

Please Note: The Council Meeting will be conducted at Rolla City Hall. Citizens are encouraged to watch the proceedings live on the City of Rolla, Missouri YouTube page at https://www.youtube.com/@City_of_Rolla/streams

COUNCIL PRAYER
Ministerial Alliance

AGENDA OF THE ROLLA CITY COUNCIL
Monday, December 15th, 2025;
Closed Session 5:30 pm
Open Session 6:30 pm
City Hall Council Chambers
901 North Elm Street

PRESIDING: Mayor Louis J. Magdits

COUNCIL ROLL: Vacancy, AUGUST ROLUFS, ANDREW BEHRENDT, NATHAN CHIRBAN, STEVE JACKSON, AARON PACE, WILLIAM HAHN, TOM MC NEVEN, KEVIN GREVEN, DAVID SHELBY, TINA BALCH AND MICHEAL DICKENS

PLEDGE OF ALLEGIANCE
Councilman Jackson

IX. CLOSED SESSION – Closed Session per RSMo 610.021 –(2) Leasing of Real Estate and (12) Negotiated contract
Note: Closed session will begin at 5:30 pm in Council Chambers.

I. PUBLIC HEARINGS -

A. **Public Hearing** – Kohl’s Tax Increment Financing (TIF) -5 Year Review (City Administrator, Keith Riesberg)

II. ACKNOWLEDGMENTS and SPECIAL PRESENTATIONS –

A. **Resolution** honoring South Central Regional Veterans Groups (SCRVG) and Veterans Memorial Park

III. OLD BUSINESS – None

IV. NEW BUSINESS –

- A. **Ordinance** to amend chapter 28 of the Rolla City Code for the purpose of updating the Administrative Search Warrant Process. (Keith Riesberg, City Administrator) **First Reading**
- B. **Resolution** to approve a management agreement with Power Wellness LLC for natatorium oversight. (Keith Riesberg, City Administrator)
- C. **Resolution** to approve a Design Agreement with Cordogan Clark for natatorium planning services. (Keith Riesberg, City Administrator)

V. **CLAIMS and/or FISCAL TRANSACTIONS –**

A. **Motion** to award and Ordinance to Maggi Construction for the replacement of pavilions at Veteran’s Memorial Park.(Floyd Jernigan, Parks Director) **Motion and First Reading**

VI. **CITIZEN COMMUNICATION**

VII. **MAYOR/CITY COUNCIL COMMENTS**

- A. **Motion** to re-appoint Jonathan Hines to the Police Personnel Board for a 4-year term, expiring June 2029.
- B. **Motion** to appoint Councilman William Hahn to the Audit committee for a term expiring May 2026.
- C. **Motion** to appoint Councilman Kevin Greven to the Audit committee for a term expiring May 2026.
- D. **Motion** to appoint Councilman Aaron Pace to the Audit committee for a term expiring May 2026.

VIII. **COMMENTS FOR THE GOOD OF THE ORDER**

- A. Next City Council meeting, Monday, January 5th.
- B. Update on status of comprehensive plan and announcement of public meeting. (Community Development Director Dawn Bell)

IX. **ADJOURNMENT -**



CITY COUNCIL AGENDA

DEPARTMENT: Administration

ACTION REQUESTED: Public Hearing, Motion to accept

SUBJECT: I-44/US 63 TIF Redevelopment Plan – required progress public hearing

PREPARED BY: Keith Riesberg, City Administrator

ATTACHMENTS: Copy of notice

(CASE/PROJECT #)

MEETING DATE: December 15, 2025

Overview: In 2010 the City approved the I-44/US 63 Tax Increment Financing (TIF) plan, with the associated redevelopment agreement being approved in 2011 and commercial activity commencing on the property in 2012. As required by State Statute Section 99.865.3, in addition to filing an annual report with the Missouri Department of Revenue, the City is required to hold a public hearing on the progress of the TIF plan every five years. The last public hearing on this redevelopment plan was held in December, 2020. A brief presentation will be provided by staff at the Council meeting.

Background information:

As required by State Statute Section 99.865.3, the City must conduct a public hearing on Tax Increment Financing (TIF) projects every five years following the adoption of the redevelopment plan. In 2010 the City approved the I-44/US 63 TIF plan for the development of the property occupied by Kohl's. The Redevelopment Agreement was approved in 2011 and Kohl's opened the store at this location in 2012. The store has operated at this location since that time.

Because Kohl's operates as a stand-alone store within this redevelopment area, the City is not able to share actual sales data. The amount of incremental property taxes paid (PILOT – Payment in Lieu of Tax) and incremental sales tax (EATS – Economic Activity Taxes) generated by the development are less than original projections.

The amount of TIF financing was \$3,168,488 and was financed by the development as opposed to the City issuing TIF bonds. TIF revenues would need to increase substantially at this location over the next 7-8 years to pay off the project financing. The City is not responsible for this debt in the event the project is not fully paid off when it expires in 2033.

Fiscal considerations: The conducting of the public hearing is a statutory requirement that does not alter or affect the financial arrangements of the original financing agreements or the redevelopment agreements.

Recommendation: Staff recommends Council approve a motion accepting the required five-year notice and acknowledging the Kohl's TIF project eliminated a blighted area, thereby providing a positive economic opportunity for the community.

Rolla TIF Annual Statement “I-44/US 63 TIF Redevelopment Plan & Project” (Kohl’s)

In accordance with Section 99.865.2 of the Real Property Tax Increment Allocation Redevelopment Act, Missouri provides the following information for the I-44/US 63 TIF Redevelopment Plan and Project” (Kohl’s) described therein.

The project included the acquisition of commercial property for redevelopment of the area for retail use. The project benefits improved conditions within what was a blighted area. The project was completed in 2012, with store opening March 2012, in accordance with the schedule set forth in the Plan.

The following table identifies the TIF revenues received (PILOT and EATS) and the outstanding indebtedness on an annual basis. The payments in lieu of taxes have been annually refunded back to the taxing jurisdictions in accordance with the Plan.

Any questions regarding this annual statement should be directed to Steffanie Rogers, Finance Director, at (573) 426-6980 or srogers@rollacity.gov.

<u>Year</u>	<u>Payments in Lieu of in Lieu of Taxes (PILOT)</u>	<u>Economic Activity Taxes (EATS)</u>	<u>Outstanding Debt *</u>
2012	\$ -	\$ 33,892.71	\$ 3,247,169.76
2013	\$ 42,483.33	\$ 143,973.05	\$ 3,256,983.75
2014	\$ 46,462.50	\$ 123,121.34	\$ 3,286,441.45
2015	\$ 46,353.84	\$ 118,086.09	\$ 3,321,622.83
2016	\$ 46,440.08	\$ 114,351.40	\$ 3,410,224.63
2017	\$ 47,179.26	\$ 113,200.00	\$ 3,409,945.49
2018	\$ 47,880.72	\$ 153,928.91	\$ 3,413,513.47
2019	\$ 46,303.72	\$ 94,524.78	\$ 3,481,445.88
2020	\$ 46,454.36	\$ 30,074.38	\$ 3,619,413.61
2021	\$ 46,485.10	\$ 81,443.90	\$ 3,712,636.76
2022	\$ 45,933.28	\$ 77,660.72	\$ 3,815,828.54
2023	\$ 45,646.42	\$ 75,829.58	\$ 3,927,799.67
2024	\$ 53,126.41	\$ 64,289.89	\$ 4,050,261.42
2025	\$ 52,815.20	\$ 69,203.80	\$ 4,176,506.20

* Includes 6.0% compounded interest on outstanding debt

Resolution 2078

A RESOLUTION OF THE CITY OF ROLLA, HONORING "SOUTH CENTRAL REGIONAL VETERANS GROUPS" (SCRVG) AND VETERANS MEMORIAL PARK.

WHEREAS, SCRVG was formed in 2008 for the purpose of partnering with the City of Rolla on the fundraising and development of a new City Park to be known as "Veterans Memorial Park" on formerly undeveloped City Park property; and

WHEREAS, SCRVG was formed by the voluntary participation of various veterans' groups including the Korean War Veterans Association, Veterans of Foreign Wars, Disabled American Veterans, American Legion and the MO National Guard/Reserve Units within Phelps County and surrounding counties; and

WHEREAS, the City of Rolla, through Resolution No. 1672, designated "Veterans Memorial Park" (hereafter referred to as "VMP") located off Southview Dr. south of Hwy 72, in honor of Veterans past, present, and future who have sacrificed so much for our country and who through their service represented the City of Rolla and County of Phelps with honor and dignity; and

WHEREAS, SCRVG formed the Veterans Memorial Park Committee for the expressed purpose to "oversee all monuments, plaques and/or memorabilia proposed for inclusion in the park and determine the suitability of said proposals" culminating in the beautiful park now developed and known affectionately as Veterans Memorial Park; and

WHEREAS, it was and remains the intent of both SCRVG and the City of Rolla to maintain and utilize VMP primarily as a place of respite to honor the men and women who have served and sacrificed for our Country; and

WHEREAS, it is the desire of SCRVG and local veterans' groups and the City of Rolla to continue the shared vision and support of VMP (subject to the management and maintenance by the City of Rolla).

NOW, THEREFORE, BE IT RESOLVED, that on behalf of the City of Rolla and its citizens, the City of Rolla extends its heartfelt gratitude to the men and women who have served this country and preserved the freedoms we hold dear.

Passed by the City Council of the City of Rolla, Missouri, and approved by the Mayor this 15th day of December 2025.

Mayor Louis J. Magdits IV

ATTEST: _____

Lorri M. Powell, City Clerk



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CITY COUNCIL AGENDA

DEPARTMENT: Community Development

ACTION REQUESTED: Approval of first reading

SUBJECT: Administrative Warrants – establishing City Code provisions

PREPARED BY: Keith Riesberg, City Administrator

ATTACHMENTS: Proposed ordinance

(CASE/PROJECT #)

MEETING DATE: December 15, 2025

Overview:

The proposed ordinance would add sections to the City Code that will enable City employees to obtain an administrative search warrant to affirm a violation of City Code and to take actions to abate the identified nuisance. City Council members requested the ordinance for establishing an administrative warrant process be brought forward for their consideration. The Council reviewed the proposed ordinance at the November 17, 2025 Council meeting, with requested modifications to the proposed ordinance. The ordinance with the requested changes was submitted to the City Council prior to the December 1 meeting. The ordinance as presented outlines the process that must be followed by the City to receive and execute an administrative warrant.

Background information:

In 2024 the City Council considered an ordinance to amend City Code for establishing an administrative search warrant process. The ordinance was not adopted at that time. In November of this year, the City Council requested the ordinance be brought back for the Council's discussion and consideration. The ordinance was again presented to the Council at the November 17, 2025 meeting. At that meeting the Council requested some additional edits and clarifications to the ordinance. Those edits were made and sent to the Council for review. All edits as requested have been incorporated into the ordinance draft presented for consideration at the December 15, 2025 meeting.

The administrative search warrant process allows the City staff to seek a written order from the Rolla municipal judge to access a property for the purpose of documenting a violation of the City's codes. The ordinance also may grant the City staff permission to take actions to abate the nuisances on a private property. The sections of City Code to be established with this ordinance outline the process that must be followed for City staff to receive an administrative search warrant. It is important to note that the City staff can only request an administrative search warrant. The warrant application will be reviewed by the Rolla municipal judge, who will make the decision whether or not to grant the warrant.

Having the ability to pursue an administrative search warrant provides the City staff an additional tool to address nuisance violations when other legal actions are unable to resolve the issue. An example of this has been recently seen on a property on Vienna Street where a collection of trash and debris

continues to detrimentally affect surrounding properties. The City has attempted to correct this issue by citing the property owner into municipal court. If the City had an administrative search warrant process, the City staff could request a warrant to take actions to abate the nuisance posed by the trash and debris at the subject property.

The process for securing an administrative search warrant is spelled out in detail within the sections of City Code to be adopted with the proposed ordinance. As noted in Section 28-14 (A), the application for an administrative search warrant is to enter upon the exterior of any property. Any application for an administrative search warrant requesting entry into a structure must be authorized by the City Council. The process for obtaining and executing these warrants is outlined in detail within the sections of City Code to be adopted by this ordinance.

Fiscal considerations: The adopted FY 26 budget has funds allocated in line item 01/5-079-331.00 for nuisance abatement work and other contractual obligations. This line items contains \$30,000 – only a portion of which would be available for nuisance abatement work. The City may attempt to recover expenses associated with nuisance abatement work by placing a lien against the property containing the violation.

Recommendation: Staff recommends the adoption of the Ordinance amending City Code to establish an administrative search warrant process.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY OF ROLLA, MISSOURI, FOR THE PURPOSE OF UPDATING THE ADMINISTRATIVE SEARCH WARRANT PROCESS.

WHEREAS, the City has determined that it is in the best interest of the City and its residents, to update its current Code by amending various sections of Chapter 28, Article II.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI AS FOLLOWS:

SECTION ONE: That Chapter 28 of the City Code is hereby amended by adding five new sections, to read as follows:

Section 28-13: Administrative Search Warrant, Defined – Who May Execute.

- A. An administrative search warrant is a written order of the judge of the City of Rolla Municipal Division of the Circuit Court of Phelps County, Missouri, commanding the search or inspection of any property, place or thing, and the seizure, photographing, copying or recording of property or physical conditions found thereon to determine or prove the existence of violations of specific provisions contained within the Code, to permit abatement of nuisances, and enforcement of violations of said Code provisions and the International Property Maintenance Code, as adopted.
- B. The Judge of the City Municipal division of the County Circuit Court having original and exclusive jurisdiction to determine violations against the ordinances of municipality may issue an administrative search warrant when:
 - 1. The property or place to be searched or inspected or the thing to be seized is located within the City at the time of the making of the application.
- C. Any such warrant shall be directed to the Chief of Police or any other Police Officer, Code Enforcement Officer or Building Inspector of the City (with consent of the Community Development Director), and shall be executed by authorized City personnel within the City limits within ten calendar days of issuance and not elsewhere.

Section 28-14: Who May Apply For Warrant – Contents of Application.

- A. Any Police Officer, Code Enforcement Officer, prosecuting attorney or any other attorney of the City may make application to the Municipal Judge for the issuance of an administrative search warrant to enter upon the exterior of any property. City Council shall authorize the application of an administrative search warrant within a building or structure.
- B. The application shall:

1. Be in writing;
 2. State the time and date of the making of the application;
 3. Identify the property or places to be entered, searched, inspected or seized in sufficient detail and particularity that the Police Officer, Code Enforcement Officer, or other authorized person executing the warrant can readily ascertain it, and state that the property is within the corporate limits of Rolla;
 4. Identify the City Code violation in sufficient detail and particularity that the Police Officer, Code enforcement Officer, or other authorized person executing the warrant can readily ascertain it;
 5. State that the owner or occupant of the property or places to be entered, searched, inspected or seized has been requested by an appropriate officer of the city to allow such action. The application shall additionally state either that the owner or occupant has been contacted and refused consent for the search or state that no contact has been made with owner or occupant despite reasonable efforts. The warrant shall state the date of successful contact with refusal or state the date upon which the owner or occupant was called on the telephone, the date the property was visited, and the date a notice mailed. If the owner or occupant does not respond to the telephone call, visit, or letter, such efforts shall be sufficient to satisfy the reasonable effort standard above.
 6. State facts sufficient to show probable cause for the issuance of a search warrant, as provided in this Chapter, to:
 - i. Search or inspect for violations of an ordinance or code section specified in the application; or
 - ii. Show that entry or seizure is authorized and necessary to enforce an ordinance or code section specified in the application and that any required due process has been afforded prior to the entry or seizure.
 7. Be verified by the signed oath or affirmation of the application; and
 8. Be filed in the municipal court. The application and related documents may be submitted electronically.
- C. The application may be supplemented, in writing, as necessary to assist the Municipal Judge in determining whether there is probable cause for the issuance of a search warrant and in filling out any deficiencies in the description of the property or place to be searched or in the Code violation(s) on the property. Oral testimony shall not be considered.

Section 28-15: Hearing and Procedure.

- A. The Municipal Judge shall hold a non-adversary ex-parte hearing to determine whether probable cause exists to inspect or search for violations of any City ordinance or Code section, or to enforce any such ordinance or Code section, including the abatement of violations and the seizure of property related thereto.
- B. The Municipal Judge shall determine whether the action to be taken by the City is reasonable in light of the facts stated. The Municipal Judge shall consider the goals of the ordinance or Code section sought to be enforced and such other factors as may be appropriate, including but not limited to, the physical condition of the specified property, the age and nature of the property, the condition of the area in which the property is located, the known violation of any relevant City ordinance or Code section and the passage of time since the property's last inspection. The standard for issuing a warrant need not be limited to actual knowledge of an existing violation of a City ordinance or Code section.
- C. If it appears from the application and any supporting affidavit that there is probable cause to inspect or search for violations of any City ordinance or Code section, or to enforce any such ordinance or Code section, a search warrant shall immediately be issued.
- D. The warrant shall issue in the form of an original and two (2) copies, and the application, any supporting affidavit and copy of the warrant as issued shall be retained in the records of the Municipal Court.

Section 28-16: Contents of Search Warrant.

- A. The search warrant shall:
 - 1. Be in writing and in the name of the City of Rolla, Missouri;
 - 2. Be directed to any police officer, Code enforcement Officer, or Building Inspector in the City of Rolla, Missouri;
 - 3. State the time and date the warrant was issued;
 - 4. Identify the property or places to be searched, inspected, or entered upon in sufficient detail and particularly that the Police Officer, Code Enforcement Officer, or other authorized person executing the warrant can readily ascertain it;
 - 5. Identify the Code violation in sufficient detail and particularity such that the Police Officer, Code Enforcement Officer, or other authorized person executing the warrant can readily ascertain it;
 - 6. Command that the described property or places to be searched or entered upon, and that any evidence of any City ordinance violations found therein or thereon,

or any property seized pursuant thereto, or a description of such property seized, be returned, within ten (10) days after filing of the application, to the Municipal Judge who issued the warrant, to be dealt with according to law;

7. Be signed by the Municipal Judge or Acting Municipal Judge, with his/her office indicated; and
8. Be executed between the hours of 8:00 AM and 5:00 PM except in the case of an emergency threatening immediate danger or harm to life or property.

Section 28-17: Execution and Return.

- A. A search warrant issued under this ordinance shall be executed only by the Chief of Police, other Police Officer, or Code Enforcement Officer, however, that one or more designated City officials may accompany the officer, and the warrant shall be executed in the following manner:
 1. The warrant shall be executed by conducting the search, inspection, entry or seizure as commanded and shall be executed as soon as practicable and in a reasonable manner but not later than ten calendar days of issuance ;
 2. The officer shall give the owner or occupant of the property searched, inspected or entered upon a copy of the warrant;
 - i. If any property is seized incident to the search, the officer shall give the person from whose possession it is taken, if the person is present, an itemized receipt for the property taken. If no such person is present, the officer shall leave the receipt at the site of the search in a conspicuous place;
 - ii. A copy of the itemized receipt of any property taken shall be delivered to an attorney for the City within two (2) working days of the search;
 - iii. The disposition of property seized pursuant to a search warrant under this Section shall be in accordance with an applicable City ordinance or Code section, but in the absence of same, then with Section 542.301 of the Revised Statutes of Missouri;
 3. The officer may summon as many persons as he/she deems necessary to assist him/her in executing the warrant, and such persons shall not be held liable as a result of any illegality of the search and seizure;
 4. An officer making a search pursuant to an invalid warrant, the invalidity of which is not apparent on its face, may use such force as he would be justified in using if the warrant were valid.

- B. A search warrant shall expire if it is not executed, and the required return made within ten (10) days after the date of making the application.
- C. After execution of the search warrant, the warrant, with a return thereon signed by the officer making the search, shall be delivered to the Municipal Court, and:
 - 1. The return shall show the date and manner of execution and the name of the possessor and of the owner, when not the same person, if known, of the property or places searched or seized;
 - 2. The return shall be accompanied by any photographs, copies, or recordings made, and by any property seized, along with a copy of the itemized receipt of such property required by this Section; provided, however, that seized property may be disposed of as provided herein, and in such a case a description of the property seized shall accompany the return.
 - 3. The Court Clerk, upon request, shall deliver a copy of the return, to the possessor and the owner, when not the same person, of the property searched or seized.

Section 28-18: Warrant Invalid, When.

- A. A search warrant shall be deemed invalid:
 - 1. If it was not issued by the Municipal Judge or Acting Municipal Judge;
 - 2. If it was issued without a written application having been filed and verified;
 - 3. If it was issued without sufficient probable cause in light of the goals of the ordinance to be enforced and such other factors as provided in this Chapter;
 - 4. If it was not issued with respect to property or places within the City of Rolla;
 - 5. If it does not describe the property or places to be searched, inspected, entered upon or seized with sufficient certainty;
 - 6. If it is not signed by the Judge who issued it;
 - 7. If it was not executed and the required return made within ten (10) days after the date of the making of the application.

SECTION TWO: This Ordinance shall be in full force and effect from and after the date of its passage and approval.

SECTION THREE: The provisions of this Ordinance are severable and if any provision hereof is declared invalid, unconstitutional or unenforceable, such determination shall not affect the validity of the remainder of this Ordinance.

SECTION FOUR: That the City Clerk is authorized by this Ordinance to correct any scrivener's errors identified within this Ordinance.

SECTION FIVE: That all other parts and provisions of the City Code not in conflict herewith shall remain in full force and effect unless previously or subsequently amended or repealed.

PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI AND
APPROVED BY THE MAYOR THIS 5th DAY OF JANUARY, 2026

APPROVED:

Mayor

ATTEST

City Clerk

Approved as to Form:

City Counselor



CITY COUNCIL AGENDA

DEPARTMENT: Administration

ACTION REQUESTED: Approval of agreement

SUBJECT: Management agreement w/ Power Wellness Management, LLC for natatorium oversight

PREPARED BY: Keith Riesberg, City Administrator

ATTACHMENTS: Proposed agreement, resolution

(CASE/PROJECT #)

MEETING DATE: December 15, 2025

Overview: The City plans to lease a portion of the Centre to Phelps Health for their operation and management, with the City retaining operational control over the natatorium space within the Centre. To provide management of this space and the associated operations, the City is proposing to enter into an agreement with Power Wellness Management, LLC for the aquatic operations. The agreement is a one-year agreement with a 30-day termination notice requirement. Under the agreement, Power Wellness will be responsible for the scheduling of employees and operation of the aquatic functions. The costs for these services will be paid from the funds that were appropriated in the approved FY 26 budget for the operation of the Centre.

Background information:

The City has negotiated with Phelps Health for the leasing of the recreational space within the Centre, with the City retaining operational control over the natatorium space within the Centre. It is the intent of the City to continue offering aquatic services within the natatorium. Because this space will be outside of the components leased to Phelps Health, the City will be responsible for the oversight and management of all aquatic operations. The proposed agreement is to retain Power Wellness Management, LLC (Power Wellness) for the management and oversight of the aquatic operations.

The agreement for the services to be provided by Power Wellness is similar to the previous agreement the City had for the operation of the Centre. The scope of services has been reduced to only cover the aquatic operations within this facility. Under the reduced scope, Power Wellness is responsible for providing lifeguard services, aquatic fitness classes and individual and group swim lessons. They will assist with the operation and maintenance of the aquatic area as well the tracking of member use and collecting and remitting fees for use of the natatorium space.

It is anticipated that Phelps Health will be contracting with Power Wellness for the management of their operations; the City's use of Power Wellness for the aquatic management allows for a more seamless transition for the existing members and future users of the Centre. The agreement does have a 30-day termination provision that allows for quick stoppage of operations in the event of an operational system failure within the natatorium.

Fiscal considerations: The proposed contract for the management of the aquatic operations is \$4,000 per month plus operational expenditures. The adopted FY 26 budget allocated funds for the operation of the Centre, which included funding for the management and operation of the facility.

Recommendation: Staff recommends entering into the agreement with Power Wellness Management, LLC for the management and oversight of the aquatic operations within the Centre.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF ROLLA, MISSOURI, A CONTRACT WITH POWER WELLNESS MANAGEMENT, LLC FOR MANAGEMENT OF THE NATATORIUM LOCATED WITHIN THE CENTRE.

WHEREAS, the City of Rolla has entered into an agreement with Phelps Health for the leasing of the recreational space with the Centre located at 1200 Holloway Street in Rolla; and

WHEREAS, the City will retain operational control over the natatorium space within the Centre and proposes to contract the management of the aquatic operations; and

WHEREAS, the City has a professional relationship with Power Wellness Management, LLC.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AS FOLLOWS:

Section 1: That the Mayor is hereby authorized and directed to execute on behalf of the City of Rolla, Missouri, an agreement with Power Wellness Management, LLC for the provision of management services over aquatic operations within the Centre, a copy of said agreement being attached hereto and marked Exhibit A.

Section 2: That this resolution shall be in full force and effect from and after the date of its passage and approval.

PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AND APPROVED BY THE MAYOR THIS 15TH DAY OF DECEMBER 2025.

APPROVED:

ATTEST:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY COUNSELOR

MANAGEMENT AGREEMENT

This MANAGEMENT AGREEMENT dated _____, 2025 (the “Agreement”) is hereby entered into by and between City of Rolla, individually and collectively ("Owner") and **POWER WELLNESS MANAGEMENT, LLC**, an Illinois limited liability corporation ("Manager").

RECITALS:

WHEREAS, Owner operates an aquatic facility (the “Facility”) within The Centre in Rolla, Missouri.;

WHEREAS, in an effort to utilize its resources more effectively, provide exceptional services and programs for its aquatic members (“members”) and ensure its commitment to improve the health of the communities it serves, Owner desires to retain a management company with expertise and a proven track record to provide aquatic management services described herein.

WHEREAS, Manager has experience in providing aquatic management services (hereinafter “Services”) and

WHEREAS, Owner desires to engage Manager, and Manager desires to be engaged, to manage and operate the Facility, subject to and in accordance with the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the parties hereto do hereby agree as follows:

Section 1. TERM.

(a) The term of this Agreement shall commence on January 1, 2026 (“Commencement Date”) and shall continue for 1 years subsequent to the Commencement Date (the “Initial Term”), provided the parties acknowledge that the Facility may be subject to renovations and or closure which may pause or reduce the term of the agreement. Either party may terminate this Agreement for any reason by providing thirty (30) days written notice or, in the event of a breach by a party, such shorter period set forth in Section 9 below.

(b) Upon termination of this Agreement, except as otherwise provided in this Agreement, each party shall promptly (within five (5) days) return to the other party all property and confidential information of the other party in such party’s possession or control (which shall include property and confidential information in the possession or control of a party’s contractors or subcontractors), including all copies thereof. Specifically, Manager agrees to return to Owner all records pertaining to the Services. Provided that Manager may retain copies of such documentation to the extent necessary to comply with legal and or auditing requirements, and subject to the ongoing obligation to maintain the confidentiality of such information.

(c) In the event of termination or expiration of this Agreement for any reason, neither party shall have any further obligations hereunder, except for obligations accruing prior to

the date of termination and the obligations surviving in accord with specific provisions of this Agreement, including without limitation the responsibility for indemnification and confidentiality.

(d) Upon termination or expiration of this Agreement, the parties shall reasonably cooperate to facilitate a seamless transition of the Services being provided pursuant to this Agreement, including but not limited to providing Owner with all working files, excluding Manager's work product, (defined below) and documents related to the Services in a mutually agreed upon format, and returning (at Manager's cost) to Owner all Data (defined below) and other property of Owner and any affiliates that are in the possession of Manager.

Section 2. USE AND OPERATION OF THE FACILITIES.

2.1 Use and Standard of Operation - Services.

(a) All Services shall be provided in a timely, professional, competent, efficient and workmanlike manner, by individuals qualified by training and experience in the Services and knowledgeable about applicable regulatory requirements applicable to the Services. Subject to the Owner's oversight and in compliance with all applicable Owner policies and procedures that are shared with Manager from time to time, including but not limited to those related to staff safety, security, employee health and welfare, and patient privacy, Manager will manage the Services including the employment and management of staff for the Services, and provide the Services to operate the Facility for the benefit of the Owner in accordance with **Exhibit A** of this Agreement. Owner hereby grants to Manager the sole and exclusive right to manage and operate the Services pursuant to the terms of this Agreement, and Manager agrees that, except to the extent excused as hereinafter provided, Manager will, as the agent of and for the benefit of Owner, operate the Services during the Term in a businesslike, effective and cost-efficient manner, subject to Owner's budgetary systems and other constraints and in compliance with this Agreement. Subject to the specific limitations set forth in this Agreement, Manager, as sole and exclusive agent of Owner, shall have control and discretion in the operation of the Services in the ordinary course of business, including the right and power, subject to the Operating Budget, to negotiate and enter into such reasonable contracts in the name and at the expense of Owner as may be reasonably necessary or advisable in connection with the operation of the Services, and the right to determine, subject to the Operating Budget, the terms of labor policies (including wage rates and prevailing wage rates where appropriate, the hiring and discharging of employees, and the installation of employee retirement or other benefit plans). All acts performed by Manager pursuant to the terms of this Agreement shall be for the account and benefit of Owner and at Owner's expense, except such acts which are in breach of this Agreement or outside the scope of Manager's authority under this Agreement or which constitute gross negligence or willful misconduct. Manager shall, in collaboration with owner, review and adjust as needed the hours of operation for the Services; including classes; pricing for the Services; and develop marketing materials and publicity for the Services.

(b) Manager shall employ all such personnel as may be reasonably necessary and appropriate for the timely and efficient provision of the Services. All employees of the Facility

will be the employees of Manager. Manager, as an independent contractor, retains all the rights, privileges and obligations of an employer as to Manager's personnel including, but not limited to, the right to hire, direct, discipline, compensate, and terminate its employees assigned to the Services, and Manager shall be solely responsible for all aspects relating to the recruitment, employment, labor law compliance, compensation of (including the payment rate and benefits, and the withholding, reporting and payment of all payroll taxes and other withholdings) with respect to all such personnel. Owner will reimburse Manager for the Services payroll cost as detailed in a written invoice, monthly on the 10th day of each month for the total aggregate compensation for the current month, including payroll taxes, legal services (if incurred at the direction of Owner, or for Owner's benefit and approved by owner, and directly attributed to the Services operations and not operations of Manager's business or other facilities), fringe benefits (health insurance, dental insurance, life insurance, 401(k) match, long term disability insurance, employee assistance program, and administration of such benefits), employee Earned Time Off, manager's insurance (see Section 6), (such costs shall equal thirty percent (32%) of cash compensation and will be adjusted in accordance with market conditions for such costs) and annual performance bonuses based on achievement of personal performance metrics, if eligible, provided that Owner shall not be responsible for reimbursement of any bonus in excess of twenty percent (20%), without Owner's prior written consent. Owner will also reimburse Manager for the direct costs for any employees of Manager working on matters related to the Services, as included in the annual budget. Manager acknowledges and agrees that total Services payroll cost shall not be increased by more than three percent (3%) annually without Owner's prior written consent. Owner agrees to make available and accessible to Manager at all times during the terms of this Agreement a minimum of funds sufficient to pre-fund approximately one monthly payroll and related costs for the Services as described above.

(c) Manager represents and warrants that all personnel assigned by Manager to provide Services hereunder have and will maintain the requisite certifications, licensure, training, expertise, ability, and legal right to render Services required under this Agreement, including the right to work in the United States. All personnel assigned to provide services pursuant to this Agreement ("Personnel") shall undergo a criminal background check, including a check of sexual predator status, negative for any criminal convictions or pleas, including no contest pleas, other than for minor traffic violations, prior to being assigned to the Facility. Such background check shall, at a minimum, include statewide correspondence checks for each state in which the individual has resided during the thirty six (36) months prior to being assigned to the Facility, and any other screening required by applicable law, regulation, Owner's policies, or standards of a or other accrediting body, if any.

(d) Except as otherwise agreed by Owner, Manager shall use its best efforts to maintain the continuity of Personnel assigned to the Services.

(e) At any time, and at the sole discretion of Owner, and in accordance with federal and state laws, if any Manager Personnel (i) does not meet the applicable qualifications to provide services hereunder, including but not limited to a high degree of aptitude, ethical behavior, positive attitude, and good interpersonal relationships; (ii) is subject to a judicial or administrative

order or enters into a consent decree or other settlement with respect to healthcare fraud or other wrongdoing, or is suspended or excluded or debarred from any federal program; (iii) takes any action that places patient or participant health or safety in imminent and serious danger, as reasonably determined by Owner or Manager; or (iv) is otherwise unacceptable to Owner, then Manager will immediately remove said personnel and replace with an individual acceptable to Owner as soon as reasonably possible. Owner has the right to require that Manager's Personnel to stop providing Services and leave the Facility and/or Owner's premises at any time that Owner reasonably determines is necessary or desirable.

(f) Notwithstanding anything to the contrary contained in this Agreement, Manager shall be excused from its obligation to operate the Services in conformity with the terms of this Agreement to the extent and whenever (i) Manager shall be prevented from compliance with such standard by Force Majeure Causes, (ii) there shall occur any material breach by Owner of any provision hereof, after written notice to Owner and an opportunity to cure, which breach would prevent Manager from performing the Services, and (iii) Owner places a limitation on Manager's ability to expend funds in respect of the Services provided that the failure to expend funds by reason of the operation of such limitation shall reasonably prevent Manager from meeting the terms of this Agreement and Manager has provided prior written notice to Owner of such inability and the reason for such inability to perform. For purposes hereof, "Force Majeure Causes" shall mean causes beyond the reasonable control of Manager, including casualties, war, insurrection, strikes, lockouts, floods, weather disturbances, power outages, material shortages and governmental actions. It is expressly understood and agreed that each and every provision contained in this Agreement pursuant to which Manager is excused from its obligation to operate the Services in conformity with the terms of this Agreement shall operate without prejudice to any other remedy (including the right to terminate this Agreement) which Manager shall have under the terms of this Agreement.

(g) Owner agrees to designate a readily accessible Project Director ("Owner's Representative") who shall be responsible for managing the relationship with Manager, and Manager shall keep Owner's Representative up to date on the operations of the Services. Manager shall, as appropriate, consult with the Owner's Representative by telephone or email between on-site visits. Manager shall timely complete and deliver to Owner's Representative accurate and complete records and reports, as denoted in Section 5.4, of the status of the Services provided and the financial performance of the Services, as well as Manager's recommendations regarding Services improvement opportunities. The format and frequency of such reports (which may be electronic) shall be as reasonably requested by Owner. All such records shall remain the Owner's property. Manager shall participate in meetings as requested by Owner, on-site at the Facility or at Owner's offices, to review Services financials, strategic plans, and other matters related to the Services.

(h) Manager and Manager Personnel shall use the Services space, equipment and supplies only to perform the Services set forth herein.

(i) Owner shall maintain all state and federal licenses, registrations, and certifications necessary to conduct its business and provide the services set forth herein, and shall provide copies of said licenses, registrations and certificates to Manager upon request. Owner shall be the sole owner and holder of Services specific licenses, permits, certifications and contracts, however, Manager will provide any necessary assistance in obtaining and retaining any such licenses, permits, certifications and contracts.

(j) **Ownership.** Any materials or brochures, records, data, information, artwork, images, reports, formulas, processes, ideas, inventions, techniques, documentation, databases, computer programs, fitness assessment forms, fitness and exercise programs, marketing and operational materials (including charts, notes, outlines and drafts) developed or generated by Manager for the use by Owner in connection with the Services provided pursuant to this Agreement (“Work Product”) and all data collected from Services clients, participants, Owner or affiliates (“Data”) are works made for hire owned by Owner as of the date of creation and are not, at any time during or after the term of this Agreement, to be utilized, distributed, copied or otherwise employed by Manager (except to provide the Services), without the prior written consent of Owner. To the extent Manager uses pre-existing templates in providing the Services hereunder, that Manager uses in the performance of services to its other clients, Owner shall have ownership rights only in the data in the records prepared exclusively for Owner and shall have no ownership in the general templates. The parties acknowledge and agree that the other party has its own intellectual capital, goodwill, technical know-how, membership related data and documents, computer programs, data, financial reports, policies, procedures, secret shop forms, membership surveys, sales reports, forms, marketing materials, quality assurance and control materials, forms and documents training and education materials, expertise and best practices that such party has developed, and ownership rights to those materials are not transferred to the other party. For example, the materials developed by Manager through its general consultant and management services and practices shall be considered "Manager Owned Materials". Any Manager Owned Materials provided to Owner for use for the Services shall remain the sole and exclusive property of Manager.

(k) **Data Aggregation and Use.** Manager may only aggregate Data for use in Services operations, to generate reports for Owner or to analyze de-identified aggregated data as follows. Owner acknowledges that Owner is part of a group of fitness and wellness centers that Manager manages collectively. To the extent Manager prepares and analyzes combined statistical data for all or a portion of the centers it manages for the benefit of the Facility and its other clients, Manager is authorized to use only de-identified data (as defined by HIPAA) as part of its collective statistical data analysis, and its general reports for clients only. Upon termination of this Agreement or upon request of Owner, Manager shall promptly return all Data to Owner. Manager is strictly prohibited from using (for any purpose other than providing Services hereunder), sharing, transferring or selling Data or aggregated Data unless otherwise approved.

2.2 Leases and Concessions. Manager shall not, without the approval of Owner, enter into leases or concessions for any Facility operations or for any other operation in or about the Services. Any such lease or concession so approved shall be entered into in Owner's

name and shall be executed by Owner (or Manager, if directed by Owner to act as agent for Owner). Manager shall, during the Term, use reasonable efforts to perform, as agent for Owner, all of the obligations of Owner as landlord or concessionaire under all present or future leases and concessions made or granted with respect to the Services. Manager shall during the term hereof use reasonable efforts to perform all of the obligations concerning the granting of concessions and shall use reasonable efforts to collect the sums due from such concessions and shall deposit same in the Operating Accounts.

2.3 Bank Accounts. Owner shall establish a bank account for all monies received by Manager from members for the aquatic Services ("Operating Accounts"). Manager shall establish a disbursement account for facility operating expenses. Owner shall fund disbursement account, for expenses relating to Services, upon review and approval of Manager's funding request including a cash disbursement request report and related invoices. Manager shall disburse funds in accordance with the approved report and invoices and will then provide Owner with evidence of disbursement.

2.4 Limitation on Manager's Authority. Except as otherwise provided in this Agreement, throughout the Term, Owner shall retain all authority and control over the business, policies, operations and assets of the Services, and Owner does not through this Agreement, delegate to Manager any of the powers, duties, and responsibilities vested by law or through Owner governance documents to the Owner's board of directors or any Owner affiliate. Manager shall obtain Owner's prior written consent, which Owner may withhold in its sole discretion, before entering into agreements with any subcontractors who may supply any services related to this Agreement. Manager agrees that the engagement of any subcontractor shall in no way diminish, reduce, modify or affect Manager's duties or warranties to Owner hereunder. Manager is and shall remain responsible for all payments, out of Owner's accounts, to a subcontractor, hired to perform services or provide products for Owner's benefit, and for the subcontractor's performance, and a breach by any subcontractor of any provision of this Agreement shall constitute a breach by Manager.

In addition, Manager shall not, without the prior written consent of Owner enter into any contract for the account of Owner, provided that this limitation shall not apply to the extent that any such contract is deemed necessary by Manager in the event of an emergency posing a threat to persons or property. Manager shall take all steps necessary to notify Owner immediately about the emergency situation and any actions taken by Manager to address the emergency situation.

Manager agrees that it will not solicit for management service a competing client within a 20-minute drive of the facility, without express written consent of Owner.

2.5 Operating Budget.

(a) Not later than ninety (90) days prior to the commencement of each Owner fiscal year, Manager shall submit to Owner an operating budget (collectively the "Operating Budget") for the operation of the Services for such year, containing reasonably detailed membership, revenue and expense projections, and including Owner allocated expenses.

(b) The Operating Budget is intended as and will represent only an estimate of the projected revenues and expenditures for such year based upon assumptions believed by Manager to be reasonable at the time of preparation. Although Manager will use its best efforts to achieve the budgetary goals reflected in the Operating Budget, the Operating Budget and first year pro forma cannot be relied upon as an assurance of actual results for such year, and failure to achieve the budgetary goals set forth in any Operating Budget shall not constitute an event of default hereunder. Manager shall promptly notify Owner of the need to depart in any material way from the Operating Budget if, in Manager's reasonable judgment, adherence to the Operating Budget is impractical or such departure is necessary or desirable for the efficient or profitable operation of the Services.

(c) Owner shall have the right to approve each Operating Budget, or material departures from approved Operating Budgets, which approval shall not be unreasonably withheld or delayed, and pending such approval, Manager shall operate the Services in accordance with the last approved Operating Budget, adjusted reasonably on account of changes in volume and cost of living. To the extent Manager cannot do so without interfering with the orderly and efficient operation of the Services as contemplated by this Agreement, Manager shall promptly notify Owner of the need to depart in any material way from the Operating Budget.

Section 3. MANAGEMENT FEES.

Owner shall pay Manager a Management Fee as set forth in Exhibit B attached to this Agreement. All undisputed amounts shall be payable at the beginning of each month and within fifteen (15) days after receipt of invoice.

Section 4. REPAIRS AND LEGAL REQUIREMENTS.

4.1 Repairs and Maintenance. Owner and Managers responsibilities relating to repairs and maintenance are delineated in Exhibit C.

4.2 Compliance with Legal Requirements. Except as elsewhere herein limited or excused, throughout the Term, Manager shall cause the Services thereof to comply with all applicable legal requirements within the scope of Manager's work. If any alterations, additions or improvements, structural or nonstructural, shall be required in order to cause the Services to be in compliance with applicable legal requirements, within Owner's responsibilities under this Agreement, Manager shall promptly inform Owner and the same shall be the responsibility of and shall be performed at the expense of Owner. Manager may, but only after approval by Owner, contest by appropriate legal proceedings conducted in good faith, in the name of Manager or Owner, or both, the validity or applicability of any legal requirements. If Owner shall approve any such contest, Owner shall execute and deliver any appropriate documents which may be necessary

or proper to permit Manager to prosecute such contest. Owner may, by notice to Manager, direct Manager to contest, or Owner may contest directly, any legal requirements which Manager may otherwise desire not to contest. Manager agrees in the performance of this Agreement to comply with all federal, state and municipal laws, rules and regulations. Failure by either party to comply with such laws, rules or regulations may be grounds for termination of this Agreement.

Section 5. GENERAL COVENANTS OF MANAGER AND OWNER.

5.1 Working Capital. Owner shall, at all times during the Term, cause sufficient working capital funds to be on hand in the Operating Accounts to assure the timely payment of all current liabilities for the Services and all other items of expense to be paid from the Operating Accounts as provided in Section 2.3, the uninterrupted and efficient operation of the Services at all times during the Term and the performance by Manager of its other obligations hereunder.

5.2 Right of Inspection and Review. Manager shall accord to Owner and its duly authorized agents the right to enter upon any part of the aquatic area at all reasonable times during the Term for the purposes of examining or inspecting the aquatic area or upon reasonable advance notice and mutual coordination, examining or making extracts from the books and records of the Services operation, or for any other purpose which Owner, in its discretion, shall deem necessary or advisable, but the same shall be done with as little disturbance to the operation of the Facility as possible. Notwithstanding anything to the contrary herein, Owner shall be permitted access to inspection of personnel records upon reasonable advance notice and coordination.

5.3 Payment of Taxes. During the Term, Owner shall pay, prior to delinquency, all real property, personal property, state sales and related taxes, use taxes or other taxes assessed against the aquatic area.

5.4 Financial Reports. Manager shall deliver to Owner, within fifteen (15) days after the end of each month, an unaudited financial statement prepared from the books and records maintained by Manager for the Services containing (i) a current profit and loss statement showing the results of the Facility operations for such month, year to date and compared to budget and (ii) such other information as Owner may request from time to time.

Section 6. INSURANCE.

6.1 Insurance to be Maintained During Term.

(a) Owner Insurance. Owner shall maintain, at all times during the Term, the following insurance respecting the Services in amounts and with responsible and properly licensed companies or self-coverage arrangements (provided that such amounts shall in no event be less than the amounts required under any mortgage, deed of trust or security agreement affecting the Facility):

- (i) For operations outside the Scope of Services and in excess of insurance provided by the Manager, General liability insurance (or self-insurance) providing coverage against liability for property damage, bodily injury, and personal injury

with a limit of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate.

(ii) Business Auto Liability insurance including owned, non-owned and hired vehicles for a combined single limit of bodily injury and property damage of not less than One Million Dollars (\$1,000,000) per Occurrence.

(iii) Property Insurance on the building and contents insuring against loss or damage by fire, lightning, windstorm, earthquakes, sinkhole and all other risks included in the special cause of loss form including boiler and machinery/equipment breakdown, in amounts not less than the full insurable replacement value of the Services and bearing a replacement cost agreed amount endorsement, and all such deductibles shall be the responsibility of the Owner.

(iv) Business Income insurance covering loss of income, extra expenses and any necessary continuing expenses for interruptions caused by any occurrence covered by the insurance referred to in subsections (ii) above and providing coverage on an actual loss sustained basis.

(v) Flood insurance if any portion of the Improvements is currently or at any time in the future located in a federally designated “special flood hazard area” and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any successor thereto) in an amount which reasonably assures that there will be sufficient proceeds to replace the Improvements in the event of a loss against which such insurance is issued.

(vi) Such other insurance for protection against claims, liabilities and losses resulting from or arising out of the Owner’s obligation to the operation of the assets of the aquatics area under this Agreement as is customarily carried for facilities of similar character.

(b) Manager Insurance. Manager shall maintain, at all times during the Term, the following insurance with companies licensed to do business in Missouri with an AM Best Rating of A-VII or better and acceptable to Owner, with limits not less the ones stated below:

(i) Commercial General liability insurance (providing coverage against liability for property damage, bodily injury, personal injury and liquor liability (if applicable) with a limit not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate.

(ii) Business Auto Liability insurance including owned, non-owned and hired vehicles for a combined single limit of bodily injury and property damage of not less than One Million Dollars (\$1,000,000) per Occurrence.

(iii) Workers Compensation insurance at amounts required by state law and

(iv) Employers Liability coverage with limits not less than:

a. \$1,000,000 for Each Accident

- b. \$1,000,000 Disease – Each Employee
- c. \$1,000,000 Disease – Policy Limit

(v) Umbrella or Excess Liability which will follow form General Liability, Automobile Liability, Employers' Liability and Liquor Liability (if applicable), with limits in a minimum amount of not less than Five Million Dollars (\$5,000,000.00) per occurrence/aggregate.

(vi) Professional Liability with a limit not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate

(vii) Employment Practices Liability including coverage for third parties with a limit not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate

(viii) Manager shall maintain crime, and fidelity insurance against dishonest acts by employees and others that includes a Joint Payee Endorsement in favor of owner.

(d) The Manager's General Liability policy shall name Manager as the principal insured and shall name Owner and any Owner affiliate or any mortgagee of the Facility or creditor of any member of Owner as additional insureds on a primary and non-contributory basis by endorsement.

(e) The cost of Managers insurance directly attributable to the Facility or the Services provided hereunder shall be reimbursed to Manager as noted in Section 2.1(b).

(f) The provision of required insurance shall in no way be construed to limit Manager's liability pursuant to this Agreement.

(g) If Manager will maintain or transfer any Owner or affiliate data, Manager shall carry cyber liability coverage with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate, including coverage for data reconstruction, financial damages resulting from the unauthorized disclosure of or general corruption or loss of personal data, identity theft monitoring services for individuals whose data was compromised, costs of incident response, investigation and follow-up, coverage for actions of rogue employees and the costs of defending or responding to (including damages and fines) any investigations or informational requests from any regulatory agency or other governmental or quasigovernmental agency responsible for the control and use of personal health information or other confidential information.

6.2 Notice of Cancellation or Change. All insurance policies required to be carried hereunder shall have attached thereto an endorsement that the same shall not be canceled or changed without at least thirty (30) days' prior written notice to all named insureds and additional insureds. Each party shall promptly notify the other party in the event that any insurance required hereunder is cancelled or reduced. In the event that Manager's insurance is cancelled, non-renewed or materially changed, Owner may terminate this Agreement without penalty.

6.3 Evidence of Insurance Coverage. For the purpose of evidencing compliance with the provisions of this Section 6, Manager shall furnish to Owner insurance

certificates for all insurance policies required to be maintained by Manager pursuant to this Section 6 prior to policy expiration dates. If Manager's insurance required in this section is provided on a claims-made basis, such party shall purchase "tail coverage" or continuously maintain such claims made insurance for any events occurring during the Term of this Agreement for a period of not less than five (5) years following the expiration or termination of this Agreement. The coverages required in this Section shall not in any way limit either Party's liability under this Agreement.

Section 7. COMPLIANCE.

(a) Neither Party will knowingly or intentionally conduct its behavior in such a manner as to violate the prohibitions against fraud and abuse in connection with the Medicare and Medicaid programs. The parties shall comply with all applicable federal, state and local laws and regulations.

(b) Manager represents and warrants to Owner that it is not now, nor has it ever been, nor have its owners, officers or directors, or any personnel assigned by Manager to provide services hereunder, excluded, suspended, sanctioned or otherwise disallowed from participation in, or proposed for such exclusion, suspension, or sanctions relating to, (collectively, "Sanctioned") the Medicare, Medicaid or any state or federally funded or operated health care or procurement program (collectively, the "Programs"), or listed as a Specially Designated National or Blocked Person by the U.S. Treasury Office of Assets Control ("a Blocked Person"). Further, Manager represents and warrants that it will not knowingly contract with, purchase from, employ, subcontract with or carry on business in any form with any person or entity that is Sanctioned or listed as a Blocked Person. Manager further warrants and represents that it actively screens its officers, directors, employees and agents (including subcontractors) for such exclusion.

Manager further certifies to Owner that it will immediately (within two (2) days) notify Owner upon its receipt of any indication, whether or not official, that it shall be excluded or suspended from any federal health care program, as defined above, for any reason during the term of this Agreement, or that any one or more of the representations set forth in this section are no longer true and accurate in all respects, and in such event, Owner may immediately terminate this Agreement and any other agreements between Owner and Manager upon notice to Manager. This Agreement shall terminate immediately and automatically in the event that Manager specifically or any senior officer or director is excluded or suspended from any Program. In the event a non-management employee of Manager is excluded or suspended from any Program, Manager shall immediately terminate that employee(s). Any affected employee(s) shall be promptly replaced (no longer than sixty (60) days).

(c) Manager represents and warrants that it is an equal opportunity employer, and Manager shall not illegally or intentionally discriminate against any employee or applicant for employment in violation of an applicable law. Further, Manager represents and warrants that in the course of providing services under this Agreement, Manager shall comply with all applicable Laws and Owner Policies prohibiting discrimination. Services shall be provided without illegal regard to race, color, creed, sex, sexual orientation, gender identity, age, handicap status, or national origin of the person providing or receiving such services. Manager further represents and

warrants that it has and enforces policies and procedures designed to prevent illegal discrimination, sexual harassment, and other improper employment practices.

Section 8. INDEMNIFICATION.

(a) **Owner Indemnification.** To the fullest extent permitted by law but without waiving and subject to sovereign immunity, the Owner agrees (a) to indemnify, defend and hold harmless the Manager, its officers, directors, employees and agents (and those of any affiliate) from and against any claims, suits, liability, loss, costs, expenses (including, without limitation, reasonable attorneys' fees and court costs), damages, settlements and judgments suffered or incurred by Manager, to the extent caused by or arising out of (i) injury to persons or property by reason of any acts or omissions of Owner or Owner's employees or agents (not including Manager), (ii) any breach of this Agreement by Owner, (iii) infringement of any third party intellectual property rights arising out of the Manager's use of Owner's name, logo or marks as permitted under this Agreement, (iv) any accident, injury or damage caused by the negligence or willful misconduct of Owner or Owner's employees or (v) any act or omission by Owner's current management company relating to facts, occurrences, events and/or allegations that occurred prior to the date Manager takes control of management of the Services and the employees. To the extent that employees assigned to perform the Services by Owner's current management company (1) have pending, prior to the date Manager takes over operation and management of the Services, worker's compensation claims, employment related claims or lawsuits, (2) are off from performing the Services due to Family Medical Leave Act leaves and/or other leaves of absence, or (3) are COBRA following termination of employment from Owner's prior management company, Manager shall have no responsibility or obligation to assume any liability whatsoever in any amount for any such employees.

(b) **Manager Indemnification.** To the fullest extent permitted by law the Manager agrees to indemnify, defend and hold harmless the Owner, its officers, directors, employees and agents (and those of any affiliate) from and against any claims, suits, liability, loss, costs, expenses (including, without limitation, reasonable attorneys' fees and court costs), damages, settlements and judgments suffered or incurred by Owner or any affiliate, to the extent caused by or arising out of (i) injury to persons or property by reason of any acts or omissions of Manager or Manager's employees or agents, (ii) infringement of any third party intellectual property rights arising out of use by Owner or any affiliate of any materials provided by Manager, including but not limited to deliverables, programs, software, materials, and logos, (iii) any breach of this Agreement or the Business Associate Agreement by Manager; or (iv) any accident, injury or damage not caused by the negligence or willful misconduct of Owner or Owner's employees or agents (not including Manager).

(c) It is expressly understood and agreed that the provisions of this Section 8 shall survive the termination or expiration of this Agreement.

(d) Both parties are required to notify the other within ten (10) days of receipt of any lawsuits, claims, suits, proceedings or notices of intent to file a lawsuit based in any manner on services rendered pursuant to this Agreement. If both parties have an obligation to the other

under the foregoing provisions, for comparative fault principles shall be applied to allocate payment between the parties.

Section 9. DEFAULT AND TERMINATION.

The following shall constitute events of default hereunder:

(a) The failure of either party (the "defaulting party") to pay to the other party (the "non-defaulting party") any undisputed sum which may become due here under within fifteen (15) days after receipt by the defaulting party of a written late notice from the non-defaulting party specifying such failure; or

(b) The failure of the defaulting party to perform, keep or fulfill any of the material terms, covenants, undertakings, obligations or conditions set forth in this Agreement other than those referred to in the foregoing subsection (a), and the continuance of such failure for a period of thirty (30) days after written notice to the defaulting party from the other party (the "non-defaulting party") specifying such failure, or, in the event such failure is of such a nature that it cannot, with due diligence and in good faith, be cured within thirty (30) days, the failure of the defaulting party to commence to cure the same within such thirty-day period and thereafter to prosecute the curing of such failure with due diligence and in good faith it being intended that, in connection with a failure not susceptible of being cured with diligence and in good faith within thirty (30) days, the time allowed the defaulting party within which to cure the same shall be extended for such period as may be necessary for the curing thereof with due diligence and in good faith; or

(c) If the defaulting party shall file a voluntary petition in bankruptcy or for arrangement, reorganization or other relief under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter in effect, or shall file an answer or other pleading in any proceeding admitting insolvency, bankruptcy or inability to pay its debts as they mature; or if within ninety (90) days after the filing against the defaulting party of any involuntary proceedings under the Federal Bankruptcy Code or similar law, state or federal, now or hereafter in effect, such proceeding shall not have been vacated; or if all or a substantial part of the defaulting party's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon, unless such attachment, seizure, writ, warrant or levy is vacated within ninety (90) days; or if the defaulting party shall be adjudicated a bankrupt; or if the defaulting party shall make an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due or shall consent to the appointment of a receiver or trustee or liquidator of all or the major part of its property; or if any order appointing a receiver for, trustee of or liquidator of the defaulting party or all or a major part of the property of the defaulting party is not vacated within ninety (90) days following the entry thereof.

If the defaulting party fails to cure the default during the cure periods provided in items (a) through (c) above, the non-defaulting party may give to the defaulting party may terminate this Agreement with fifteen (15) days prior written notice. In addition to the foregoing, Owner may terminate this Agreement upon written notice to Manager if Manager fails to continuously maintain the insurance coverage required under this Agreement, or fails to continuously meet the requirements of Section

6.1. Further, the Manager acknowledges that a material breach by Manager of the same term or condition of this Agreement more than two (2) times during the Term shall be deemed, at the discretion of Owner, a breach which is not capable of cure, and shall therefore result in the Owner's right to terminate this Agreement immediately with written notice, upon the occurrence of the same breach of third time. Such termination shall be without prejudice to any right to damages that the non-defaulting party may have against the defaulting party under applicable law.

Section 10. EMPLOYEE TRANSITION.

Subject to the provisions in Sections 11 and 19, in the event of termination of the Agreement by either party, (i) Owner and Manager agree to work together professionally and expeditiously to assess the placement of Manager's employees prior to or upon the effective date of termination, and (ii) Manager shall not enforce any non-compete provisions that it may have with its employees if those employees who are not listed in Section 11 below chose to pursue employment with Owner following the effective date of termination of this Agreement.

Section 11. NON-DISCLOSURE, NON-DISPARAGEMENT AND NON-COMPETITION.

(a) During the Term hereof and indefinitely thereafter, Manager will (i) refrain from directly or indirectly using or causing to be used in any manner whatsoever any Owner information (or that of any affiliate) of a proprietary or confidential nature (as defined below) other than in connection with fulfilling its obligations hereunder and, upon termination of this Agreement, such information, to the extent that it has been reduced to writing (including any and all copies thereof), together with all copies of all records, forms and charts of every kind, whether confidential or otherwise, shall be promptly returned to Owner and shall not be retained by Manager or furnished to any third party, either by sample, facsimile, or by verbal communication; (ii) refrain from any disparagement of Owner or any of its employees, officers, directors or agents; and (iii) refrain from soliciting or encouraging any program participant or client of the Services to join any other facility or obtain similar services elsewhere for the six (6) months following expiration or termination of this Agreement. Provided, however, that this restriction shall not apply to any program participant or client of the Services that makes the initial contact with Manager about joining another of Manager's facilities or purchasing services at another of Manager's facilities, provided that Manager has not communicated with the individuals about other facilities or provided any marketing materials regarding those facilities either directly or through a mail campaign.

(b) During the Term hereof and indefinitely thereafter, Owner will (i) refrain from directly or indirectly using or causing to be used in any manner whatsoever any Manager information of a proprietary or confidential nature (as defined below) or Manager's Materials other than in connection with the operation of the Services, provided that sharing such information with Owner's affiliated entities is permitted in discussions regarding the operation of the Services; (ii) refrain from any disparagement of Manager or any of its employees, officers, directors or agents (iii) refrain from soliciting the business of any corporate client for whom Manager has provided service (other than those provided in the aquatic area) during the six (6) months following expiration or termination of this Agreement.

Section 12. CONFIDENTIAL INFORMATION.

(a) Owner's confidential or proprietary information, which shall either be marked "Confidential", or which should reasonably be considered confidential given the nature of the material and circumstances of disclosure, and shall include but not be limited to the following: all sales and marketing information and protocols; marketing plans; client names, addresses or any other client-related information; client accounting, policies, procedures, forms and reports; cash flows and receivables; short-term and long-term management strategy; business data; financial records; income and expense information; pricing and charging for services; employee flow and placement methodology; procedures to document services provided; revenue and expense monitoring and analysis; client satisfaction information; client intake procedures; client booking procedures; collections procedures and strategies; charge/billing generation and documentation procedures; employee record documentation procedures; fee schedules; fee information; payroll information; billing and payment methodology; copyright; trademark; personnel information; volume of business; strategic plans; administrative policy; quality management procedures; information related to earnings and other financial information; assets; patient and participant information, research, and all other information deemed by Owner to be confidential and proprietary.

(b) Manager's confidential or proprietary information, which shall either be marked "Confidential", or which should reasonably be considered confidential given the nature of the material and circumstances of disclosure, shall include but not be limited to the following (except as used by or related to the Owner or the Services, while this Agreement is in effect) or thereafter: all Manager sales and marketing information and protocols; proprietary programming and/or marketing plans protected by trademark or copyright; secret shop forms; membership surveys; Manager's other client names, addresses or any other information regarding Manager or Manager's other clients, including accounting, policies, procedures, forms and reports; cash flows and receivables; short-term and long-term management strategy; business data; financial records; income and expense information; pricing and charging for services; employee flow and placement methodology; procedures to document services provided; revenue and expense monitoring and analysis; client satisfaction information; client intake procedures; client booking procedures; collections procedures and strategies; charge/billing generation and documentation procedures; employee record documentation procedures; fee schedules; fee information; payroll information; billing and payment methodology; personnel information; volume of business; strategic plans; administrative policy; quality management procedures; information related to earnings and other financial information; assets; and all other information deemed by Manager to be confidential and proprietary.

(c) If either party receives a subpoena, order or other legal request for the other party's confidential information, the party shall promptly notify the other party, to the extent permitted by law, to allow time to challenge the disclosure.

(d) The provisions of this Section shall survive termination of the Agreement.

(e) The parties acknowledge that this confidentiality provision is subject to Missouri's Sunshine Law.

Section 13. REPRESENTATIONS AND WARRANTIES.

(a) **Infringement.** Manager represents and warrants that all products and materials developed by or provided by Manager for Owner or any of its affiliates pursuant to this Agreement, if any, including but not limited to software, documentation, programs and any and all other source information, do not and will not infringe any patent, copyright, trade secret or other proprietary right of any third party; and Manager has full title, or the right to convey title to, all portions of any products and materials to be developed for or provided to Owner and its affiliates under this Agreement, if any, all free from any liens, security interests or other encumbrances or restrictions upon transfer.

(b) **Virus.** Manager further represents and warrants that it will use its best efforts to ensure that nothing delivered by Manager to Owner or any affiliate shall contain any protection feature, calendar-related kill codes, Trojan horse, bug collection device or "back door" designed to prevent use of Owner's or any affiliate's software or operating system and Manager shall use best efforts when accessing Owner's and any affiliate's computer system not to introduce any virus, worm, or disabling instruction into Owner's or any affiliate's operating system.

(c) **Pass-Through Warranty.** Manager represents and warrants that if it provides any third- party products (including software) to Owner or any affiliate, Manager shall pass through to Owner and its affiliates any third party product and third party end-user warranties and indemnities, and shall take all steps necessary to ensure such warranties and indemnities flow to and for the benefit of Owner and its affiliates. To the extent Manager is not permitted to so pass-through, Manager agrees to enforce such warranties and indemnities on behalf of Owner and its affiliates.

(d) **Mutual Warranties.** Each Party represents and warrants to the other that:

- (i) it is organized and validly existing under the laws of the state of its incorporation and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof;
- (ii) it is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder;
- (iii) this Agreement is a legal and valid obligation binding upon it and enforceable according to its terms; and
- (iv) the execution, delivery and performance of this Agreement by such Party does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound.

Section 14. SUCCESSORS AND ASSIGNS.

Manager shall not assign this Agreement without the prior written consent of the Owner. If such consent shall be given, the terms, provisions, covenants, undertakings, agreements, obligations and conditions of this agreement shall be binding upon and shall inure to the benefit of the successors in interest and the assigns of the parties hereto with the same effect as if mentioned in each instance where the party hereto is named or referred to.

Section 15. NOTICES.

All notices to be given hereunder shall be deemed received when delivered personally or by express courier or three (3) business days after being sent by certified or registered U.S. mail, return receipt requested, to the parties listed below:

If to Owner: Keith Riesberg _____
Rolla City Administrator
City of Rolla
P.O. Box 979
Rolla, Missouri 65402

If to Manager: Brian Hummert
Executive Vice President
Power Wellness Management LLC
851 Oak Creek Drive
Lombard, IL 60148

Either party hereto may change its address for notices hereunder by notice of such change to the other party hereto in the manner herein above provided. Manager will give copies of all notices given to Owner to any mortgagees of the Facility whose names and addresses are furnished to Manager, in the manner set forth in this Section.

Section 16. APPROVALS.

If a party shall desire the approval of the other party hereto to any matter, such party must give written notice to such other party that it requests such approval, specifying in such notice the matter as to which such approval is requested and reasonable detail respecting such matter. Approvals must be granted in writing.

Section 17. FURTHER INSTRUMENTS.

Each party hereto shall execute and deliver all such other appropriate supplemental agreements and other instruments and take such other action as may be necessary to make this Agreement fully and legally effective, binding and enforceable as between the parties hereto and as against third parties, as the other party may reasonably request.

Section 18. APPLICABLE LAW.

This Agreement shall be governed by and construed and enforced in accordance with the laws of Illinois and without regard to the conflict of law rules principals thereof, and the exclusive venue for any disputes arising out of this Agreement shall be the state and federal courts located in Missouri.

Section 19. SURVIVAL AND CONTINUATION.

Upon termination or expiration of this Agreement, (a) Owner's obligations to pay to Manager any amounts due to Manager hereunder (for services rendered prior to the effective date of termination) shall survive such termination or expiration and shall continue until all such

amounts, are paid in full, and (b) all terms, provisions and obligations of either party contained herein which, in order to give them effect and accomplish their intent and purpose, need to survive such termination shall, by agreement between Owner and Manager, survive and continue until they have been fully satisfied or performed.

Section 20. NOTICE OF CLAIMS

Manager agrees to promptly notify Owner of any participant or patient event or other event that Manager reasonably determines may result in liability to or any claim against either party relating to or resulting from the Services or otherwise relating to or arising from this Agreement or the Facility, and of any complaints received from patients or participants or other parties relating to the Facility or the services provided under this Agreement. No provision of this section is intended to or shall be construed as a waiver of any applicable peer review, attorney-client or insured-insurer privilege. In the event of a third- party lawsuit relating to the Services, Manager shall reasonably cooperate with Owner and its affiliates in the defense of said lawsuit.

Section 21. INDEPENDENT CONTRACTOR

Owner and Manager are each acting as independent contractors. Neither Party shall be construed in any manner whatsoever to be an employee or agent of the other, nor shall this Agreement be construed as a contract of employment or agency. Specifically, all fitness instructors and other personnel providing Services are and shall remain employees of Manager during the term of this Agreement, and Manager shall be solely responsible for paying and providing all benefits to all such personnel and for withholding, reporting and remitting any and all taxes, FICA, FUTA, unemployment and disability insurance required by Federal, state and local law to be reported and paid in connection with Manager's payments to such personnel, subject to reimbursement by Owner in accordance with the Operating Budget. Owner shall not withhold any taxes or other withholdings from any payments made pursuant to this Agreement. Without limiting Manager's indemnification obligations pursuant to this Agreement, if the Internal Revenue Service, the federal or any state Department of Labor, or the Illinois, Kansas or any other state's Department of Revenue questions the independent contractor status of either or both of the Parties hereto or of any personnel provided by Manager to provide the Services, the Parties agree that both Parties shall have the right to participate in any discussion or negotiation with such agency regardless of who initiated such discussions or negotiations. Manager agrees to cooperate with Owner in its efforts to notify Owner patients, staff and visitors that Manager its personnel are not Owner agents or employees, including through the use of written notices.

Section 22. USE OF NAMES.

Manager agrees that it shall not use the name, logo or marks of Owner or any of its affiliates in any manner whatsoever, including, but not limited to use in any marketing or other materials, or in statements regarding the existence of this Agreement, without the Owner's prior written consent.

Section 23. FAIR MARKET VALUE.

The amounts paid to Manager hereunder have been determined by the parties through good faith, arms-length bargaining to be fair market payments for the value of Services rendered by Manager under the terms of this Agreement. No amount paid hereunder is intended to be, nor shall it be construed to be, an inducement or payment for referral of any patient or business, nor does such amount include any discount, rebate, kickback, or other reduction in charge.

Section 24. FORCE MAJEURE.

Neither party shall be liable to the other party for any failure to perform caused by any circumstances beyond its reasonable control, including strikes, riots, storms, weather disturbances, power outages, unanticipated construction interruptions or delays, fires, war or any other catastrophe (each a “Force Majeure Event”). Any failure or delay by a party in performance of any of its obligations under this Agreement due to a Force Majeure Event shall not be construed as a breach of this Agreement, provided the failure is remedied as soon as practicable under the circumstances. Each Party shall use commercially reasonable efforts to continue to perform, to the extent practical, in the event of a Force Majeure Event, and shall keep the other Party reasonably informed about the status of their ability to perform. Either party may terminate this Agreement with written notice to the other party if any Force Majeure Event continues for more than thirty (30) consecutive days.

Section 25. NO CONFLICT.

Each party represents and warrants that it is not bound by any agreement or arrangement that would preclude the party from entering into, or fully performing under this Agreement.

Section 26. CHANGE IN LAW

This Agreement shall be construed to be in accordance with all applicable laws. If any new law becomes effective or any authoritative interpretation of a law by any governmental authority, whether federal or state, is rendered which makes any of the material terms of this Agreement unlawful, makes illegal the structure of the relationship between the Manager and the Owner set forth in this Agreement, jeopardizes the tax exempt status of Facility, Owner, any Owner affiliate, or the tax exempt status or treatment of any debt, bonds or other obligations of Facility, Owner or of any Owner affiliate or is reasonably likely to materially and adversely affect the manner in which either Party may perform or be compensated for its services under this Agreement, the Parties hereto agree to negotiate an amendment to this Agreement with each other in good faith for a period of ninety (90) days; unless legal counsel to either Party opines that continued performance of such Agreement is unlawful or subjects either Party to potential civil or criminal liability or jeopardizes the tax exempt status or treatment of any debt, bonds or other obligations of Facility, Owner or any Owner affiliate, in which event the Party may terminate this Agreement immediately, upon written notice to the other Party.

Section 27 OWNER AUDIT RIGHTS.

Manager shall maintain complete and accurate records to support and document the charges for all services provided pursuant to this Agreement. Upon Owner’s request at any time

throughout the term of this Agreement or until seven (7) years following the expiration or termination of this Agreement for any reason, Manager shall permit Owner or its designated employees or agent(s) (which may include third parties) to examine its books and/or to conduct audits to confirm Manager's charges for the Services hereunder. Manager shall cooperate with such audits, and shall make its personnel reasonably available to assist in such audits. Any such examination or audit shall be conducted with twenty (20) days prior written notice and shall be at Owner's expense, unless such examination or audit reveals overcharges of more than fifteen percent (15%) of applicable charges in question, in which case Manager shall pay for, or reimburse Owner the cost of conducting such examination or audit. In addition, a credit for any overcharge shall be corrected on the subsequent monthly invoice.

Section 28. USE OF FACILITY BY OWNER.

No provision of this Agreement shall prohibit Owner or any Owner affiliate from utilizing any portion of the aquatic area for purposes of any Owner sponsored event, to be provided by employees of Owner or any affiliate(s). Any such use by Owner shall be deemed within Owner's scope of work and outside Manager's scope of Services under the Agreement, consistent with the indemnity provisions in Section 8. The parties shall reasonably cooperate in scheduling such use(s).

Section 29. INTERPRETATION.

The headings and captions herein are inserted for convenient reference only, and the same shall not limit or construe the paragraphs or sections to which they apply or otherwise affect the interpretation hereof. This Agreement and any document or instrument executed pursuant hereto may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement contains the entire Agreement and understanding of the parties in respect to the subject matter hereof, and the same may not be amended, modified or discharged, nor may any of its terms be waived, except by an instrument in writing signed by the parties to be bound thereby.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above set forth.

MANAGER:
POWER WELLNESS
MANAGEMENT, LLC.

OWNER:
City of Rolla

By:

By:

Name: Ken Gorman
Title: President & CEO

Name: Louis J. Magdits, IV
Title: Mayor

Date: _____

Date: _____

EXHIBIT A

MANAGEMENT SERVICES

Manager will provide the following list of services on a continuing basis. This list is not intended to be all-inclusive and may be adjusted as appropriate.

Aquatics Management

- Provision of Lifeguard Staffing
- Provision of Group Aquatics Fitness Classes
- Individual and Group Swim Lessons
- Services as Outlined in Exhibit C
- Reporting of member use of the natatorium space
- Collection and remittance of fees for membership and use of natatorium space

EXHIBIT B
MANAGEMENT FEES

Management Fee: Owner shall pay Manager a Base Management Fee equal to Four Thousand dollars (\$4,000.00) per month (excluding costs as noted in 2.1(b)) or as otherwise defined in this Management Agreement.

EXHIBIT C REPAIRS & MAINTENANCE

Following is in reference to Section 4.1

OWNER Responsibilities:

All matters relating to the Facility as defined in this Section, shall be the responsibility of OWNER throughout the Term. OWNER shall maintain the functionality, comfort, safety, sustainability, and efficiency of the buildings, infrastructure, and grounds at all times during the Term, in support of the services offered and managed by MANAGER. MANAGER shall promptly notify OWNER of the repairs or maintenance that MANAGER believes is necessary in order for MANAGER to perform under this Agreement.

OWNER shall be responsible for the following ongoing maintenance, repairs, and alterations. This list is not intended to be all inclusive and may be modified from time to time subject to the agreement of OWNER and MANAGER. When Facility-related issues pose a safety concern, have a direct impact on use and enjoyment of the Facility, OWNER shall address these Facility-related issues and concerns as outlined below in a timely manner (within 24 hours when possible), and shall use commercially reasonable efforts to minimize the closure of amenities. Project management for any / all building related (indoor & outdoor) capital projects.

- Any/all electrical issues/concerns (indoor & outdoor), including but not limited to the operations, preventative maintenance, repair, and replacement of any light fixtures.
- Any/all plumbing and HVAC issues/concerns including, but not limited to the operation, preventative maintenance, temperature control, repair and replacement of fixtures, and any issues related to and/or resulting from the above.
- Any/all building preventative maintenance, including coolers, refrigerators, maintaining ductwork and exhaust ducts, and other mechanical systems.
- Monitoring of all building mechanical systems 365 days per year (including but not limited to HVAC, boilers, pumps, etc.).
- Carpentry maintenance and repairs, tile, carpet and flooring maintenance and repairs, painting and decorating.
- Facility lock maintenance and key distribution.

- Management of outside property including landscaping, snow removal, parking lot maintenance, and grounds keeping for the Facility.
- Monitoring and maintenance of Facility security system (indoor & outdoor).
- Outside window cleaning and maintenance, and inside for larger windows.

MANAGER Responsibilities:

- MANAGER shall promptly notify OWNER of the need for any repairs or maintenance about which MANAGER becomes aware.
- Daily monitoring and water testing for swimming pools and adjustment of chemicals when necessary. This responsibility extends to weekends and holidays.
- Ordering of all pool supplies and pool minor equipment.
- Oversight of vendors, on site, performing complex maintenance services, cleaning the pools and natatorium and other maintenance requests from Owner.
- Provide environmental services including but not limited to cleaning pool, pool decks and emptying trash.



CITY COUNCIL AGENDA

DEPARTMENT: Administration

ACTION REQUESTED: Approval of agreement

SUBJECT: Design agreement w/ Cordogan Clark for natatorium planning

PREPARED BY: Keith Riesberg, City Administrator

ATTACHMENTS: Proposed agreement, resolution

(CASE/PROJECT #)

MEETING DATE: December 15, 2025

Overview: The City issued a request for qualifications for the selection of a design firm to assist with the planning and reimagining of the existing natatorium space within the Centre. Four firms were interviewed and Council authorized staff to move forward with the negotiation of a scope of work and contract price with Cordogan Clark. The proposed scope of work outlined as specific task orders has been attached to the agreement. If approved the work associated with Task 1 (Project Kick-off & Facility Assessment – physical conditions) and Task 2 (Operational Assessment) would begin to move forward. The cost of the work as outlined in the scope is \$52,500.

Background information: The Centre was dedicated by the City as a recreation center in 2002. As the City moves forward with the leasing of the recreational space to Phelps Health, it was recognized that professional design services are needed to plan and reimagine the existing natatorium space. Under the lease agreement with Phelps Health, the City will retain operational control and responsibility for the natatorium space

The City issued a request for qualifications earlier this year and after conducting interviews with four firms, selected Cordogan Clark as the firm to perform the needed design work. The Cordogan Clark team includes several key consultants who are subject matter experts in aquatic space designs as well as community recreation centers. Recognizing the natatorium space is more than twenty-years old, the aquatic features need significant capital upgrades, which offers the opportunity to reimagine this space. Cordogan Clark is tasked with gathering input from a planned Steering Committee, which will include representatives from Phelps Health, key stakeholders as well as gathering community inputs. Following these inputs, the design team is to present concepts for the City's consideration. All concepts and plans are expected to be supportive of the operation of the recreational center, which is expected to continue operations.

The work will begin with assessments of the physical conditions of the facility and the operational models for this space. The timeline anticipates beginning input meetings shortly after the first of the year and having concepts developed by mid-February. The expectation is to have a proposed concept plan developed by the end of April. This will allow the elected officials to decide how they wish to move

forward with this space and the funding mechanism necessary. Should the elected officials wish to move forward with an August ballot proposal, action is required to be taken before the end of May.

Fiscal considerations: The contract for the provision of design services is \$52,500 which includes up to \$3,500 for reimbursable expenses. The contract does NOT include funding for a statistically valid survey, which would add \$13,500 to the expense. The budget for the Centre anticipated the hiring of professional design services for this work and the Professional/Contract Services line item contains sufficient funds for this contract.

Recommendation: Staff recommends entering into the agreement with Cordogan Clark for the planning and design work associated with the re-imagining of the natatorium space within the Centre.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF ROLLA, MISSOURI, A CONTRACT WITH CORDOGAN – CLARK FOR PLANNING & DESIGN SERVICES OF THE NATATORIUM SPACE LOCATED WITHIN THE CENTRE.

WHEREAS, the City of Rolla anticipates entering into an agreement with Phelps Health for the leasing of the recreational space with the Centre located at 1200 Holloway Street in Rolla;

WHEREAS, the City will retain control over the natatorium space within the Centre;

WHEREAS, the City requires professional services to assist in the planning and re-imagining of the natatorium space which requires significant capital improvements; and

WHEREAS, the City wishes to engage the team lead by Cordogan - Clark for the provision of these services.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AS FOLLOWS:

Section 1: That the Mayor is hereby authorized and directed to execute on behalf of the City of Rolla, Missouri, an agreement with Cordorgan – Clark for the provision of planning and conceptual design services for the natatorium space within the Centre, a copy of said agreement being attached hereto and marked Exhibit A.

Section 2: That this resolution shall be in full force and effect from and after the date of its passage and approval.

PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AND APPROVED BY THE MAYOR THIS 15TH DAY OF DECEMBER 2025.

APPROVED:

ATTEST:

MAYOR

CITY CLERK

APPROVED AS TO FORM:

CITY COUNSELOR

AIA® Document B101® – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 11 day of December in the year 2025

(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

The City of Rolla
901 North Elm Street
Rolla, Missouri 65401

and the Architect:
(Name, legal status, address and other information)

Cordogan Clark & Associates, Inc., an Illinois corporation registered to do business in Missouri

for the following Project:
(Name, location and detailed description)

The Centre- Natatorium Planning Study
Planning and design services for implementing a planning and feasibility study of the existing Natatorium space within The Centre Rolla's Health and Recreation Complex, located at 1200 Holloway Street, Rolla, Missouri. The design team will assess the physical and operational aspects of the indoor pool volume, and through a public engagement process will then develop conceptual design options for determining the best possible use for the space. Consideration of potential programs within the natatorium will consider both wet recreational activities as well as dry recreational activities to better align the facility with the current recreational needs of the community.

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

IV.C.5

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 SUPPLEMENTAL AND ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

Planning and feasibility study developed with Cordogan Clark and the City of Rolla.

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

Not used.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

Existing natatorium and recreation facility.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1;

(Provide total and, if known, a line item breakdown.)

Total fee for 'The Centre – Natatorium Planning Study' \$52,500.00

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

Physical Facility Assessment: December 22nd-January 14th

Operational Assessment: December 22nd-January 9th

IV.C.6

Community Leader Input: January 5th-January 26th

Stake Holder Meetings: January 5th-January 20th

Concept Design Options: January 19th-February 20th

Community Engagement: January 19th-March 30th

Concept Refinement: February 9th-March 2nd

Finalize Concepts: March 23rd-April 30th

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

Not used.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

Not used

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™-2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204-2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204-2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

Keith Riesberg
City Administrator
City of Rolla, MO
kriesberg@rollacity.gov

Lori Powell
City Clerk
City of Rolla, MO
573-426-6948
lpowell@rollacity.gov

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

Not Used

§ 1.1.9 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

Ballard King & Associates - Planning & Operations Assessment
9457 South University Blvd.
#335, Highlands Ranch, Colorado, 80126
BKA@ballardking.com

IV.C.7

303-470-8661

Councilman Hunsaker - Aquatic Design
156 Weldon Parkway
St. Louis, MO 63043
slservice@landmarkaquatic.com
314-432-1801

Unknown at this time.

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

Tony Duncan, AIA, NCARB
Vice President
Cordogan Clark
3001 Locust St Floor 2
St. Louis, MO 63103

Reed I Voorhees, AIA, NCARB
RIV Design, LLC
314-803-0922
rivoorhees@riv-design.com

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

.2 Mechanical Engineer:

.3 Electrical Engineer:

§ 1.1.11.2 Consultants retained under Supplemental Services:

Not used

§ 1.1.12 Other Initial Information on which the Agreement is based:

None

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The

IV.C.8

Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.

§ 2.5.1 Commercial General Liability with policy limits of not less than One Million (\$ 1,000,000) for each occurrence and Two Million (\$ 2,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than Five Hundred Thousand Dollars (\$ 500,000) each accident, Five Hundred Thousand Dollars (\$ 500,000) each employee, and Five Hundred Thousand Dollars (\$ 500,000) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Three Million Dollars (\$ 3,000,000) per claim and Three Million (\$ 3,000,000) in the aggregate.

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§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

The Architect, in consideration of the Fee specified hereinafter, conveys and agrees to perform, in connection with this Project, with the assistance of competent registered professional staff and/or sub consultants including but not limited to the disciplines below, and any others as necessary to complete the professional services as detailed herein or in any additional contract Attachments/Exhibits:

Existing Facility Assessment
Operational Assessment
Concept Design Options
Community Engagement
Concept Refinement
Finalize Concepts to Align w Ballot Language

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

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Architect

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	Architect
§ 4.1.1.2 Multiple preliminary designs	Not applicable
§ 4.1.1.3 Measured drawings	Architect
§ 4.1.1.4 Existing facilities surveys	Architect
§ 4.1.1.5 Site evaluation and planning	Architect
§ 4.1.1.6 Building Information Model management responsibilities	Architect
§ 4.1.1.7 Development of Building Information Models for post construction use	Not applicable
§ 4.1.1.8 Civil engineering	Not applicable
§ 4.1.1.9 Landscape design	Not applicable
§ 4.1.1.10 Architectural interior design	Not applicable
§ 4.1.1.11 Value analysis	Architect
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	Not applicable
§ 4.1.1.13 On-site project representation	Not applicable
§ 4.1.1.14 Conformed documents for construction	Not applicable
§ 4.1.1.15 As-designed record drawings	Not applicable
§ 4.1.1.16 As-constructed record drawings	Not applicable
§ 4.1.1.17 Post-occupancy evaluation	Not applicable
§ 4.1.1.18 Facility support services	Not applicable
§ 4.1.1.19 Tenant-related services	Not applicable
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Not applicable
§ 4.1.1.21 Telecommunications/data design	Not applicable
§ 4.1.1.22 Security evaluation and planning	Not applicable
§ 4.1.1.23 Commissioning	Not applicable
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	Not applicable
§ 4.1.1.25 Fast-track design services	Not applicable
§ 4.1.1.26 Multiple bid packages	Not applicable
§ 4.1.1.27 Historic preservation	Not applicable

§ 4.1.1.28	Furniture, furnishings, and equipment design	Not applicable
§ 4.1.1.29	Other services provided by specialty Consultants	Not applicable
§ 4.1.1.30	Other Supplemental Services	Not applicable

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

Not used

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

Not used

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of entities providing bids or proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or,
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

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§ 4.2.5 If the services covered by this Agreement have not been completed within twenty-four (24) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

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§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

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§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this

Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201–2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 Mediation

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☒ Litigation in a court of competent jurisdiction, sole venue to lie in the Circuit Court of St. Louis County, Missouri.

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

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§ 8.3 Arbitration

§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

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

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

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

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

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§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:
(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide

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professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

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

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

- .1** Stipulated Sum
(Insert amount)

\$52,500.00

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

«To be determined by mutual agreement for each Project and Service Order as approved and authorized by The City of Rolla..»

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

Per Section 11.7 , unless otherwise negotiated

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus zero percent (0 %), or as follows:

(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

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§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Permitting and other fees required by authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Postage, handling, and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- .8 If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses;
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent (0 %) of the expenses incurred. Total Reimbursable Expenses including markups shall not exceed \$10,000. Reference Exhibit A.

§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth below:

(Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

Not applicable

§ 11.10 Payments to the Architect

§ 11.10.1 Initial Payments

§ 11.10.1.1 An initial payment of zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

§ 12.1 Pursuant to Section 34.600 RSMo, the Architect certifies that it is not currently engaged in and shall not, for the duration of this contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

§ 12.2 Architect will comply with applicable laws pertaining to Equal Employment Opportunity. Architect must comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes and shall not discriminate based on race, religion, color, sex, national origin, age or disability.

§ 12.3 Omitted

§ 12.4 Pursuant to RSMo. 285.530, all business entities awarded any contracts in excess of \$5,000 with a Missouri public school district must as a condition to the award be enrolled in and participate in a federal work authorization program with respect to the employees working on the Project (to the extent allowed by E-verify). Architect shall affirm that it is enrolled in such a program and shall provide a sworn affidavit to the effect.

§ 12.5 Prior to commencing work for a Project, the Architect shall obtain appropriate state architectural licenses and/or registrations for its firm and/or its individuals in responsible charge as required to practice in the State of Missouri. The Architect shall immediately advise the Owner if the required licenses or registrations cannot be obtained.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect

[«X »] Other Exhibits incorporated into this Agreement:

(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

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

OWNER (Signature)

ARCHITECT (Signature)

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(Printed name and title)

(Printed name, title, and license number if required)

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Additions and Deletions Report for AIA® Document B101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:52:40 CST on 12/11/2025.

Changes to original AIA text

PAGE 1

Cordogan Clark & Associates, Inc., an Illinois corporation registered to do business in Missouri

PAGE 2

Planning and feasibility study developed with Cordogan Clark and the City of Rolla.

PAGE 3

- ~~1~~ Design phase milestone dates, if any:
- ~~2~~ Construction commencement date:
- ~~3~~ Substantial Completion date or dates:
- ~~4~~ Other milestone dates:

Physical Facility Assessment: December 22nd-January 14th

Operational Assessment: December 22nd-January 9th

Community Leader Input: January 5th-January 26th

Stake Holder Meetings: January 5th-January 20th

Concept Design Options: January 19th-February 20th

Community Engagement: January 19th-March 30th

Concept Refinement: February 9th-March 2nd

Finalize Concepts: March 23rd-April 30th

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- ~~1~~ Geotechnical Engineer:
- ~~2~~ Civil Engineer:
- ~~3~~ Other, if any:
- (List any other consultants and contractors retained by the Owner.)

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Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Tony Duncan AIA, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:52:40 CST on 12/11/2025 under Order No. 20250109647 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ - 2017, Standard Form of Agreement Between Owner and Architect, other than those additions and deletions shown in the associated Additions and Deletions Report.


(Signed)


(Title)


(Dated)

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Ballard King & Associates - Planning & Operations Assessment

9457 South University Blvd.

#335, Highlands Ranch, Colorado, 80126

303-470-8661

Councilman Hunsaker - Aquatic Design

156 Weldon Parkway

St. Louis, MO 63043

314-432-1801

Unknown at this time.

Tony Duncan, AIA, NCARB

Vice President

Cordogan Clark

3001 Locust St Floor 2

St. Louis, MO 63103

.1 — Structural Engineer:

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§ 2.5.1 Commercial General Liability with policy limits of not less than One Million (\$ 1,000,000) for each occurrence and Two Million (\$ 2,000,000) in the aggregate for bodily injury and property damage.

§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than One Million (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

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§ 2.5.5 Employers' Liability with policy limits not less than Five Hundred Thousand Dollars (\$ 500,000) each accident, Five Hundred Thousand Dollars (\$ 500,000) each employee, and Five Hundred Thousand Dollars (\$ 500,000) policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than Three Million Dollars (\$ 3,000,000) per claim and Three Million (\$ 3,000,000) in the aggregate.

~~§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.~~

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The Architect, in consideration of the Fee specified hereinafter, conveys and agrees to perform, in connection with this Project, with the assistance of competent registered professional staff and/or sub consultants including but not limited to the disciplines below, and any others as necessary to complete the professional services as detailed herein or in any additional contract Attachments/Exhibits:

Existing Facility Assessment

Operational Assessment

Concept Design Options

Community Engagement

Concept Refinement

Finalize Concepts to Align w Ballot Language

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§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical-

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and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- 1—facilitating the distribution of Bidding Documents to prospective bidders;
- 2—organizing and conducting a pre-bid conference for prospective bidders;
- 3—preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- 4—organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

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§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- 1—facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- 2—organizing and participating in selection interviews with prospective contractors;
- 3—preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,

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- 4—participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

~~§ 3.5.3.3~~ If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

~~§ 3.6 Construction Phase Services~~

~~§ 3.6.1 General~~

~~§ 3.6.1.1~~ The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™ 2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201 2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

~~§ 3.6.1.2~~ The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

~~§ 3.6.1.3~~ Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

~~§ 3.6.2 Evaluations of the Work~~

~~§ 3.6.2.1~~ The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

~~§ 3.6.2.2~~ The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

~~§ 3.6.2.3~~ The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

~~§ 3.6.2.4~~ Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

~~§ 3.6.2.5~~ Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201 2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

~~§ 3.6.3 Certificates for Payment to Contractor~~

~~§ 3.6.3.1~~ The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an

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evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

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§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

- .1—conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2—issue Certificates of Substantial Completion;
- .3—forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,
- .4—issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the

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Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

~~§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.~~

~~§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.~~

~~§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.~~

~~§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.~~

Architect

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Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	<u>Architect</u>
§ 4.1.1.2 Multiple preliminary designs	<u>Not applicable</u>
§ 4.1.1.3 Measured drawings	<u>Architect</u>
§ 4.1.1.4 Existing facilities surveys	<u>Architect</u>
§ 4.1.1.5 Site evaluation and planning	<u>Architect</u>
§ 4.1.1.6 Building Information Model management responsibilities	<u>Architect</u>
§ 4.1.1.7 Development of Building Information Models for post construction use	<u>Not applicable</u>
§ 4.1.1.8 Civil engineering	<u>Not applicable</u>
§ 4.1.1.9 Landscape design	<u>Not applicable</u>
§ 4.1.1.10 Architectural interior design	<u>Not applicable</u>
§ 4.1.1.11 Value analysis	<u>Architect</u>
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	<u>Not applicable</u>
§ 4.1.1.13 On-site project representation	<u>Not applicable</u>
§ 4.1.1.14 Conformed documents for construction	<u>Not applicable</u>
§ 4.1.1.15 As-designed record drawings	<u>Not applicable</u>
§ 4.1.1.16 As-constructed record drawings	<u>Not applicable</u>
§ 4.1.1.17 Post-occupancy evaluation	<u>Not applicable</u>
§ 4.1.1.18 Facility support services	<u>Not applicable</u>
§ 4.1.1.19 Tenant-related services	<u>Not applicable</u>
§ 4.1.1.20 Architect's coordination of the Owner's consultants	<u>Not applicable</u>
§ 4.1.1.21 Telecommunications/data design	<u>Not applicable</u>
§ 4.1.1.22 Security evaluation and planning	<u>Not applicable</u>
§ 4.1.1.23 Commissioning	<u>Not applicable</u>
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	<u>Not applicable</u>
§ 4.1.1.25 Fast-track design services	<u>Not applicable</u>

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§ 4.1.1.26	Multiple bid packages	<u>Not applicable</u>
§ 4.1.1.27	Historic preservation	<u>Not applicable</u>
§ 4.1.1.28	Furniture, furnishings, and equipment design	<u>Not applicable</u>
§ 4.1.1.29	Other services provided by specialty Consultants	<u>Not applicable</u>
§ 4.1.1.30	Other Supplemental Services	<u>Not applicable</u>

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~~§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.~~

- ~~1. Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;~~
- ~~2. Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;~~

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- ~~3. Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;~~
- ~~4. Evaluating an extensive number of Claims as the Initial Decision Maker; or,~~
- ~~5. Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.~~

~~§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:~~

- ~~1. () reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor~~
- ~~2. () visits to the site by the Architect during construction~~
- ~~3. () inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents~~
- ~~4. () inspections for any portion of the Work to determine final completion.~~

~~§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.~~

~~§ 4.2.5 If the services covered by this Agreement have not been completed within (~~

§ 4.2.5 If the services covered by this Agreement have not been completed within twenty-four (24) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

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ARTICLE 6 — COST OF THE WORK

~~§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the~~

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compensation of the Architect; the costs of the land, rights of way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

~~§ 6.2~~ The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

~~§ 6.3~~ In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

~~§ 6.4~~ If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

~~§ 6.5~~ If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

~~§ 6.6~~ If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- ~~1~~ give written approval of an increase in the budget for the Cost of the Work;
- ~~2~~ authorize rebidding or renegotiating of the Project within a reasonable time;
- ~~3~~ terminate in accordance with Section 9.5;
- ~~4~~ in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- ~~5~~ implement any other mutually acceptable alternative.

~~§ 6.7~~ If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

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[☒] Litigation in a court of competent jurisdiction, sole venue to lie in the Circuit Court of St. Louis County, Missouri.

[☐] Other: *(Specify)*

PAGE 18

- ~~1~~ Termination Fee:
- ~~2~~ Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

~~§ 9.8~~ Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

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- ~~2~~ — Percentage Basis
 — *(Insert percentage value)*
 — () % of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.

- ~~3~~ — Other
 — *(Describe the method of compensation)*

«To be determined by mutual agreement for each Project and Service Order as approved and authorized by The City of Rolla...»

Per Section 11.7 , unless otherwise negotiated

~~§ 11.5~~ When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

~~§ 11.6.1~~ When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

~~§ 11.7~~ The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

~~§ 11.8.2~~ For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent (0 %) of the expenses incurred. Total Reimbursable Expenses including markups shall not exceed \$10,000. Reference Exhibit A.

~~§ 11.10.1.2~~ If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of (\$) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred. *(Insert rate of monthly or annual interest agreed upon.)*

~~%~~

ARTICLE 13 — SCOPE OF THE AGREEMENT

~~§ 13.1~~ This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect. § 12.1 Pursuant to Section 34.600 RSMo, the Architect certifies that it is not currently engaged in and shall not, for the duration of this contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.

~~§ 13.1.2~~ This Agreement is comprised of the following documents identified below: Architect will comply with applicable laws pertaining to Equal Employment Opportunity. Architect must comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes and shall not discriminate based on race, religion, color, sex, national origin, age or disability.

- ~~1~~ — AIA Document B101™ 2017, Standard Form Agreement Between Owner and Architect
- ~~2~~ — Building Information Modeling Exhibit, if completed:
- ~~3~~ — Exhibits:

(Check the appropriate box for any exhibits incorporated into this Agreement.)

☐ — AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:

(Insert the date of the E204-2017 incorporated into this agreement.)

☐ —

§ 12.3 Omitted

§ 12.4 Pursuant to RSMo. 285.530, all business entities awarded any contracts in excess of \$5,000 with a Missouri public school district must as a condition to the award be enrolled in and participate in a federal work authorization program with respect to the employees working on the Project (to the extent allowed by E-verify). Architect shall affirm that it is enrolled in such a program and shall provide a sworn affidavit to the effect.

§ 12.5 Prior to commencing work for a Project, the Architect shall obtain appropriate state architectural licenses and/or registrations for its firm and/or its individuals in responsible charge as required to practice in the State of Missouri. The Architect shall immediately advise the Owner if the required licenses or registrations cannot be obtained.

ARTICLE 13 SCOPE OF THE AGREEMENT

PAGE 22

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

.1 AIA Document B101™-2017, Standard Form Agreement Between Owner and Architect

[☒] Other Exhibits incorporated into this Agreement:

(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

.4 — Other documents:

— *(List other documents, if any, forming part of the Agreement.)*

Variable Information

PAGE 1

AGREEMENT made as of the 11 day of December in the year 2025

The City of Rolla

901 North Elm Street Rolla, Missouri 65401

The Centre- Natatorium Planning Study

Planning and design services for implementing a planning and feasibility study of the existing Natatorium space within The Centre Rolla's Health and Recreation Complex, located at 1200 Holloway Street, Rolla, Missouri. The design team will assess the physical and operational aspects of the indoor pool volume, and through a public

IV.C.33

engagement process will then develop conceptual design options for determining the best possible use for the space. Consideration of potential programs within the natatorium will consider both wet recreational activities as well as dry recreational activities to better align the facility with the current recreational needs of the community.

PAGE 2

Not used.

Existing natatorium and recreation facility.

Total fee for 'The Centre – Natatorium Planning Study' \$52,500.00

PAGE 3

Not used.

Not used

Keith Riesberg

City Administrator

City of Rolla, MO

Lori Powell

City Clerk

City of Rolla, MO

573-426-6948

lpowell@rollacity.gov

PAGE 4

Not Used

Reed I Voorhees, AIA, NCARB

RIV Design, LLC

314-803-0922

rivoorhees@riv-design.com

PAGE 5

Not used

None

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PAGE 12

Not used

Not used

PAGE 17

[☒] Litigation in a court of competent jurisdiction, sole venue to lie in the Circuit Court of St. Louis County, Missouri.

PAGE 19

\$52,500.00

PAGE 20

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus zero percent (0 %), or as follows:

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus zero percent (0 %) of the expenses incurred. Total Reimbursable Expenses including markups shall not exceed \$10,000. Reference Exhibit A.

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Not applicable

§ 11.10.1.1 An initial payment of zero (\$ 0) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

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CITY COUNCIL AGENDA

DEPARTMENT: Parks & Recreation

ACTION REQUESTED: Bid approval, First reading

SUBJECT: Veterans Memorial Park Pavilions Replacement

PREPARED BY: Floyd Jernigan

ATTACHMENTS: Ordinance and Contract

(CASE/PROJECT #)

MEETING DATE: December 15, 2025

Overview: The City of Rolla did a competitive bid solicitation for the replacement of the Veterans Memorial Park pavilions that were flattened in the March 14, 2025 tornado. Ads were placed in the local newspaper and the bid documents were placed on the city's website. The new build will elevate the wind tolerance from 90 to 125 for the larger and from 60 to 125 for the smaller.

Background information: The larger pavilion, completed in 2023, was constructed with materials from a company that designed the 53x60 structure. The smaller pavilion, 26x62, built in 2012, was constructed primarily by volunteers. South Central Regional Veterans Group asked the city to use the same company, Backyard Showcase, an Amish outdoor structure manufacturer and shipper, that provided the design and materials for the large pavilion. Council approved the bid awarding the materials for the pavilions June 16, 2025.

Fiscal considerations: As this is a reimbursable insurance expense due to the March 14, 2025 tornado, the adopted FY 26 budget did not appropriate any expense or offsetting revenue for this replacement. It did, in the parks fund comment section, note that the building and grounds category would see a wash of the tornado impact for the replacement of the Veterans Memorial Park pavilions.

Insurance appropriation - \$120,000 (city engineering estimate)

Company	Description	Price
Maggi Construction Rolla, Mo.	Erection of pavilions kit, roofing the pavilions	\$111,999.81
CSE Enterprises Rolla, Mo.	Same	\$221,900
Industrial Enterprises Inc. Jefferson City, Mo	Same	\$280,766.07

Recommendation: Staff recommends accepting the low bid from Maggi for the construction of the replacement Veterans Park Pavilions and the first reading of the ordinance approving the contract.

ORDINANCE NO.

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A CERTAIN AGREEMENT BETWEEN THE CITY OF ROLLA, MISSOURI AND DONALD MAGGI, INC.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI, AS FOLLOWS:

Section 1: That the Mayor of the City of Rolla, Missouri be and is hereby authorized and directed to execute on behalf of the City of Rolla, Missouri an agreement between the City of Rolla and Donald Maggi, Inc., a copy of said agreement being attached hereto and marked Exhibit "A".

Section 2: This ordinance will be in full force and effect from and after the date of its passage and approval.

PASSED BY THE CITY COUNCIL OF THE CITY OF ROLLA, MISSOURI AND APPROVED BY THE MAYOR THIS 5TH DAY OF JANUARY 2026.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY COUNSELOR

EXHIBIT A

CONTRACT AGREEMENT

THIS AGREEMENT, made and entered into this _____ Day of _____ by and between the City of Rolla, Missouri, Party of the First Part and hereinafter called Owner, and _____ **Donald Maggi, Inc.** _____ Party of the second Part and hereinafter called the Contractor.

WITNESSETH:

THAT WHEREAS, the Owner has caused to be prepared, in accordance with law, specifications, plans, and other Contract Documents for the work herein described, and has approved and adopted said documents, and has caused to be published and advertised for and in connection with the construction of: **Veteran's Park Pavilions**, in complete accord with the Contract Documents and the said plans and specifications; and

WHEREAS, the said Contractor, in response to such advertisement, has submitted to the Owner, in the manner and at the time specified, a sealed proposal in accordance with the terms of said advertisement; and

WHEREAS, the Owner, in the manner prescribed by law, has publicly opened, examined and canvassed the proposals submitted in response to the published invitation therefore, and as a result of such canvass has determined and declared the aforesaid Contractor to be lowest and best bidder for the said work and has duly awarded to the said Contractor a contract therefore, for the sum or sums named in the Contractor's proposal, a copy thereof being attached to and made a part of this contract.

NOW THEREFORE, in consideration of the compensation to be paid to the Contractor and of the mutual agreement herein contained, the parties to these presents have agreed and hereby agree, the Owner for itself and its successors, and the Contractor for itself, himself, or themselves, or its, his or their successors and assigns, or its, his, or their executors and administrators, as follows:

ARTICLE I. That the Contractor shall (a) furnish all tools, equipment, supplies, superintendent, transportation, and other construction accessories, services and facilities; (b) furnish all materials, supplies, and equipment specified and required to be incorporated in, and form a permanent part of the completed work except the items specified to be furnished by the Owner; (c) provide and perform all necessary labor, and (d) in a good, substantial, and workmanlike manner, and in accordance with the provisions of the General Conditions and the Special Conditions of the Contract, which are attached hereto and made a part hereof, and in conformity with the Contract Plans and Specifications designated and identified therein, execute, construct, and complete all work included in, and covered by the Owner's official award of this Contract to the said Contractor, such award being based on the acceptance by the Owner of the Contractor's proposal, for the construction of **Veteran's Park Pavilions**.

It is further stipulated that not less than the prevailing hourly rate of wages as found by the Department of Labor and Industrial Relations of the State of Missouri, or determined by the Court of Appeal shall be paid to all workers performing work under this Contract.

ARTICLE II. Contractor acknowledges that Section 285.530, R.S.Mo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Contractor therefore covenants that it is not knowingly in violation of Subsection 1 of Section 285.530, R.S.Mo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on the Project, and that its employees are lawfully eligible to work in the United States.

ARTICLE III. Occupational Safety and Health Administration (OSHA)

Safety Training:

- a. Contractor shall provide a ten (10) hour Occupational Safety and Health Administration (OSHA) construction safety program for all employees who will be on-site at the project. The construction safety program shall include a course in construction safety and health that is approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program as required by Section 292.675, R.S.Mo.
- b. Contractor shall require its on-site employees to complete a construction safety program within sixty (60) days after the date work on the project commences.
- c. Contractor acknowledges and agrees that any of Contractor's employees found on the project site without the documentation of the successful completion of a construction safety program shall be required to produce such documentation within twenty (20) days, or will be subject to removal from the project.
- d. Contractor shall require all of its subcontractors to comply with the requirements of this Section and Section 292.675, R.S.Mo.

Notice of Penalties for Failure to Provide Safety Training

- a. Pursuant to Section 292.675, R.S.Mo, Contractor shall forfeit to City as a penalty two thousand five hundred dollars (\$2,500.00), plus one hundred dollars (\$100.00) for each on-site employee employed by Contractor or its Subcontractor, for each calendar day, or portion thereof, such on-site employee is employed without the construction safety training required in Safety Training section of Article III above.
- b. The penalty described in above subsection A of this section shall not begin to accrue until the time periods described in Sections B and C Safety Training of Article III above have elapsed.
- c. Violations of Article III – Safety Training above and imposition of the penalty described in this Section shall be investigated and determined by the Missouri Department of Labor and Industrial Relations.

ARTICLE IV. That the Contractor shall construct and complete the work designated and described in the foregoing proposal and attached specifications in accordance with the Notice to Bidders, Instruction to Bidders, Proposal, Bond, General Conditions, Special Conditions, Technical Specifications, Drawings, Addenda, and other component parts of the Contract Documents hereto attached, all of which documents from the Contract and are as fully a part hereto as if repeated verbatim herein.

ARTICLE V. That the Owner shall pay to the Contractor for the performance of the work described as follows: Complete construction of the improvements in accordance with plans and specifications; and the Contractor will accept as full compensation therefore, the sum (subject to adjustment as provided by the Contract) of \$111,999.81 for All work covered by and included in the contract award and designated in the foregoing Article I. Payment therefore shall be made in the manner provided in the General Conditions attached hereto.

ARTICLE VI. That the Contractor shall begin assembly of materials and equipment within ten (10) days after receipt from the Owner of executed copies of the Contract and that the Contractor shall complete said work within 120 consecutive calendar days from the thirtieth day after the Effective Date of the Agreement, or if a Notice to Proceed is given, from the date indicated in the Notice to Proceed.

OWNER and Contractor recognize time is of the essence of this agreement and that OWNER will suffer financial loss if the work is not completed within the time specified above, plus any extensions thereof allowed in allowance with Article 12 of the General Conditions. OWNER and Contractor agree that as liquidated damages for delay, but not as a penalty, Contractor shall pay OWNER Five Hundred dollars (\$ 500) each consecutive calendar day of each section that expires following the time specified above for completion of the work.

Liquidated damages will be waived for any one period of time covered by a time extension granted by the OWNER.

In case of joint responsibility for any delay in the final completion of the Work covered by the Agreement; where two or more separate Agreements are in force at the same time and cover work on the same project and at the same site, the total amount of liquidated damages assessed against all contractors under such Agreement for any one day of delay in the final completion of the Work will not be greater than the approximate total of the damages sustained by the OWNER by reason of such delay in completion of the Work, and the amount assessed against any Contractor for such one day of delay will be based upon the individual responsibility of such Contractor for the aforesaid delay as determined by and in the judgment of the OWNER.

The OWNER shall have the right to deduct said liquidated damages from any moneys in its hands, otherwise due or to become due to said Contractor, or sue for and recover compensation for damages for nonperformance of the Agreement at the time stipulated herein and provided for.

ARTICLE VII. Before the final payment can be made to the Contractor on the project, the Contractor must complete and return the Affidavit Compliance with the Prevailing Wage Law form furnished at the end of the Special Conditions section.

ARTICLE VIII. Before the final payment can be made on the project to the Contractor, the Contractor must complete and return the Contractor's Affidavit Regarding Settlement of Claims form furnished at the end of the Special Conditions section.

ARTICLE IX. This Contract will not be binding and effective until confirmed by the Owner.

IN WITNESS-WHEREOF: The parties have executed this Contract as of the day and year first above written.

CITY OF ROLLA, MISSOURI

CONTRACTOR

BY _____
Mayor, Owner, Party of the First Part

BY _____

Printed Name

Printed Name/Title

STATE OF MISSOURI)
SS)
County of Phelps)

On this _____ day of _____ before me appeared _____ ,
to me personally known, who, being by me duly sworn, did say that he is the Mayor of the City
of Rolla, Missouri, a municipal corporation, and the seal affixed to said instrument is the
corporate seal of said municipal corporation and that said instrument is the corporate seal of said
municipal corporation and that said instrument was signed under authority of the City Council of
of the City of Rolla, Missouri; and the said _____ Acknowledged
said instrument to be the free act and deed of said municipal corporation.

My commission expires: _____

Notary Public

STATE OF MISSOURI)
SS)
County of Phelps)

On this _____ day of _____ before me appeared _____ ,
to me personally known, who, being by me duly sworn, did say that (s)he is the _____
of _____
and that the seal affixed to said instrument is the corporate seal of said corporation by authority
of its board of directors; and the said _____ acknowledged said
instrument to be the free act and deed of said corporation.

My commission expires: _____

Notary Public