@sunroc.com
730 North 1500 West
Orem, UT 84057

§ 19.6 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 20 TERMINATION OF THE CONTRACT**§ 20.1 Termination by the Contractor**

If the Owner fails to certify payment as provided in Section 15.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.2 for a period of 30 days, the Contractor may, upon seven additional days' after written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 20.2 Termination by the Owner for Cause**§ 20.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 20.2.2 When any of the reasons described in Section 20.2.1 exists, the Owner without prejudice to any other may have and after giving the Contractor seven days' notice, terminate the Contract and take possession of the site and of all materials, thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

§ 20.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Owner shall pay the Contractor for Work executed; and costs incurred by reason of such termination, including costs attributable to termination of Subcontracts; and a termination fee, if any, as follows:

(Insert the amount of or method for determining the fee payable to the Contractor by the Owner following a termination for the Owner's convenience, if any.)

ARTICLE 21 CLAIMS AND DISPUTES

§ 21.1 Claims, disputes, and other matters in question arising out of or relating to this Contract, including those alleging an error or omission but excluding those arising under Section 16.2, shall be referred to the Owner for decision. Such matters, except those waived as provided for in Section 21.11 and Sections 15.7.3 and 15.7.4, shall, after initial decision by the Owner or 30 days after submission of the matter to the Owner, be subject to mediation as a condition precedent to binding dispute resolution.

§ 21.2 Notice of Claims

§ 21.2.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the Owner within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 21.2.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 18.2, shall be initiated by notice to the other party.

§ 21.3 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Agreement whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 21.3.

§ 21.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 21.5 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days

from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 21.6 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 21.7 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 21.8 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.

§ 21.9 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 21.10 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 21.11 Waiver of Claims for Consequential Damages

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to this Contract, with exception of loss covered by insurance. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 20. Nothing contained in this Section 21.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

This Agreement entered into as of the day and year first written above.

NorthPoint Development, LLC

Sunroc



OWNER (Signature)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

Grantsville Redevelopment Agency (Project Funding) (Signature)

(Printed name and title)

Init.

Exhibit A

Item 1 - Description of Work

Contractor shall furnish all labor, supervision, safety protection, insurance, materials, equipment, tools, supplies, other property and services necessary to perform and complete in a good and workmanlike manner and in strict compliance with the Contract Documents hereinafter identified all of the work and services (herein termed "Work") described as: The Work shall include all for the project as described in the contract documents enumerated per Exhibit C of this Contract Agreement. More specifically, Contractor's Work shall include but is not limited to: Please reference Exhibit B

Item 2 - Date of Commencement

March 18, 2021

Item 3 - Substantial Completion

July 15, 2021

Item 4 - Contract Sum

Three Million, Fifty-One Thousand, Eight Hundred Seventy-Eight Dollars and Zero Cents
(\$3,051,878.00)

Item 5 - Alternates

N/A

Item 6 - Allowances

N/A

Item 7 - Unit Prices

N/A

Item 8 - Payments

Payment terms: Provided that an Application for Payment is received by the Architect not later than the 2nd day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 5th day of the following month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than 45 (forty-five) days after the Architect receives the Application for Payment.

Retention: 5%

All invoices shall be sent via email in one .pdf image to Thane Smith, Jeff Nelson, and Haley Couture

Item 9 - Electronic Notice

Jeff Nelson – Project Manager – jnelson@northpointkc.com
Haley Couture – Project Administrator – hcouture@northpointkc.com

Item 10 - Supplementary and Other Conditions

Any Additional Work to be approved by Owner and incorporated via amendment.

PM_____

Item 11 - Construction Schedule

The work of this contract related to the installation of the 21" sewer line in UDOT ROW (Hwy 138) shall be complete no later than April 15th, 2021 due to the planned UDOT improvement project scheduled for that section of roadway.

The installation of the remaining sewer line outside of Hwy 138 shall be complete no later than July 15, 2021

Exhibit B - Schedule of Values

Lakeview Business Park - Offsite Sewer
Bid Schedule
2/26/21

				Company Name	
No.	Item Description	Bid		Unit	Total
		Quantity	Units	Price	Amount
Site Work					
1	Mobilization	1	LS	\$71,000.00	\$71,000.00
2	Clearing, Grubbing, and Cleaning of Site	1	LS	\$37,401.00	\$37,401.00
3	UDOT Encroachment Permit	1	LS	\$2,000.00	\$2,000.00
4	Erosion Control Measures	1	LS	\$100,000.00	\$100,000.00
5	Erosion Control Plan and City Permit including Re-Vegetation Bond	1	LS	\$11,000.00	\$11,000.00
6	Traffic Control for SR-138	1	LS	\$36,400.00	\$36,400.00
7	Restore Land Owners Property to Original Grade	1	LS	\$42,000.00	\$42,000.00
8	Restore Public and Private Crossings (Driveways) to Original Grade	1	LS	\$30,000.00	\$30,000.00
9	Construction Staking to be provided by Dominion Engineering	1	LS	\$29,500.00	\$29,500.00
				Subtotal	\$359,301.00
Manholes					
10	Furnish and Install 60" Manhole	62	EA	\$5,900.00	\$365,800.00
11	Locate Exist. 18" Sewer Main & Connect with Sewer Manhole	1	LS	\$5,500.00	\$5,500.00
				Subtotal	\$371,300.00
21" Piping					
12	Furnish & Install 21" SDR 35 PVC Pipe Sewer Line within Grantsville City Utility Trench for SR-138 R.O.W. In Asphalt + Repaving	260	LF	\$580.00	\$150,800.00
13	Furnish & Install 21" SDR 35 PVC Pipe Sewer Line within Grantsville City Utility Trench for SR-138 R.O.W. No Asphalt	1550	LF	\$215.00	\$333,250.00
14	Furnish & Install 21" SDR 35 PVC Pipe Sewer Line within Grantsville City Utility Trench for Future R.O.W.	987	LF	\$125.00	\$123,375.00
				Subtotal	\$607,425.00
18" Piping					
15	Furnish & Install 18" SDR 35 PVC Pipe Sewer Line within Grantsville City Utility Trench for Outside of Future R.O.W.	12921	LF	\$82.00	\$1,059,522.00
16	Furnish & Install 18" SDR 35 PVC Pipe Sewer Line within Grantsville City Utility Trench for Sheep Lane R.O.W. + Repaving	95	LF	\$265.00	\$25,175.00
17	Furnish & Install 18" SDR 35 PVC Pipe Sewer Line within Grantsville City Utility Trench for Future R.O.W.	4339	LF	\$145.00	\$629,155.00
				Subtotal	\$1,713,852.00

Total	\$3,051,878.00
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Notes:

- 1) Contractor shall verify numbers and quantities.
- 2) Import backfill pipe bedding material and manhole base material will be used as specified.
It will be the contractors responsibility to remove all large rocks and debris from native backfill material.
- 3) Contractor to Coordinate with Owner for supplied material testing of pipe bedding material and backfill material.
- 4) Contractor to Coordinate with Kilgore Construction for SR-138 Overlay Project
- 5) Structural Backfill Subject to City Testing and Approval
- 6) Construction in Paved UDOT Roadway to be completed by April 5th, 2021
- 7) All Construction to be Finished by July 14th, 2021
- 8) Excess Material to be Removed and Disposed Of according to City and State Standards
- 9) Staging Area to be Approved by City and UDOT
- 10) Disposal of Groundwater (If Required) will be per City Requirements
- 11) Contractor to Field Verify all Existing Utilities along Project
- 12) All Construction and Installation will be per City Requirements and Specifications.
- 13) Contractor to comply with UDOT Excavation Handbook
- 14) Contractor to Contact UDOT Motor Carrier Division Prior to Construction Start.

Exhibit C - Construction Documents

Sheet Name	Version	Description	Date Issued
0	LBP Offsite Sewer Improvement Plans	COVERSHEET	2/25/21
DT-1	LBP Offsite Sewer Improvement Plans	SEWER DETAILS	2/25/21
DT-2	LBP Offsite Sewer Improvement Plans	UDOT SEWER DETAILS	2/25/21
GN-1	LBP Offsite Sewer Improvement Plans	GENERAL NOTES	2/25/21
IDX	LBP Offsite Sewer Improvement Plans	INDEX SHEET	2/25/21
SV-CTRL	LBP Offsite Sewer Improvement Plans	SURVEY CONTROL SHEET	2/25/21
UT-1	LBP Offsite Sewer Improvement Plans	UTILITY PLAN AND PROFILE STA 10+00 - 20+00	2/25/21
UT-10	LBP Offsite Sewer Improvement Plans	UTILITY PLAN AND PROFILE STA 105+00 - 115+00	2/25/21
UT-11	LBP Offsite Sewer Improvement Plans	UTILITY PLAN AND PROFILE STA 115+00 - 125+00	2/25/21
UT-12	LBP Offsite Sewer Improvement Plans	UTILITY PLAN AND PROFILE STA 125+00 - 135+00	2/25/21
UT-13	LBP Offsite Sewer Improvement Plans	UTILITY PLAN AND PROFILE STA 135+00 - 145+00	2/25/21
UT-14	LBP Offsite Sewer Improvement Plans	UTILITY PLAN AND PROFILE STA 145+00 - 155+00	2/25/21
UT-15	LBP Offsite Sewer Improvement Plans	UTILITY PLAN AND PROFILE STA 155+00 - 165+00	2/25/21
UT-16	LBP Offsite Sewer Improvement Plans	UTILITY PLAN AND PROFILE STA 165+00 - 175+00	2/25/21
UT-17	LBP Offsite Sewer Improvement Plans	UTILITY PLAN AND PROFILE STA 175+00 - 185+00	2/25/21
UT-18	LBP Offsite Sewer Improvement Plans	UTILITY PLAN AND PROFILE STA 185+00 - 195+00	2/25/21
UT-19	LBP Offsite Sewer Improvement Plans	UTILITY PLAN AND PROFILE STA 195+00 - 205+00	2/25/21
UT-2	LBP Offsite Sewer Improvement Plans	UTILITY PLAN AND PROFILE STA 20+00 - 31+00	2/25/21
UT-20	LBP Offsite Sewer Improvement Plans	UTILITY PLAN AND PROFILE STA 205+00 - 215+00	2/25/21
UT-3	LBP Offsite Sewer Improvement Plans	UTILITY PLAN AND PROFILE STA 31+00 - 42+00	2/25/21
UT-4	LBP Offsite Sewer Improvement Plans	UTILITY PLAN AND PROFILE STA 42+00 - 53+00	2/25/21
UT-5	LBP Offsite Sewer Improvement Plans	UTILITY PLAN AND PROFILE STA 53+00 - 63+00	2/25/21
UT-6	LBP Offsite Sewer Improvement Plans	UTILITY PLAN AND PROFILE STA 63+00 - 74+00	2/25/21
UT-7	LBP Offsite Sewer Improvement Plans	UTILITY PLAN AND PROFILE STA 74+00 - 85+00	2/25/21
UT-8	LBP Offsite Sewer Improvement Plans	UTILITY PLAN AND PROFILE STA 85+00 - 95+00	2/25/21
UT-9	LBP Offsite Sewer Improvement Plans	UTILITY PLAN AND PROFILE STA 95+00 - 105+00	2/25/21

Exhibit D - Insurance Requirements

Contractor shall carry insurance in the following amounts and limits:

A. Worker's Compensation & Employers Liability

1. Work Compensation - Statutory
2. Employer's Liability -
 - \$1,000,000 - Bodily Injury - each accident
 - \$1,000,000 - Bodily Injury by Disease - each employee
 - \$1,000,000 - Bodily Injury by Disease - aggregate
3. Specific Wording/Endorsements
 - a. Waiver of Subrogation in favor of NorthPoint Holdings, LLC, NorthPoint Development, LLC and all subsidiaries, affiliated companies, property owners and their agents, successors and assigns, as their interests may appear, and Owner.

B. Commercial General Liability Including Contractual and Completed Operations

1. Bodily Injury and Property Damage Combined Single Limits
 - a. \$2,000,000 General Aggregate Limit
 - b. \$2,000,000 Products-Completed Operations Aggregate
 - c. \$1,000,000 Bodily Injury and Property Damage Occurrence Limit
2. Specific Wording/Endorsements
 - a. Additional Insured on a primary and noncontributory basis - NorthPoint Holdings, LLC, NorthPoint Development, LLC and all subsidiaries, affiliated companies, property owners and their agents, successors and assigns, as their interests may appear, and Owner.
 - b. Waiver of Subrogation endorsement in favor of NorthPoint Holdings, LLC, NorthPoint Development, LLC and all subsidiaries, affiliated companies, property owners and their agents, successors and assigns, as their interests may appear, and Owner.
 - c. General aggregate limit is applied separately to each project
 - d. Please include Grantsville Redevelopment Agency as Additional Insured

C. Commercial Automobile Liability

1. Bodily Injury and Property Damage Combined Single Limits
 - a. \$1,000,000 Combined Single Limit
2. Specific Wording/Endorsements
 - a. Additional Insured on a primary and noncontributory basis - NorthPoint Holdings, LLC, NorthPoint Development, LLC and all subsidiaries, affiliated companies, property owners and their agents, successors and assigns, as their interests may appear, and Owner.
 - b. Waiver of Subrogation Endorsement in favor of NorthPoint Holdings, LLC, NorthPoint Development, LLC and all subsidiaries, affiliated companies, property owners and their agents, successors and assigns, as their interests may appear, and Owner.
 - c. Please include Grantsville Redevelopment Agency as Additional Insured

D. Umbrella Excess Liability

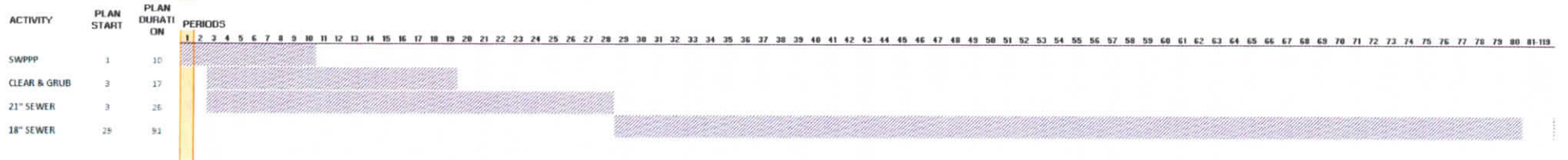
1. \$5,000,000 - Each Occurrence and Aggregate Limit
2. Specific Wording/Endorsements
 - a. Additional Insured on a primary and noncontributory basis - NorthPoint Holdings, LLC, NorthPoint Development, LLC and all subsidiaries, affiliated companies, property owners and their agents, successors and

- assigns, as their interests may appear, and Owner.
- b. Waiver of Subrogation Endorsement in favor of NorthPoint Holdings, LLC, NorthPoint Development, LLC and all subsidiaries, affiliated companies, property owners and their agents, successors and assigns, as their interests may appear, and Owner.
- c. Please include Grantsville Redevelopment Agency as Additional Insured
- E. Professional Liability
1. ~~\$5,000,000 each claim~~
 2. ~~\$5,000,000 annual aggregate~~
- F. Builders Risk ~~when NorthPoint is not purchasing~~
1. ~~Limits~~
 - a. ~~Contract/Project specific~~
 2. ~~Specific Wording/Endorsements~~
 - a. ~~NorthPoint named as Named Insured on policy~~
 - b. ~~Named Insured should also include "All Owners, General Contractors, Lenders, Suppliers, Vendors, and Subcontractors of every tier as their interest may appear"~~
 - c. ~~Deductibles and sub-limits should be evaluated for each project~~
 - ~~\$1,000,000 minimum limit for Property and Materials in Transit~~
 - ~~\$1,000,000 minimum limit for Property and Materials in Temporary Storage at Unnamed Locations~~
 - ~~Flood and Earthquake limits should be evaluated for each project~~
 - d. ~~Soft Costs should be included (loss of rent, interest on loan, etc.)~~
- G. Certificate Holder shall be addressed to:
- NorthPoint Holdings, LLC
c/o VendorShield
PO Box 55701 PMB 34943
Boston, MA 02205-5071
- H. In the "regarding" section of your certificate the following language shall be listed: "All policies except Workers Compensation shall include NorthPoint Holdings, LLC, NorthPoint Development, LLC and all subsidiaries, affiliated companies, property owners and their agents, successors and assigns, as their interests may appear, and owner as additional insured on a primary and non-contributory basis for claims as required by written contract or agreement.
- A waiver of subrogation in favor of the NorthPoint Holdings, LLC, NorthPoint Development, LLC and all subsidiaries, affiliated companies, property owners and their agents, successors and assigns, as their interests may appear, and owner is included under the General Liability, Automobile Liability, Umbrella Liability and Workers' Compensation.
- All Policies to be endorsed to provide NorthPoint Holdings, LLC and Owner 30 day notice of cancellation or material change.

Exhibit E - Construction Schedule

LVBP OFF-SITE SEWER

Select a period to highlight in grid. Legend: 1 Plan Duration Actual Start % Complete Actual (beyond plan) % Complete (beyond plan)



ACTIVITY	PLAN START	PLAN DURATION
SWPPP	1	10
CLEAR & GRUB	3	17
21" SEWER	3	26
18" SEWER	29	91

****Any dumpster used by the Contractor during construction will need to be covered (per City code). ****

AGENDA ITEM #3

Adjourn.