DEVELOPER PLEDGE

between

EDGEMOOR INFRASTRUCTURE & REAL ESTATE II LLC

and the

CITY OF KANSAS CITY, MISSOURI

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DEVELOPER Pledge

THIS DEVELOPER Pledge (the **"Agreement"**) is entered into this _____ day of _____, 2018 (the **"Effective Date"**) by and between **EDGEMOOR INFRASTRUCTURE & REAL ESTATE II LLC**, a Maryland limited liability company, and its successors and assigns (the **"Developer"**) and the **CITY OF KANSAS CITY, MISSOURI,** a duly organized and existing Missouri constitutional municipal body politic and corporate, and its successors and assigns (the **"City"**) (Developer and City are each a **"party"** and are together, the **"parties"**(.

RECITALS

A. In connection with the terminal modernization program (the **"Project"**) at the Kansas City International Airport (**"KCI"** or the **"Airport"**), the City and the Developer's affiliate, Edgemoor Infrastructure & Real Estate LLC, a Maryland limited liability company)**"Edgemoor"**(, entered into that certain Memorandum of Understanding dated February 9, 2018 (the "**MOU**") which was approved by the City Council of the City pursuant to Committee Substitute for Ordinance No. 180058 on February 9, 2018.

B. The MOU sets forth the terms and conditions pursuant to which Edgemoor will construct, develop, and deliver the Project to the City, and contemplates the execution by Developer and the City of a comprehensive Airport modernization development agreement.

C. In furtherance of the MOU, the City and Developer, as successor to Edgemoor, entered into that certain KCI Airport Terminal Modernization Project Development Agreement dated as of its Effective Date (the **"Development Agreement"**) approved by the City pursuant to Ordinance No. _____. The Development Agreement sets forth, in a legally binding format, the provisions of the MOU and additional terms related to the implementation of the Project.

D. In the MOU, Developer sets forth its corporate commitment to attract the greatest number of available, qualified, ready and able subprime and subcontract construction and professional service providers to the Project in an increasingly competitive marketplace, in order to (i) achieve and maintain productivity during Project development and construction, (ii) experience better Project performance which is likely to result from such productivity, (iii) complete the Project successfully, in accordance with the Project budget and on time, and (iv) further Developer's own corporate commitment and policy to promote the financial and social

benefits associated with achieving and maintaining a diverse labor pool and supplier pipeline (individually and collectively, the foregoing commitments are hereinafter defined as the **"Developer Pledge"**(.

E. Due to the high profile nature of the Project, the significance of the Project to City, and in recognition that Developer is more likely to achieve the Developer Pledge with the support of the City, Developer desires to work collaboratively with the City to (i) provide a framework and various metrics Developer may use to support, benchmark, document, improve upon, classify, account for and reconcile Developer's progress toward achieving its Developer Pledge, (ii) identify services, personnel, and supportive activities which may be offered by the City to promote the likelihood of Developer's achieving its Developer Pledge, and (iii) identify incentives to motivate Developer's dedication and effort to pursue the Developer Pledge.

F. To facilitate Developer's success toward achieving its Developer Pledge and in light of the significant public benefits that will be realized as a result of Developer achieving its Developer Pledge upon Developer's full and complete performance of the Development Agreement, the City and Developer desire to enter into this Agreement to acknowledge the Developer Pledge and set forth the activities and resources the City may provide, to encourage Developer's achievement of its Developer Pledge.

G. For the purposes of achieving the Developer Pledge, Developer commits to take (and require those in privity of contract with Developer on the Project to take) commercially reasonable and persistent actions (**"Action Plan"**) to achieve (a) twenty percent (20%) participation by City certified minority business enterprises)**"MBE"**) and fifteen percent (15%) participation by City certified women business enterprises)**"WBE"**) participation on the Project for Construction Services (the **"Construction Pledge"**), and (b) twenty percent (20%) MBE and fifteen percent (15%) WBE participation on the Project for Professional Services (the **"Professional Pledge"**). Hereinafter, the terms MBE and WBE are **"M/WBE"** when referenced together, and **"M/WBEs"** when referenced collectively. As used herein, the terms "Construction Services" and "Professional Services" are defined in **Section 13** below. As used in this Agreement, "participation" is determined by dividing the MBE or WBE spending achieved under this Agreement for Construction Services or Professional Services by the corresponding M/WBE construction services or professional services budgets reflected in Exhibits 2-A-1 and 2-A-2 to the Development Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **INCORPORATION OF RECITALS; DEFINED TERMS.** The defined terms in the foregoing Recitals are incorporated by reference as if fully set forth below. All terms used in the exhibits which are not defined in this Agreement are given the meanings set forth in the Development Agreement, and the exhibits and appendices thereto.

2. NATURE OF PLEDGE. Developer declares and agrees, and the City acknowledges, that the Developer Pledge is voluntary, and derives solely from the Developer's business plan and intent to achieve its corporate initiatives.

3. CONTRACT REQUIREMENTS. Over, above and notwithstanding the obligations Developer may have to the City with respect to M/WBE participation, to achieve the Developer Pledge:

A. Construction Services. Developer shall, subject to the terms of this Agreement and in consideration of the City's promise to perform the "Support Services" (defined in Section 6 below), achieve an additional five percent (5%) MBE participation for Construction Services (the **"MBE Construction Supplement"**) and six percent (6%) WBE participation for Construction Services (the **"WBE Construction Supplement"**) (together, the MBE Construction Supplement and the WBE Construction Supplement are hereinafter the **"Construction Supplement"**(.

B. Professional Services. Developer shall, subject to the terms of this Agreement and in consideration of the City's promise to perform the Support Services, achieve an additional three percent)3%(MBE participation for Professional Services (the **"MBE Professional Supplement"**) and three percent)3%(WBE participation for Professional Services (the **"WBE Professional Supplement"**) (together, the MBE Professional Supplement and the WBE Professional Supplement are hereinafter the **"Professional Supplement"**) (together, the Construction Supplement and the Professional Supplement are hereinafter the **"Developer Supplement"**(.

4. ACTION PLAN. Developer will demonstrate its Action Plan to achieve the Developer Supplement and, by extension, its Developer Pledge, by applying, performing, and,

provided there are a sufficient number of willing and able M/WBEs, implementing the plan set forth on Exhibit A, a copy of which is attached and incorporated by reference, and such additional plans hereinafter developed by Developer and agreed to by City (collectively, the **"Action Plan"**(. Developer's Action Plan is based upon all relevant facts and circumstances, applying commercial reasonable industry practices, taken in totality. Commencing upon the Effective Date, Developer, using information provided by its Design-Builder (as such term is defined in the Development Agreement), contractors and subcontractors, will document its efforts to substantiate its Action Plan (the **"Documentation"**(.

5. FLOW-DOWN PROVISIONS. Developer intends to incorporate in its prime contracts (and require its prime contractors to incorporate in all of the Project subcontracts for both Construction Services and Professional Services) provisions which mirror the requirements of this Agreement (each and collectively, the **"Flow-Down Provisions"**(.

6. SUPPORT SERVICES.

A. **Provision of Services.** In consideration of the public purpose served by maximizing M/WBE contracting opportunities through implementation of the Developer Pledge, the City will exercise reasonable efforts, to the extent the City has the authority, to provide services and accomodations to Developer in an effort to support, encourage, benchmark, document, organize, catalogue, classify, account for and reconcile Developer's progress toward achieving the Developer Pledge (collectively, the **"Support Services"**). In connection with the Support Services, the City may provide such personnel and support, and perform such assessments, as the City and Developer deem most likely to assist Developer in achieving the Developer Pledge.

B. **Limits; No Liability.** Notwithstanding the City's provision of Support Services, Developer is solely responsible for achieving its Developer Pledge. In connection with providing the Support Services, the City shall have no liability to Developer if the Developer Pledge is not achieved. Developer acknowledges and agrees that (i) in providing the Support Services, the City is not a joint venture partner, agent or representative of Developer, and (ii) no act, action or omission to act by Developer shall in any way obligate, or be binding upon, the City.

7. UPDATES AND PROGRESS REPORTS

A. **Developer Update.** Developer will provide periodic updates to the City, the first to be provided by June 30, 2019 and no less often thereafter than semi-annually until the "Certificate of Final Completion" (as such term is defined in Section 7.5 of the Development

Agreement) has been issued for the Project, for the purposes of providing information about the then current status of Developer's Action Plan toward achieving the Developer Pledge (each, a **"Developer Update"**(.

B. **Status Meeting.** Developer may request that the City conduct a meeting with one or more representatives of Developer (and, if desired, Developer's prime contractors) to review the Documentation included in the Developer Update and such other information as may be provided by Developer (each, a **"Status Meeting"**(.

C. **Progress Report.** Following any Status Meeting, Developer may request the City to prepare and provide a written summary of its observations concerning Developer's progress toward implementing its Action Plan (each, a **"Progress Report"**(. The Progress Report will include such information as Developer has requested of the City which Developer determines would be useful toward understanding the status of achieving the Developer Pledge. The parties agree each Progress Report prepared by the City is for illustrative purposes only, designed solely for the City and Developer to understand the progress Developer has made in accomplishing the Developer Pledge.

D. **Final Developer Update.** Within fifteen (15) days after the later of (i) the date on which a Certificate of Final Completion has been issued, or (ii) the date on which Developer submits its Application for Final Payment (as defined in Section 10.10 of the Development Agreement) to the City, Developer will provide the City with the final Documentation of all steps taken to implement the Action Plan and achieve the Developer Pledge (the **"Final Developer Update"**(.

8. CLOSE-OUT PROCESS.

A. **Final Report.** Within thirty)30) days after the Final Developer Update, the City will prepare a written summary of its observations concerning Developer's success in achieving the Developer Supplement and, by extension, the Developer Pledge (the **"Final Report"**(. The City will base the conclusions and recommendations set forth in the Final Report on the Final Developer Update, and such other contracts, documents, information, reports, affidavits, and statements as may be prepared by or provided to the City by Developer and any other information agreed to by the City and the Developer.

B. **Tabulation of Supplement.**

i. Construction Services.

a. *Supplement Achieved*. If the Final Report indicates Developer met the Construction Supplement, Developer's contract performance will be the subject of recognition by a resolution introduced by the Mayor, a member(s) of the City Council or the City Manager, which resolution, following adoption, shall be distributed by the City to such professional groups, labor organizations and other parties as may be requested by Developer, to promote Developer's achievement of its Construction Pledge.

b. *Supplement Exceeded*. If the Final Report indicates Developer exceeded the Construction Supplement (the **"Construction Excess"**(, then Developer's success in outperforming its contractual commitment will be the subject of recognition by a resolution introduced by the Mayor, a member(s) of the City Council or the City Manager, which resolution, following adoption, shall be distributed by the City to such professional groups, labor organizations and other parties as may be requested by Developer, to promote Developer's achievement of a Construction Excess.

c. *Supplement Deficiency*. If the Final Report indicates the Construction Supplement has not been achieved by Developer, there shall exist a deficiency in the in an amount equal to the difference between the Construction Supplement and the Construction Supplement actually achieved (the **"Construction Deficiency"**(. In the event of a Construction Deficiency, Developer shall be deemed to have not satisfied its contractual obligation to achieve the Construction Pledge. In such event, the City will engage in the process set forth in Section 8.C below, in an effort to mitigate the Construction Deficiency.

ii. Professional Services.

a. *Supplement Achieved*. If the Final Report indicates Developer met the Professional Supplement, then Developer's contract performance will be the subject of recognition by a resolution introduced by the Mayor, a member(s) of the City Council or the City Manager, which resolution, following adoption, shall be distributed by the City to such professional groups, labor organizations and other parties as may be requested by Developer, to promote Developer's achievement of its Professional Pledge.

b. *Supplement Exceeded*. If the Final Report indicates Developer exceeded the Professional Supplement)the **"Professional Excess")**, then Developer's success in outperforming its contractual commitment will be the subject of recognition by a resolution introduced by the Mayor, a member(s) of the City Council or the City Manager, which

resolution, following adoption, shall be distributed by the City to such professional groups, labor organizations and other parties as may be requested by Developer, to promote Developer's achievement of a Professional Excess.

c. *Supplement Deficiency*. If the Final Report indicates the Professional Supplement has not been achieved by Developer, there shall exist a deficiency in the dollar amount equal to the difference between the Professional Supplement and the Professional Supplement actually achieved (the **"Professional Deficiency"**(. In the event of a Professional Deficiency, Developer shall be deemed to have not satisfied its contractual obligation to achieve the Professional Pledge. In such event, the City will engage in the process set forth in Section 8.C below, in an effort to mitigate the Professional Deficiency.

C. **Mitigation**. A Professional Excess will reduce a Construction Deficiency determined pursuant to Section 8.B above in a dollar amount equal to the Professional Excess, and a Construction Excess determined pursuant to Section 8.B above will reduce a Professional Deficiency in a dollar amount equal to the Construction Excess. For illustrative purposes only, if there is a Construction Deficiency that equals $400,000.00 and a Professional Excess that equals $100,000.00, the Construction Deficiency will be reduced by the $100,000.00 of Professional Excess.Based upon the foregoing, if (1) after mitigating a Construction Deficiency with any Professional Excess there remains a Construction Deficiency, and (2) after mitigating any Professional Deficiency with any Construction Excess there remains a Professional Deficiency, the Final Report shall reflect the amount of the Construction Deficiency and Professional Deficiency, as applicable, that exists following the mitigation analysis.

D. **Action Plan Assessment.**

i. *Construction Services*. If, after performing the mitigation pursuant to Section 8.C above, the Final Report states there remains a Construction Deficiency, the City agrees to engage in an analysis, and provide its written conclusions, and the factual support therefor, of the Developer's commercially reasonable efforts to apply, perform and implement its Action Plan to achieve the Construction Supplement (the **"Action Plan Assessment (Construction)"**(in the Final Report. Such Action Plan Assessment (Construction) shall be based upon the Documentation included in each Developer Update, including the Final Developer Update, Status Meetings, and such other information the City and Developer determine is supportive of Developer's implementation of its Action Plan.

ii. *Professional Services*. If, after performing the mitigation pursuant to Section 8.C above, the Final Report states there remains a Professional Deficiency, the City agrees to engage in an analysis and provide its written conclusions, and the factual support therefor, of the Developer's commercially reasonable efforts to apply, perform and implement its Action Plan to achieve the Professional Supplement (the **"Action Plan Assessment (Professional)"**) in the Final Report. Such Action Plan Assessment (Professional) shall be based upon the Documentation included in each Developer Update, including the Final Developer Update, Status Meetings, and such other information as the City and Developer determine is supportive of Developer's implementation of its Action Plan

iii. *Full Developer Performance*. Notwithstanding anything else to the contrary in this Agreement, in connection with the Action Plan Assessment (Construction) and Action Plan Assessment (Professional), if it is determined that Developer has applied commercially reasonable efforts to implement the Action Plan, starting not later than the Development Agreement Effective Date (as such term is defined therein) and ending not before Substantial Completion of the Project, Developer shall be deemed to have fully performed all obligations under this Agreement.

9. **DELIVERY OF REPORT; CONTRACT OPTIONS**.

A. **Delivery of Final Report.** Within five (5) days following the completion of the Final Report, the City shall deliver an authorized copy of the Final Report to Developer.

B. **Contract Options.** If the Final Report states that either or both of the Developer's Action Plan Assessment (Construction) or Developer's Action Plan Assessment (Professional), as applicable, and in the City's good faith judgment indicate Developer did not exercise commercially reasonable efforts to implement all or any portion of its Action Plan to accomplish the Developer Supplement, the City will calcluate the amount of an assessment (the **"Assessment"**(as provided for in **Exhibit B**, a copy of which is attached and incorporated by reference. The City will include the Assessment in the Final Report. The conclusions of the Final Report may be accepted or disputed by Developer. Written notice of Developer's dispute (a **"Dispute"**) with all or any portion of the City's Action Plan Assessment (Construction) or Action Plan Assessment (Professional), as applicable (the **"Dispute Notice"**), or written notice of

Developer's acceptance of the City's Action Plan Assessment (Construction) or Action Plan Assessment (Professional), as applicable, shall be provided to the City no fewer than five (5) days following Developer's receipt of the Final Report.

i. *Accepted Assessment; Construction Damages.* In the event Developer accepts the Action Plan Assessment (Construction) showing a Construction Deficiency after mitigation, if any, Developer directs the City to offset from the City's final payment of any of the Fixed Development Management Fee (as such term is used in the Development Agreement and exhibits thereto, or any other payment due to Developer by the City, by the amount of the Assessment.

ii. *Accepted Assessment; Professional Damages.* In the event Developer accepts the Action Plan Assessment (Professional) showing a Professional Deficiency after mitigation, if any, Developer directs the City to offset from the City's final payment of any of the Fixed Development Management Fee (as such term is used in the Development Agreement and exhibits thereto, or any other payment due to Developer by the City, by the amount of the Assessment.

iii. *Dispute*. If Developer tenders a Dispute Notice to the City, the Dispute will be adjudicated pursuant to the procedures and requirements of Section 10 below.

10. **ARBITRATION PROCESS**.

A. **Selection of Arbitrator.** Within ten (10) calendar days after the City's receipt of the Dispute Notice, both the City and Developer will provide to the other a list of two (2) persons for the other to consider to serve as an arbitrator of the Dispute (the **"Arbitrator"**). The parties agree to proffer such persons who are independent and neutral persons with demonstrable, documented expertise in the subject matter of the Dispute. Within ten (10) calendar days thereafter, both the City and Developer will advise the other, in writing, as to whether they object to any of the persons suggested by the other. If there are persons on either list to which there is no objection, the City and Developer will meet to mutually agree on one of the suggested persons for whom there was no objection after that person's availability to serve as the Arbitrator is confirmed. If the City and Developer cannot agree on a person to serve as Arbitrator, the City and Developer agree that they will request the appointment of an Arbitrator by the American Arbitration Association and mutually agree to such an appointee to serve as the Arbitrator. Once selected by the parties or named through appointment, the Arbitrator will be charged with the

responsibility of determining: 1) whether a Construction Deficiency or Professional Deficiency, or both, after any mitigation as described above, exists, and, if so, 2) whether Developer exercised commercially reasonable efforts to implement its Action Plan to achieve the Developer Pledge, and, if not, 3) the appropriate amount of damages owed the City as a result of Developer's default (collectively, items 1) through 3) above, as applicable are hereinafter the)**"Dispute Topics"**(.

B. **Responses on Dispute Topics**. Unless otherwise ordered by the Arbitrator, on or before thirty (30) calendar days following Developer's receipt of the Final Report (the **"Reply Period"**), Developer will submit to the Arbitrator and the City any and all documentation Developer determines is required to rebut the Final Report and the conclusions and recommendations of the City set forth therein, for the purpose of substantiating a ruling in favor of Developer on the Dispute Topics (the **"Developer Response"**). Prior to the expiration of the Reply Period, the City may also submit written documentation to the Arbitrator to supplement the Final Report and the conclusions and recommendations set forth therein, for the purpose of substantiating a ruling in favor of the City on the Dispute Topics (collectively, the Final Report and all such supplemental information submitted by the City to the Arbitrator, if any, is hereinafter the **"City Response"**). City shall provide a copy of the City Response to Developer contemporaneously with its submittal to the Arbitrator.

C. **Hearing**. Unless otherwise ordered by the Arbitrator, within thirty (30) calendar days following its receipt of the Developer Response and the City Response, as applicable, or at some later date as determined by the Arbitrator, the Arbitrator shall convene a meeting of the City and Developer (the **"Pledge Hearing"**), to receive testimony from the City and Developer regarding the Dispute Topics, the Developer Response and the City Response, as applicable, in order to adjudicate, in the Arbitrator's professional opinion, the Dispute Topics. The Arbitrator may also allow the testimony of third-parties at the Guaranty Hearing, if the Arbitrator determines such third-party testimony would be productive and informative to resolving the Dispute or providing information relevant to the Dispute Topics.

D. **Decision**. No later than ten (10) calendar days following the Pledge Hearing, or at some later date as determined by the Arbitrator, the Arbitrator shall issue its final decision on the Dispute Topics, and articulate such final decision in a detailed, written summary (the **"Arbitrator Opinion"**). The Arbitrator Opinion shall (a) detail, with specificity, the bases for Arbitrator's final decision on the Dispute Topics, (b) indicate its award of Construction

Damages or Professional Damages, or both, which the Arbitrator determines is due and owing the City as a result of Developer's failure to achieve the Developer Supplement in furtherance of its Developer Pledge, and exercise commercially reasonable efforts to implement the Action Plan, and (c) set forth such other directives and determinations as the Arbitrator deems appropriate. If the Arbitrator Opinion awards Construction Damages or Professional Damages, or both, the Arbitrator Opinion shall apply the formula ascribed thereto in Exhibit B above, as the bases therefor.

E. **Appealable Decision**. The Arbitrator's Report and the conclusions and recommendations contained therein are nonbinding upon the parties and, in the event either party disagrees with the conclusions and recommendations concerning the Dispute Topics and the damages allocated to Developer in the Arbitrator Opinion, the aggrieved party may seek any legal and equitable remedies available to it in the courts of the Missouri. The parties hereby agree that the venue for any such judicial action shall be the Sixteenth Judicial Circuit Court of Jackson County, Missouri.

F. **Costs of Arbitration.** The parties each agree to pay one-half of the total cost of the fees and reasonable expenses of the Arbitrator and any other third-party costs associated with adjudicating the Dispute Topics, including, but not limited to, the costs of the Pledge Hearing. The parties further agree that each will bear their own costs and expense of resolving the Disputes submitted to arbitration pursuant to this Section 10.

11. RELEASE FROM PLEDGE.

In the event of a termination of the Development Agreement or Developer's removal or withdrawal from the Project, this Agreement and the guarantees of Developer to the City set forth herein will concurrently terminate and be of no further force and effect.

12. MISCELLANEOUS.

A. **Applicable Law**. The laws of the State of Missouri shall govern the validity, construction and effect of this Agreement. All disputes arising under or relating to this Agreement shall be filed, maintained and resolved in accordance with the laws of the State of Missouri without regard to its conflict of law rules.

B. **Assignment**. Neither party to this Agreement shall be permitted to assign or transfer its rights under this Agreement without the prior written consent of the other party, except that Developer may assign or transfer its interest and obligations under this Agreement to

an affiliate or subsidiary entity of Developer or as otherwise permitted by the Development Agreement.

C. **Binding Effect**. This Agreement shall be binding upon the parties hereto and upon their assigns, transferees and successors in interest.

D. **Amendments**. This Agreement may not be varied, amended, modified or supplemented and any obligation, right power or remedy shall not be waived except in an agreement in writing signed by the duly authorized representatives of the parties hereto.

E. **Notice**. A notice or communication under this Agreement by either party to the other shall be sufficiently given or delivered if dispatched by hand, national courier services, or by registered or certified mail, postage prepaid, addressed as follows:

If to City:

City Attorney's Office
City Hall, 23rd Floor
414 E 12th St.
Kansas City, MO 64106
Attn: Cecilia Abbott
Telephone: (816) 513-3127

With a copy to:

Director of Aviation Department
601 Brasilia Avenue
Kansas City, MO 64153
Attn: Pat Klein
Telephone: (816) 243-3107

If to Developer:

Geoffrey Stricker
Managing Director
Edgemoor Infrastructure & Real Estate
7500 Old Georgetown Road
Bethesda, MD 20814

Frank J. Baltz, Esq.
Senior Vice President & Chief Legal Officer
Clark Construction Group, LLC
7500 Old Georgetown Road
Bethesda, MD 20814

With a copy to:

Jeffrey Gans
Pillsbury Winthrop Shaw Pittman, LLP
1200 17th Street, NW
Washington, D.C. 20036

F. **Compliance with Laws**. Developer shall comply with all federal, state and local laws, ordinances and regulations applicable to this Agreement and performance of its obligations under this Agreement. Developer shall secure all occupational and professional licenses and permits from public or private sources necessary for performance under this Agreement.

G. **Headings; Construction of Agreement**. The headings of each section of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

H. **Severability of Provisions**. Except as specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

I. **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

J. **Limitation on Third-Party Beneficiaries.** No provision of this Agreement is intended to or does create any third-party beneficiary hereunder or authorize anyone not a party to this Agreement to maintain an action pursuant to the terms or provisions hereof.

13. ADDITIONAL DEFINITIONS. In addition to the definitions set forth above, the following terms are hereby defined as follows:

A. **"Construction Services"** means any compensated work or service performed by a person or entity that provides any service, labor, equipment, materials, or the like, directly or indirectly, to Design-Builder or any subcontractor (of all tiers) to Design-Builder, including but not limited to any laborer, material supplier, tradesmen, journeyman, craftsman, equipment supplier, surveyor, or landscaper.

B. **"Professional Services"** means any work or service performed by a person or entity that provides any service or labor, directly or indirectly, to Developer, Design-Builder, or any subcontractor (of all tiers) to Design-Builder, which requires and which involves the application of any specialized knowledge, expertise, training, education, experience or license, including but not limited to a financial advisor, accountant, architect, engineer, lawyer, electrician, consultant, designer, community outreach specialist, surveyor, public relations specialist, and the like.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

EDGEMOOR INFRASTRUCTURE & REAL ESTATE II LLC

By: _____
Name: C. Neal Fleming, Jr.
Title: Manager

By: _____
Name: Geoffrey Stricker
Title: Manager

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

CITY:

CITY OF KANSAS CITY, MISSOURI

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

APPROVED AS TO FORM:

By: _____
Name: Galen P. Beaufort
Title: Senior Associate City Attorney

Attach:

Exhibit A – Action Plan
Exhibit B – Assessment

EXHIBIT A

Developer's Action Plan

1. Create contracting opportunities for MBE/WBEs on the Project pursuant to a written and legally enforceable joint venture agreement which clearly delineates the rights and responsibilities of each member or partner. For joint venture contracts for which the M/WBE is allocated at least 20% of the profits/losses of the joint venture, Developer shall be credited toward the Developer Supplement an amount equal to the total contract dollar amount of the joint venture's contract amount, provided the M/WBE is performing a commercially useful function. For joint venture contracts for which the M/WBE is allocated less than 20% of the profits/losses of the joint venture, Developer shall be credited toward the Developer Supplement an amount equal to the M/WBE's share of the joint venture's contract amount.

2. Utilize the City's Mentor/Protege Program by providing M/WBE firms with sound business advice, technical assistance, financial assistance (e.g., introduction to capital and bonding relationships) and/or training, to increase such M/WBE's capacity in the marketplace, and otherwise meet any reporting requirements of Section 3-349(b) of the Code. For Mentor/Protege' agrements under which the M/WBE is paid at least 20% of the Mentor's contract, Developer shall be credited toward the Developer Supplement an amount equal to the total contract dollar amount of the Mentor's contract amount, provided the M/WBE is performing a commercially reasonable function. For Mentor/Protege agreements for which the M/WBE Protoge is paid less than 20% of the Mentor's contract, Developer shall be credited toward the Developer Supplement an amount equal to the amount paid to the Protege. The form of Mentor/protégé agreement is available on the City's website, which form shall be amended upon the reasonable agreement of the City and Developer.

3. Conduct market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified M/WBEs that have the capability to perform the work of the contract let in connection with the Project. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, including advertising opportunities in the City's plan room, at multiple locations at the Project site, and on Developer's website, posting of notices of sources sought and/or requests for proposals, written notices or emails to all M/WBEs listed in the City's directory of M/WBE firms that specialize in the areas of work desired and which are located in the area or surrounding areas of the Project.

4. Proactively solicit contract participation as early as practicable in the planning and contracting phase of the Project process, to provide the M/WBEs a commercially reasonable period of time to respond to the solicitation and submit an offer for the subcontract sufficiently in advance of the subcontractor selection.

5. Initiate follow-up communications with M/WBEs on all contract solicitations, and documenting such follow-up communications, in writing.

6. Segregate portions of the work for the Project into economically feasible units (for example, smaller tasks or quantities), even when the Design-Builder might otherwise be able to

self-perform such units of work with its own forces or let larger, single scope subcontracts to non M/WBE firms.

7. When possible, establish flexible and longer timeframes for performance and delivery of goods and services, to encourage and facilitate participation of M/WBE firms with limited capacity.

8. Proactively provide readily accessible and adequately detailed information about the plans, specifications, and requirements of the proposed subcontract in a timely manner, at no cost to the MBE/WBEs.

9. Tenaciously engage in commercially reasonable negotiations with interested MBE/WBEs.

10. Make meaningful work available to M/WBEs, and selecting those portions of the work or material needs consistent with the available M/WBE subcontractors and suppliers, so as to facilitate M/WBE participation.

11. Select an M/WBE after applying commercially reasonable standards by conducting a thorough investigation of capabilities, and after considering a number of other factors, (a) regardless of such M/WBE's standing within its industry, membership in specific groups, organizations, associations, or political or social affiliations (for example union vs. non-union status), and (b) notwithstanding the fact that such M/WBE's quoted price for the subcontract is not the lowest quote received, provided that the price quote is within acceptable industry norms.

12. Exercise Action Plan to identify and engage an M/WBE to replace a departing M/WBE, notwithstanding (a) the fact that the contract price of the replacement M/WBE is higher than the contract price of the departing M/WBE, provided that the price quote of the replacement M/WBE is within acceptable industry norms, (b) the Design-Builder's desire and/or ability to perform the contract work of the departing M/WBE with its own forces; or (c) the Design-Builder's ability to perform the contract work with another non-M/WBE contractor, at a contract price less than the departing M/WBE.

13. Assist interested M/WBEs in obtaining bonding, or insurance required by Developer or the Design-Builder.

14. Provide a low-interest loan program for M/WBE firms that qualify for a loan with financial partner.

15. Assist interested M/WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, on economically favorable terms.

16. Effectively use the services of available minority/women community organizations; minority/women contractor groups; local minority/women business assistance offices; and other organizations as allowed, on a case-by-case basis, to aid to recruit and place M/WBEs.

17. Attend the Progress Meetings, completing and submitting the Documentation and Progress Reports, utilizing the Support Services, and implement the recommendations set forth in the Progress Reports.

18. Engage M/WBE suppliers and materialmen, sixty percent (60%) of the payments to which shall count toward the Construction Supplement.

19. Promote and provide notice of opportunities to participate in the Project though any means reasonably calculated to reach the M/WBEs, including, when appropriate, the identification of specific skills needed and, in response to inquiries from M/WBEs, provide details regarding the scope and requirements of the work for which their participation was solicited.

EXHIBIT B

Formula. The percentages referenced herein shall be calculated by dividing the sum total of all MBE or WBE spending achieved under this Agreement for Construction Services or Professional Services (as the case may be) by the M/WBE construction services or professional services budgets reflected in Exhibits 2-A-1 and 2-A-2 to the Development Agreement. If the quotient is not a whole number, it shall be rounded to the nearest quarter from the hundreths place.

For example, if Developer's MBE spending for Construction Services is $20,000,000, and construction services budget reflected in Exhibit 2-A-1 of the Development Agreement is $100,000,000, Developer's MBE spending on Construction Services would be 20%. If Developer's MBE spending for Construction Services is $19,120,000, and construction services budget reflected in Exhibit 2-A-1 of the Development Agreement is $100,000,000, Developer's MBE spending on Construction Services would be 19.12% that would be rounded to 19%, leaving a 1% short fall.

An Assessment for a Construction Deficiency (the **"Construction Assessment"**), subject to the Construction Cap and when coupled with a Professional Deficiency, will be calculated by multiplying the Construction Cap by the sum of the Construction Supplement divided by the Construction Deficiency. Stated as a formula, the Construction Assessement would be as follows:

Construction Deficiency x *Construction Cap* = *Construction Assessment*
Construction Supplement

An Assessment for a Professional Deficiency (the **"Professional Assessment"**), subject to the Professional Cap and when coupled with a Construction Deficiency, will be calculated by multiplying the Professional Cap by the sum of the Professional Supplement divided by the Professional Deficiency. Stated as a formula, the Professional Assessement would be as follows:

Professional Deficiency x *Professional Cap* = *Professional Assessment*
Professional Supplement

Assessment Cap. If Developer fails to achieve its Developer Pledge for both Construction Services and the Professional Services, the maximum aggregate Assessment shall not exceed $7,333,333, which sum represents one-third (1/3rd) of the Fixed Development Management Fee, (the "Assessment Cap"). If Developer fails to achieve its Developer Pledge for Construction Services, the Assessment Cap for Construction Services is $5,500,000. If Developer fails to achieve its Developer Pledge for Professional Services, the Assessment Cap for the Professional Services is $1,833,333. Each Assessment shall be reduced to the amounts shown below, based on the amount by which Developer falls short of its goals:

Percentage Shortfall	Construction Assessment	Professional Assessment
0%	$0	$0
.25	$125,000	$76,389

.50	$250,00	$152,778
.75	$375,000	$229,167
1%	$500,000	$305,556
.25	$625,000	$381,945
.50	$750,000	$458,334
.75	$875,000	$534,723
2%	$1,000,000	$611,112
.25	$1,125,000	$687,501
.50	$1,250,000	$763,890
.75	$1,375,000	$840,279
3%	$1,500,000	$916,668
.25	$1,625,000	$993,057
.50	$1,750,000	$1,069,446
.75	$1,875,000	$1,145,835
4%	$2,000,000	$1,222,224
.25	$2,125,000	$1,298,613
.50	$2,250,000	$1,375,002
.75	$2,375,000	$1,451,391
5%	$2,500,000	$1,527,780
.25	$2,625,000	$1,604,169
.50	$2,750,000	$1,680,558
.75	$2,875,000	$1,756,947
6%	$3,000,000	$1,833,336
.25	$3,125,000	
.50	$3,250,000	
.75	$3,375,000	
7%	$3,500,000	
.25	$3,625,000	
.50	$3,750,000	
.75	$3,875,000	
8%	$4,000,000	
.25	$4,125,000	
.50	$4,250,000	
.75	$4,375,000	
9%	$4,500,000	
.25	$4,625,000	
.50	$4,750,000	
.75	$4,875,000	
10%	$5,000,000	
.25	$5,125,000	
.50	$5,250,000	
.75	$5,375,000	
11%	$5,500,000	