



MEMORANDUM

Date: April 14, 2021

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry *CHH*
County Administrator

Re: **April 20, 2021 Board of Supervisors Agenda – Consent Calendar Item #7 on Knott Development, Inc., Predevelopment Services Agreement for Kino South Sports & Entertainment Complex**

Background

In October 2020 and March 2021, I provided the Board of Supervisors information on the procurement process initiated in February 2020 for selection of a master developer partner for the remainder of Kino South Sports & Entertainment Complex. In 2016, the County completed the Kino South Master Concept Plan that established the vision for a premier multi-use complex bringing together sports and entertainment facilities, hotels, restaurants and retail in one location to support youth, adult, amateur and professional athletics in the community and promote growth in sports-related tourism.

A Solicitation for Qualifications (SFQ) was published on February 7, 2020. Evaluation and virtual interviews were conducted to score the two responsive submitted SFQ proposals. A Request for Proposals (RFP) was then issued to both firms on September 2, 2020. Through this two-step process, Knott Development, Inc. was selected as the highest qualified firm, and the County issued a Notice of Intent to Negotiate a Best and Final Offer for a Master Developer Partnership Agreement on October 23, 2020. A Notice of Recommendation for Award (NORFA) to contract with Knott Development was issued on February 8, 2021.

Since October 2020, County staff has been working with Knott Development to refine the project business plan and master development agreement. As previously communicated, the current overall project proposal includes the following elements:

- Indoor court facility;
- Outdoor stadium;
- Commercial services including hotel, entertainment, restaurant and retail;
- Parking garage;
- Iceplex facility with multiple sheets of ice;
- Multi-purpose entertainment venues;
- Various outdoor plazas and public spaces;
- Loop enhancements to integrate existing infrastructure within the development;
- Medical office building;
- Multi-family housing; and
- All site work including utilities, access, Julian Wash-traversing bridges and a future Interstate 10 underpass connecting to the existing Kino Sports Complex.

APR 14 2021 PM 2:14 PM

CHH

The Honorable Chair and Members, Pima County Board of Supervisors

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Predevelopment Services Agreement

On the Board of Supervisors April 20, 2021 Agenda is a Predevelopment Services Agreement (Attachment) for further design and cost estimating for two of the initial anchor facilities, the Iceplex and Field House. These facilities will drive a substantial portion of the project's economic value and return on investment to the region. Information available indicates rapidly growing demand for venues for ice sports and indoor court sports. For example, the local youth recreational hockey association has grown more than 325 percent over the past five years, reaching more than 250 member families last year alone and vastly surpassing current facility capacity. Representative of this growth, USA Hockey ranked Tucson youth hockey in 2019, nationally, as #1 in growth for registered women and girls, #1 in growth for 8-and-under skaters and #2 in overall growth. Likewise, the local adult recreational hockey organization has expanded its membership by nearly 100 percent over the same period and has the ability to utilize over twice the current local facility capacity. In addition, both organizations cite the strain on additional programming growth due to current facility scheduling limitations that drives all local hockey athletes to the Phoenix market. As for basketball and volleyball participation, a 2020 report from the Aspen Institute indicates over 4 million youth in the US ages 6-12 participated in basketball and 842,000 in volleyball on a regular basis. The report also indicates participation in basketball of an addition 3.4 million youth ages 13-17 and 1.1 million in court volleyball.

Under the Predevelopment Services Agreement (PDSA), the Iceplex and Field House components will be refined by completing certain architectural, engineering, geotechnical and financial analyses and plan preparations. The PDSA work also facilitates the ability for the Iceplex and Field House, and their supporting amenities, to be constructed and operational by August 2023, provided the Board approves a subsequent Master Development Partnership Agreement in July 2021. Work to be conducted on the Iceplex and Field House as part of the PDSA includes the following:

- Architectural Services – Perform schematic design and design development phases of overall architectural design;
- Civil Engineering Services – Perform civil engineering and design in support of Architectural Services and related to development and construction;
- Geotechnical Services – Perform a geotechnical study and design report in support of Architectural and Civil Engineering Services required for development and construction;
- Preconstruction Services – Perform design-build preconstruction services in support of the Architectural, Civil Engineering and Geotechnical Services required for development and construction; and
- Financial Planning Services – Prepare and evaluate development budgets and cost analyses associated with development and construction.

The Honorable Chair and Members, Pima County Board of Supervisors

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The aggregate sum of the PDSA contract is \$1,825,000 for these services and will be disbursed in four phases between April 2021 and July 2021.

Predevelopment Payment Reimbursement & Master Developer Partnership Agreement

Per the terms of the PDSA, payments under the agreement will be reimbursed to the County upon a future award of a Master Developer Partnership Agreement (MDPA) to Knott Development. Should an MDPA not be awarded by the Board of Supervisors, Knott Development would not have an obligation to reimburse the County for PDSA payments, provided that it delivers to the County all copies of plans and reports generated by Knott Development's work under the PDSA.

By utilizing this no-risk approach, Pima County can obtain additional design and cost estimate information on the Iceplex and Field House prior to consideration of the MDPA in July, which will outline the respective responsibilities of Pima County and Knott Development regarding the planning, design, financing, construction, operation and maintenance of the new complex. A detailed business plan covering all aspects of the project will be included with the MDPA. It is expected that the MDPA and Knott Development's business plan will be placed on the agenda for the Board of Supervisors meeting on July 6, 2021.

Recommendation

Given the levels of regional and national participation in youth ice and court sports, along with the potential positive economic benefits of expanding sports facilities at the Kino Sports Complex, it is recommended that the Board of Supervisors approve award of the Predevelopment Services Agreement in the amount of \$1,825,000 to perform additional design and cost estimating work for the Iceplex and Field House. The work products generated by awarding this PDSA will provide additional information that will be beneficial in the future consideration of the proposed MDPA and Knott Development business plan for the project.

Attachment

c: Jan Leshner, Chief Deputy County Administrator
Carmine DeBonis Jr., Deputy County Administrator for Public Works
Michelle Campagne, Director, Finance Department
Reenie Ochoa, Director, Stadium District and Kino Sports Complex
Terri Spencer, Director, Procurement Department
Nancy Cole, Manager, Project Management Office
Scott Loomis, Design & Construction Division Manager, Procurement Department



BOARD OF SUPERVISORS AGENDA ITEM REPORT **CONTRACTS / AWARDS / GRANTS**

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 04/20/21

** = Mandatory, information must be provided*

or Procurement Director Award ☐

***Contractor/Vendor Name/Grantor (DBA):**

Knott Development Inc (Headquarters: Bethesda, Maryland)

***Project Title/Description:**

Predevelopment Services Agreement, Kino South Sports and Entertainment Complex

***Purpose:**

Award: Contract No. CT-PW-21-364. This award of contract is recommended to the highest qualified respondent in the amount of \$1,825,000.00 for a contract term from 04/20/21 to 09/16/21 to provide predevelopment services for the Kino South Sports and Entertainment Complex.

***Procurement Method:**

SFQ-PO-2000017 was conducted in accordance with A.R.S. §§ 11-254.04, 11-932, and 48-4203. Two (2) responsive statements of qualifications (SOQs) were received and evaluated by a seven (7) member committee using qualifications and experience-based selection criteria. Based upon the evaluation of the respondents' written representations of their qualifications and necessary due diligence, both respondents were invited to interviews. As a result of the combined scoring of the written SOQs and interviews, both respondents were invited to Step 2 Request for Proposal, RFP-PO-2100005. Award is to the responsive and responsible respondent submitting the highest scoring proposal.

Attachments: Notice of Recommendation for Award, County Administrator Memos to Board of Supervisors regarding Kino South Sports and Entertainment Complex dated October 27, 2020 and March 25, 2021, Risk Management approval of modified insurance language, and Predevelopment Services Agreement.

***Program Goals/Predicted Outcomes:**

The goal for this Agreement is to develop and operate a new sports and entertainment center and support elements such as hotels, restaurants, retail shops, outdoor public plazas.

***Public Benefit:**

The benefits will include the integration of healthy community principles that support active recreation, pedestrian and bicycle enhancements, opportunities for low income youth sport recreation and skills training, creation of the premier sports and entertainment complex, ability to attract regional and national sporting events, sustainability goals, as well as spurring redevelopment, stimulate economic development and expand employment opportunities.

***Metrics Available to Measure Performance:**

The performance will be measured using the procurement evaluation forms pursuant to BOS Policy D.29.1.

***Retroactive:**

No.

Contract / Award Information

Document Type: CT Department Code: PW Contract Number (i.e., 15-123): 21-364
Commencement Date: 04/20/21 Termination Date: 09/16/21 Prior Contract Number (Synergen/CMS): _____
☒ Expense Amount: \$* 1,825,000.00 ☒ Revenue Amount: \$ 1,825,000.00

*Funding Source(s) required: General Fund

Funding from General Fund? ☒ Yes ☐ No If Yes \$ 1,825,000.00 % 100.00

Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No

If Yes, is the Contract to a vendor or subrecipient? _____

Were insurance or indemnity clauses modified? ☒ Yes ☐ No

If Yes, attach Risk's approval.

Vendor is using a Social Security Number? ☐ Yes ☒ No

If Yes, attach the required form per Administrative Procedure 22-10.

Amendment / Revised Award Information

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____
Amendment No.: _____ AMS Version No.: _____
Commencement Date: _____ New Termination Date: _____
Prior Contract No. (Synergen/CMS): _____
☐ Expense or ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$ _____
Is there revenue included? ☐ Yes ☐ No If Yes \$ _____

*Funding Source(s) required: _____

Funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

Grant/Amendment Information (for grants acceptance and awards) ☐ Award ☐ Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____
Commencement Date: _____ Termination Date: _____ Amendment Number: _____
☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____

*All Funding Source(s) required: _____

*Match funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____

*Match funding from other sources? ☐ Yes ☐ No If Yes \$ _____ % _____

*Funding Source: _____

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)? _____

Contact: Matt Sage, CPPB Matthew Sage Digitally signed by Matthew Sage Date: 2021.04.07 12:21:07 -07'00'
Department: Procurement Terri Spencer Digitally signed by Terri Spencer Date: 2021.04.07 12:09:46 -07'00'
Department Director Signature/Date: _____ Telephone: 724-8586
Deputy County Administrator Signature/Date: Nancy Cole, 4/4/21
County Administrator Signature/Date: C. Duluth 4/7/2021
(Required for Board Agenda/Addendum Items)



PREDEVELOPMENT SERVICES AGREEMENT

BY AND BETWEEN

KNOTT DEVELOPMENT INC

AND

PIMA COUNTY, ARIZONA

REGARDING

KINO SOUTH SPORTS AND ENTERTAINMENT COMPLEX
PIMA COUNTY, ARIZONA

CT-PW-21-364

April 20, 2021

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PREDEVELOPMENT SERVICES AGREEMENT

THIS PREDEVELOPMENT SERVICES AGREEMENT (this “Agreement”) is made as of April 20, 2021 (the “Effective Date”) by and between PIMA COUNTY, ARIZONA, a political subdivision of the State of Arizona (the “Owner”) and KNOTT DEVELOPMENT INC, a Maryland corporation (the “Development Services Company”). All terms used in this Agreement having an initial capital letter shall have the meanings ascribed to such terms in Article VIII.

RECITALS

- A.** The Owner is the owner of certain unimproved real property consisting of ninety (90) acres, more or less, known as the Kino South Sports and Entertainment Complex (the “Premises”).
- B.** The Owner has selected the Development Services Company as the master development partner to develop the Premises subject to a Master Developer Partnership and Development Agreement (the “MDPA”) to be submitted to the Pima County Board of Supervisors (the “Board of Supervisors”) for award on July 6, 2021.
- C.** In order for the Development Services Company to meet the facility delivery schedule associated with its site development plan for the Premises, the Development Services Company and the Owner have agreed that it is necessary for the Development Services Company to commence certain predevelopment activities as set forth in Article I of this Agreement (the “Predevelopment Work”) prior to the submission of the MDPA to the Board of Supervisors.
- D.** Subject to the payment and reimbursement provisions set forth in Article II of this Agreement, the Owner has agreed that it will pay for the costs of the Predevelopment Work.
- E.** The Development Services Company and the Owner have agreed to enter into this Agreement evidence their agreement with respect to the provision and management of the Predevelopment Work.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Owner and the Development Services Company hereby agree as follows:

ARTICLE I. PREDEVELOPMENT WORK

The Development Services Company shall perform and manage the Predevelopment Work, consisting of the predevelopment services activities and services set forth below:

Section 1.01 Architectural Services.

The Development Services Company shall engage its athletic facilities architect, JLG Architects (the “Architect”), to perform, in coordination with the Development Services Company, architectural services related to the schematic design and design development phases of overall architectural design for the ice sports and multi-sport facilities (the “Subject Facilities”) that are a part of the Development Services Company’s development plan for the Premises (the “Architectural Services”).

Section 1.02 Civil Engineering Services.

The Development Services Company shall engage its civil engineering firm, Dibble Corp. (the "Civil Engineer"), to perform, in coordination with the Development Services Company, civil engineering and design services in support of the Architectural Services and related to the site-focused civil engineering required for the development and construction of the Subject Facilities (the "Civil Engineering Services").

Section 1.03 Geotechnical Services.

The Development Services Company shall engage its geotechnical and environmental sciences consultant, Ninyo & Moore (the "Geotechnical Consultant"), to perform, in coordination with the Development Services Company, a geotechnical exploration study and prepare a geotechnical design report in support of the Architectural Services and the Civil Engineering Services required for the development and construction of the Subject Facilities (the "Geotechnical Services").

Section 1.04 Preconstruction Services.

The Development Services Company shall engage its design build construction firm, Hensel Phelps Construction Co. (the "Design Builder" and together with the Architect, the Civil Engineer and the Geotechnical Consultant, the "Predevelopment Service Firms"), to perform, in coordination with the Development Services Company, preconstruction services related to the Architectural Services, the Civil Engineering Services, the Geotechnical Services as well as coordinating site development services with the Development Services Company related to the development and construction of the Subject Facilities (the "Preconstruction Services").

Section 1.05 Financial Planning Services.

The Development Services Company, in coordination with the Design Builder and based on the Predevelopment Work being performed by the Architect, the Civil Engineer and the Geotechnical Consultant, and utilizing the results of the Architectural Services, the Civil Engineering Services, the Geotechnical Services and the Preconstruction Services, shall prepare and evaluate development budgets and perform development cost analyses incorporating basic cost assumptions and other relevant considerations associated with the development and construction of the Subject Facilities required to achieve the completion and delivery schedule for the Premises development plan.

Section 1.06 Right of Entry.

The Owner hereby agrees with and consents to the Development Services Company and its Predevelopment Service Firms, under the direction and supervision of the Development Services Company, entering the Premises to perform any portion of the Predevelopment Work. The Development Services Company shall provide the Owner with a schedule of site visits to be made by Predevelopment Service Firms. Predevelopment Work site visits shall be on weekdays during the hours of 7:30AM and 5:30PM and if any site visit by Predevelopment Firms is reasonably expected to consist of activities involving (i) equipment other than commercial service vehicles used by Predevelopment Service Firms, (ii) noise that would exceed normal noise levels at or immediately adjacent to the Premises if the Predevelopment Work was not being conducted, or (iii) disrupting pedestrian or vehicular traffic to, from or surrounding the Premises, the Development Services Company shall coordinate with the Owner to manage any such activities to avoid material disruption to the Owner and its normal operational activities in the immediate vicinity of the Premises. Site visits to the Premises outside of the day and time parameters set forth in this Section 1.06 shall be disclosed to the Owner by the Development Services Company prior to such a site visit and shall be subject to the review and approval by the Owner.

Section 1.07 Easements.

The Owner hereby grants the Development Services Company and its Predevelopment Service Firms (as well as their employees, subcontractors and agents) easements pursuant to which the Development Services Company and its Predevelopment Service Firms, under the direction of the Development Services Company, shall have the non-exclusive right of vehicular and pedestrian ingress and egress over the roads and walkways leading to and from the

Premises. During the provision of Predevelopment Work, the Owner shall maintain and repair (or cause to be maintained and repaired) the roads and walkways so that at all times the roads and walkways shall be in a safe and operable condition adequate for the purpose of vehicular and pedestrian ingress and egress to and from the Premises.

Section 1.08 Predevelopment Service Firm Insurance.

Upon the commencement of Predevelopment Work and continuing until the earlier of (a) the termination or expiration of this Agreement or (b) the Development Services Company's provision of Notice to the Owner that all Predevelopment Work site visits to the Premises have been completed and that no further Predevelopment Service Firms will be entering the Premises, the Development Services Company shall cause each Predevelopment Service Firm that will enter the Premises to carry and maintain (i) commercial general liability insurance (including, without limitation, contractor's liability coverage) written on an occurrences basis with a limits of liability of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, an additional policy of excess liability insurance of at least Three Million Dollars (\$3,000,000) to be excess over such commercial general liability insurance, naming the Owner and the Development Services Company as additional named insureds on a primary and non-contributory basis, (ii) workers' compensation insurance and employee liability insurance as required by the jurisdiction in which the Premises is located, as well as (iii) professional liability, errors and omissions insurance covering professional misconduct or negligent acts with policy limits of not less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) in annual aggregate claims and if written on a claims-made basis, the Development Services Company warrants that any retroactive date under such policies will precede the effective date of this Agreement and, either continuous coverage will be maintained by such Predevelopment Service Firms or an extended discovery period will be exercised, for a period of three (3) years beginning at the time the Predevelopment Work under this Agreement is completed. Development Services Company shall cause any such Predevelopment Services firm to provide proof of all such insurance to the Development Services Company and the Owner prior to making its initial site visit to the Premises.

ARTICLE II. PAYMENT FOR PREDEVELOPMENT WORK

Section 2.01 Payment by the Owner.

In consideration for the provision and management of the Predevelopment Work, the Owner agrees to pay the Development Services Company the aggregate sum of One Million Eight Hundred Twenty-Five Thousand Dollars (\$1,825,000) (the "Predevelopment Work Payment") in accordance with the following schedule:

- (a) Five Hundred Thousand Dollars (\$500,000) upon execution of this Agreement;
- (b) Five Hundred Thousand Dollars (\$500,000) on May 15, 2021;
- (c) Five Hundred Thousand Dollars (\$500,000) on June 15, 2021; and
- (d) Three Hundred Twenty-Five Thousand Dollars (\$325,000) on July 1, 2021.

Section 2.02 Reimbursement of Predevelopment Work Payment.

The Predevelopment Work Payment shall be reimbursed in full by the Development Services Company within thirty (30) Business Days of the occurrence of all of the following:

- (a) The MDPA is presented to the Board of Supervisors for award at its July 6, 2021 meeting (the "July Meeting");

- (b) The MDPA is awarded by the Board of Supervisors at its July Meeting; and
- (c) The MDPA is executed by all applicable and authorized representatives of the Owner within five (5) calendar days of the July Meeting.

Section 2.03 Reimbursement Following the Initial Reimbursement Date.

If all of the conditions set forth in Section 2.02 of this Agreement are not satisfied then the Predevelopment Work Payment shall be reimbursed in full by the Development Services Company no later than thirty (30) Business Days following the occurrence of all of the following:

- (a) The Owner and the Development Services Company agree to the amendments to the MDPA required to satisfy the modifications requested by the Board of Supervisors by no later than August 1, 2021 (the "Revised MDPA");
- (b) The Revised MDPA is submitted to the Board of Supervisors at its August 16, 2021 meeting (the "August Meeting");
- (c) The Revised MDPA is awarded by the Board of Supervisors at the August Meeting; and
- (d) The Revised MDPA is executed by all applicable and authorized representatives of the Owner within five (5) calendar days of the August Meeting.

Section 2.04 Approval Delay Beyond the August Meeting.

To the extent that all of the conditions set forth in Section 2.03 of this Agreement are not satisfied, then the Predevelopment Work Payment shall be reimbursed in full by the Development Services Company no later than thirty (30) Business Days following the occurrence of all of the following:

- (a) The Owner and the Development Services Company agree to the amendments to the Revised MDPA required to satisfy the modifications requested by the Board of Supervisors (the "Further Revised MDPA");
- (b) The Further Revised MDPA is submitted to the Board of Supervisors at its meeting immediately following the date upon which the Owner and the Development Services Company complete the Further Revised MDPA (the "Subsequent Meeting");
- (c) The Further Revised MDPA is awarded by the Board of Supervisors at the Subsequent Meeting; and
- (d) The Further Revised MDPA is executed by all applicable and authorized representatives of the Owner within five (5) calendar days of the Subsequent Meeting.

Section 2.05 Failure to Approve the MDPA.

To the extent that the Predevelopment Payment has been made in its entirety, if the Board of Supervisors, at a regularly scheduled meeting, makes the express determination that the MDPA, the Revised MDPA or the Further Revised MDPA (as applicable) (a) will not be subject to modifications requested by the Board of Supervisors, (b) will not be awarded by the Board of Supervisors in any form, and (c) will not be considered for subsequent award, and that the Board of Supervisors will not approve the development of the Premises in accordance with the development plan as described in the MDPA, the Revised MDPA or the Further Revised MDPA (as applicable) (a "Development Termination Action"), then the Development Services Company shall have no obligation to reimburse the Owner for the Predevelopment Work Payment, provided, however, that in such case the Development

Services Company shall deliver to the Owner, within thirty (30) Business Days of such Development Termination Action, copies of all plans and reports generated by the Predevelopment Services Company and the Predevelopment Services Firms as a part of the Predevelopment Work.

ARTICLE III. PROJECT PERSONNEL

Section 3.01 Authorized Representative of Owner.

The Owner hereby designates the Project Management Office (PMO) Manager to be its designated representative for purposes of contact between the Owner and the Development Services Company in connection with the Predevelopment Work ("Owner's Authorized Representative"). The Owner shall have the right, by timely written notice given to the Development Services Company, to remove the existing Owner's Authorized Representative and to appoint another individual to act as Owner's Authorized Representative. However, no more than one (1) individual shall act as Owner's Authorized Representative at any time. The Owner agrees that the Owner's Authorized Representative shall have the authority to bind the Owner with respect to all matters for which the consent or approval of the Owner is required or permitted pursuant to this Agreement and that all consents, approvals and waivers given in writing by Owner's Authorized Representative shall bind owner and may be relied upon by the Development Services Company.

Section 3.02 Authorized Representative of Development Services Company.

The Development Services Company hereby designates Francis J. Knott, Jr., to be its designated representative for purposes of contact between the Development Services Company and the Owner in connection with the Predevelopment Work ("Development Services Company's Authorized Representative"). The Development Services Company shall have the right, by timely written notice given to the Owner, to remove the existing Development Services Company's Authorized Representative and to appoint another individual to act as Development Services Company's Authorized Representative. However, no more than one (1) individual shall act as Development Services Company's Authorized Representative at any time. The Development Services Company agrees that the Development Services Company's Authorized Representative shall have the authority to bind the Development Services Company with respect to all matters for which the consent or approval of the Development Services Company is required or permitted pursuant to this Agreement and that all consents, approvals and waivers given in writing by Development Services Company's Authorized Representative shall bind the Development Services Company and may be relied upon by the Owner.

ARTICLE IV. OWNER'S REPRESENTATIONS AND WARRANTIES

Section 4.01 Organization.

The Owner is a political subdivision of the State of Arizona. The Owner has all requisite legal power and authority to own its property and assets and to carry on its business as now conducted and as proposed to be conducted. The Owner has the legal power and authority to execute, deliver and perform its obligations under this Agreement and each other exhibit, agreement or instrument contemplated hereby or thereby.

Section 4.02 Authorization.

The execution and delivery by the Owner of this Agreement and all other exhibits, agreements and instruments provided for or contemplated by this Agreement, and the consummation by the Owner of all transactions contemplated hereunder and thereunder have been duly authorized by all requisite legal and political action. This Agreement has been duly executed by the Owner. This Agreement and all other agreements and obligations entered into and undertaken in connection with the transactions contemplated hereby constitute the valid and legally binding obligations of the Owner, enforceable against it in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar laws relating to or

affecting creditors' rights generally from time-to-time in effect and to general principles of equity (including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing), regardless of whether considered in a proceeding in equity or at law and the availability of the remedy of specific performance. The execution, delivery and performance by the Owner of this Agreement and all other exhibits, agreements and instruments provided for herein, and the consummation by the Owner of the transactions contemplated hereby and thereby, will not, with or without the giving of notice or the passage of time or both, (a) violate the provisions of any applicable Legal Requirements applicable to the Owner, (b) violate the provisions of the authorizing resolutions of Pima County, Arizona, (c) violate any judgment, decree, order or award of any court, Governmental Authority or arbitrator, or (d) conflict with or result in the breach or termination of any term or provision of, or constitute a default under, or cause any acceleration under, or cause the creation of any lien, charge or encumbrance upon the properties or assets of the Owner pursuant to any indenture, mortgage, deed of trust, bond or other instrument or agreement to which the Owner or its Affiliates are a party or by which the Owner, its Affiliates or any of their properties and assets may be bound.

Section 4.03 Governmental Approvals.

The Owner has all material government authorizations, approvals, consents, permits, licenses, certifications and qualifications, and has complied in all material respects with all applicable Legal Requirements of Pima County and the State of Arizona, to conduct its business as is presently conducted and to own, except to the extent such failure to obtain any such approval or to take any such action is not reasonably expected, either individually or in the aggregate, to have a material adverse effect. No action, consent or approval or registration or filing with or any other action by any Governmental Authority is required in connection with this Agreement, except for such as have been made or obtained and are in full force and effect and, except to the extent that failure to obtain any such approval or take any such action would not be reasonably expected, either individually or in the aggregate, to have a material adverse effect.

Section 4.04 Title to the Premises.

The Owner is the owner in fee simple of the Premises, free of any encumbrance that would impair or interfere with the Development Services Company's ability to engage in the Predevelopment Work on the Premises, and that the Owner has full right and authority to extend the Development Services Company the right to engage in the Predevelopment Work on the Premises. There are no options to purchase or lease, rights of first refusal to purchase or lease, or any other agreements applicable to the Premises that would prohibit, limit or otherwise interfere with the Development Services Company's rights to engage in the Predevelopment Work on the Premises. There are no agreements that the Owner has entered into that relate to its ownership, financing or operations that prohibit, limit or otherwise interfere with the Owner's right to extend the Development Services Company the right to engage in the Predevelopment Work on the Premises.

ARTICLE V. DEVELOPMENT SERVICES COMPANY REPRESENTATIONS AND WARRANTIES

Section 5.01 Organization.

The Development Services Company is a corporation duly organized and validly existing and in good standing under the laws of the jurisdiction of its organization. The Development Services Company has all requisite corporate power and authority to own its property and assets and to carry on its business as now conducted and as proposed to be conducted. The Development Services Company has the corporate power and authority to execute, deliver and perform its obligations under this Agreement and each other exhibit, agreement or instrument contemplated hereby or thereby.

Section 5.02 Authorization.

The execution and delivery by the Development Services Company of this Agreement and all other exhibits, agreements and instruments provided for or contemplated by this Agreement, and the consummation by the

Development Services Company of all transactions contemplated hereunder and thereunder have been duly authorized by all requisite corporate action. This Agreement has been duly executed by the Development Services Company. This Agreement and all other agreements and obligations entered into and undertaken in connection with the transactions contemplated hereby constitute the valid and legally binding obligations of the Development Services Company, enforceable against it in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar laws relating to or affecting creditors' rights generally from time-to-time in effect and to general principles of equity (including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing), regardless of whether considered in a proceeding in equity or at law and the availability of the remedy of specific performance. The execution, delivery and performance by the Development Services Company of this Agreement and all other exhibits, agreements and instruments provided for herein, and the consummation by the Development Services Company of the transactions contemplated hereby and thereby, will not, with or without the giving of notice or the passage of time or both, (a) violate the provisions of any applicable Legal Requirements applicable to the Development Services Company, (b) violate the provisions of the Development Services Company's organizational documents, (c) violate any judgment, decree, order or award of any court, Governmental Authority or arbitrator, or (d) conflict with or result in the breach or termination of any term or provision of, or constitute a default under, or cause any acceleration under, or cause the creation of any lien, charge or encumbrance upon the properties or assets of the Development Services Company pursuant to any indenture, mortgage, deed of trust, bond or other instrument or agreement to which the Development Services Company or its Affiliates are a party or by which the Development Services Company, its Affiliates or any of their properties and assets may be bound.

Section 5.03 Governmental Approvals.

The Development Services Company has all material government authorizations, approvals, consents, permits, licenses, certifications and qualifications, and has complied in all material respects with all applicable Legal Requirements of the jurisdiction in which the Development Services Company conducts business or owns property, to conduct its business as is presently conducted and to own, except to the extent such failure to obtain any such approval or to take any such action is not reasonably expected, either individually or in the aggregate, to have a material adverse effect. No action, consent or approval or registration or filing with or any other action by any Governmental Authority is required in connection with this Agreement, except for such as have been made or obtained and are in full force and effect and, except to the extent that failure to obtain any such approval or take any such action would not be reasonably expected, either individually or in the aggregate, to have a material adverse effect.

ARTICLE VI. TERMINATION AND REMEDIES

Section 6.01 Termination.

Following the reimbursement of the Predevelopment Work Payment pursuant to either Section 2.02, Section 2.03 or Section 2.04 of this Agreement, as applicable, this Agreement shall automatically terminate without any further action required of the Owner or the Development Services Company. If the Predevelopment Work Payment is not reimbursed due to the application of Section 2.05 of this Agreement, upon the Development Services Company's compliance with its delivery obligations set forth in Section 2.05 of this Agreement, this Agreement shall automatically terminate without any further action required of the Owner or the Development Services Company.

Section 6.02 Default.

- (a) *Owner Default.* An "Owner Default" shall occur if the Owner shall default in performing any duty or obligation to be performed by the Owner under this Agreement and such default shall not be remedied within (a) ten (10) calendar days after written notice of such default shall have been given by the Development Services Company to the Owner describing the default in reasonable detail, or (b) in the case of any such default which is capable of being cured, but which cannot with due diligence and in good faith

be cured within ten (10) calendar days, within such additional period as may be reasonably required to cure such default with due diligence and in good faith, but not in excess of sixty (60) calendar days from the date of such notice provided that the Owner has commenced the cure at the beginning of the ten (10) calendar day cure period.

- (b) *Development Services Company Default.* A “Development Services Company Default” shall occur if the Development Services Company shall default in performing any duty or obligation to be performed by the Development Services Company under this Agreement and such default shall not be remedied within (a) thirty (30) calendar days after written notice of such default shall have been given by the Owner to the Development Services Company describing the default in reasonable detail, or (b) in the case of any such default which is capable of being cured, but which cannot with due diligence and in good faith be cured within thirty (30) calendar days, within such additional period as may be reasonably required to cure such default with due diligence and in good faith, provided that the Development Services Company has commenced such cure within such thirty (30) calendar day cure period.

Section 6.03 Remedies.

In the event of an Owner Default or a Development Services Company Default, either party may pursue all of its remedies at law or in equity, subject to the limitations set forth in this Agreement.

Section 6.04 Waiver of Consequential Damages.

Notwithstanding anything to the contrary in this Agreement:

- (a) The Owner hereby waives and releases all rights of recovery against the Development Services Company and the Development Services Company’s affiliates’, members, managers, managing members, officers, directors, employees and agents for consequential, indirect, special or punitive damages, including loss of income or profits and damage to goodwill or going concern value, arising out of loss or damage to property or business of the Owner relating to this agreement, except to the extent that such loss or damage is caused by the willful misconduct or grossly negligent acts or omissions of the Development Services Company, or its agents or employees.
- (b) The Development Services Company hereby waives and releases all rights of recovery against the Owner and the Owner’s affiliates’, members, managers, managing members, officers, directors, employees and agents for consequential, indirect, special or punitive damages, including loss of income or profits and damage to goodwill or going concern value, arising out of loss or damage to property or business of the Development Services Company relating to this agreement, except to the extent that such loss or damage is caused by the willful misconduct or grossly negligent acts or omissions of the Owner, or its agents or employees.

Section 6.05 Prevailing Party’s Expenses.

In the event that litigation or other legal action is instituted between the Development Services Company and the Owner to enforce this Agreement, the prevailing party in such litigation or other legal action by final judgment or settlement shall be entitled to reimbursement from the non-prevailing party in such litigation or other legal action by final judgment or settlement of all reasonable fees, costs and expenses (including, without limitation, court costs and reasonable attorneys’ fees and expenses) incurred by the prevailing party in connection therewith.

ARTICLE VII. GENERAL PROVISIONS

Section 7.01 Governing Law.

Owner and Development Services Company hereby agree that this agreement and all matters, suits (whether in equity or at law), causes of action, claims, cross-claims, counterclaims, demands, obligations, actions, survival claims, rights to damages, costs, attorneys' fees or expenses of any kind or in any way relating to the subject matter of this agreement shall be governed, interpreted, construed and enforced in all respects by the internal laws, and not the law of conflicts, of the State of Arizona.

Section 7.02 Jurisdiction, Venue and Process.

Each of the parties hereby irrevocably and unconditionally submits to the jurisdiction of the federal and state courts located in the State of Arizona (and any appellate court from any such court) in any suit, action or proceeding arising out of or relating to this agreement, or for recognition or enforcement of any judgment, and each hereby irrevocably and unconditionally agrees that all claims in respect of any such suit, action or proceeding shall be brought in and may be heard and determined in such federal or state courts located in the State of Arizona. Each of the parties hereby agrees that a final judgment in any suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each of the parties hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so (a) any objection that it may not or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this agreement in any state or federal court located in the State of Arizona and (b) the defense of an inconvenient forum to the maintenance of such suit, action or proceeding in any such court.

Section 7.03 Waiver of Trial by Jury.

Each of the parties hereby waives, to the fullest extent permitted by law, the right to trial by jury in any action, proceeding or counterclaim filed by the other party, whether in contract, tort or otherwise, which right or claim relates directly or indirectly to this agreement, any documentation related thereto, or any acts or omissions in connection with this agreement. This waiver has been agreed to after consultation with legal counsel selected independently by the Owner and the Development Services Company.

Section 7.04 Entire Agreement.

This Agreement and any exhibits attached to this Agreement constitute the sole, entire and only agreement between the Owner and the Development Services Company with regard to the subject matter hereof. This Agreement supersedes all prior discussions and agreements (whether written or oral) between the Owner and the Development Services Company with respect to the subject matter hereof.

Section 7.05 Non-Waiver.

No waiver of any covenant, condition or provision of this Agreement shall be deemed, or construed, to have been made unless expressed in writing and signed by the party against whom such waiver has been charged. The failure of any party to insist in any one or more cases upon the performance of any of the provisions, covenants or conditions of this Agreement or to exercise any option or right set forth in this Agreement shall not be deemed, or construed, as a waiver or relinquishment for the future of any such provisions, covenants or conditions. The acceptance of performance of anything required by this Agreement to be performed with knowledge of the breach or failure of a covenant, condition or provision hereof shall not be deemed or construed to be a waiver of such breach or failure. No waiver by any party of one breach by another party shall be construed or deemed to be a waiver with respect to any other subsequent breach. Failure of a party to declare any default immediately upon its occurrence, or delay in taking any action in connection with a default shall not constitute a waiver of such default, nor shall it constitute an estoppel against such party, but such party shall have the right to declare the default at any time and take such action as is lawful or authorized under this Agreement.

Section 7.06 Notices.

Any notices, demands, requests or other communications required or permitted to be given hereunder shall be given in writing and shall be delivered in person, by a commercial overnight air or ground courier that guarantees next day delivery and provides a receipt or by e-mail transmission, followed by hard copy delivered in accordance with the immediately preceding provisions (each a "Notice"), and such Notices shall be addressed as noted below. Either party may, at any time, change its Notice address by giving the other party Notice stating the change and setting forth the new address. Any of the aforementioned Parties may change its address for the receipt of Notices, demands, consents, requests and other communications by giving written Notice to the others in the manner provided for above. Any Notice shall be effective only upon receipt unless such Notice is refused by the Party to which it is to be delivered or because such Notice cannot be delivered because of failure to provide written Notice to the other Party of a change of address, in which event Notice shall be deemed to be given on the date of such refusal in the case of a refusal to accept delivery of Notice or the date of the attempted delivery in the case of a change of address, provided, however, Notices sent by e-mail after 5PM local time at the location to which the same is sent shall be deemed received on the next succeeding Business Day. Notices given by an attorney named below on behalf of its client and sent to the other Party in the manner set forth in this Section 7.06 shall have the same effect as if given by a Party.

(a) Notice to Owner: Project Management Office Manager, Pima County Arizona, 201 North Stone Avenue, 5th Floor, Tucson, Arizona 85701, Email nancy.cole@pima.gov.

(b) Notice to Development Services Company: Francis J. Knott, Jr., President, Knott Development Inc., MacArthur Building, 6106 MacArthur Boulevard, Bethesda, Maryland 20816, Email fjk@knottdevelopment.com.

With a copy to: Goulston & Storrs PC, 1999 K Street, NW, Suite 500, Washington, D.C. 20006, Attn. Paul A. Tummonds, Jr., Email ptummonds@goulstonstorrs.com.

Section 7.07 No Third Party Beneficiary.

This Agreement is entered into solely for the benefit of the Parties to this Agreement and their assigns permitted under Section 7.16 of this Agreement. No Party (other than assigns permitted under Section 7.16 of this Agreement) shall be deemed a third party beneficiary of this Agreement.

Section 7.08 Cooperation and Additional Instruments.

Each Party to this Agreement agrees to promptly sign or join in the signing of all applications, requisitions, certifications and other documents reasonably necessary and proper to give effect and enable the purposes of this Agreement to be performed. Each Party agrees to render such assistance as the other Party may reasonably request in connection with the foregoing.

Section 7.09 Severability.

If any provision of this Agreement would be held in any jurisdiction to be invalid, prohibited or unenforceable for any reason, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 7.10 Time is of the Essence.

Time is of the essence of this Agreement, and of each provision thereof of which time is an element, except as otherwise expressly provided in this Agreement.

Section 7.11 No Partnership or Joint Venture.

Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture of or between the Owner and the Development Services Company.

Section 7.12 Captions.

The headings and titles to the paragraphs of this Agreement are for convenience only and shall have no effect upon the construction or interpretation of any part of this Agreement.

Section 7.13 Language Construction.

This Agreement represents the result negotiations between the Owner and the Development Services Company, each of which has been (or has had opportunity to be) represented by counsel of its own selection, and neither of which has acted under duress or compulsion, whether legal, economic or otherwise. Consequently, the Owner and the Development Services Company agree that the language in all parts of the Agreement shall in all cases be construed as a whole according to its fair meaning and neither strictly for nor against the Owner or the Development Services Company.

Section 7.14 Effective Date.

This Agreement shall commence and be effective on the Effective Date.

Section 7.15 Approvals and Consents.

Wherever this Agreement requires any Party to approve or consent to any document or other matter, such approval or consent shall not be unreasonably withheld, delayed or conditioned, except as otherwise expressly provided in this Agreement.

Section 7.16 Successors and Assigns.

This Agreement shall be binding upon and shall inure to the benefit of the Parties to this Agreement, their successors and permitted assigns. The Owner shall not have the right to assign this Agreement without the prior written consent of the Development Services Company. The Development Services Company shall not have the right to assign its obligations under this Agreement without the prior written consent of Owner, provided, however, that the Development Services Company may assign this Agreement to KDEV Kino District Development LLC for the purpose of complying with the reimbursement requirements of either Section 2.02, Section 2.03 or Section 2.04 of this Agreement, as applicable, and to develop the Premises under the MDPA.

Section 7.17 Owner's Brokers.

The Owner represents and warrants to the Development Services Company that it has not dealt with any broker in this transaction and each agrees to defend, indemnify, save and hold the Development Services Company harmless from and against any and all fees, commissions, other liabilities, damages, costs or expenses (including, without limitation, reasonable attorneys' fees and disbursements) suffered by the Development Services Company as a result of acts of the Owner or any of its agents that would constitute a breach of its representation and warranty in this Section 7.17. The provisions of this Section 17.17 shall survive the termination or expiration of this Agreement.

Section 7.18 Counterparts.

This Agreement may be executed and delivered in one or more counterparts (and by different Parties on different counterparts), each of which shall constitute an original and together which shall constitute one and the same instrument. To facilitate execution of this agreement, the Parties may execute and exchange by electronic (e-mail) delivery different counterparts of the signature pages, which shall be as effective as originals for all purposes.

Section 7.19 Exhibits.

It is understood and agreed that any documents or exhibits referred to in this Agreement and/or attached hereto form an integral part of this Agreement and are hereby incorporated by reference.

Section 7.20 Incorporation of Recitals.

The recitals set forth in the forepart of this Agreement are incorporated into this Agreement as if fully set forth in this Agreement.

Section 7.21 Americans With Disabilities Act.

The Development Services Company will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under such Act, including 28 CFR Parts 35 and 36. If the Development Services Company is carrying out government programs or services on behalf of Owner, then the Development Services Company will maintain accessibility to the program to the same extent and degree that would be required of the Owner under 28 CFR Sections 35.130, 35.133, 35.149 through 35.151, 35.160, 35.161 and 35.163. Failure to do so could result in the termination of this Agreement.

Section 7.22 Non-Discrimination.

The Development Services Company will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this Agreement, including flow-down of all provisions and requirements to any subcontractors. During performance of this Agreement, the Development Services Company will not discriminate against any employee, client or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability or national origin.

Section 7.23 Cancellation for Conflict of Interest.

Notwithstanding anything to the contrary set forth in this Agreement, this Agreement is subject to cancellation for conflict of interest pursuant to A.R.S. Section 38-511, the pertinent provisions of which are incorporated into this Agreement by reference.

Section 7.24 Ethics.

During the course of pursuing contracts with Owner and while performing contract work in accordance with this Agreement, the Development Services Company agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on Owner's best interests.

- (a) The Development Services Company will take reasonable steps to prevent any actions or conditions which could result in a conflict with Owner's best interests. These obligations apply to the activities of the Development Services Company's employees, agents, subcontractors, subcontractor employees and consultants.
- (b) The Development Services Company's employees, agents, subcontractors, material suppliers (or their representatives) should not make or cause to be made any cash payments, commissions, employment gifts, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to Owner's representatives, employees or their relatives.
- (c) The Development Services Company's employees, agents or subcontractors (or their relatives) should not receive any payments, commissions, employment gifts, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the Predevelopment Work.

- (d) The Development Services Company will notify the Owner's Designated Representative within forty-eight (48) hours of any instance where the Development Services Company becomes aware of a failure to comply or possible failure to comply with the provisions of this Article.
- (e) Upon request by Owner, the Development Services Company agrees to provide a certified Management Representation Letter executed by the Development Services Company's Authorized Representative in a form agreeable to Owner stating that they are not aware of any situations violating the business ethics expectations outlined in this Agreement or any similar potential conflict of interest situations.
- (f) The Development Services Company will include this clause in all contracts with subcontractors and material suppliers receiving more than Twenty-Five Thousand Dollars (\$25,000) in funds in connection with the Predevelopment Work.
- (g) The Development Services Company will permit interviews of employees, reviews and audits of accounting or other records by Owner representatives to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of the Development Services Company's employees, agents, representatives, vendors, subcontractors, and other third parties paid by the Development Services Company in their relations with Owner's current or former employees or employee relatives.
- (h) The Development Services Company will implement a program requiring its employees to sign acknowledgements that they have read and understand Owner's Business Ethics Expectations and the related obligations outlined in this Agreement.

Section 7.25 Non-Appropriation.

Notwithstanding any other provision in this Agreement, Owner may terminate this Agreement if for any reason there are not sufficient appropriated and available monies for the purpose of maintaining Owner or other public entity obligations under this Agreement. In the event of such termination, Owner will have no further obligation to the Development Services Company, other than to pay for services rendered prior to termination.

Section 7.26 Public Records - Disclosure.

Pursuant to A.R.S. Section 39-121 et seq., and A.R.S. Section 34-603(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all documents submitted in response to the solicitation resulting in this award of this Agreement, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, these documents are subject to release and/or review the general public upon request, including competitors.

Section 7.27 Public Records – Records marked Confidential; Notice and Protective Order.

If the Development Services Company reasonably believes that some of the records subject to disclosure pursuant to Section 7.26 of this Agreement contain proprietary, trade secret or otherwise confidential information, the Development Services Company must prominently mark those records "CONFIDENTIAL." In the event a public records request is submitted to Owner for records marked CONFIDENTIAL, Owner will notify the Development Services Company of the request as soon as reasonably possible. Owner will release the records ten (10) business days after the date of that notice, unless the Development Services Company has, within that period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records. Owner will not, under any circumstances, be responsible for securing such an order, nor will Owner be in any way financially responsible for any costs associated with securing such an order.

Section 7.28 Compliance with Immigration Laws.

The Development Services Company hereby warrants that it will at all times during the term of this Agreement comply with all federal immigration laws applicable to its employment of its employees, and with the requirements of A.R.S. Section 23-214(A) (together the "State and Federal Immigration Laws"). Development Services Company will further ensure that each subcontractor who performs any work for the Development Services Company under this Agreement likewise complies with the State and Federal Immigration Laws. Owner has the right at any time to inspect the books and records of the Development Services Company and any subcontractor to verify such party's compliance with the State and Federal Immigration Laws. Any breach of the Development Services Company's warranty or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Agreement subjecting the Development Services Company to penalties up to and including suspension or termination of this Agreement. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, the Development Services Company will be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor, as soon as possible so as not to delay project completion. Any additional costs attributable directly or indirectly to such remedial action are the responsibility of the Development Services Company. The Development Services Company will advise each such subcontractor of Owner's rights, and the subcontractor's obligations, under this Section 7.28 by including in each subcontract substantially the following form: "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. Section 23-214(a). Subcontractor further agrees that Owner may inspect the Subcontractor's books and records to ensure that Subcontractor is in compliance with the requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Section 7.29 Israel Boycott Certification.

Pursuant to A.R.S. Section 35-393.01, if contractor engages in for-profit activity and has 10 or more employees, and if this contract has a value of One Hundred Thousand Dollars (\$100,000) or more, the Development Services Company certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. Section 4842 or a regulation issued pursuant to 50 U.S.C. Section 4842.

ARTICLE VIII. DEFINITIONS

Section 8.01 Affiliate.

The term "Affiliate" shall mean as to any Person, any other Person that directly or indirectly:

- (a) has an ownership interest in the specified Person;
- (b) Controls, is Controlled by or is under common Control with such Person;
- (c) Is a director or officer of such Person;
- (d) Is the spouse, issue or parent of such Person; or
- (e) Is any Person that would constitute an Affiliate of the Development Services Company or the Owner.

Section 8.02 Agreement.

The term "Agreement" shall have the meaning ascribed to it in the forepart of this Agreement.

Section 8.03 Architect.

The term "Architect" shall have the meaning ascribed to it in Section 1.01 of this Agreement.

Section 8.04 Architectural Services.

The term "Architectural Services" shall have the meaning ascribed to it in Section 1.01 of this Agreement.

Section 8.05 Board of Supervisors.

The term "Board of Supervisors" shall have the meaning ascribed to it in Recital B to this Agreement.

Section 8.06 Business Day.

The term "Business Day" means any a calendar day other than a Saturday, Sunday or legal holiday observed by the State of Arizona.

Section 8.07 Civil Engineer.

The term "Civil Engineer" shall have the meaning ascribed to it in Section 1.02 of this Agreement.

Section 8.08 Civil Engineering Services.

The term "Civil Engineering Services" shall have the meaning ascribed to it in Section 1.02 of this Agreement.

Section 8.09 Control.

The term "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the day-to-day management or operation of an entity, whether through the ownership of voting securities, by contract, or by virtue of being, inter alia, the officer, director, manager, managing member, general partner, managing partner, managing joint venturer or trustee. For purposes of this Agreement, the term "Control" (including the terms "Controlling", "Controlled by" and "under Common Control with") of a Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting interests, by contract or otherwise.

Section 8.10 Design Builder.

The term "Design Builder" shall have the meaning ascribed to it in Section 1.04 of this Agreement.

Section 8.11 Development Services Company.

The term "Development Services Company" shall have the meaning ascribed to it in the forepart to this Agreement.

Section 8.12 Development Services Company's Authorized Representative.

The term "Development Services Company's Authorized Representative" shall have the meaning ascribed to it in Section 3.02 of this Agreement.

Section 8.13 Development Services Company Default.

The term "Development Services Company Default" shall have the meaning ascribed to it in Section 6.02(b) of this Agreement.

Section 8.14 Development Termination Action.

The term "Development Termination Action" shall have the meaning ascribed to it in Section 2.05 of this Agreement.

Section 8.15 Effective Date.

The term "Effective Date" shall have the meaning ascribed to it in the forepart of this Agreement.

Section 8.16 Further Revised MDPA.

The term "Further Revised MDPA" shall have the meaning ascribed to it in Section 2.04(a) of this Agreement.

Section 8.17 Geotechnical Consultant.

The term "Geotechnical Consultant" shall have the meaning ascribed to it in Section 1.03 of this Agreement.

Section 8.18 Geotechnical Services.

The term "Geotechnical Services" shall have the meaning ascribed to it in Section 1.03 of this Agreement.

Section 8.19 Governmental Authority.

The term "Governmental Authority" means any governmental agency, authority or board or other party having jurisdiction over the development of the Project, including pursuant to any intergovernmental agreement or otherwise, relative to the issuance and granting of any Governmental Approvals required for the Project.

Section 8.20 July Meeting.

The term "July Meeting" shall have the meaning ascribed to it in Section 2.02 of this Agreement.

Section 8.21 Legal Requirements.

The term "Legal Requirements" means any and all laws, ordinances, rules, regulations, statutes, by-laws, building codes, court decisions, orders and requirements of all public authorities, including the Governmental Approvals.

Section 8.22 MDPA.

The term "MDPA" shall have the meaning ascribed to it in Recital B to this Agreement.

Section 8.23 Notice.

The term "Notice" shall have the meaning ascribed to it in Section 7.06 of this Agreement.

Section 8.24 Owner.

The term "Owner" shall have the meaning ascribed to it in Recital F of this Agreement.

Section 8.25 Owner's Authorized Representative.

The term "Owner's Authorized Representative" shall have the meaning ascribed to it in Section 3.01 of this Agreement.

Section 8.26 Owner Default.

The term "Owner Default" shall have the meaning ascribed to it in Section 6.02(a) of this Agreement.

Section 8.27 Person.

The term "Person" means a natural person, an estate, a trust, a partnership, a limited liability company, a corporation and any other form of business or legal association or entity.

Section 8.28 Preconstruction Services.

The term "Preconstruction Services" shall have the meaning ascribed to it in Section 1.04 of this Agreement.

Section 8.29 Predevelopment Service Firms.

The term "Predevelopment Service Firms" shall have the meaning ascribed to it in Section 1.04 of this Agreement.

Section 8.30 Predevelopment Work.

The term "Predevelopment Work" shall have the meaning ascribed to it in Recital C of this Agreement.

Section 8.31 Predevelopment Work Payment.

The term "Predevelopment Work Payment" shall have the meaning ascribed to it in Section 2.01 of this Agreement.

Section 8.32 Premises.

The term "Premises" shall have the meaning ascribed to it in Recital A of this Agreement.

Section 8.33 Revised MDP.

The term "Revised MDP" shall have the meaning ascribed to it in Section 2.03(a) of this Agreement.

Section 8.34 State and Federal Immigration Laws.

The term "State and Federal Immigration Laws" shall have the meaning ascribed to it in Section 7.28 of this Agreement.

Section 8.35 Subject Facilities.

The term "Subject Facilities" shall have the meaning ascribed to it in Section 1.01 of this Agreement.

Section 8.36 Subsequent Meeting.

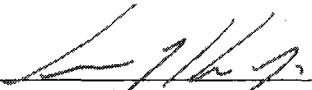
The term "Subsequent Meeting" shall have the meaning ascribed to it in Section 2.04(b) of this Agreement.

IN WITNESS WHEREOF, Owner and the Development Services Company have executed this Agreement under seal as of the Effective Date.

[HERE ENDS THIS PAGE – SIGNATURES APPEAR ON FOLLOWING PAGES]

[Development Services Company Signature Page of Predevelopment Services Agreement]

KNOTT DEVELOPMENT INC

By: 

Name: Francis J. Knott, Jr.

Title: President

Date: April 6, 2021

[Owner Signature Page of Predevelopment Services Agreement]

PIMA COUNTY, ARIZONA

APPROVED:

By: _____
Name: _____
Chair, Board of Supervisors
Date: _____

ATTEST:

By: _____
Name: _____
Clerk of the Board of Supervisors

APPROVED AS TO FORM:

By: Kell Olson
Name: Kell Olson
Deputy County Attorney
Date: 04/05/2021