

City Council

400 Main St, Suite 460

Knoxville, TN 37902
<http://knoxville.tn.gov>

Workshop

~ Agenda ~

Thursday, July 12, 2018

6:00 PM

City-County Building: Small Assembly Room

ORDER OF BUSINESS

1. CALL TO ORDER

Vice-Mayor Finbarr Saunders

2. PLEDGE OF ALLEGIANCE

Council Member Andrew Roberto

3. ROLL CALL

4. INTRODUCTIONS

Vice-Mayor Finbarr Saunders

5. CLAYTON SCIENCE/DISCOVERY CENTER PROJECT

a. Overview and Background

David Brace, Chief Operating Officer and Deputy to the Mayor

Dr. Bill Lyons, Chief Policy Officer and Deputy to the Mayor

b. Site Options and Potential Impacts on Knoxville Police Department

David Brace

Dr. Bill Lyons

c. Proposed Project Schedule and Development Agreement

David Brace

Dr. Bill Lyons

Law Department representative

d. Vision for the Knox Science Museum

Representative from Clayton Family Foundation

6. COUNCIL QUESTIONS AND DISCUSSION

7. PUBLIC FORUM

8. ADJOURNMENT

**DEVELOPMENT AGREEMENT FOR THE
KNOX SCIENCE MUSEUM**

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") is made and entered into as of the 31st day of July, 2018, by and between THE CITY OF KNOXVILLE, a municipal corporation organized and existing pursuant to the laws of the State of Tennessee (the "**City**"), KNOXVILLE SCIENCE MUSEUM, INC., a Tennessee not-for-profit corporation ("**Developer**"), and THE CLAYTON FAMILY FOUNDATION, a State of Tennessee nonprofit 501(c)(3) corporation.

RECITALS:

A. The Clayton Family Foundation and specifically Mr. Jim Clayton very generously have a desire to design, build and operate as a gift to the community and region the following (collectively, the "**Project**"): (i) a state-of-the-art, world class educational science and discovery center, to be commonly known as the Knoxville Science Museum, which shall accommodate interactive exhibits, various group programs, classrooms, and two large zones designated for current traveling exhibits, and other educational interactive activities (the "**KSM**"), (ii) associated supporting facilities and activities necessary or convenient to support, enhance, or operate the KSM, such as a gift shop, food facilities, and administrative offices, (iii) associated supporting site improvements and activities necessary or convenient to support, enhance, or operate the KSM, such as outdoor interactive exhibits or activities, play areas, and grounds improvements, and (iv) associated supporting site infrastructure improvements, such as parking, lighting, and walkways; and

B. The City owns the real property, buildings, and improvements located at 800 Howard Baker, Jr. Avenue (Parcel ID # 095IB005) and 0 East Hill Avenue, (Parcel ID # 095IC001), and 715 Honor Our Troops (Parcel ID # 095IB004), which is currently being used by the City for the Knoxville Police Department (the "**KPD**") and the City's Municipal Courts (collectively, with the KPD, the "**Safety Building**"), 0 Howard Baker Jr. Avenue (Parcel ID #095IB00102), and vacant space near the existing Civic Coliseum and garage, all as shown on the map attached to this Agreement as Exhibit A (hereinafter referred to as "**the Property**"); and

C. In order to attract an estimated one million visitors, both nationally and internationally, annually to Knoxville and this region, while providing interactive science, technology, engineering, math, and related educational programs to children, senior citizens, adults, and especially students, kindergarten through college, who live throughout the Knoxville community and the greater East Tennessee Region, the City and the Developer desire the Project to be located upon a portion of the Property; and

D. The Property is within the Mountain View Auditorium Redevelopment Plan, and the redevelopment of the Project upon the Property is consistent with the foregoing redevelopment plan for this area; and

E. The Clayton Family Foundation and the City entered into a Memorandum of Understanding on March 9, 2018 so that The Clayton Family Foundation could conduct a preliminary site analysis and both parties are interested in establishing parameters for future development of the Project upon the Property in accordance with this Agreement; and

F. The City desires to enter into this Agreement with the Developer, as the KSM will serve not only to revitalize this area of the City, but also to provide citizens of this region and beyond with a

unique and enjoyable learning experience. The highly interactive KSM exhibits and staff will provide local citizens, and visitors, from kindergarteners to senior citizens, with an incomparable opportunity to enjoy, while learning about, current and historical, scientific developments; and

G. Subject to the terms and conditions set forth below, Developer and the City desire to enter into this Agreement to memorialize these terms and conditions which will facilitate the orderly development, transfer, and future operation of the KSM Property, the Project and KSM; and

H. For the purpose of establishing the rights and obligations of the parties with respect to the matters described above and related matters, the parties have entered into this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions and mutual agreements by and between the parties, as hereafter set forth in detail, the parties do hereby mutually agree as follows:

ARTICLE I. GENERAL PROVISIONS

- A. Property Description; KSM Property Description. The Property is that property described in Recital B, set forth above, and the associated Exhibit A. The "**KSM Property**" shall mean that portion of the Property that the Developer determines, in its sole discretion, but subject to the City's final approval of the Proposal pursuant to Article III(A), will be the site of the Project or any future improvements, enhancements, or expansions to the Project or KSM, which will be the real property that is ultimately transferred by the City to the Developer, or its assignee, which may be a separate 501(c)(3) entity yet to be determined.
- B. Effective Date. The "**Effective Date**" of this Agreement shall be the date that all parties hereto have executed this Agreement.
- C. Purpose of Agreement. Developer and the City desire to enter into this Agreement to memorialize certain terms and conditions which will facilitate the orderly development, transfer, and future operation of the KSM Property, the Project, and KSM.
- D. Term. Unless terminated earlier as provided herein, this Agreement shall be effective upon the Effective Date and shall remain in effect until the KSM opens to the public or until terminated in accordance with the terms herein. The expiration date of this Agreement may be extended by written mutual consent of the parties hereto.

ARTICLE II. DEVELOPMENT OF THE KSM PROPERTY

- A. The Project. The Developer shall design and construct the Project and operate and maintain the KSM and KSM Property subject to the following requirements:
1. Project Analysis. The Developer is acquiring the KSM Property "AS IS." Therefore, in order for the Developer to determine Project feasibility, the Developer and its duly authorized agents, contractors and/or representatives may perform, among other things, the following activities, at

Developer's sole cost, to ascertain whether the Developer is able and willing, in Developer's sole discretion, to proceed further with the Project (the "**Project Analysis**"):

- (a) Gather all relevant City documentation and information.
- (b) Gather information on site conditions, land use and topography.
- (c) Conduct Phase I and Phase II environmental assessments of the Property, as desired, in order to ascertain any existing environmental conditions on the Property.
- (d) Conduct a parking analysis, as discussed more fully in Article VI(B) of this Agreement, which will analyze the existing City-owned parking assets in the area and the needs of the KSM.
- (e) Review existing zoning, infrastructure and regulatory conditions on or governing the Property.
- (f) Any other activities, services or inspections which will allow the Developer to fully determine the feasibility of the Project, including, but not limited to, survey work, architectural work, engineering work, soil testing, site planning, master planning, title and legal work and diligence.

Information obtained by the Developer regarding the Property shall be shared with the City. Should the Developer determine, in Developer's sole discretion, that the Property is not suitable for the Project or the KSM or otherwise unacceptable for any reason, Developer may terminate this Agreement at any time prior to Closing, and neither party shall have any further liability whatsoever to the other.

From and after the Effective Date, the City hereby grants the Developer and its duly authorized agents, contractors and/or representatives the right of access to the Property during normal business hours, and will coordinate such access with the City's Project Manager, for the purpose of conducting the Project Analysis. Notwithstanding the foregoing, the Developer shall take all reasonable steps to avoid interfering with the activities of the KPD or the Municipal Courts, including scheduling such inspections and tests at such times and in such manner so as to not interfere in any material way with their occupancy of the Property.

2. Preliminary Site Analysis and Building Placement. Due to existing operations of the KPD on the Property, the City and Developer both recognize the need for the Developer to determine the siting of the Project and the KSM. The Developer will advise the City in writing, no later than one hundred and eighty (180) days from the Effective Date, of (a) that portion of the Property that shall be the KSM Property, and (b) the preliminary site location for the Project and the KSM on the KSM Property (the "**KSM Property Notice**").

- (a) If the Developer determines, in Developer's sole discretion, that the desired site location for the Project and the KSM on the KSM Property is either within the existing boundary of the Safety Building or in such close proximity to the Safety Building that it will need to be demolished prior to the Developer commencing construction, the parties understand and agree that the City will vacate the Safety Building and associated grounds and improvements within 365 days from the date of the KSM Property Notice.
- (b) If the Project and the KSM on the KSM Property does not impact the City's ability to continue its existing operations at the Safety Building without disruption, the City is not required to vacate the Safety Building prior to Closing and commencement of construction of the Project.

The City does agree to vacate the Safety Building and KSM Property upon the earlier to occur of (a) the completion of the design and construction of a new KPD/KFD administrative and training building, or (b) two (2) years from the date of Closing. This time may be extended upon mutual written agreement of both parties. The City agrees to work as expeditiously as possible to vacate the Safety Building and relocate KPD and other City resources from the KSM Property.

- (c) Should the KSM Property include that portion of the Property upon which is situated the Safety Building and associated improvements, the parties agree to work together in good faith to create a shared occupancy or lease agreement of the KSM Property (the "**Lease Agreement**") at no cost to either party.
 - (d) Unless utilized for the Project, after the KSM Property is vacated by the City, the Developer agrees to demolish the Safety Building at its sole cost and properly dispose of any and all materials and debris.
3. Closing. The Closing of the transactions completed by and under this Agreement ("**Closing**") shall take place at the offices of a title company selected by the Developer and on a date (the "**Closing Date**") within ten (10) business days after all of the following conditions have been satisfied:
- (a) The Developer's Project Analysis has been completed to Developer's satisfaction, in Developer's sole discretion, or the time period allocated for the Developer to complete its analysis has expired;
 - (b) The Developer's Proposal (as defined herein) has been approved by the City;
 - (c) The Public Improvements Agreement (as defined herein) has been approved by the City and Developer;
 - (d) The Shared Parking Agreement (as defined herein) has been approved by the City and Developer;
 - (e) The Lease Agreement has been approved by the City, City Council and Developer;
 - (f) a Real Property Purchase and Sale Agreement (the "**Purchase and Sale Agreement**") relating to the transfer of the KSM Property to Developer has been approved by the City, City Council and Developer;
 - (g) The City has issued the Developer a Notice to Proceed (as defined herein); and
 - (h) The Developer has obtained or has been provided all Permits and Approvals (as defined herein) and all other approvals, permits, licenses, or authorizations required herein or subsequently required by the City or any other governmental or quasi-governmental authority.

At Closing, the City shall transfer fee simple absolute ownership of the KSM Property to the Developer, or its assignee, by due execution and delivery of a special warranty deed (the "**Deed**") that is mutually acceptable and consistent with this Agreement. This Agreement shall survive the transfer of the KSM Property and shall not merge with the Deed. The City will convey good and marketable title to the KSM Property to the Developer free and clear of all monetary liens and encumbrances whatsoever, and subject only to such easements, restrictions and other title exceptions as shall be of record in the Register's Office for Knox County, Tennessee. Immediately upon Closing, the Developer shall properly record the Deed in the Register of Deeds of Knox County, Tennessee.

The City shall be responsible for all closing costs traditionally attributed to the Seller and the Developer shall be responsible for all closing costs traditionally attributed to the Buyer. Any applicable transfer taxes shall be paid by the Developer.

4. Right of Reversion.

(a) The City shall have a right of reversion ("**Right of Reversion**"), consistent with the following: fee simple title to the KSM Property (including all then existing improvements thereon that are part of the real estate) shall revert to the City if and only if: (a) the Developer fails to commence construction of the Project within twelve (12) months of the later of (i) the Closing Date, or (ii) that date Developer has obtained or has been provided all Permits and Approvals, and all other approvals, permits, licenses, or authorizations required herein or subsequently required by the City or any other governmental or quasi-governmental authority; (b) the Developer has not conducted demolition, site preparation, and grading over at least twenty-five percent (25%) percent of the KSM Property whereupon the KSM shall be located within twenty-four (24) months of the later of (i) the Closing Date, or (ii) that date Developer has obtained or has been provided all Permits and Approvals, and all other approvals, permits, licenses, or authorizations required herein or subsequently required by the City or any other governmental or quasi-governmental authority; or (c) the Developer has not completed construction of the KSM within six (6) years (72 months) of the commencement of construction; provided, however, if the Developer has not completed construction of the KSM within the six (6) years (72 months) period, Developer shall have such additional period of time as is reasonably necessary in which to complete construction of the KSM if Developer is diligently pursuing construction of the KSM at the end of the six (6) year (72 month) period and continues to do so therefor; provided, further, however, such additional period of time shall be no longer than two (2) years (24 months) from the expiration of the initial six (6) year (72 month) period.

(b) In the event the City exercises its Right of Reversion, to the extent allowed by law, the Developer shall assign to the City all warranties, guarantees, contracts, plans, specifications, and other similar documents provided by the any general contractor or any subcontractors or which are otherwise included in or required by the construction contract for the KSM.

5. Commencement of the Project. Developer agrees that commencement of construction on the Project will occur within sixty (60) days of the later of (i) the Closing Date, (ii) that date Developer has obtained or has been provided all Permits and Approvals, and all other approvals, permits, licenses, or authorizations required herein or subsequently required by the City or any other governmental or quasi-governmental authority, or (iii) should the site placement of the KSM require KPD to move before construction commences, that date upon which the City has finally vacated the Safety Building and KSM Property.

B. Public Improvements. As part of this Project, the parties recognize and acknowledge that the KSM Project may include certain public improvements ("**Public Improvements**"), such as landscaped walkways, outdoor play areas, lawn and garden-style plazas, pavilions and other similar like features on City property and rights-of-way, that are adjacent to the KSM Property and may serve as a gateway or entrance to the KSM Property, and agree as follows:

1. To negotiate in good faith and work collaboratively to reach an agreement on the nature of such Public Improvements, the design specifications thereof, as well as any shared expenses related to said improvements as part of the final approval of the Proposal (the "**Public Improvements Agreement**").
2. Any improvements must be designed and built in compliance with the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. ("**ADA**") and open to the public. The Public Improvements design specifications must be approved by the City as part of the Public Improvements Agreement and prior to obtaining a permit for construction, and said approval shall not be unreasonably withheld, conditioned, or delayed.
3. Subject to Excusable Delay (as defined herein) and Developer's development and construction schedule, construction of the Public Improvements shall not be abandoned by the Developer and shall not cease without being resumed within ninety (90) days thereafter.
4. Any of the materials, fixtures or articles used in the construction of the Public Improvements or the appurtenances thereto shall materially comply with the Public Improvement Plan, as approved as provided herein.
5. The City or their representatives are permitted, at all reasonable times and upon reasonable advance notice, to inspect the Public Improvements and the construction thereof and all materials, fixtures and articles used or to be used in the construction and to examine all detailed plans, shop drawings, specifications and other records that relate to the Public Improvements, which Developer agrees to furnish to the City, when requested, copies of such plans, drawing and/or specifications.

ARTICLE III. OBLIGATIONS OF DEVELOPER

- A. Developer's Proposal for Development of the Property. The parties agree that the Developer will prepare a detailed proposal for the Project (the "**Proposal**") and submit the Proposal to the City for its approval, which shall not be unreasonably withheld, conditioned, or delayed. This Proposal shall be submitted to the City by the Developer within one hundred and eighty (180) days of the Effective Date, unless extended by mutual agreement, but no later than June 30, 2019. Prior to the final submission of the Proposal, the Developer and the City agree to host at least one (1) public meeting to obtain community feedback on the Project and the designs set forth in the Proposal. This public meeting will be organized and led by the City with support from the Developer. It is agreed and understood that the City's approval of the Proposal is a prerequisite to the City transferring the KSM Property to the Developer.
1. Contents of the Proposal. Developer shall include in its Proposal the following: (1) a detailed description of the Developer's development team, naming the principals of Developer, the architectural and design team, the general contractor and the owner's representative; (2) the Project's conceptual design, including site plans, elevations and typical floor plates in keeping with all applicable planning requirements and design guidelines of the City; (3) refined economic estimate of construction costs for Project designs and any market analysis for the Project; (4) the anticipated financing plan and cash flow analysis for operation of the KSM upon completion of construction; (5) location of parking spaces and the manner by which those spaces will be operated;

(6) evidence of ability to satisfy the City's insurance and indemnity requirements set forth on Exhibit B attached hereto; and (7) the KSM Property Notice, if not previously delivered by Developer to the City.

2. Review of Proposal. The City agrees to review the Proposal and any Public Improvements within fifteen (15) business days of its receipt thereof and provide written comments and proposed revisions to the Developer no later than twenty (20) business days following the date upon which the City receives the Proposal. In the event that the City fails to respond to any submission by the Developer within this applicable review period, such submission by the Developer shall be deemed approved by the City. Any approvals granted by the City at this phase of Proposal review shall not be deemed to be approvals for the purposes of City codes and permitting review that are required generally for all construction projects within the City.
 3. Disapproval of Proposal. This Agreement may be terminated by either Developer or the City if the parties cannot come to a mutual agreement with regard to the Proposal. Prior to any termination by the City, the City agrees to provide the Developer with a written explanation of the reason the City does not agree with the contents of the Proposal, and allow the Developer sixty (60) days within which to amend and resubmit the Proposal. The review and approval procedures set forth in Subsection 2 immediately above shall thereafter govern the re-submitted Proposal.
- B. Notice to Proceed. Promptly upon approval of the Proposal, and once any required relocation of KPD and vacation of the Safety Building has been completed, the City will issue the Developer a Notice to Proceed (the "**Notice to Proceed**"). Promptly upon receipt of the Notice to Proceed, the Developer will strive to finalize design documents and submit the same to the City for approval in accordance with subsection H below, which shall not be unreasonably withheld, conditioned, or delayed (the "**Final Plan Approval**").
- C. Permits and Approvals. Promptly upon receipt of the Final Plan Approval, the Developer will strive to finalize design documents and apply for and pursue all necessary permits, approvals, and licenses needed for the planning, design, engineering, testing, acquisition, construction, installation, and development of the Project, the Public Improvements, and operation of the KSM, including, without limitation, planning approvals, zoning permits, zoning changes and variances, building permits, utility and related service permits (the "**Permits and Approvals**"). The City will reasonably cooperate with the Developer in completing applications and making submissions in connection with obtaining the Permits and Approvals so as to expedite the permitting application process. The Developer agrees to adhere to the local building codes and zoning requirements as part of applying for and obtaining the Permits and Approvals.
- D. Minimum Building Specifications. The Project shall include, at minimum, a two story building which consists of approximately 80,000 to 200,000 square feet of exhibition, office and classroom space. The overall design of the KSM shall be approved in accordance with this Article III.
- E. Costs of Predevelopment Activities and Preconstruction Design Development Activities. Developer is responsible for all Developer's costs of predevelopment activities and preconstruction design development activities, including but not limited to costs for planning, environmental, architectural, engineering, legal services, and other costs associated with preparation of the Proposal, the Project, this Agreement, the Purchase and Sale Agreement, and other related documents to this Project. The City is

responsible for all the City's costs of predevelopment activities and preconstruction design development activities, including but not limited to costs for planning, environmental, architectural, engineering, legal services, and other costs associated with reviewing the Proposal or the Project, preparing this Agreement, the Purchase and Sale Agreement, and other related documents to this Project. The Developer shall be the sole owner of any analysis, studies, reports, contracts, documents, permits, licenses, plans, and writings (collectively the "**Materials**") for which the Developer orders, initiates, contracts for, pays for, or otherwise receives pursuant to this Agreement or the Project. To the extent permitted by law, with regard to any Materials for the Public Improvements related to this Project, the Developer grants the City the right to use said Materials for its purposes. The Developer agrees to provide copies of all Materials in its possession or control to the City upon request.

- F. Assignment of Agreements. All construction contracts with a general contractor and all material agreements that the Developer enters into for the provision of engineering and architectural activities on the Project shall include a term providing for the right of Developer to assign such agreements to the City. Such assignments shall be effective only upon the assumption of the agreements by the City.
- G. Changes to Final Design. Any changes in the preconstruction designs must be noted in the final design plans and construction documents for the Project. The final design must be approved by the City prior to the Developer obtaining the Permits and Approvals to construct the Project, such approval shall not be unreasonably withheld, conditioned, or delayed. If there are any material changes to the Final Design during the Permitting and Approvals process, the parties agree that said changes must be approved by the City, which shall not be unreasonably withheld, conditioned, or delayed.
- H. Commencement of Construction of the Project and Endowment. Construction of the Project must be consistent with the approved final design and subject to the following requirements:
1. Permits and Approvals. Before construction commences, the Developer shall submit such appropriate permit applications and shall have received all necessary non-appealable Permits and Approvals required to commence construction on the Project, including, without limitation, planning approvals, zoning permits, zoning changes and variances, building permits, utility and related service permits. During the process of the Developer obtaining the Permits and Approvals, should the Developer alter the design or construction of the Project, the Developer may do so, subject to the consent and approval of the City, which approval shall not be unreasonably withheld, conditioned, or delayed.
 2. Construction. It is anticipated that The Clayton Family Foundation will gift and invest approximately One Hundred Million Dollars (\$100,000,000) in the Project in accordance with the Proposal. The Developer will implement a plan of finance, which may include any combination of grants, donations, and other financial instruments, to fund the Project and operate the KSM. All Developer's costs for the design, development and construction of the KSM will be borne by the Developer, through its plan of finance, which may include any combination of grants, donations, or other financial instruments.
 3. Endowment. In addition to the approximate Project costs noted above, it is anticipated that The Clayton Family Foundation will gift and invest approximately Fifty Million Dollars (\$50,000,000) to an operating endowment that will be established, managed, and used by The Clayton Family Foundation, or its assignees, for the operation and maintenance of the KSM.

The specific terms and conditions for operating the operating endowment will be set forth in a separate agreement prepared solely by The Clayton Family Foundation, or its assignees.

- I. ADA Compliance. With regard to the construction services performed under this Agreement, Developer will comply in all material respects with all applicable requirements of the ADA. Further, with regard to the design and construction of the Public Improvements for this Project, the Developer agrees that it will defend, indemnify and hold the City harmless against any and all claims, demands, suits or causes of action against the City which arise out of any negligent and/or intentional misconduct or omissions by Developer, its employees, agents or representatives that violates the ADA. Developer agrees that the City will not be responsible for any costs or expenses arising from Developer's failure to comply with the ADA.

- J. Completion of Project. Subject to any Excusable Delays (as defined herein), Developer shall diligently pursue the development, construction and installation of the KSM within sixty (60) months of the date on which construction is commenced pursuant to Article II (A)(5) hereof; provided, however, such deadline may be reasonably adjusted from time to time with the consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed, provided Developer is proceeding in good faith with the completion of the KSM. Such adjustments shall include, without limitation, extensions for Excusable Delay, as long as Developer notifies the City in writing in each case promptly after the occurrence of an Excusable Delay and specifies the nature and the specific duration in days of the Excusable Delay, if then known. Completion of construction of the KSM shall be deemed to have occurred when certificate(s) of occupancy have been issued with respect to the KSM. Completion of construction of the Project or any particular phase of the Project shall be deemed to have occurred upon the earlier to occur of (a) when certificate(s) of occupancy have been issued with respect to the Project or any particular phase of the Project, or (b) when certificate(s) of occupancy are not issued, when all construction is finished and there is no further labor to be contributed or material to be delivered to the Project or any particular phase of the Project.

- K. Excusable Delays. Developer shall endeavor to notify the City promptly after the occurrence of an Excusable Delay, which such notice will specify the nature and the anticipated specific duration in days of the Excusable Delay. An "Excusable Delay" shall be defined as any unanticipated delay in commencement or completion of construction due to contract disputes or disagreements, strikes, lockouts or other labor or industrial disturbance or disputes, civil disturbance, future order of any governmental authority or quasi-governmental authority, court or regulatory body claiming jurisdiction, act of the public enemy, war, riot, sabotage, blockage, embargo, lightning, earthquake, fire, hurricane, tornado, flood, washout, explosion, unusually inclement weather, taking or condemnation, or any other cause or event whatsoever beyond the reasonable control of Developer (excluding financial inability to perform by the Developer, or any lack of usual and customary diligence by any contractor or subcontractor of Developer).

ARTICLE IV. REPRESENTATIONS, DEFAULT, REMEDIES

- A. Representations and Warranties of Developer. Developer represents and warrants for the benefit of the City as follows:
1. Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Tennessee, is in compliance with the laws of the State of Tennessee, and has the power and authority to own its properties and assets and to carry on its business in the State of Tennessee as now being conducted and as hereby contemplated.
 2. This Agreement is a legal, valid and binding obligation of Developer enforceable against Developer in accordance with its terms, subject to applicable insolvency laws and equitable principles.
 3. No litigation at law or in equity or proceeding before any governmental agency involving Developer is pending or, to the knowledge of Developer, threatened, in which any liability of Developer is not adequately covered by insurance or in which any judgment or order would have a material adverse effect upon the business or assets of Developer or the performance of its obligations hereunder.
 4. Developer is not in default or in violation of this Agreement, and the execution, delivery and compliance by Developer with the terms and conditions of this Agreement will not conflict with or constitute or result in a material default under or violation of, (i) any material agreement or instrument to which Developer is a party or by which it is bound, or (ii) any constitutional or statutory provisions or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over Developer or its property, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute or result in such a material default or violation.
- B. Default by Developer. The occurrence and continuance of any of the following events shall constitute an "Event of Default":
1. Failure of Developer to perform any of Developer's obligations under this Agreement after written notice is given to the Developer of such failure and Developer has not cured such failure within ninety (90) calendar days of such notice; provided, however, if the Event of Default cannot be remedied or cured within the ninety (90) day period, Developer shall have such additional period of time as is reasonably necessary in which to remedy or cure the default if Developer is diligently pursuing a remedy or cure at the end of the ninety (90) day period and continues to do so therefor; provided, however, such notice and cure period shall not apply to the defaults contained in subsections (2) through (4) of this Article IV, Section (B); or
 2. Any material representation or warranty made or deemed made by the Developer in any instrument, documents, statement or certificate in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect as of the date made; or

3. A court of competent jurisdiction enters a decree or order for relief with respect to the Developer in an involuntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed, or any other similar relief shall be granted under any applicable federal or state law; or (ii) an involuntary case shall be commenced against Developer under any applicable bankruptcy, insolvency or similar law now or hereafter in effect which is not dismissed within one-hundred and eighty (180) days after filing; or (iii) a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over the Developer, as the case may be, or over all or a substantial part of its property, shall have been entered which is not dismissed within one-hundred and eighty (180) days after filing; or (iv) there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Developer for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Developer which is not dismissed within one-hundred and eighty (180) days after filing; or
4. Developer has an order for relief entered with respect to it or shall commence a voluntary case under any applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case or to the conversion of an involuntary case to a voluntary case under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or Developer makes any assignment for the benefit of creditors, or Developer is unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or Developer adopts any resolution or otherwise authorize any action to approve any of the actions referred to herein.

C. Remedies of the City Upon Default of Developer.

1. If an Event of Default occurs, the City will provide written notice of such Event of Default to Developer and provide to Developer ninety (90) calendar days within which to cure such Event of Default; provided, however, if the Event of Default cannot be remedied or cured within the ninety (90) day period, Developer shall have such additional period of time as is reasonably necessary in which to remedy or cure the default if Developer is diligently pursuing a remedy or cure at the end of the ninety (90) day period and continues to do so therefor; provided, however, such notice and cure period shall not apply to the defaults contained in subsections (2) through (4) of Article IV, Section (B).
2. If an Event of Default occurs hereunder which has not been cured as provided herein, the City may (a) terminate this Agreement, at which time all of the rights and privileges of the Developer hereunder shall cease and be of no further force or effect, and/or (b) pursue whatever other remedies are available at law or in equity which are necessary or desirable to effect the purposes of this Agreement. The City's termination of the rights of the Developer shall not terminate or otherwise adversely affect the rights of the City to pursue and exercise other remedies against the Developer.
3. In addition, if an Event of Default occurs hereunder pursuant to Article II(A)(4), which has not been cured as provided herein, the City may also exercise and enforce the Right of Reversion.

Notwithstanding anything in this Agreement to the contrary, should the City exercise and/or enforce the Right of Reversion, any and all obligations of the Developer and The Clayton Family Foundation, if any, shall terminate and neither the Developer nor The Clayton Family Foundation shall have any further liability whatsoever to the City or hereunder, except as set forth in Article II(4)(b).

4. The City shall also be entitled to exercise all other rights, options and privileges, and assert all claims, provided by law or in equity, as a result of an Event of Default hereunder.
- D. Waiver. No failure by City to exercise any right, remedy, or option under this Agreement or any present or future supplement hereto, or delay by City in exercising the same, will operate as a waiver thereof. No waiver by City will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by City on any occasion shall affect or diminish City's rights thereafter to require strict performance by the Developer of any provision of this Agreement. City's rights under this Agreement will be cumulative.

ARTICLE V. OPERATION OF THE PREMISES

- A. Operation and Maintenance of the Premises. Upon completion of the Project, the KSM Property shall be used solely by Developer for the purposes of operating the KSM and related uses, including an ancillary retail store, restaurants, educational facilities, supporting parking, administrative and on-site security offices, and other uses that are related to the operation of the KSM.
1. In occupying, maintaining, repairing, modifying and otherwise using the KSM Property for the KSM, the Developer shall comply in all material respects, at no cost to the City, with all applicable laws, whether in force when this Agreement is executed or later enacted.
 2. The KSM must maintain days of operation in which, weather permitting and subject to nationally recognized banking holidays, the KSM is open to the public not less than six hours a day, six days per week during the peak season, and not less than six hours per day, five days per week, during the off-season.
 3. The Developer agrees to maintain the KSM and related facilities, including the grounds, buildings, fixtures, appurtenances, improvements, and all incidentals, so that the Premises are in a well-maintained and safe condition and are fit to be used for their intended purpose.
 4. The KSM will develop a program or series of programs that guarantee access for low-income students (K-12) who reside within the City of Knoxville. This program will be developed in coordination with the City of Knoxville and may include opportunities such as scholarships, school voucher programs, or annual passes for specific neighborhood-specific youth, as well as other programs. The parties intend that this program and the programming of KSM will operate in cooperation with the various local school systems, but ultimately the programming and access developed and offered is at the discretion of the Board of the KSM. The KSM will have a Board separate from The Clayton Family Foundation. Parties agree that the City, at all times, shall have at least one representative on the Board, to be nominated by the Mayor, approved by City Council and approved by the KSM Board.

- B. Parking. The parties understand and agree that available and accessible parking is a vital component to the success of the KSM, as well as to the City's Civic Coliseum and Auditorium, both of which are located on parcels adjacent to the Property where the KSM is to be constructed. Currently, there are three existing parking garages which serve the City's existing facilities, and the City is willing to offer some of the parking spaces in these garages to the Developer for use for the KSM. The Developer has agreed to hire an engineering or other comparable firm to analyze the existing parking spaces owned by the City in the area surrounding the Property and evaluate the demand and needs of the new KSM.

Upon completion of the parking analysis, the parties agree to work together in good faith to further discuss the availability of parking for the KSM utilizing existing City parking spaces, create a parking fee schedule, and create a detailed shared parking use agreement (the "**Shared Parking Agreement**"). The Developer understands that its patrons will be allowed to use a designated number of available spaces within the City's existing parking garages, but any parking fees paid by KSM customers to use said spaces will be payable to the City for the continued operation and maintenance of said parking structures. A fee schedule will be determined after completion of the parking analysis and incorporated into the Shared Parking Agreement.

ARTICLE VI. ENDOWMENT OF THE SCIENCE DISCOVERY CENTER

Upon completion of the Project, the KSM and related facilities shall be endowed by The Clayton Family Foundation, or the 501(c)(3) entity created by The Clayton Family Foundation, which endowment is as described in and in accordance with Article IV(I)(3).

ARTICLE VIII. MISCELLANEOUS PROVISIONS

- A. Naming Rights. The Developer has the right to name the KSM, subject to the City's written approval, which the City may not unreasonably withhold, delay or condition.
- B. Notices. Any notice, request, demand, tender or other communication under this Agreement shall be in writing, and shall be deemed to have been duly given at the time and on the date when personally delivered, or upon being delivered to a nationally recognized commercial courier for next day delivery, to the address for each party set forth below, or upon the third Business Day after being deposited in the United States Mail, Certified Mail, Return Receipt Requested, with all postage prepaid, to the address for each party set forth below.

i. If to the Developer:

Knoxville Science Museum, Inc.
Attn: James L. Clayton
520 W. Summit Hill Drive, Suite 801
Knoxville, TN 37902-2006

ii. If to The Clayton Family Foundation:

The Clayton Family Foundation
Attn: James L. Clayton
520 Summit Hill Drive, Suite 801
Knoxville, TN 37902-2006

iii. If to the City to:

The City of Knoxville
Attn: Law Director
P. O. Box 1631
Knoxville, TN 37902

Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of such communication. By giving prior notice to all other parties, any party may designate a different address for receiving notices.

- C. Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Tennessee. Venue for any action arising out of this Agreement shall be exclusively in the State and Federal Courts sitting in Knoxville, Knox County, Tennessee.
- D. Entire Agreement. This Agreement supersedes all prior discussions and agreements between the City and Developer with respect to the Project. This Agreement contains the sole and entire understanding between the City and Developer with respect to the transactions contemplated by this Agreement, and all promises, inducements, offers, solicitations, agreements, representations and warranties heretofore made between the parties.
- E. Amendments. This Agreement shall not be modified or amended in any respect except by written agreement executed by or on behalf of the parties to this Agreement in the same manner as this Agreement is executed.
- F. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- G. Captions. All captions, headings and section and paragraph numbers and letters and other reference numbers or letters are solely for the purpose of facilitating reference to this Agreement and shall not supplement, limit or otherwise vary in any respect the text of this Agreement. All references to particular sections, paragraphs or subparagraphs by number refer to the particular section, paragraph or subparagraph so numbered in this Agreement unless reference to another document or instrument is specifically made.
- H. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same Agreement.

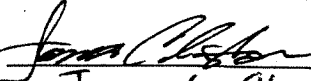
- I. No Government Limitation. This Agreement between Developer and the City shall not be construed to bind any other agency or instrumentality of federal, state or local government in the enforcement of any regulation, code or law under its jurisdiction.
- J. Enforcement. The prevailing party in any action commenced due to a breach of this Agreement shall be entitled to receive from the other party reasonable attorneys' fees and court costs incurred in such action.
- K. Time of the Essence. Time shall be of the essence in the performance of the terms and conditions of this Agreement.
- L. Inspection Rights. The City and the City's agents, employees and independent contractors shall have the right and privilege to enter upon the Property during the term of this Agreement to monitor Developer's compliance with the terms of this Agreement upon reasonable notice to Developer during business hours.
- M. Approvals by the City. Unless otherwise specifically provided herein, any approval to be given hereunder by the City may be given by the Mayor or her designee for the Project.
- N. Business Days. For purposes of this Agreement, "Business Day" shall mean any day other than a Saturday or Sunday or a day on which banking institutions in Knoxville, Tennessee are authorized or obligated by law or executive order to close. If any date on which performance or notice is due under this Agreement is not a Business Day, performance or notice shall not be due until the next Business Day.
- O. Limitation on Liability, No Personal Liability. UNDER NO CIRCUMSTANCES SHALL THE PARTIES BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, AS A RESULT OF A BREACH OF THIS AGREEMENT, ALL OF WHICH ARE HEREBY WAIVED BY THE PARTIES; PROVIDED, HOWEVER, SUCH WAIVER SHALL NOT APPLY TO THOSE INDEMNIFICATION OBLIGATIONS OF DEVELOPER SET FORTH IN EXHIBIT D. NO RECOURSE SHALL BE HAD FOR ANY CLAIM BASED UPON ANY OBLIGATION, COVENANT OR AGREEMENT IN THIS AGREEMENT OR ANY TRANSACTION OR MATTER RELATING HERETO AGAINST ANY PAST, PRESENT OR FUTURE DIRECTOR, OFFICER, MEMBER, EMPLOYEE, COUNSEL, OR AGENT OF THE PARTIES, WHETHER DIRECTLY OR INDIRECTLY, AND ALL SUCH LIABILITY OF ANY SUCH INDIVIDUAL AS SUCH IS EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF AND IN CONSIDERATION FOR THE PARTIES ENTERING INTO THIS AGREEMENT.
- P. Assignments. The Developer shall not assign or transfer any interest in this Agreement without obtaining the prior written approval of the City. Any request for City approval of an assignment shall be in writing.
- Q. Federal, State and Local Requirements. Developer is responsible for full compliance with all applicable federal, state, and local laws, rules and regulations.

- R. Non-Reliance of Parties. The parties hereto explicitly agree that they have not relied upon any earlier or outside representations other than what has been included in this Agreement. Furthermore, neither party has been induced to enter into this Agreement by anything other than the specific written terms set forth herein.
- S. Insurance. Developer shall maintain insurance in accordance with the terms contained on Exhibit B attached hereto and incorporated herein by reference.
- T. Ethical Standards and Non-Discrimination Requirements. Developer shall comply with the Ethical Standards required on Exhibit C attached hereto and incorporated herein by reference.
- U. Distinction from Regulatory Authority of the City. The parties understand and agree that this Agreement does not and shall not be construed to indicate or imply that the City, acting as a regulatory or permitting authority, has hereby granted or is obligated to grant any approval or permit required by law for the development of the Property.
- V. Waiver. No waiver by any party of any term or condition of this Agreement shall be deemed or construed to constitute a waiver of any term or condition or of any subsequent breach, whether or not it is the same or different provision.
- W. Sovereign Immunity. The City does not waive its sovereign immunity by entering into this Agreement, and fully retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Agreement.
- X. No Joint Venture. This Agreement does not create a joint venture or a partnership between the parties.
- Y. Authority. Each person signing this Agreement for Developer and Operator hereby represents and warrants that he or she is fully authorized to sign this Agreement on behalf of Developer and/or Operator and to bind Developer and/or Operator to the performance of its obligations under this Agreement.


[Signature Page Follows]

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be duly executed as of the date first above written.

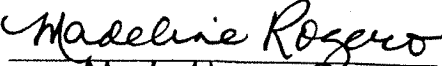
KNOXVILLE SCIENCE MUSEUM, INC.

By: 
Name: James L. Clayton
Title: Chairman

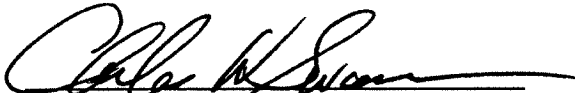
THE CLAYTON FAMILY FOUNDATION

By: 
Name: James L. Clayton
Title: President & Chairman

THE CITY OF KNOXVILLE

By: 
Name: Madeline Rogero
Title: Mayer

APPROVED AS TO FORM:


CHARLES W. SWANSON
LAW DIRECTOR

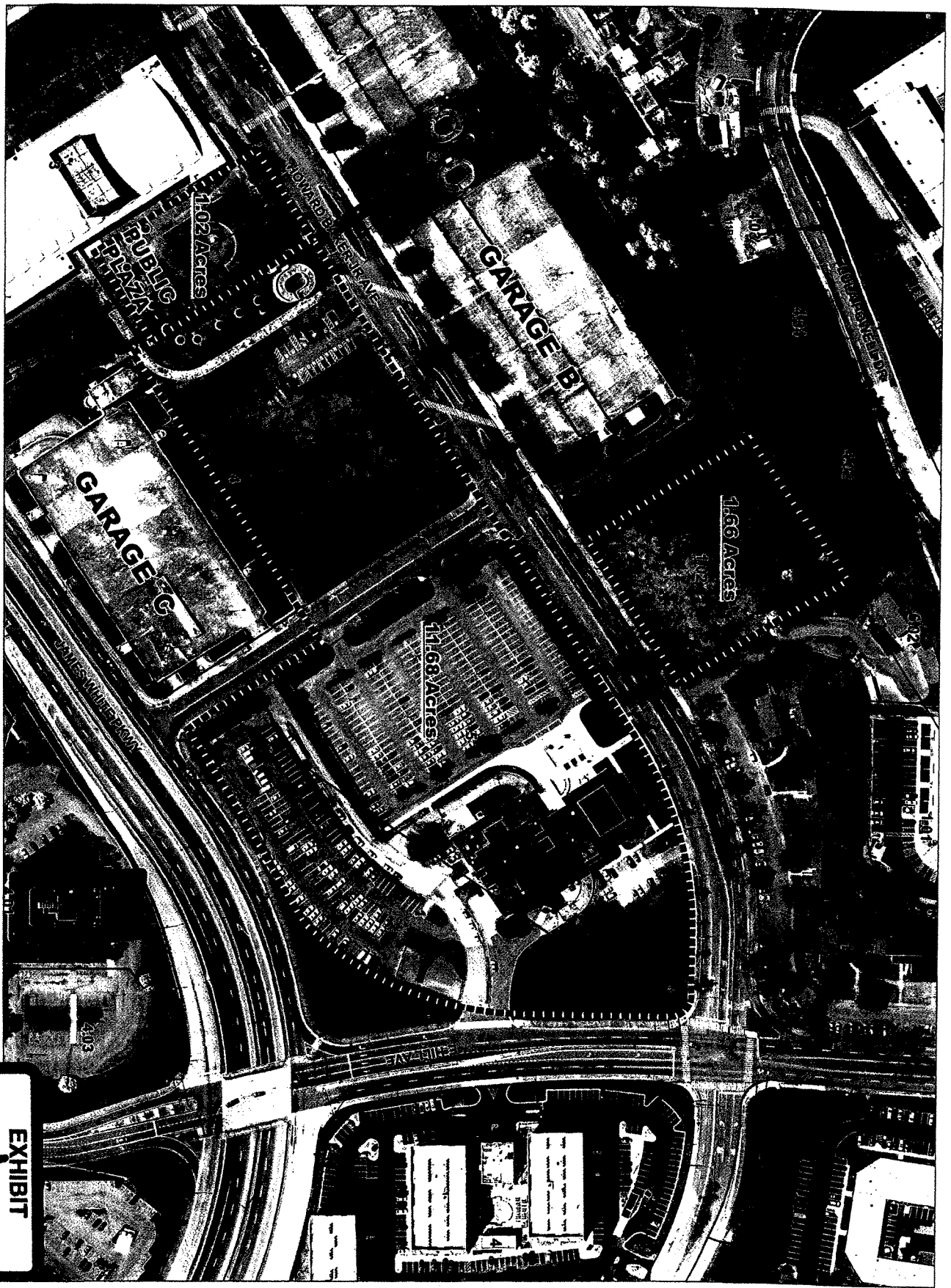
FUNDS CERTIFIED:


JAMES YORK
FINANCE DIRECTOR

Exhibit A

Property

(see attached)



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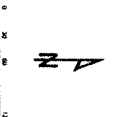
EXHIBIT

A

DATE	BY	VERSION
6/20/18	DMN	1
8/16/2018	DMN	2
9/20/18	DMN	3

This plan is submitted as a proposed final plan for the City of Knoxville. The City Engineer's Office will review the plan for compliance with the City Code and the Tennessee State Code. The City Engineer's Office will issue a final plan if the plan is found to be in compliance with the City Code and the Tennessee State Code. The City Engineer's Office will not be responsible for the accuracy of the information provided on this plan. The City Engineer's Office will not be responsible for the accuracy of the information provided on this plan.

NOV 2017 A. BARNETT
 OFFICE SURVEYOR & MAPPING
 400 NORTH UNIVERSITY AVENUE
 KNOXVILLE, TENNESSEE 37916
 606.520.2100
 www.barnettm.com



CITY OF KNOXVILLE

DEPARTMENT OF EXHIBITION

Staff: 100
 City of Knoxville Building
 300 Main Street
 Knoxville, Tennessee 37902
 606.520.2100

Exhibit B

Insurance

Developer shall at its sole expense obtain and maintain in full force and effect until construction is completed on the Project at least the following types and amounts of insurance for claims which may arise from or in connection with this Agreement. All insurance must be underwritten by insurers with an A.M. Best rating of A-VIII or better.

1. *Commercial General and Umbrella Liability Insurance*; occurrence version commercial general liability insurance, and if necessary umbrella liability insurance, with a limit of not less than \$2,000,000 each occurrence for bodily injury, personal injury, property damage, and products and completed operations. If such insurance contains a general aggregate limit, it shall apply separately to the work/location in this Agreement or be no less than \$3,000,000.

Such insurance shall:

a. Contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Developer including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds. Proof of additional insured status up to and including copies of endorsements and/or policy wording will be required.

b. For any claims related to this project, Developer's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering the City, its officials, officers, employees, and volunteers shall be excess of Developer's insurance and shall not contribute with it.

c. At the sole discretion of the City, dedicated limits of liability for this specific project may be required.

2. *Automobile Liability Insurance*; including vehicles owned, hired, and non-owned, with a combined single limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of Developer.

3. *Workers' Compensation Insurance*. Developer shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee or other applicable laws and employers' liability insurance with limits of not less than \$500,000. Developer shall require each of its subcontractors to

provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by Developer's workers' compensation insurance coverage.

4. *Other Insurance Requirements.* Developer shall:

a. Prior to commencement of construction, furnish the City with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to the City Attorney of Knoxville, P.O. Box 1631, Knoxville, Tennessee 37901. Proof of policy provisions regarding notice of cancellation will be required.

b. Upon the City's request, provide certified copies of endorsements and policies in lieu of or in addition to certificates of insurance. Copies of policies will only be requested when contracts are deemed to be extremely or uniquely hazardous, include a dollar amount that is significant to the overall budget of the City or a City Department, or the coverage(s) may not follow standard insurance forms. A policy will only be requested after the City's Risk Manager has reviewed the contract and proof of coverage has been provided. Should the certificate of insurance refer to specific coverage wording or endorsement(s), proof of such policy wording or endorsement(s) will be required.

c. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of construction.

d. Maintain such insurance from the time construction commence until construction is completed. Failure to maintain or renew coverage may be treated by the City as a material breach of contract until Closing occurs. Developer shall provide evidence of renewal of such insurance promptly upon such renewal.

e. If Developer cannot procure insurance through an insurer having an A.M. Best rating of A-VIII, Developer may, in the alternative, place such insurance with insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A. Modification of this standard may be considered upon appeal to the City Law Director.

f. Require all subcontractors to maintain during the term of the Agreement Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation/Employer's Liability insurance (unless subcontractor's employees are covered by Developer's or the general contractor's insurance) in the same manner as specified for Developer. Developer shall furnish subcontractors' certificates of insurance to the City without expense within ten (10) business days upon request.

Large Deductibles; Self-Insured Retentions. Any deductibles and/or self-insured retentions greater than \$50,000 must be disclosed to and approved by the City of Knoxville prior to the commencement of construction. Use of large deductibles and/or self-insured retentions will require proof of financial ability as determined by the City.

Waiver of Subrogation Required. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by Developer for the City. Proof of waiver of subrogation up to and including copies of endorsements and/or policy wording will be required.

Occurrence Basis Requirement. All general liability policies must be written on an occurrence basis unless the Risk Manager determines that a claims made basis is reasonable in the specific circumstance. Use of policies written on a claims made basis must be approved by the Risk Manager and retroactive

Exhibit C

Ethical Standards And Non-Discrimination Requirements

I. Ethical Standards:

The Developer hereby takes notice of and affirms that it is not in violation of, or has not participated, and will not participate, in the violation of any of the following ethical standards prescribed by the Knoxville City Code:

(A) Sec. 2-1048. Conflict of Interest.

It shall be unlawful for any employee of the city to participate, directly or indirectly, through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering advice, investigation, auditing or otherwise, in any proceeding or application, request for ruling or other determination, claim or controversy or other matter pertaining to any contract or subcontract and any solicitation or proposal therefor, where to the employee's knowledge there is a financial interest possessed by:

- (1) The employee or the employee's immediate family;
- (2) A business other than a public agency in which the employee or a member of the employee's immediate family serves as an officer, director, trustee, partner or employee; or
- (3) Any other person or business with whom the employee or a member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment.

(B) Sec. 2-1049. Receipt of Benefits from City Contracts by Councilmembers, Employees and Officers of the City.

It shall be unlawful for any member of council, member of the board of education, officer or employee of the city to have or hold any interest in the profits or emoluments of any contract, job, work or service, either by himself or by another, directly or indirectly. Any such contract for a job, work or service for the city in which any member of council, member of the board of education, officer or employee has or holds any such interest is void.

(C) Sec. 2-1050. Gratuities and Kickbacks Prohibited.

Gratuities. It is unlawful for any person to offer, give or agree to give to any person, while a city employee, or for any person, while a city employee, to solicit, demand, accept or agree to accept from another person, anything of a pecuniary value for or because of:

- (1) An official action taken, or to be taken, or which could be taken;
- (2) A legal duty performed, or to be performed, or which could be performed; or
- (3) A legal duty violated, or to be violated, or which could be violated by such person while a city employee.

Anything of nominal value shall be presumed not to constitute a gratuity under this section.

Kickbacks. It is unlawful for any payment, gratuity or benefit to be made by or on behalf of a subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

(D) Sec. 2-1051. Covenant Relating to Contingent Fees.

(a) *Representation of Contractor.* Every person, before being awarded a contract in excess of ten thousand dollars (\$10,000.00) with the city, shall represent that no other person has been retained to solicit or secure the contract with the city upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or bona fide established commercial, selling agencies maintained by the person so representing for the purpose of securing business.

(b) *Intentional violation unlawful.* The intentional violation of the representation specified in subsection (a) of this section is unlawful.

(E) Sec. 2-1052. Restrictions on Employment of Present and Former City Employees.

Contemporaneous employment prohibited. It shall be unlawful for any city employee to become or be, while such employee, an employee of any party contracting with the particular department or agency in which the person is employed.

For violations of the ethical standards outlined in the Knoxville City Code, the City has the following remedies:

- (1) Oral or written warnings or reprimands;
- (2) Cancellation of transactions; and
- (3) Suspension or debarment from being a Contractor or subcontractor under city or city-funded contracts.

The value of anything transferred in violation of these ethical standards shall be recoverable by the City from such person. All procedures under this section shall be in accord with due process requirements, included but not limited to a right to notice and hearing prior to imposition of any cancellation, suspension or debarment from being a Contractor or subcontractor under a city contract.

II. Non-Discrimination Requirements:

The Developer hereby agrees that it:

- A. Will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, familial status or national origin;
- B. Will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, sex, age, disability or familial status or national origin;
- C. Will in all solicitations or advertisements for employees placed by or on behalf of itself, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, disability, familial status or national origin;
- D. Will include these provisions in every subcontract or sublease let by or for it.

Exhibit D

Indemnification Requirements.

During the term of this Agreement, and until the statute of limitations on any claim arising out of this Agreement has run which claim is factually predicated upon events occurring while this Agreement was in effect, the Developer shall defend, indemnify and hold harmless the City, its officers, employees and agents from any and all liabilities which may accrue against the City, its officers, and employees for any and all lawsuits, claims, demands, losses or damages alleged to have arisen from an act or omission of the Developer in performance of this Agreement related to the Public Improvements or from the Developer's failure to perform this Agreement related to the Public Improvements using ordinary care and skill, except where such injury, damage, or loss was caused by the sole negligence of the City, its agents or employees.

During the term of this Agreement, and until the statute of limitations on any claim arising out of this Agreement has run which claim is factually predicated upon events occurring while this Agreement was in effect, the Developer shall save, indemnify and hold the City harmless from the cost of the defense of any claim, demand, suit or cause of action made or brought against the City alleging liability referenced above, including, but not limited to, costs, fees, attorney fees, and other expenses of any kind whatsoever arising in connection with the defense of the City; and the Developer shall assume and take over the defense of the City in any such claim, demand, suit, or cause of action upon written notice and demand for same by the City. The Developer will have the right to defend the City with counsel of its choice that is satisfactory to the City, and the City will provide reasonable cooperation in the defense as the Developer may request. The Developer will not consent to the entry of any judgment or enter into any settlement with respect to an indemnified claim without the prior written consent of the City, such consent not to be unreasonably withheld, conditioned, or delayed. The City shall have the right to participate in the defense against the indemnified claims with counsel of its choice at its own expense.

The Developer shall save, indemnify and hold City harmless and pay such final, non-appealable judgments that shall be rendered in any such actions, suits, claims or demands against City alleging liability referenced above, except where such injury, damage, or loss was caused by the sole negligence of the City, its agents or employees.

The indemnification and hold harmless provisions of this Agreement shall survive until the statute of limitations has run on any claim arising out of this Agreement which such claim is factually predicated upon events occurring while this Agreement was in effect; provided, however, the Developer shall have no obligation and liability to defend, indemnify and hold harmless the City for: (a) any liability referenced above related to Public Improvements following the City's final inspection and approval of the construction of each applicable Public Improvement, which shall not be unreasonably withheld, conditioned, or delayed, and (b) any liability referenced above related to a claim occurring more than twelve (12) months following completion of construction which such claim is factually predicated upon events occurring more than twelve (12) months following completion of construction.

July 3, 2019

Mr. David Brace
Chief Operating Officer and Deputy to the Mayor
City of Knoxville
400 Main St., Room 681
Knoxville, Tennessee 37902

RE: Knoxville Science Museum
BMA Project Number 194700

Dear Mr Brace:

BarberMcMurry Architects is pleased to share with you that we have reached an Agreement with the Clayton Family Foundation to provide architectural services for the study of the Safety Center site for the referenced project.

With Mr. Jim Clayton's guidance, we have defined a process that will result in the delivery of three options for development of the site to the Foundation and the City of Knoxville. With each of these options we will include, at a minimum, a draft program (list of potential spaces), conceptual site and floor plans, three dimensional representations of the exterior of the facility, square footage tabulations, and an opinion of probable cost. We will also help provide guidance for other cost information and potential construction scheduling as needed in support of the Foundation.

In defining this process, the primary goals are to understand the best ways to maximize the efficiencies of the site while minimizing the impact upon existing occupied buildings that will ultimately be demolished. Our secondary goals will be to facilitate the best flow of pedestrians from the City and the adjacent parking structures and maximize its visual presence from downtown and James White Parkway.

With your concurrence that these deliverables meet the intent of the Development Agreement and our authorization to begin, we anticipate our graphic process will take approximately 8-10 weeks. Once complete, these exhibits, along with the Foundation's support materials will be delivered to the City for your use and consideration.

We thank you for your patience as this process has been defined and look forward to working with the City toward the successful completion of this project and an

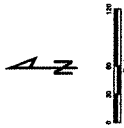
outstanding addition to downtown. As always, do not hesitate to contact us with any questions or concerns.

Sincerely,
BarberMcMurry Architects LLC

Kelly L. Headden, AIA
Exec Vice President / COO

cc: File

C:\Users\kheadden\Desktop\Knoxville Science Museum\letter David Brace July 3.docx



MAP DATA TAKEN FROM
 AERIAL SERVICE OF KNOXVILLE
 AND DEAN COUNTY. THIS MAP IS
 INTENDED TO PROVIDE VISUAL
 ACCURACY TO THE
 COMPARISON SCALE

DISCLAIMER
 The user of this map is advised that it is not intended to be used as a substitute for a professional survey. The City of Knoxville, Tennessee, and the City of DeKalb County, Georgia, are not responsible for any errors or omissions in this map. This map is provided for informational purposes only. The user of this map is advised that it is not intended to be used as a substitute for a professional survey. The City of Knoxville, Tennessee, and the City of DeKalb County, Georgia, are not responsible for any errors or omissions in this map. This map is provided for informational purposes only.

Date	Sheet	Version
8/18/2018	DRR	1
8/18/2018	DRR	2
8/18/2018	DRR	3

