DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE PLANNED INDUSTRIAL EXPANSION AUTHORITY OF KANSAS CITY, MISSOURI

AND

CENTERPOINT ZIMMER LLC

AND

KANSAS CITY, MISSOURI

AND

THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF KANSAS CITY, MISSOURI

DATED: FEBRUARY 16, 2010
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recitals</td>
<td>1</td>
</tr>
<tr>
<td>Definitions</td>
<td>3</td>
</tr>
<tr>
<td>Incorporation of Recitals</td>
<td>9</td>
</tr>
<tr>
<td>Statutory Authority</td>
<td>9</td>
</tr>
<tr>
<td>Corporate Authority</td>
<td>9</td>
</tr>
<tr>
<td>Scope</td>
<td>9</td>
</tr>
<tr>
<td>Property Acquisition and Conveyances</td>
<td>9</td>
</tr>
<tr>
<td>Leases</td>
<td>9</td>
</tr>
<tr>
<td>Escrow Agreement</td>
<td>10</td>
</tr>
<tr>
<td>Developer Designation</td>
<td>10</td>
</tr>
<tr>
<td>The Project</td>
<td>11</td>
</tr>
<tr>
<td>Description of the Project</td>
<td>11</td>
</tr>
<tr>
<td>Developer's Obligations with Respect to the Project</td>
<td>11</td>
</tr>
<tr>
<td>Construction of the Work</td>
<td>11</td>
</tr>
<tr>
<td>Books, Records, Reports, Fiscal Matters</td>
<td>11</td>
</tr>
<tr>
<td>Developer's Efforts</td>
<td>12</td>
</tr>
<tr>
<td>MBE/WBE and Construction Workforce</td>
<td>12</td>
</tr>
<tr>
<td>Prevailing Wage</td>
<td>17</td>
</tr>
<tr>
<td>Governmental Approvals</td>
<td>18</td>
</tr>
<tr>
<td>Completion of Project</td>
<td>18</td>
</tr>
<tr>
<td>Liens and Encumbrances</td>
<td>18</td>
</tr>
<tr>
<td>Employment Eligibility Verification</td>
<td>18</td>
</tr>
<tr>
<td>Topic</td>
<td>Page</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>------</td>
</tr>
<tr>
<td>Binding Effect</td>
<td>35</td>
</tr>
<tr>
<td>Severability</td>
<td>35</td>
</tr>
<tr>
<td>Execution of Counterparts</td>
<td>35</td>
</tr>
<tr>
<td>Governing Law</td>
<td>35</td>
</tr>
<tr>
<td>Term</td>
<td>35</td>
</tr>
<tr>
<td>PIEA Invoices</td>
<td>35</td>
</tr>
<tr>
<td>Further Assurances</td>
<td>35</td>
</tr>
</tbody>
</table>
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of this 16th day of February, 2010 (the "Execution Date"), by and among THE PLANNED INDUSTRIAL EXPANSION AUTHORITY OF KANSAS CITY, MISSOURI, a statutory public body of the State of Missouri (the "PIEA"), CENTERPOINT ZIMMER LLC, a Missouri limited liability company (the "Developer"), KANSAS CITY, MISSOURI, a constitutionally chartered city under the laws of Missouri (the "City"), and THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF KANSAS CITY, MISSOURI, a public corporation organized and existing under the laws of the State of Missouri (the "IDA"). The PIEA, the Developer, the City and the IDA are each a "Party" and are collectively referred to herein as the "Parties".

REQUITALS

1. The PIEA, created by Section 100.300, et seq., of the Revised Statutes of Missouri 2000, as amended, ("PIEA ACT") is transacting business and exercising the power granted by the Planned Industrial Expansion Law by virtue of Ordinance No. 34677, duly passed by the City Council of Kansas City, Missouri on May 10, 1974.

2. The City is a constitutional charter city organized and existing under Article VI, Section 19, Section 19(a) of the Constitution of Missouri. The City Council (the "Council") of the City, on October 16, 2008, passed Ordinance No. 080913 (the "Ordinance"), which declared approximately 186 acres generally located at the northwest corner of Missouri Hwy 150 and Botts Road ("Project Area") to be a blighted and unsanitary area, pursuant to the 150 Highway & Botts Road PIEA General Development Plan dated July 1, 2008, revised September 2, 2008, as further revised from time to time ("General Development Plan") approved by the PIEA pursuant to the PIEA's Resolution 1338 adopted July 11, 2008.

3. The U.S. General Services Administration, an agency of the United States of America ("GSA") has obtained approval of the Congress of the United States of America for development of the Project Area (the "Project") as a campus for the National Nuclear Security Administration. A copy of the preliminary budget for the Project is attached hereto as Exhibit A.

4. The development of the Project will require the planning, design, permitting, and construction of certain public infrastructure described herein within and in the vicinity of the Project Area (the "Infrastructure Improvements"). A copy of the preliminary budget for the Infrastructure Improvements is attached hereto as Exhibit B.

5. After a competitive bidding process, the GSA selected the Developer to construct and develop the Project and the Developer has heretofore on June 5, 2009, submitted to the PIEA a Proposal (the "Proposal") attached hereto as Exhibit C and incorporated herein as part of this Agreement, to develop the Project Area, and the PIEA approved Resolution No. 1358 ("Resolution") on June 19, 2009, expressing the intent of the PIEA to accept
Applicant's Proposal subject to the review and approval of the Proposal by the City Council of the City.

6. The Resolution requires that the PIEA (1) prepare a definitive development agreement regarding the Project Area to implement the Proposal, and this Agreement fulfills that requirement, and (2) administer the development agreement after it is approved by the PIEA.

7. The PIEA will also provide a Tax Exemption Certificate to Developer permitting property tax abatement on the real property legally described on Exhibit D attached hereto and incorporated herein by reference (the "Real Property") as provided by Section 100.570, RSMo., and Sections 353.110 and 353.150(4), RSMo. on the terms and conditions detailed herein and the Developer will make, or cause to be made, payments in lieu of taxes during the term of such tax abatement, and a portion of such payments in lieu of taxes will be used to pay off the IDA Bonds.

8. In accordance with the Proposal, the Developer will convey, or cause to be conveyed, fee simple title to the Project Area to the PIEA on the Real Estate Closing Date (as that term is defined in this Agreement). The PIEA will Lease the Project Area back to the Developer (the "Developer Lease") and the Developer will in turn sublease the Project to the GSA (the "GSA Sublease"). The Base Rent, Annual Usage Payments for the Central Utility Plant at the Project (the "CUP") and the PILOT Payments paid by the tenant pursuant to the GSA Sublease shall be made directly to the trustees under the Indentures for the IDA Project Bonds and the IDA Infrastructure Bonds, respectively, to retire the bonded indebtedness evidenced by the IDA Project Bonds and the IDA Infrastructure Bonds, respectively.

9. The Council on June 25, 2009, passed Committee Substitute for Ordinance No. 090474 (the "URD Ordinance") approving the rezoning of the Project Area to Urban Redevelopment District, which such URD Ordinance is attached hereto as Exhibit E, and approving a development plan for the Project Area, said development plan being attached hereto as Exhibit F (the "Development Plan").

10. The Council, on July 9, 2009, passed Ordinance No. 090569 approving the plat of NNSA National Security Campus (the "Plat Ordinance").

11. In order to finance a portion of the Infrastructure Improvements, it is anticipated that the IDA will issue one or more series of non-recourse bonds, notes or other securities in an amount not to exceed $45,000,000.00 as authorized by Chapter 349 RSMo. (the "IDA Infrastructure Bonds") and loan the net proceeds of the IDA Infrastructure Bonds to PIEA which will make the funds available for the Infrastructure Improvements.

12. In order to finance a portion of the Project, it is anticipated that the IDA will issue one or more series of non-recourse bonds, notes or other securities in an amount not to exceed $705,000,000.00 (the "IDA Project Bonds"). The net proceeds of the IDA Project Bonds will be loaned to the PIEA which will make the funds available to the Developer.
to finance the cost of constructing and developing the Project as shown on the “Sources and Uses” chart attached here to as Exhibit G.

13. The City is partnering with the Missouri Department of Transportation ("MODOT") to facilitate the construction of certain of the Infrastructure Improvements. MODOT has approved a Cost Share Application of the City to match a City contribution of up to $10,000,000 as set out in a commitment letter dated July 23, 2009 and attached hereto as Exhibit H (the “MODOT Contribution”). The City intends to make in kind and cash contributions of $10,000,000 to maximize the MODOT Contribution. Some of the net proceeds of the IDA Infrastructure Bonds may be used for the purpose of financing the Infrastructure Improvements to be contracted for by MODOT.

14. The City has agreed to work cooperatively with the Developer to obtain other funding sources and incentives that may be available to support the Project and the Infrastructure Improvements, such as for example, making an application for Contribution Tax Credits ("Tax Credit Application") to the Missouri Development Finance Board (the "MDFB").

15. The Parties desire to enter into this Agreement in order to facilitate and authorize the construction, development, financing, use, and ownership of the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the grants, covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Definitions. Unless otherwise defined in this Agreement, all capitalized words or terms used in this Agreement shall have the following meanings:


b. “Base Rent” – The Base Rent payable by the GSA under the GSA Sublease, which shall be remitted by the GSA directly to the Trustee under the Indenture for the IDA Project Bonds.

c. “Buildings” – The various buildings which are to be constructed on the Project Area under the GSA Sublease.

d. “Building One” – The approximate 350,000 s.f. three-story office and data center to be constructed on the Project Area.

e. “Building Two” – The approximate 760,000 s.f. one-story manufacturing building to be constructed on the Project Area.

f. “City” – City of Kansas City, Missouri.
g. “City Contribution” – the City’s payment (with funds generated in part from the proceeds of the sale of the IDA Infrastructure Bonds) of up to $10,000,000 in kind and cash contributions.

h. “City MBE/WBE Ordinance” - Chapter 38 of the Code of Ordinances known as the “Minority and Women’s Business Enterprise Program of Kansas City, Missouri”.

i. “City Owned Improvements” – Those portions of the Infrastructure Improvements owned and to be maintained by the City after construction.

j. “Closing” – The date of closing on the Project Bond Documents.


l. “Contractor” - JE Dunn Construction.

m. “Council” – The governing body of the City.

n. “CUP” – The Central Utility Plant to be constructed on the Project Area as part of the Project.

o. “Developer” – Centerpoint Zimmer LLC.

p. “Developer Deed” – The PIEA’s Special Warranty Deed conveying its interest in the Project Area to the Developer upon expiration or termination of the term of the Developer Lease.

q. “Developer Lease” - The PIEA Lease back to the Developer for the Project Area and the Project.

r. “Developer’s Compliance Director” – the compliance director designated by the Developer and responsible for representing Developer in all matters relating to MBE/WBE and workforce utilization matters.

s. “Development Plan” – The development plan for the Project Area attached hereto as Exhibit F.

t. “Director” – the City’s Director of Human Relations.

u. “Equity Investment” – as set forth in Section 13 of this Agreement.

v. “Execution Date” – The date the Development Agreement is executed by all parties.

w. “Flyover” – The overpass to be constructed at the southwest corner of the Project Area, for the purpose of allowing the KCS intermodal traffic entering and exiting from that facility to have separate access to Missouri Highway 150 without going through the Interchange.
x. “Frozen Base Taxes” – The amount of general ad valorem taxes imposed by the City, the State or any political subdivision thereof on and assessed against the Real Estate by the Assessor of Jackson County, Missouri and payable during the calendar year 2008.

y. “General Development Plan” – The PIEA General Development Plan dated July 1, 2008, revised September 2, 2008, as further revised from time to time.

z. “Governmental Approvals” – Any approvals required with the United States of America, the City, Jackson County, Missouri or the State for construction or operation of the Project.

aa. “GSA” - The U.S. General Services Administration.

bb. “GSA Sublease” – The Developer’s sublease for the Project Area and the Project with the GSA.

c. “IDA” – The Industrial Development Authority of the City of Kansas City, Missouri.

cc. “IDA Bonds” – collectively the IDA Infrastructure Bonds and IDA Project Bonds.

dd. “IDA Infrastructure Bonds” - one or more series of non-recourse bonds, notes or other securities in an amount not to exceed $45,000,000, to finance a portion of the Infrastructure Improvements, and issued by the IDA pursuant to Chapter 349 RSMo.

ee. “IDA Project Bonds” - one or more series of non-recourse bonds, notes or other securities in an amount not to exceed $705,000,000.00 to finance the cost of constructing and developing the Project, and issued by the IDA pursuant to Chapter 349 RSMo.

ff. “Indenture” or “Indentures” – The one or more Indentures of Trust pursuant to which the IDA Bonds are issued.

hh. “Infrastructure Improvements” – Certain infrastructure within and in the vicinity of the Project Area.

ii. “Infrastructure PILOTs” - PILOTs available for and dedicated to the payment of debt service on the IDA Infrastructure Bonds.

jj. “Initial Transaction Activity” – Individually, the Closing of the Project Bond Documents; the execution of the Developer Lease; and the execution of the GSA Sublease.

kk. “Initial Transaction Activities” – Collectively the Closing of the Project Bond Documents, execution of the Developer Lease and execution of the GSA Sublease.
II. "Interchange" – The new interchange to be constructed at Botts Road and Missouri Hwy 150.

mm. "IRS" – Internal Revenue Service.


oo. "Leases" – Collectively, the Developer Lease and the GSA Sublease.

pp. "Lease Terms" – The terms of the Leases, which commence on the Real Estate Closing Date of the IDA Bonds and continue for periods of time which shall not be less than the term of the IDA Bonds. The Developer Lease and the GSA Sublease may not be co-terminus.


rr. "MODOT" – The Missouri Department of Transportation.

ss. "MODOT Contribution" – MODOT’s approved Cost Share Application of up to $10,000,000 to assist with the construction of the Infrastructure Improvements as evidenced by commitment letter dated July 23, 2009, a copy of which is attached as Exhibit H.

tt. "Mortgage and Security Agreements" – The Note evidencing the loan from the IDA out of the proceeds of the IDA Project Bonds, the mortgage, deed of trust or other security documents covering the Project and encumbering PIEA’s fee simple interest in the Project, together with the loan agreement and any other documents, agreements and instruments executed as security for the repayment of the Note. In addition, the Mortgage and Security Agreements include, but are not limited to, the Financing Agreements between the IDA and the PIEA pursuant to the Indentures, and the PILOT Agreement (if any) as required under the Indenture for the IDA Infrastructure Bonds.

uu. "MOU" - That certain Memorandum of Understanding dated on or about April 17, 2009 attached hereto as Exhibit M by and between GSA, KCS and CenterPoint Kansas City One LLC.


ww. "Parties" – Collectively the PIEA, the Developer, the City and the IDA

xx. "PIAC Funds" – City’s contribution of $6,300,000 to be used for the design and construction of a portion of the Infrastructure Improvements.

yy. "PIEA" – The Planned Industrial Expansion Authority of Kansas City, Missouri.

zz. "PIEA Act" – Section 100.300, et seq., of the Revised Statutes of Missouri 2000, as amended.
aaa. "PIEA Redevelopment Corporation" - The Planned Industrial Expansion Authority of Kansas City, Missouri Redevelopment Corporation.

bbb. "PILOTs" – Payments in lieu of taxes to be paid or cause to be paid from time to time by the GSA or the Developer to the PIEA or the Trustee under the Indenture for the IDA Infrastructure Bonds.

ccc. "Plat Ordinance" – Ordinance No. 090569 dated July 9, 2009, approving the plat of NNSA National Security Campus.


eee. "Project Area" – The approximately 186 acres generally located at the northwest corner of Missouri Hwy 150 and Botts Road declared blighted by the City Council on October 16, 2008, in Ordinance No. 080913.

fff. "Project Bond Documents" - The documents related to the issuance by the IDA of the IDA Bonds for the Project.

ggg. "Project Investment" – The requirement that Developer expend a minimum equal to $425 million attributable to the costs of the Project (which shall include but not be limited to the costs of issuance of the IDA Bonds, all design and professional services, permitting, construction of the shell and core of all Buildings and the CUP, onsite grading and site preparation, utility and pipeline construction and relocations, the cost to design and construct the CUP, the Tenant Improvement Allowance (and any increase thereof) funded by the Lessor in accordance with the GSA Sublease, and all other related costs of the Project) and the design, permitting and construction of the Infrastructure Improvements.

hhh. "Proposal" – Developer’s proposal to develop the Project submitted June 5, 2009, to the PIEA.

iii. "Real Estate Closing Date" - The date of closing on the Project Bond Documents.

jjj. "Real Property" - The real property legally described on Exhibit D.

kkk. "Recognition Agreements" - Agreements by and among various Parties and other third parties participating in the transactions for the issuance of the IDA Infrastructure Bonds and the IDA Project Bonds.

lll. "Re-Conveyance Deed"– The PIEA Redevelopment Corporation's deed reconveying the Project back to the PIEA.


nnn. "Service Road" – A service road entrance to be constructed on Botts Road at the northeast corner of the Project Area.
“SFO” – GSA Solicitation For Offer (SFO, GSA SFO NO. 7MO2054-2) dated 9/30/08, as amended 2/19/09, pursuant to which Developer was selected, and as further modified by the “Pertinent Portions of Solicitation for Offers 7MO2054-2”, being a part of the GSA Sublease.

“State” – The State of Missouri.

“Tax Abatement” – Real property tax abatement on the Project.

“Tax Credit Application” – An application for Contribution Tax Credits to the Missouri Development Finance Board.


“Taxing Jurisdiction PILOTs” – A portion of the PILOTs to be paid from time to time to Jackson County, Missouri for the benefit of the taxing jurisdictions or directly to the taxing jurisdictions themselves.

“Total PILOTs” – Payments in lieu of taxes (i) in the amount of the Frozen Base Taxes from and after the Real Estate Closing Date for each calendar year to and including the calendar year in which the first PILOT payment is made under the GSA Sublease and (ii) in the amount equal to 25 years multiplied by $5,200,000, each such payment of $5,200,000 to be paid annually commencing upon the first PILOT Payment under the GSA Sublease after acceptance by the GSA of the first Building or “Increment” under the GSA Sublease (which is estimated to be 29 months after the Real Estate Closing Date) and on or before each anniversary date of such initial payment.

“Trustee” – The bank or trust company approved by IDA, PIEA and in the case of the IDA Project Bonds, the Developer, to serve as trustee under an Indenture.

“URD Improvements” – Collectively, (i) a land set aside for bikeways along Botts Road and Missouri Hwy 150; (ii) a possible (partial) relocation of water main transmission line in Missouri Hwy 150; (iii) storm water management improvements (both on and off the Project Area); and (iv) wetlands restoration/enhancement on the Project Area and adjacent Botts Road right-of-way.

“URD Ordinance” - Committee Substitute for Ordinance No. 090474 dated June 25, 2009.

“Utility Extensions” – Extension of electricity, natural gas, and sanitary sewers into the Project Area.

“Work” – Collectively, all work described in the Development Plan and this Agreement, and any other work necessary to effectuate the intent of this Agreement as more particularly described in Section 10.
2. **Incorporation of Recitals.** The foregoing Recitals are true and correct and are incorporated herein as if fully set forth.

3. **Statutory Authority.** The City, the PIEA and the IDA, have the authority to enter into this Agreement, pursuant to Article VI, Section XVI of the Missouri Constitution of 1945, Sections 70.220, 99.420 and Chapter 349 of the Revised Statutes of Missouri, the PIEA Act and the City Charter of Kansas City.

4. **Corporate Authority.** The Developer is duly organized, validly existing, and in good standing under the laws of the State of Missouri and has lawful power and authority to enter in to this Agreement and to carry out its obligations hereunder.

5. **Scope.** The Parties agree to (a) advance activities and efforts related to the design, permitting, construction, development, and ownership of the Project and Infrastructure Improvements, (b) negotiate in good faith the Developer Lease, and reasonably accommodate the Developer’s entering into the GSA Sublease, and otherwise determine the terms pursuant to which the Parties and other third parties may make use of the Project, (c) determine the financial and non-financial contributions of each Party, including but not limited to, the issuance of the IDA Project Bonds and IDA Infrastructure Bonds and the repayment of the same, and (d) identify other issues related to the completion of the Project and Infrastructure Improvements, in accordance with the requirements of this Agreement.

6. **Property Acquisition and Conveyances.** The Project Bond Documents related to the issuance by the IDA of the IDA Bonds for the Project are being prepared and reviewed by the Parties. On or before the date of Closing, the Developer will deliver, or cause to be delivered, a special warranty deed that grants merchantable fee simple title to the Project Area to the PIEA. Simultaneously therewith, (i) the PIEA and the Developer will enter into the Developer Lease, and (ii) the Developer and GSA will enter into the GSA Sublease, and (iii) parties will enter into the Recognition Agreements and, as appropriate, the Mortgage and Security Documents. The parties understand and agree that the Initial Transaction Activities must occur simultaneously and that each Initial Transaction Activity is contingent upon the closing or execution, as applicable, of the other Initial Transaction Activities and that the IDA Bonds will not be issued until the Initial Transaction Activities have been completed.

7. **Leases.** The form of the Developer Lease, GSA Sublease, Mortgage and Security Documents and Recognition Agreements shall all be subject to the review and approval of the Developer in its sole and absolute discretion. The form of the Developer Lease, Mortgage and Security Documents and any Recognition Agreement to which the PIEA is a party shall further be subject to the review and approval of the PIEA in its sole and absolute discretion. The Leases shall include standard insurance (Contract Liability Insurance), environmental indemnity, general indemnity, maintenance and other provisions as may be agreed upon by the PIEA, Developer, and GSA in their respective sole and absolute discretion. The terms of the Leases will commence on the Real Estate Closing Date and will continue for terms at least equaling the terms of the IDA Bonds. The Developer Lease shall, subject to the approval of the Developer as to the time-frame of the term of the Tax Abatement, have a term permitting the Tax Abatement for twenty five (25) years from the date that the PILOT's commence. During the Term of the IDA Bonds, the Developer shall cause the Base Rent, Annual Usage Payments and PILOT Payments
paid by the tenant pursuant to the GSA Sublease to be made directly to the Trustee under the Indentures for the IDA Project Bonds and the IDA Infrastructure Bonds, respectively, to retire the bonded indebtedness under the IDA Project Bonds and the IDA Infrastructure Bonds, respectively, by the maturity date of the IDA Project Bonds and IDA Infrastructure Bonds, respectively, including costs and expenses in connection with the call, redemption and payment of the IDA Project Bonds and the IDA Infrastructure Bonds, respectively. During the term of the Developer Lease, the improvements located on the Project Area shall be owned by the PIES. Accordingly, during the term of the Developer Lease, such improvements are expected to be exempt from all real property taxes. During the term of the Developer Lease, the Developer will indemnify the PIES, its Board and its staff against any and all liability arising as a result of the capital leasehold interest. The schedule of Base Rent, Annual Usage Payments and PILOT payments shall be approved by PIES, IDA and the Developer prior to the issuance of the IDA Bonds.

8. Escrow Agreement. The Parties agree that upon the expiration of the Developer Lease and the full payment of the IDA Project Bonds and the IDA Infrastructure Bonds, respectively, the PIES will convey its interest in the Project Area to the Developer by way of the Developer Deed for a sum equal to $10.00. The PIES and the Developer agree to execute an Escrow Agreement on the Real Estate Closing Date whereby the PIES will deposit the Developer Deed with an escrow agent with instructions instructing the escrow agent to record the Developer Deed on the expiration of the Lease Term of the Developer Lease and receipt of certification from the PIES that the IDA Project Bonds and the IDA Infrastructure Bonds, respectively, have been paid in full. It is acknowledged and agreed that the term of the Developer Lease may be longer than the term of the IDA Bonds. The PIES agrees to provide such certification to the escrow agent on the later of the day the IDA Project Bonds and the IDA Infrastructure Bonds have matured and have been paid in full (which may be before the Developer Lease term has ended). As soon as practicable after the execution of this Agreement, the Parties shall prepare a draft form of the Leases, Mortgage and Security Documents, Recognition Agreements, and Escrow Agreement as provided in this Section 8.

9. Developer Designation. From and after the Closing, the Parties agree the Developer shall perform or cause the performance of all work necessary to prepare the Project Area and to construct or cause the construction and completion of the Project and Infrastructure Improvements as specifically described in the Proposal and this Agreement including but not limited to, (i) professional services including, but not limited to, architecture, engineering, surveying, financing, legal, planning and consulting; (ii) site preparation, improvements, the URD Improvements, construction of all building shells, building interiors, the façade and structural elements of the buildings substantially as shown and described in the Development Plan; (iii) procurement of all goods, materials and equipment needed to construct and furnish the Project in accordance with the Proposal; (iv) construction of related Infrastructure Improvements including without limitation sidewalks, parking facilities, installation of lighting and landscaping; and (v) all other work described in the Development Plan and this Agreement, and any other work necessary to effectuate the intent of this Agreement. Notwithstanding the foregoing, the Developer’s obligation hereunder is limited to the amount of public and bond funds available to the Project. None of the Parties shall have an obligation to undertake any Infrastructure Improvements which are unfunded by the Parties. Further, and notwithstanding any of the foregoing, in the event of any inconsistency between the design and construction.
requirements for the Project under the GSA Sublease, and the work and improvements described in the Proposal or this Agreement, the GSA Sublease shall supersede and is controlling.

10. **The Project**

   a. **Description of the Project.** The Project plan consists of a five building campus of office and manufacturing space totaling approximately 1,500,000 square feet and the CUP (see also Exhibit F). Parking will be provided by the Developer under a plan approved by the GSA. The Parties acknowledge that the Development Plan is subject to change, and in the case of any revisions or amendments thereto, the Project description set forth in this Section shall change to conform to such revisions or amendments.

   b. **Developer’s Obligations With Respect to the Project.**

      i. **Construction of the Work.** The Developer shall commence or cause the commencement of the construction of the Project as soon as reasonably practicable after the Real Estate Closing Date, which work shall be constructed in a good and workmanlike manner in accordance with the terms of this Agreement. The Developer may enter into or cause to be entered into one or more construction contracts to complete the Work. Such construction contracts shall require the contractors and subcontractors to furnish evidence of the ability to provide bonds covering the faithful performance of the construction contract and payment of obligations arising under the contract. Contractors and subcontractors shall have agreements with applicable unions for their respective trade work to be performed. Prior to the commencement of the Work, the Developer will obtain or will require that Developer’s contractors obtain (and that the Developer’s contractors require that their respective subcontractors obtain) worker’s compensation, commercial general liability, auto liability and excess umbrella coverage in amounts and upon such terms as required under the Developer Lease and shall name IDA, PIBA and the City as additional insureds. Such coverage shall be written on an occurrence basis, with the exception of workers’ compensation. Certificates of such insurance shall be supplied upon request to PIBA, IDA and the City. The Developer will require that such insurance be maintained by all of its contractors for the duration of the construction of the Work.

      ii. **Books, Records, Reports, Fiscal Matters.** The Developer shall maintain current and complete records and accounts of all transactions with respect to the Project and the development and construction of the Project, including, but not limited to, the current and complete records and accounts of the Developer. The PIBA, the City and the IDA shall have the right, during normal business hours, to inspect and audit at any time, and from time to time, all of the Developer’s files, books, records, costs and expenses pertaining to the development and construction of the Project.
iii. Developer’s Efforts. The Developer shall exercise professional and workmanlike skill and judgment in performing the Work in furtherance of the Project. The Developer shall furnish efficient business administration and coordination and shall cause the Project to be completed in as expeditious and economical a manner as is practicable and in substantial compliance with the Development Plan. The Developer shall assure that the Project and all Work related thereto at all times fully comply with all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations and other requirements of all municipal, county, state and federal governments, agencies, authorities, courts and officials now or hereafter having jurisdiction over the Project, including, but not limited to, federal, state or local laws, statutes, codes, ordinances, regulations, requirements or rules relating to dangerous, toxic or hazardous pollutants, contaminants, chemical waste, materials or substances, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 USC Sec. 9601, the Resource Conservation and Recovery Act, 42 USC Sec. 6901, and the Hazardous Materials Transportation Act, 49 USC Sec. 1801, as amended.

iv. MBE/WBE and Construction Workforce. With respect to the construction of the Project, the Developer agrees to comply with the provisions of City’s MBE/WBE Program (Sections 38-84 through 38-100.8, Code of Ordinances) and Construction Workforce Program (Sections 38-83.1 through 38-83.13, Code of Ordinances) as of the date of this Agreement, and as modified by this section. For purposes of this Agreement, the City’s programs, as modified herein, shall constitute the PIEA’s minority and women business enterprise program pursuant to Section 38-85.5, Code of Ordinances, and construction workforce program pursuant to Section 38-83.3, Code of Ordinances. The Parties agree that all aspects of the development, design and construction of the Interchange, Flyover and other off-site work being developed by MODOT or third parties in cooperation with the City shall be excluded from and not subject to the MBE/WBE Program and Workforce Program established by this subsection.

The overall MBE/WBE participation goal for the construction of the Project shall be twenty-four percent (24%) of the construction cost. Provided, however, that the MBE/WBE participation goals established as provided herein shall not apply to the Contractor’s fees, general requirements, permits, bonds, insurance and any other scopes of work mutually agreeable to Developer and City’s Human Relations Division at the time utilization goals are established as provided herein. The Developer shall, at its option, be permitted to include or exclude some or all its predevelopment activities for the Project with respect to meeting said MBE/WBE participation goals for the design phases of the Project. For all purposes under this Agreement, the requirements of the City’s
MBE/WBE Program and Construction Workforce Program, and the implementation thereof, shall be subject to all federal government requirements concerning ownership, citizenship and security clearance for contractors and employees of contractors. The Parties agree that implementation of the requirements of this Section, including the establishment of MBE/WBE participation goals and the assessment of the Developer’s and/or Contractor’s good faith efforts to meet or exceed such goals, shall be subject to the requirement that bidders furnish evidence of the ability to provide payment and performance bonds for the work, are qualified to perform the work and submit competitive prices. Further, the Parties agree that PIEA and Developer have elected to impose the requirement that all individuals performing work on the Project shall be union workers, and the Director agrees to give full credit to this requirement in the establishment of MBE/WBE participation goals and the assessment of Developer’s and/or Contractor’s good faith efforts to meet or exceed such goals. Director shall grant a waiver and/or modification of the goals if Developer or Contractor otherwise made a good faith effort and the inability to meet any goal was attributable to the unavailability of MBE/WBEs meeting the requirements of this Section. The City shall assist the Developer and its contractors and subcontractors in obtaining the City’s MBE/WBE certification within a reasonable period of time; provided, however, that certification of such contractors and subcontractors shall be subject to the requirements of Section 38-100.4, Code of Ordinances. A reasonable period of time shall be construed under this Agreement for this purpose to be a 45 day period of time, unless extended by the Developer, after a contractor or subcontractor submits to the City all required documentation necessary for consideration by the City.

The construction of the Project shall be divided into multiple utilization groups of work (“Utilization Group”) as identified on Exhibit I attached hereto. Utilization goals shall be established for each Utilization Group regardless of the manner in which the resulting contract is procured; provided, however, that the utilization goals established for any particular Utilization Group shall not exceed the twenty-four (24) percent goal established for the overall Project. The MBE/WBE utilization goal for each Utilization Group shall be established by the City’s Fairness in Construction Board following a recommendation by the City’s Human Relations Division and in accordance with Section 38-88, Code of Ordinances. The Parties agree within thirty (30) days of Closing to meet and confer with the Contractor and the City Fairness in Construction Board regarding the establishment of MBE/WBE Utilization goals for the first Utilization Group. No less than 30 to 45 days prior to requesting bids/proposals for any Utilization Group or portion thereof, Developer shall provide City or cause Contractor to provide City with information on the Utilization Group and the scopes of work anticipated to be performed in sufficient detail as to enable the Human Relations Division and Fairness
in Construction Board to identify those services and goods that might be
performed or supplied by MBE/WBEs. Within 48 hours of receiving such
information, City’s Director of Human Relations ("Director") shall
determine whether the materials submitted contain adequate detail as to
cable the Human Relations Division and Fairness in Construction Board
to proceed with their respective evaluations and goals-setting work. If
Director determines that the materials are not adequate for their intended
purposes, he shall notify the Developer and Developer shall within 48
hours of the receipt of any such notice supplement the materials as
provided by Director. Upon Director’s determination that he has
sufficient information to proceed, Director shall have (30) days within
which to (A) recommend and submit goals to the Fairness in Construction
Board; and (B) cause the Fairness in Construction Board to establish
MBE/WBE participation goals for the Utilization Group. If either the
Director or Fairness in Construction Board fails to act within this 30
day period, the level of MBE/WBE participation proposed by Developer
in its submission to the Director shall be deemed the MBE/WBE
participation goals applicable to the concerned Utilization Group.
Developer shall attend and shall require Contractor to attend and
participate at every meeting of the Fairness in Construction Board at
which goals are established for any Utilization Group.

Developer and Contractor shall make and shall require every
subcontractor to make good faith efforts, as such efforts are defined in
Section 38-93, Code of Ordinances, to secure MBE/WBE participation to
meet or exceed the goals applicable to each Utilization Group. Within
five (5) business days following the date and time upon which
bids/proposals for a Utilization Group are due, Developer shall cause
Contractor to submit to Director a contractor utilization plan, whereby
Contractor identifies (A) the names and addresses of each qualified MBE
or WBE that will participate in the Utilization Group, (B) the nature of the
work to be performed, and (C) the amounts each MBE/WBE will be paid
for such work. Developer shall also cause Contractor to simultaneously
submit letters of intent to subcontract in a form set forth in Exhibit J,
whereby the listed MBE/WBEs confirm their intention to provide the
identified goods/services. In the event that contractor utilization plan for
any particular Utilization Group indicates that any applicable utilization
goal will not be met or exceeded, the Developer and/or Contractor shall
simultaneously forward any documentation supporting their belief that a
good faith effort has been made to meet or exceed the utilization goals
applicable to the Utilization Group.

Director shall have up to twenty one (21) days from the date of the receipt
of such supporting documentation, within which to evaluate the materials
provided and determine whether (A) Developer and Contractor have
exercised good faith efforts to reach the established goals; as such efforts
are defined in Section 38-93, Code of Ordinances, and (B) the utilization
goals should be modified or waived and, if they are to be modified, the amount of the modification. In the event that the Director does not complete the evaluation and make a decision within such twenty one (21) days, the Developer shall be deemed to have met the good faith criteria and the goals for the affected Utilization Group shall be reduced accordingly to the level of participation actually achieved. If aggrieved by any such determination of Director, Developer and Contractor may appeal to the City Fairness in Construction Board to the extent provided in and subject to the time limitations of Section 38-99, Code of Ordinances, and in any case within ten (10) days from such determination. The appeal to the City’s Fairness in Construction Board of any such determination shall be the exclusive administrative remedy available to Developer and/or Contractor. Provided, however, that nothing in this Agreement shall be construed as Developer’s and/or Contractor’s relinquishment of any rights to judicial review of any such determination.

MBE/WBE participation shall be applied to the construction phases of the Project and evaluated on the basis of each Utilization Group and shall be credited and disallowed as provided in Section 38-90, Code of Ordinances. No less than quarterly the Director shall approve or disapprove the MBE/WBE participation already achieved by the Developer for each such period concerned, and upon such approval of the Director, there shall be no further remedy whatsoever against the Developer, the Contractor (or their respective sub-contractors) concerning the approved Utilization Group(s) and participation to the extent approved, and including the liquidated damages remedy set forth in Section 15B as applicable to the portion of participation approved, unless, however, information not in the possession of the Director as of the date of such approval provides a reasonable basis upon which to conclude that the Developer, Contractor or any subcontractor knowingly or intentionally provided false or misleading information to the Director and that the Director relied upon such information in rendering his approval. Subject to the Director’s reasonable and prior approval, and pursuant to requirements of Section 38-94, Code of Ordinances, Developer and/or Contractor may, during the construction phases of the Project, seek the substitution of MBE/WBEs listed on the contractor utilization plan applicable to any particular Utilization Group. Upon any such approval by Director, participation by the substitute MBE/WBE shall be credited towards the utilization goals applicable to the concerned Utilization Group. If the Director finds that the Developer and/or Contractor have, notwithstanding the exercise of reasonable good faith efforts, failed to substitute the listed MBE/WBE with other qualified MBE/WBEs for the concerned scope of work the Director shall modify the amount of participation applicable to the Utilization Group as authorized in Section 38-94(a), Code of Ordinances. In any such event, the liquidated damages set forth in Section 15B, to the extent of the applicable modification, shall not be assessed as to such subcontractor’s scope of work.
Developer's Compliance Director shall report monthly to Director, in a form acceptable to Director, of the utilization of MBE/WBEs by Developer, Contractor and any subcontractor. Such information may be submitted in an electronic format. Developer shall contractually obligate Contractor and any subcontractor to provide any information which might reasonably be requested by City for purposes of monitoring compliance with the provision of this section. Developer shall additionally provide to Director, in a form acceptable to Director, affidavits signed by each MBE/WBE for purposes of verifying that the MBE/WBE has been paid in full for any goods/services it rendered in accordance with the subcontractor's respective subcontract. Developer's Compliance Director shall be required to meet with a representative of City's Human Relation Division as requested from time to time. Developer's Compliance Director shall, no less than quarterly, advise the representative of the City's Human Relations Division of all contracts expected to be awarded during the ensuing quarter, the anticipated contract value, the nature of the work to be performed, any specific technical requirements or security clearances that must be met by any subcontractor, the estimated solicitation date, and any other information that might enable Developer's Compliance Director and the representative of the City's Human Relations Division to identify avenues by which MBE/WBE participation might be realized.

The Parties acknowledge that the nature of the Project is such that specialized requirements and/or security clearances may be applicable to certain components of the Project, that those requirements/clearances are currently unknown, that the federal government has the absolute authority to determine or alter the requirements/clearances imposed, and that interested M/WBEs cannot obtain any required security clearances until they have been identified as an entity assigned to perform work on the Project. Developer and Contractor agree for this reason to pro-actively provide information as then known concerning these federal government requirements. Within thirty (30) days of the execution of this Agreement, Developer and Contractor agree to meet and confer with eligible MBE/WBEs regarding the requirements/clearances which may become applicable to work performed during the construction phase of the Project. Developer and/or Contractor shall not solicit any bids/proposals, and shall prohibit Contractor and any subcontractor from soliciting any bids/proposals, for any Utilization Group to be performed as part of the Project prior to notifying Director in writing at least 30 days prior to the solicitation of any requirements unique to the work, including any specific security clearances that must be obtained. The Developer and/or Contract shall exercise reasonable good faith efforts to assist MBE/WBEs in their attempt to satisfy the requirements/clearances that may become applicable to any particular scope of work. Provided, however, that the Parties acknowledge that the ultimate decision regarding such requirements/clearances is beyond the control of Developer and Developer
makes no representations or warranties concerning the ability of any particular MBE/WBE to obtain the necessary clearances.

The Project was initiated under federal contract procurement by the General Services Administration of the United States government and, as such, was subject to GSA specific terms and conditions. The proposal submitted to the General Services Administration established a professional team for the design, development, and financing of the Project. Final award of the Project was based on lowest cost competition with specific technical experience and expertise requirements for the professional team. The Developer is committed to this professional team and, therefore, all committed professional services necessary for design, development, and financing of the Project shall be excluded from the Utilization Plan in Developer’s discretion. The obligations within this section shall not be construed to include any professional services already contracted for or committed by the Developer. If a need for additional professional services becomes necessary during the construction of the Project, Developer shall (A) inform Director and shall request that Director provide a list of MBE/WBEs eligible to perform these additional professional services; and (B) exercise good faith efforts to contract with eligible MBE/WBEs for any such services.

Construction workforce goals of 10% minority workers and 2% female workers based upon field labor employed in the Kansas City, Missouri, metropolitan area are hereby established for the Contractor and any subcontractor performing work on the Project. Developer shall report monthly to Director, in a form acceptable to Director, on its and its Contractors and any subcontractor’s utilization of minority and female workers. Director may require that such information be submitted in an electronic format. Developer shall contractually obligate Contractor and any subcontractor to provide any information which might reasonably be requested by City for purposes of monitoring compliance with the provision of this section.

Developer shall make and shall contractually require Contractor and any subcontractors to make a good faith effort to meet or exceed the MBE/WBE and construction workforce goals and shall work diligently to ensure their compliance, provided however that the ultimate responsibility for compliance or lack thereof with this section and the established goals for each Utilization Group shall lie with Developer notwithstanding the fact that Developer may allocate certain functions and responsibilities related to the construction of the Project to Contractor.

v. Prevailing Wage. The Developer and any of its contractors shall comply in all respects with the Prevailing Wage Laws of the State of Missouri, Sections 290.210 to 290.340, RSMo., as amended, and any federal prevailing wage laws that apply to the work. In furtherance of the
Developer's covenant to comply with Sections 290.210 to 290.340, RSMo, as amended, the Developer will require (A) its contractors and subcontractors to employ workers who perform work within the trade classification of work within occupational titles for which they are skilled as described in Title 8, Division 30, Chapter 3 of the Missouri Code of State Regulations and (B) provide PIEA, upon request, copies of the payroll records (and such other data as may reasonably be required) with respect to such workers in order to allow PIEA to verify compliance with this section.

vi. Governmental Approvals. Developer has or will apply for and use reasonable good faith efforts to obtain any and all approvals, plat approvals, zoning or re-zoning changes, site plan approvals, conditional use permits, licenses, variances, vacations, building permits or other similar approvals from local, state and federal authorities and agencies required for the implementation of the Project related to the Project Area and consistent with the Development Plan and this Agreement, as they may be amended from time to time.

vii. Completion of the Project. Developer shall cooperate with the Parties to complete the Project in accordance with the timeline attached hereto as Exhibit K provided that the Closing has occurred. The Parties understand that the construction of the Work may be delayed by causes beyond the control of the Developer, such as, for example and not by way of limitation, labor disputes, fire, casualty damage, windstorm, unavoidable weather conditions, unusual delays in deliveries or governmental delays including, but not limited to, delays caused directly or indirectly by third party litigation against the GSA or other governmental parties.

viii. Liens and Encumbrances. The Developer shall pay or cause to be paid all charges for all Work done, including without limitation all labor and materials for all construction upon the Project Area and will not suffer or permit any mechanic's, materialmen's, or similar liens for labor or materials furnished to the Project Area; and if any such lien shall be filed, the Developer will either pay the same, procure the discharge thereof by giving security or in such other manner as may be required or permitted by law, or provide title insurance protection against such claims satisfactory to all of the Parties, within thirty (30) days after such filing or within such shorter time period as may be required by law. The Developer will indemnify the PIEA against, and save the PIEA harmless from, any and all loss, damage, claims, liabilities, judgments, interest, costs, expenses, and attorney fees arising out of the filing of any such lien.

ix. Employment Eligibility Verification.

(1) The Developer will require the general contractor and all subcontractors to:
a. Complete Employment Eligibility Verification Forms (Form I-9) for all employees on the Project, including U.S. citizens, and maintain such records for a period of 3 years after the date of hire or 1 year after the date the employee’s employment is terminate, whichever is later; and

b. Review the documentation presented by the employee to establish identity and work eligibility and determine whether the documents presented reasonably appear to be genuine.

(2) The Developer will require that the general contractor and all subcontractors discontinue any employee who is not authorized to work in the United States and otherwise follow the provisions of the Immigration Reform and Control Act.

(3) The Developer shall allow the PIEA, IDA and the City or their designee to review all books and records of the Developer and its general contractor and subcontractors for the purposes of this subsection, including but not limited to Employment Eligibility Verification Forms and related documentation, related to the Project at reasonable times as requested by the PIEA, IDA and the City.

(4) Developer further agrees that the failure or refusal to comply with these conditions shall be deemed a total breach of the Agreement and such Agreement or Tax Abatement granted under this Agreement may be terminated, canceled or suspended, in whole or in part upon a finding of noncompliance by the PIEA. Developer shall be given notice and a reasonable opportunity to cure any breach prior to a hearing on the matter by the PIEA.

x. Independent Contractors. The Developer may not use and must prohibit the general contractor and all subcontractors from using independent contractors to perform work on the Project unless the Developer, the general contractor or the subcontractor, as applicable, has a reasonable basis for treating the workers as independent contractors and not as employees, such as a similar judicial precedent or (a) a ruling issued by the IRS holding that the workers were property classified as independent contractors; (b) a determination by the IRS issued to the Developer, the general contractor or subcontractor, as the case may be, that the treatment as independence contractors is allowed; (c) a prior audit by the IRS of the Developer, general contractor or subcontractor, as applicable, in which similar workers were treated as independent contractors and in which the IRS did not reclassify them as employees; (d) a significant segment of the industry in which the workers were working treated similar workers as independent contractors; (e) the Developer, general contractor or subcontractor relied upon the advice of a business lawyer or accountant who were fully apprised of the facts relating to the treatment of workers as
independent contractors; or (f) the treatment of the workers as independent contractors rather than employees falls within another safe harbor recognized by the IRS.

In addition the Developer, general contractor or subcontractor, as the case may be, must have always treated the workers as independent contractors and not as employees and must have filed Form 1099-MISC for each worker, unless the worker earned less than $600.

xi. **Right of Way.** The Developer shall donate or cause the donation, without cost to the City or PIEA, of the Right of Way on the northwest, southwest and southeast corners of Missouri Highway 150 and Botts Road to facilitate the construction of the Improvements described in Section 11(a).

c. **The PIEA Obligations With Respect to the Project.**

i. **PIEA.** The PIEA agrees to borrow the net proceeds from the issuance of the IDA Project Bonds, which proceeds shall be made available to the Developer pursuant to the Developer Lease and shall be placed into escrow to fund the costs of issuance of the IDA Project Bonds and the design, permitting, construction and development of the Project including, but not limited to, escrows for construction-period reserves for interest, taxes, insurance and other construction-period costs. The PIEA shall not be responsible for costs of the Project in excess of funds available from the net proceeds from the IDA Project Bonds.

The PIEA further agrees to borrow the net proceeds from the issuance of the IDA Infrastructure Bonds, which proceeds shall be made available for the payment of the costs of issuance of the IDA Infrastructure Bonds and the costs of the design, permitting and construction of the Infrastructure Improvements and placed into escrow to fund costs of the Infrastructure Improvements provided that the PIEA shall have entered into such Cooperative Agreement or Agreements as shall be reasonably necessary with respect to the Infrastructure Improvements. The PIEA shall not be responsible for costs of the Infrastructure Improvements in excess of funds available from the net proceeds from the IDA Infrastructure Bonds. Throughout the term of the IDA Infrastructure Bonds, PIEA agrees that it shall pledge and irrevocably direct payment of the Infrastructure PILOTs and the MoDOT Contribution and the PIAC Funds (if the PIAC Funds have been funded by the IDA Infrastructure Bonds as described in Section 12(b)(iii)), to the Trustee under the Indenture for the IDA Infrastructure Bonds. Prior to the issuance of the IDA Infrastructure Bonds, PIEA must approve the prioritization of the expenditure of the net proceeds of the IDA Infrastructure Bonds; provided however that the Parties agree that a minimum of $14,013,928 of such net proceeds must be dedicated to the design and construction of the sanitary sewer and water main extensions to the Project Area, $1,495,000 for the Flyover (subject to Section 12.a.), for the reconstruction of Botts Road adjacent to the
Project Area, other Infrastructure Improvements, and grading and site work at the Project Area.

The PIEA shall be entitled to receipt of a facilitation or issuance fee payable from the proceeds of the IDA Bonds or paid over time under the terms of the Developer Lease, in such amount and at such time as the PIEA and Developer shall agree prior to issuance of the IDA Bonds.

The PIEA agrees to cooperate in the negotiation of agreements as are reasonably necessary to close on the issuance of the IDA Project Bonds and the IDA Infrastructure Bonds, respectively. The PIEA agrees to deliver to the Parties or any bond counsel or lender’s counsel, any documents related to financing the Project and to cooperate in obtaining any necessary licenses, permits, approvals, resolutions, and agreements associated with closing on the IDA Project Bonds and the IDA Infrastructure Bonds, respectively.

ii. **Tax Abatement.**

1. **Tax Exemption Certificate.** When the first of the Buildings is approximately fifty (50%) complete, but in any event, before the first Rent Commencement Date (as defined in the GSA Sublease) occurs, or as otherwise agreed between the PIEA and the Developer, the PIEA shall convey the Project by deed to the PIEA Redevelopment Corporation and the PIEA shall cause the PIEA Redevelopment Corporation to reconvey the Project back to the PIEA by deed (the “Re-Conveyance Deed”) in order to evidence the provisions of this Agreement. Contemporaneously with the reconveyance of the Project back to the PIEA, the PIEA shall provide a Tax Exemption Certificate for said Project as provided by Section 100.570, RSMo., and Sections 353.110 and 353.150(4), RSMo.

The Tax Exemption Certificate shall grant to the Developer, its successors and assigns, the property Tax Abatement with respect to the Project. The parties intend that the Real Property shall not be subject to assessment or payment of general ad valorem taxes imposed by the City, the State or any political subdivision thereof, for a period commencing as of the Real Estate Closing Date and continuing for the twenty-five (25) years that payments of Total PILOTs described in subparagraph (ii) of such definition of Total Pilots are made. The PIEA and Developer intend that assessed valuation of the land exclusive of improvements shall not be increased during the term of the Tax Abatement so long as the real property is used in accordance with the General Development Plan.

2. **Clawback.** The Developer and the PIEA agree that Developer shall expend the Project Investment for the costs of the Project and Infrastructure Improvements. In the event that Developer fails to
make the Project Investment, the Taxing Jurisdiction PILOTs shall be increased according to the schedule attached hereto as Exhibit L; provided however that in the event that the GSA reduces the scope of the Project the PIEA shall grant Developer a reasonable pro-rata reduction of the Project Investment.

iii. **Cooperation.** The PIEA agrees to exercise its statutory powers to implement this Agreement and further agrees to cooperate with the other Parties in fulfilling the terms and conditions of this Agreement as follows:

1. The PIEA agrees to cooperate with the Developer and, if required, the City in securing the issuance of a sales tax certificate exempting Project purchases for construction materials from state and local sales tax. The Developer shall be solely responsible for utilizing such exemption certificate for proper purposes.

2. The PIEA agrees to work with the Developer to adjust the term of the Developer Lease in order to assure that the Tax Abatement extends until twenty-five years after the PILOTs begin under the GSA Sublease.

3. To the full extent allowed by law, the PIEA shall cooperate with the Developer and take expedited actions to timely consider all Governmental Approvals in connection with the Project and will take all other reasonable and necessary actions to assist the Developer in achieving the objectives of this Agreement.

4. The PIEA agrees to cooperate with the Developer to obtain additional funding for Infrastructure under this Agreement.

**The City Obligations With Respect to the Project.** The City agrees to exercise its statutory powers to implement this Agreement and further agrees to cooperate with the other Parties in fulfilling the terms and conditions of this Agreement provided, that, nothing in this Agreement shall be construed to mean any police powers of the City are abrogated. The City agrees to cooperate with the Developer and the PIEA in securing the issuance of a sales tax certificate exempting Project purchases for construction materials from state and local sales tax. To the full extent allowed by law, the City shall cooperate with the Developer and take expedited actions to timely consider all Governmental Approval in connection with the Project and will take all other necessary actions to assist the Developer in achieving the objectives of this Agreement provided, that, nothing in this Agreement shall be construed to waive any City fees or mean any police powers of the City are abrogated. The City shall monitor the Developer’s compliance with the City MBE/WBB Ordinance and the City Workforce Utilization Policy on its behalf and on behalf of the PIEA and IDA.

11. **Infrastructure Improvements.**
a. **Description of the Infrastructure Improvements.** Subject to adequate funding generated and financed as provided herein, the Infrastructure Improvements shall consist of (i) the improvement of Botts Road to be a three lane (secondary arterial with center turn lane) in a 50-foot right-of-way with concrete curbs, gutters, and sidewalks; (ii) the Interchange, which will be a diverging diamond interchange design, in which traffic in each direction briefly crosses to the opposite side, simplifying movements at the signalized intersections at each end of the bridge; (iii) a contribution of $1,495,000 toward the construction of the Flyover under the MOU (subject to Section 12.a.); (iv) constructing the Service Road; (v) extending the Utility Extensions; and (vi) grading and site work at the Project Area. The Infrastructure Improvements shall also consist of the URD Improvements, unless the URD Improvements are constructed as part of the Project.

b. **Memorandum of Understanding.** The Parties acknowledge that GSA, KCS and the CenterPoint Kansas City One LLC are parties to the MOU as attached hereto as Exhibit M. The MOU provides, among other matters, for the possible funding sources for the Infrastructure Improvements (including but not limited to the GSA’s agreement to cause the allocation of $1,495,000 from the proceeds of the IDA Infrastructure Bonds) and the Parties agree to use best faith efforts to effectuate the intent of the MOU.

12. **Improvement Coordination and Financing.**

a. **IDA Obligations.**

The Parties agree that the IDA Bonds will only be issued when (i) financial due diligence is completed by PIEA and IDA, (ii) budgets for the Project and the Infrastructure Improvements are in reasonably final form, (iii) the IDA has a report from its financial advisor that the IDA Bonds are marketable and that the terms of the IDA Bonds comport with policy of the IDA; (iv) the IDA’s issuance fees have been paid or provided for, and (v) the governing body of the IDA and PIEA have approved the issuance of the IDA Bonds. The IDA shall then issue the IDA Infrastructure Bonds as authorized by Chapter 349 RSMo. in order to finance a portion of the Infrastructure Improvements and the IDA shall issue IDA Projects Bonds for the costs of the Project, provided that all of the IDA Bonds will be issued at the same time. The proceeds of the IDA Bonds shall be loaned to the PIEA to administer for use by the Developer or the City, as the case may be, in order to finance a portion of the costs of the Project and the Infrastructure Improvements. As provided in Section 10.c.i., PIEA has agreed to pledge and irrevocably direct payment of the Infrastructure PILOTs and the MoDOT Contribution and the PIAC Funds (if the PIAC Funds have been funded by the IDA Infrastructure Bonds as described in Section 12(b)(iii)), to the Trustee under the Indenture for the IDA Infrastructure Bonds throughout the term of the IDA Infrastructure Bonds. The IDA shall not be responsible for costs in excess of funds available from the proceeds from the IDA Bonds. Notwithstanding the foregoing, the Parties agree that $1,495,000 of proceeds of the IDA Infrastructure Bonds will, subject to availability in the prioritization of uses of funds and KCS’ contribution to the Flyover improvements outside of the State right-of-way on Highway 150 (currently estimated at $1,910,816), be made available to fund the
construction of the Flyover, unless and until the GSA and the Developer instruct the Parties that the funding of the Flyover no longer requires the aforesaid $1,495,000 (or any portion thereof) and that the amount thereof no longer necessary for the Flyover be expended for other Infrastructure Improvements.

The IDA agrees to cooperate in the negotiation of agreements in such form as is approved by IDA in its sole and absolute discretion and as are reasonably necessary to close on the issuance of the IDA Bonds. The IDA agrees to deliver to the parties any documents related to financing the Project and to cooperate in obtaining any necessary licenses, permits, approvals, resolutions, and agreements associated with closing on the IDA Bonds. The IDA agrees to exercise its statutory powers to implement this Agreement and further agrees to cooperate with the other Parties in fulfilling the terms and conditions of this Agreement. To the fullest extent allowed by law, the IDA shall cooperate with the Developer and will take all other necessary actions to assist the Developer in achieving the objectives of this Agreement. The Developer and the PIEA agree to list the cost of the Infrastructure Improvements to be paid from the net proceeds of the IDA Infrastructure Bonds in order of priority of construction and expenditure prior to Closing. The IDA or PIEA intend to enter into a cooperation agreement with the City, the Developer and, if required, MODOT, concerning the payment of up to $20,000,000 (some of which shall be in-kind) by the IDA or PIEA and the return to the IDA or PIEA of the MODOT City Advance defined in Section 12b below.

b. City Obligations.

i. City Funding. The City agrees to advance (with funds generated in part from the proceeds of the sale of the IDA Infrastructure Bonds) the City Contribution and the required advance deposit of the MODOT Contribution of up to $10,000,000 ("MODOT City Advance") all of which is intended to be used for the design and construction of the Infrastructure Improvements (a portion of which may be derived from the Contribution Tax Credits and the PIAC Funds). The MODOT City Advance will be repaid by MODOT and such repayment shall be irrevocably directed by the City to the PIEA, and the PIEA shall irrevocably pledge and direct such repayment to the Trustee of the Indenture for the IDA Infrastructure Bonds toward payment of the IDA Infrastructure Bonds. The City agrees to cooperate with the Developer to obtain any alternative sources of funding in order to comply with the City Contribution and to obtain additional funding for required infrastructure under this Agreement as shown on Exhibit B. The City’s efforts shall include review of State and Federal funding sources such as, stimulus funding and state transportation tax credits. The City shall make all commercially reasonable efforts to cause MODOT to fund the MODOT Contribution including the immediate commencement of negotiations of a related cooperative agreement between the City and the State of Missouri.

ii. Tax Credit Application. At the request of Developer, the City shall within thirty (30) days of this Agreement, work with Developer to identify
alternative sources of infrastructure funding from the State of Missouri to make possible the bridging of the gap in sources of funding for the Infrastructure Improvements. The potential sources shall include but not be limited to MoBuild and/or Missouri Contribution Tax Credits that make possible funding of an additional $12,000,000 for such purpose. A final package shall be prepared and advocated by the City and Developer.

iii. **PIAC Funds.** The City has contributed and agrees to continue to contribute a minimum of $6,300,000 in PIAC Funds to be used for the design and construction of the Infrastructure Improvements of which $4,300,000 shall be appropriated for the design of the Infrastructure Improvements and $2,000,000 of future PIAC Funds shall be budgeted and distributed in fiscal years 2010 and 2011. In the event that the fiscal year 2010 PIAC Funds are either (a) available (following May 1, 2010); or (b) can be advanced by the City upon closing of the IDA Infrastructure Bonds, the 2010 PIAC Funds shall be advanced with the MODOT City Advance required by subsection 12b above. Otherwise the MODOT City Advance shall be accompanied with proceeds of the IDA Infrastructure Bonds equal to the $2,000,000 in 2010 and 2011 PIAC Funds and the City agrees to irrevocably assign such PIAC Funds to the Trustee for the IDA Infrastructure Bonds in 2010 and 2011. The PIAC Funds shall be in addition to the City Contribution described in Section 12(b)(i).

iv. **Cooperation and Coordination of the Infrastructure Improvements.**

1. The City agrees to enter into any necessary agreements with the Developer, MODOT, GSA, KCS and CenterPoint Kansas City One LLC, or any other agency, utility provider or contractor necessary to complete the design and construction of the Infrastructure Improvements. The City shall use commercially reasonable best faith efforts to support the Project and the Infrastructure Improvements and complete any work or cause the completion of any work related to the Infrastructure Improvements. The City further agrees to, with the cooperation of the other Parties, prepare and file any application with MODOT and any other governmental or regulatory authority, for the construction of the Infrastructure Improvements.

2. The City agrees to take reasonable actions to cooperate with MODOT, CenterPoint Kansas City One LLC and the Developer with respect to the Flyover such that (i) MODOT provide financing for the Flyover; (ii) MODOT contribute not less than $3,440,000 to the construction of the Flyover; (iii) MODOT own and operate the Flyover; and (iv) the IDA Infrastructure funds advance includes a contribution of $1,495,000 if applicable under Section 12.a. to the construction of the Flyover subject to, and contingent upon, availability of proceeds of the IDA Infrastructure Bonds, and
KCS' contribution to the Flyover improvements outside of the State right-of-way on Highway 150 (currently estimated at $1,910,816).

3. The City shall collaborate with MODOT, Developer, CenterPoint Kansas City One LLC and KCS in the preparation of the design and construction plans, specifications, right of way documents and other documents associated with the City Owned Improvements.

4. The City shall accept and maintain the City Owned Improvements, adjacent sidewalks, permanent drainage system, and lighting along Botts Road and Missouri Hwy 150 after completion of the Infrastructure Improvements and inspection thereof.

o. **The Developer's Obligations with Respect to the Infrastructure Improvements.** In addition to the Developer Obligations relating to the Project as stated in this Agreement, the Developer shall fulfill the obligations set forth below relating to the Infrastructure Improvements subject to the disbursement of the City Contribution, MODOT Contribution and the net proceeds of the IDA Infrastructure Bonds.

i. **Payments in Lieu of Taxes.** Notwithstanding anything to the contrary herein, during the term of the Developer Lease, Developer shall make or cause to be made payments of the Total PILOTs. Such payment of Total PILOTs shall be deemed additional rent under the Developer Lease. Until the IDA Infrastructure Bonds are paid in full the PILOTs shall be irrevocably assigned and directed to be deposited with the Trustee pursuant to the Indenture for the IDA Infrastructure Bonds in accordance with a schedule to be agreed upon by IDA and the Developer prior to Closing. The Total PILOTs shall first be applied as is required to make all payments due from time to time on the IDA Infrastructure Bonds as Infrastructure PILOTs and the balance, if any, each year shall be paid to the Jackson County, Missouri Collector's office to be distributed in pro rata amounts to the affected taxing jurisdictions as herein provided as Taxing Jurisdiction PILOTs, and the amount so paid to the Jackson County, Missouri Collector's Office shall constitute the payment of any amount of real property taxes not abated by the Tax Abatement. The Taxing Jurisdiction PILOTs shall be equal to one-half of the Total PILOTs paid during the period of the Tax Abatement, and the Infrastructure PILOTs shall be equal to one-half of the Total PILOTs paid during the period of the Tax Abatement. The amortization terms for the Total PILOTs shall be flexible and shall, for example, allow for back-loading payment of the Taxing Jurisdiction PILOTs to assure the availability of adequate funding for repayment of the IDA Infrastructure Bonds.

ii. Construct or cause the construction of the Service Road, Utility Extensions and URD Improvements.
13. **Indemnifications.**

The Developer shall indemnify and save the PIEA, the City and the IDA harmless against any action, cause of action, suit, debt, cost, expense, claim, or demand whatsoever brought or asserted by any third person whomsoever, at law or in equity, arising by way of construction of the Project (including monitoring compliance with the Local Covenants) or the Infrastructure Improvements, operation of the Project during the Lease Terms or any breach by the Developer, its employees, servants, agents, or other persons for whom it is responsible, of any of the provisions of this Agreement or by reason of the negligent act or omission or willful misconduct of the Developer, its employees, servants or agents, or other persons for whom it is legally responsible, whether committed within or beyond the scope of the Developer’s duties and authority hereunder, which indemnity shall continue notwithstanding the expiration or earlier termination of this Agreement with respect to any act or occurrence preceding such expiration or termination; provided, however, the Developer shall not be liable to the PIEA, the City or the IDA for matters resulting from the PIEA’s, the City’s or the IDA’s (or any of their respective employees, servants, agents, or other persons for whom it is responsible) negligence or willful misconduct. For the purposes stated in this Section 13, the Developer agrees and covenants to maintain a minimum net worth (determined in accordance with generally accepted accounting principles) of not less than $25,000,000 (“Equity Investment”). The Equity Investment may be reduced or eliminated in the event that the Developer provides adequate security for the indemnification in the construction documentation and the Leases satisfactory in form and content to the PIEA in its sole discretion, which may include (a) general liability insurance (including coverage for contractual liability) required under Section 7 in an amount of not less than $25,000,000 (inclusive of both primary and excess coverage), (b) environmental indemnity in the types and amounts stated below, and (c) insurance coverage that meets the insurance requirements during construction of the Project stated in Section 10b.i. of this Agreement. All such insurance shall name the City, the IDA, and PIEA as additional insureds.

The environmental indemnity referenced above may be satisfied through a provision in the Developer Lease and the Mortgage and Security Agreements requiring the Developer to secure and maintain pollution legal liability insurance under one or more valid and enforceable policy(ies) providing liability and cleanup coverage for future pollution conditions arising from operation of the Project for a term of at least five years after commencement of the Leases. All such insurance shall name the PIEA, the City and the IDA as insureds or additional insureds. The limits of liability for such pollution legal liability coverage, which may include both primary and excess insurance, shall be at least $25 million in the aggregate, subject to a deductible or self-insured retention of $250,000. Any such insurance shall be endorsed to be primary to, and shall receive no contribution from, insurance carried by the PIEA, the City, the IDA, or others listed as additional insureds. All such insurance shall be from insurers satisfactory to the PIEA, the City and IDA.

In the event any matter is asserted to which the indemnity provided in this paragraph may apply, the City, PIEA or IDA, as the case may be, shall give prompt notice to the Developer; the City, the PIEA and the IDA shall cooperate with all reasonable requests of the Developer; and the Developer shall assume the defense thereof, with full power to litigate, compromise or settle the same in its sole discretion; provided, the Developer shall not settle or compromise any claim or action for which the Developer has assumed the defense without the prior approval of the
indemnified party. With respect to such portion of any claim or action which is covered by the Developer's indemnity under this paragraph, if an indemnified party does not approve a settlement or compromise of such indemnified portion of the claim or action which the Developer would agree to, the Developer shall not be responsible for any costs or expenses incurred thereafter in the defense of such claim or action, nor for the amount of any judgment or costs that may be finally adjudicated in excess of the amount of the settlement or compromise proposed by the Developer but not approved an indemnified party. The parties expressly agree that so long as no conflicts of interest exist between them with regard to the handling of such litigation, the same attorney or attorneys may simultaneously represent the indemnified party and the Developer in any such proceeding; provided, the Developer and its counsel shall consult with the indemnified party throughout the course of any such action and the Developer shall pay all reasonable and necessary costs incurred by the indemnified party in connection with such action.

14. **Project Modifications.** The Parties agree that the Developer may modify its Proposal, the Development Plan, and the boundaries of the Project Area to include any property necessary to effectuate the completion of the Project with advance written consent to the City and the PIEA, which such consent will not be unreasonably withheld.

15. **Breach of Compliance.**

a. **Remedies For Breach of the Agreement.** If any Party does not comply with the provisions of this Agreement, in that a Party shall do, permit to be done anything contrary this Agreement or if a Party shall fail or omit to do what is required of it by this Agreement, and if, within sixty (60) days after notice of such default by any Party, the Party shall not have cured such default or commenced such cure and be diligently pursuing the same if such cure would reasonable take longer than said sixty (60) days period, then any Party may institute such proceedings for actual damages or to cure the default including, but not limited to, proceedings to compel specific performance, subject, however, to compliance with the requirements of the Mortgage and Security Documents and the Recognition Agreements, and exclusive of the remedies of termination of this Agreement or termination of the Tax Abatement. If any action is instituted by any Party hereunder, the defaulting Party shall pay all costs, fees and expenses, including attorneys' fees incurred by the non-defaulting Party in enforcing this Agreement.

b. **Remedies For Breach of Local Covenants.** The Parties agree that the exclusive remedies against the Developer for a violation by the Developer as to the MBE/WBE requirements stated herein in Section 10b.iv., the Prevailing Wage requirements stated herein in Section 10b.iv., the Equity Investment requirements stated herein in Section 13, and as to the Project Investment requirement stated in Section 10c (Collectively, the "Local Covenants") shall be as follows:

i. **MBE/WBE and Construction Workforce.**

1. For purposes of the MBE/WBE Plan, construction will be divided into Utilization Groups as described on Exhibit 1 attached hereto. The amount of harm caused City and PIEA by the Developer not
exerting good faith efforts to meet the utilization goals set forth herein or hereafter agreed to, will be difficult or impossible to ascertain. Therefore, in order to liquidate those damages, and in the event the City determines that the Developer failed to exercise good faith efforts to meet the utilization goals applicable to any particular Utilization Group, the Developer agrees to pay to the City liquidated damages in an amount not to exceed the fees and expenses incurred by the City in investigating and determining that the Developer has not exerted a good faith effort to meet the utilization goals, and to the PIEA fifty percent (50%) of the monetary difference between the amount that would have been paid to MBE/WBEs based upon the goals as applied to the total dollar amount expended on the Utilization Group and the amount actually paid to qualified MBE/WBEs for performing a commercially useful function. Provided, however, that any liquidated damages assessed as provided herein shall be reduced by fifty percent (50%) of the monetary value of any excess participation achieved on any other Utilization Group. If aggrieved, the Developer may appeal the assessment of liquidated damages to the City’s Fairness in Construction Board to the extent provided in and subject to the time limitations of Section 38-99, Code of Ordinances. The appeal to the City’s Fairness in Construction Board of any such assessment shall be the exclusive administrative remedy available to Developer and/or Contractor. Provided, however, that nothing in this Agreement shall be construed as Developer’s and/or Contractor’s relinquishment of any rights to judicial review of any such decision.

2. In the event Developer and/or Contractor and/or subcontractor fail to exercise good faith efforts to meet the workforce goals established herein, the Parties shall abide by the procedures established in the “Memorandum of Agreement Construction Workforce Ordinance Implementation” dated December 15, 2009; a true and exact copy of which is attached hereto as Exhibit N. The terms of that document shall be deemed incorporated herein by reference; provided, however, that the City’s and PIEA’s exclusive remedies for any violation of the workforce goals established herein shall be to (i) seek and obtain a decree or order of specific performance to ensure the Developer’s and/or Contractor’s and/or subcontractor’s future compliance with the applicable utilization goals, (ii) seek and obtain an affirmative injunction requiring Developer and/or Contractor and/or subcontractor to comply with the applicable workforce goals; and (iii) temporarily debar the offending party(ies), whether the Developer and/or Contractor and/or subcontractor, from participating in future development projects for a period not to exceed one (1) calendar year in the event that the City finds, after
due notice and hearing, that the Developer and/or Contractor and/or subcontractor has *willfully* failed to comply with the workforce goals. Provided, further, that nothing in this subsection shall be construed as Developer’s and/or Contractor’s and/or subcontractor’s relinquishment of any rights to judicial review of the City’s decision to exercise the remedies applicable to the workforce goals.

3. In addition to the liquidated damages provided for herein, if the City finds, after due notice and hearing, that the Developer and/or Contractor and/or subcontractor has not made good faith efforts to comply with the applicable MBE/WBE utilization goals, the City may seek and obtain (i) a decree or order of specific performance to enforce the Developer’s and/or Contractor’s and/or subcontractor’s compliance with the applicable utilization goals, and (ii) an affirmative injunction requiring the Developer and/or Contractor and/or subcontractor to comply with the applicable utilization goals. In the event that the City finds, after due notice and hearing, that the Developer and/or Contractor and/or subcontractor has *willfully* failed to comply with the applicable MBE/WBE utilization goals, the City may temporarily debar the offending party(ies), whether the Developer and/or Contractor and/or subcontractor, from participating in future development projects for a period not to exceed one (1) calendar year. For the purpose of this subsection, the Developer’s and/or Contractor’s and/or subcontractor’s failure to comply with the applicable utilization goals shall be deemed *willful* upon substantial evidence that the Developer and/or Contractor and/or subcontractor has intentionally and voluntarily attempted to disregard and/or circumvent the applicable utilization goals.

ii. **Prevailing Wage.** In the event that the Developer and/or any of its contractors fail to satisfy the Prevailing Wage requirement under Section 10.b.v., the City and PSEA shall have such remedies available under the Prevailing Wage Laws of the State of Missouri, Sections 290.210 to 290.340, RSMo.

iii. **Equity Investment.** In the event that the Developer fails to satisfy the Equity Investment requirement under Section 13, the PSEA may pay premiums or obtain the necessary insurance, and the amount of the payment thereof, with legal interest thereon at the highest rate allowed by law from the date of payment, shall be due and owing from Developer to PSEA upon demand.

iv. **Project Investment Requirement.** In the event that the Developer fails to satisfy the Project Investment the Developer shall pay as liquidated damages to the PSEA an amount equal to the increased PILOTS as shown in the table attached hereto as Exhibit L.
v. **Local Covenants.** There shall be no other remedy for violation by the Developer and/or Contractor and/or subcontractor of the Local Covenants except as expressly provided in this Section 15b.

16. **Notices.** All notices required or desired to be given hereunder shall be in writing and all such notices and other written documents required or desired to be given hereunder shall be delivered (i) by nationally recognized overnight delivery service; (ii) facsimile; or (iii) delivered in person, in each case if addressed to the Parties set forth below. The facsimile numbers set out below also may be changed by notice to all persons set forth below. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered or three days after mailing; provided, however, that if any such notice or other communication shall also be sent by facsimile machine, such notice shall be deemed given at the time and on the date of machine transmittal if the sending party receives a written send verification on its machines and forwards a copy thereof with its mailed or courier delivered notice or communication. Notices given by a party’s counsel shall be considered notices by such party.

In the case of the PIBA, to:

The Planned Industrial Expansion Authority of Kansas City
20 E. 5th Street, Suite 200
Kansas City, Missouri 64106
Attn: Mr. Alfred J. Figuly,
Executive Director
Facsimile: 816-421-5500

With a copy to:
Bryan Cave LLP
3500 One Kansas City Place
1200 Main Street
Kansas City, Missouri 64105
Attn: Stephen S. Sparks
Facsimile: 816-374-3300

With a Copy to:
City of Kansas City
City Attorney’s Office
414 E. 12th Street, 28th Floor
Kansas City, Missouri 64106
Attn: Heather A. Brown
Assistant City Attorney
Facsimile: 816-513-3133

In the case of the City, to:

City of Kansas City,
City Attorney’s Office
414 E. 12th Street, 28th Floor
Kansas City, Missouri 64106
Attn: Heather A. Brown
Assistant City Attorney
Facsimile: 816-513-3133

With a Copy to:
CenterPoint Properties Trust
1880 Swift Drive
Oak Brook, Illinois 60523
Attn: James Cross
Facsimile: 630-586-2480

In the case of the Developer, to:
CenterPoint Zimmer LLC

With a copy to:
17. **Compliance with Laws.** The Parties shall comply with all federal, state, and local laws, ordinances and regulations applicable to the Work under this Agreement. All references to "Code" shall mean the City Code of Ordinances, including any amendments thereto or recodification thereof.

18. **No Gratuities and Kickbacks.** The provisions of Code of Ordinances Section 2 1765, prohibiting gratuities to City employees, and kickbacks by Contractors, and Sections 2 1770 and 2 1771, imposing sanctions for violations, shall apply to this Agreement.

a. **Gratuities.** No Party to this Agreement has or will offer or give any City or Authority employee or officer a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a contract requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract, or to any solicitation or proposal therefor;
b. **Kickbacks.** The City and the PIEA certify that no payment, gratuity, offer of employment or benefit has been or will be made by or on behalf of or solicited from any third party contractor under a contract to the City and the PIEA as an inducement for the award of a subcontract or order in connection with the subject matter of this Agreement.

19. **Conflicts Of Interest.** The provisions of Code of Ordinances Sections 2 1015 and 2 1764, prohibiting City officers and employees from having a personal financial interest in any contract with City, and Code of Ordinances Sections 2 1016 and 2 1770, imposing sanctions for violations, shall apply to this Agreement. The City and the PIEA each certify that no officer or employee of the City or the PIEA has, or will have, a direct or indirect financial interest in this Agreement which is incompatible with the officer’s or employee’s discharge of official duties in the public interest, and that no officer or employee of the City or the PIEA, or member of such officer’s or employee’s immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of the City or the PIEA in this Agreement.

20. **Prohibition Against Contingent Fees.** The provisions of Code of Ordinances Section 2 1766, prohibiting the retention of persons to solicit contracts for contingent fees, and Sections 2 1770 and 2 1771, imposing sanctions for violations, shall apply to this Agreement. No Party to this Agreement will employ or retain any person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies. For breach or violation of this warranty, the City and the PIEA shall each have the right to annul this Agreement without liability or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

21. **Assignment.** No Party to this Agreement shall assign or transfer any part or all of their respective obligations or interests without the other Parties’ prior written approval. If any Party assigns or transfers any part of its interests or obligations under this Agreement without such prior approval, it shall constitute a material breach of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree Developer may assign its interest in the Developer Lease and the GSA Sublease to a special purpose entity which the Developer controls which assignment will not require the further consent of the other Parties. In addition, the Parties agree that the Developer may assign it interest in this Agreement to the same assignee that acquires the Developer’s interest in the Developer Lease and the GSA Sublease without the prior written approval of the other Parties; provided, the Developer shall remain liable to perform the obligations of Developer under this Agreement and if Developer or the assignee causes a breach of this Agreement, the Developer alone shall be liable, and not the assignee, for the amount of any damages resulting from such breach. The other Parties agree they will not offset the amount of damages resulting from such breach against their respective obligations under this Agreement, nor will they bring any action or assert any claim or file any lien against such assignee or against such assignee’s leasehold interest under the Developer Lease. No Party shall be obligated to pay or be liable for payment of any monies which may be due to any subcontractor of the other Parties.
22. **Independent Contractor.** Each Party to this Agreement is an independent contractor with respect to all services performed under this Agreement. The Parties each accept full and exclusive liability for the payment of any and all premiums, contributions or taxes for workers compensation, Social Security, unemployment benefits, or other employee benefits now or hereinafter imposed under any state or federal law which are measured by the wages, salaries or other remuneration paid to persons employed to perform the work under the terms of this Agreement. Nothing contained in this Agreement nor shall any act of the City, PIEA or the IDA be deemed or construed to create any third party beneficiary or principal and agent association or relationship involving the other party. No party is agent of the others and no party has authority to take any action or execute any documents on behalf of the other parties.

23. **No Partnership.** It is expressly understood that the Parties are not now, nor will they be, engaged in a joint venture, partnership or any other form of business relationship except as expressly set forth herein, and that no Party shall be responsible for the conduct, warranties, guarantees, acts, errors, omissions, debts, obligations or undertaking of any kind or nature other than in the performance of this Agreement.

24. **Force Majeure.** None of the Parties to this Agreement, nor any successor in interest or permitted assign shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended in the event of any delay caused by force majeure, including without limitation, damage or destruction by fire or casualty; strike; lockout; civil disorder; war; terrorist act; restrictive non-gaming government regulations; lack of issuance of any permits and/or legal authorization by the governmental entity necessary for the Developer to proceed with construction of the Work or any portion thereof; shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather or wet soil conditions; “Excusable Delay and “Government Delay” under the GSA Sublease; or other like causes beyond the parties’ reasonable control, including without limitation any litigation, court order or judgment resulting from any litigation affecting the validity of the Project or this Agreement.

25. **Miscellaneous Provisions.**

   a. **Condition Precedent.** The obligations of the Parties under this Agreement are expressly subject to the successful financing and sale of the IDA Bonds as contemplated herein.

   b. **Survival of Indemnity Covenants.** If upon expiration of the Developer Lease there are any remaining obligations of the Developer to the City, the PIEA and IDA which have not been satisfied under Section 13 above, then the indemnity covenants contained in Section 13 of this Agreement shall survive the term of the Developer Lease until such remaining obligations are satisfied.

   c. **Amendments.** This Agreement may not be amended, modified, terminated or waived orally, but only by a writing signed by the Party against whom any such amendment, modification, termination or waiver is sought.

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d. **No Oral Agreements.** This Agreement contains all the oral and written agreements, representations and arrangements between the Parties, and any rights which the parties may have under any previous contracts or oral arrangements are hereby canceled and terminated and no representations or warranties are made or implied, other than those set forth in this Agreement.

e. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

f. **Severability.** The provisions of this Agreement are severable. In the event that any provision of this Agreement is held to be invalid, illegal or unenforceable to any extent, then the remaining provisions of this Agreement, and the portion of the offending provision (or any application of such provision) which is not invalid, illegal or unenforceable shall remain in full force and effect.

g. **Execution of Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute but one and the same instrument.

h. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri without regard to conflict of laws.

i. **Term.** The term of this Agreement shall commence as of the Execution Date and expire on the latter of (i) expiration of the Developer Lease, or (ii) at such time as the IDA Project Bonds and IDA Infrastructure Bonds have been repaid. This Agreement shall also terminate if the Developer and GSA have not entered into the GSA Sublease by December 31, 2010. (unless such date is extended by Developer, PIES, IDA and the City in their sole and absolute discretion).

j. **PIEA Invoices.** Developer agrees to reimburse the PIES expenses incurred in the amount of $1,529.45 for those invoices attached hereto as Exhibit O.

k. **Further Assurances.** Each Party will do, execute, acknowledge and deliver such further acts, instruments, financing statements and assurances as the other party may reasonably require for accomplishing the purposes of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, as of the Execution Date.

(SEAL)

THE PLANNED INDUSTRIAL EXPANSION
AUTHORITY OF KANSAS CITY, MISSOURI

By: ___________________________
Name: Anthony Abbott, Chairman

ATTEST: ________________________
Alfred J. Figuly, Assistant Secretary
CENTERPOINT ZIMMER LLC, a Missouri limited liability company

By: CENTERPOINT PROPERTIES TRUST, a Maryland real estate investment trust, its Manager

By: [Signature]
Name: Michael Murphy
Title: Executive Vice President

By: [Signature]
Name: Michael Tortorici
Title: Vice President, Treasurer
CITY OF KANSAS CITY, MISSOURI

By: __________________________
Name: Troy M. Schulte
Title: City Manager

ATTEST:

Vickie Thompson
Vickie Thompson, City Clerk

____________________________________
Assistant City Attorney
THE INDUSTRIAL DEVELOPMENT
AUTHORITY OF THE CITY OF KANSAS CITY,
MISSOURI, a public corporation organized and
existing under the laws of the State of Missouri

By:  
Name: Frederick H. Riesmeyer, Jr.
Title: Chairman

ATTEST:

Heather Brown, Assistant Secretary
EXHIBITS

Exhibit A  Preliminary Budget for the Project
Exhibit B  Preliminary Budget for the Infrastructure Improvements
Exhibit C  Developer's Proposal
Exhibit D  Legal Description of Real Property
Exhibit E  URD Ordinance No. 090474
Exhibit F  Development Plan
Exhibit G  Sources and Uses
Exhibit H  MODOT Commitment Letter
Exhibit I  Utilization Groups
Exhibit J  Letter of Intent to Subcontract Form
Exhibit K  Project Timeline
Exhibit L  Clawback Schedule
Exhibit M  Memorandum of Understanding
Exhibit N  Memorandum of Agreement Construction Workforce Ordinance Implementation
Exhibit O  PIEA Invoices 758, 761, 763 771 and 778
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Structured data:

- Kansas City, MO
- January 13, 2010
- Item list and quantities
**EXHIBIT B**

Preliminary Budget
for the Infrastructure Improvements

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<tr>
<td>Sanitary Sewer (Onsite)</td>
<td>$  719,015</td>
</tr>
<tr>
<td>Storm Sewer (Onsite)</td>
<td>$ 1,840,064</td>
</tr>
<tr>
<td>Water (Domestic)</td>
<td>$  529,036</td>
</tr>
<tr>
<td>Water (Fire Safety)</td>
<td>$ 1,164,904</td>
</tr>
<tr>
<td>Engineering (Sewer &amp; Water)</td>
<td>$  420,000</td>
</tr>
<tr>
<td>Magellan Pipeline Relocation</td>
<td>$ 1,040,000</td>
</tr>
<tr>
<td>Rough Grading (Sitework)</td>
<td>$  6,580,926</td>
</tr>
<tr>
<td>Rough Grading (Structural &amp; Backfill)</td>
<td>$    798,100</td>
</tr>
<tr>
<td>Wetland Mitigation</td>
<td>$    119,590</td>
</tr>
<tr>
<td>Public Trail</td>
<td>$    300,000</td>
</tr>
<tr>
<td>Contingency</td>
<td>$    252,293</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$ 45,358,928</strong></td>
</tr>
</tbody>
</table>

* MODOT and City of Kansas City Estimate of cost  
** Per MOU dated 4/22/09 between KCS and GSA