

BOARD BILL #167 INTRODUCED BY ALDERWOMAN PHYLLIS YOUNG, PRESIDENT LEWIS REED, ALDERWOMAN LYDA KREWSON, ALDERWOMAN DIONNE FLOWERS, ALDERMAN FREEMAN BOSLEY, ALDERMAN SAM MOORE, ALDERWOMAN APRIL FORD-GRIFFIN, ALERMAN STEPHEN CONWAY, ALDERMAN KEN ORTMANN, ALDERMAN JOSEPH VOLLMER, ALDERMAN MATT VILLA, ALDERMAN ALFRED WESSELS, ALDERMAN STEPHEN GREGALI, ALDERWOMAN JENNIFER FLORIDA, ALDERWOMAN DONNA BARINGER, ALDERMAN JOSEPH RODDY, ALDERWOMAN MARLENE DAVIS, ALDERMAN CRAIG SCHMID, ALDERWOMAN BENNICIE JONES KING, ALDERMAN JEFFREY BOYD, ALDERWOMAN KATHLEEN HANRAHAN, ALDERMAN WILLIAM WATERHOUSE, ALDERWOMAN DOROTHY KIRNER, ALDERMAN FRANK WILLIAMSON

1 An ordinance authorizing and directing execution of a Cooperation Agreement between
2 the City and Gateway Foundation (the “**Foundation**”), a not-for-profit trust, which
3 provides procedures for the improvement of a two-block portion of the property
4 commonly known as the Gateway Mall and for the operation and maintenance of said
5 property once the improvements are completed.

6 WHEREAS, an existing master plan for the Gateway Mall, which was
7 commissioned by the City in 1999, recommended that a two-block portion of the Mall be
8 developed as a sculpture garden which portion is bounded on the east by Eighth Street,
9 on the west by Tenth Street, on the south by Market Street, and on the north by
10 Chestnut Street, and is generally depicted on Exhibit A attached hereto (“**City Blocks**
11 **190 and 276**”); and

Date: June 8, 2007

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1 WHEREAS, the City desires to improve City Blocks 190 and 276 by adding
2 landscape improvements, hardscape improvements, a café, and water features, and by
3 providing areas for the display of public artwork and sculpture (such improved property
4 is referred to herein as the “**Urban Garden**”); and

5 WHEREAS, the Foundation has agreed to fund the preparation of a plan for the
6 development of the Urban Garden on City Blocks 190 and 276 as provided above; and

7 WHEREAS, the City and the Foundation desire to enter into the Cooperation
8 Agreement, in the form attached hereto as Exhibit B, which provides procedures for the
9 planning, completion, operation, and maintenance of the Urban Garden; and

10 WHEREAS, notwithstanding the development of City Blocks 190 and 276 as
11 provided in the Cooperation Agreement, the Urban Garden will be the property of the
12 City, free and open to the public, subject to closures that are necessitated by
13 construction or maintenance, or as otherwise permitted by the City, and subject to the
14 Foundation’s ownership of all artwork and sculpture within the Urban Garden as
15 provided in the Cooperation Agreement.

16 NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

Date: June 8, 2007

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**BOARD BILL #167 INTRODUCED BY ALDERWOMAN PHYLLIS YOUNG,
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ALDERWOMAN KATHLEEN HANRAHAN, ALDERMAN WILLIAM
WATERHOUSE, ALDERWOMAN DOROTHY KIRNER, ALDERMAN
FRANK WILLIAMSON**

1 SECTION ONE. The Director of Parks, Recreation and Forestry, the President
2 of the Board of Public Service and the Comptroller are hereby authorized and directed
3 to enter into and execute on behalf of the City of St. Louis a Cooperation Agreement
4 with the Foundation with respect to that portion of the Gateway Mall depicted on Exhibit
5 A, which is incorporated herein by this reference, in substantially in the form attached
6 hereto as Exhibit B, which is incorporated herein by this reference, as well as any other
7 documents that are necessary or appropriate to carry out the provisions of this
8 ordinance.
9

Date: June 8, 2007

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WATERHOUSE, ALDERWOMAN DOROTHY KIRNER, ALDERMAN
FRANK WILLIAMSON**

Exhibit A to Board Bill # _____

(Depiction of City Blocks 190 and 276)

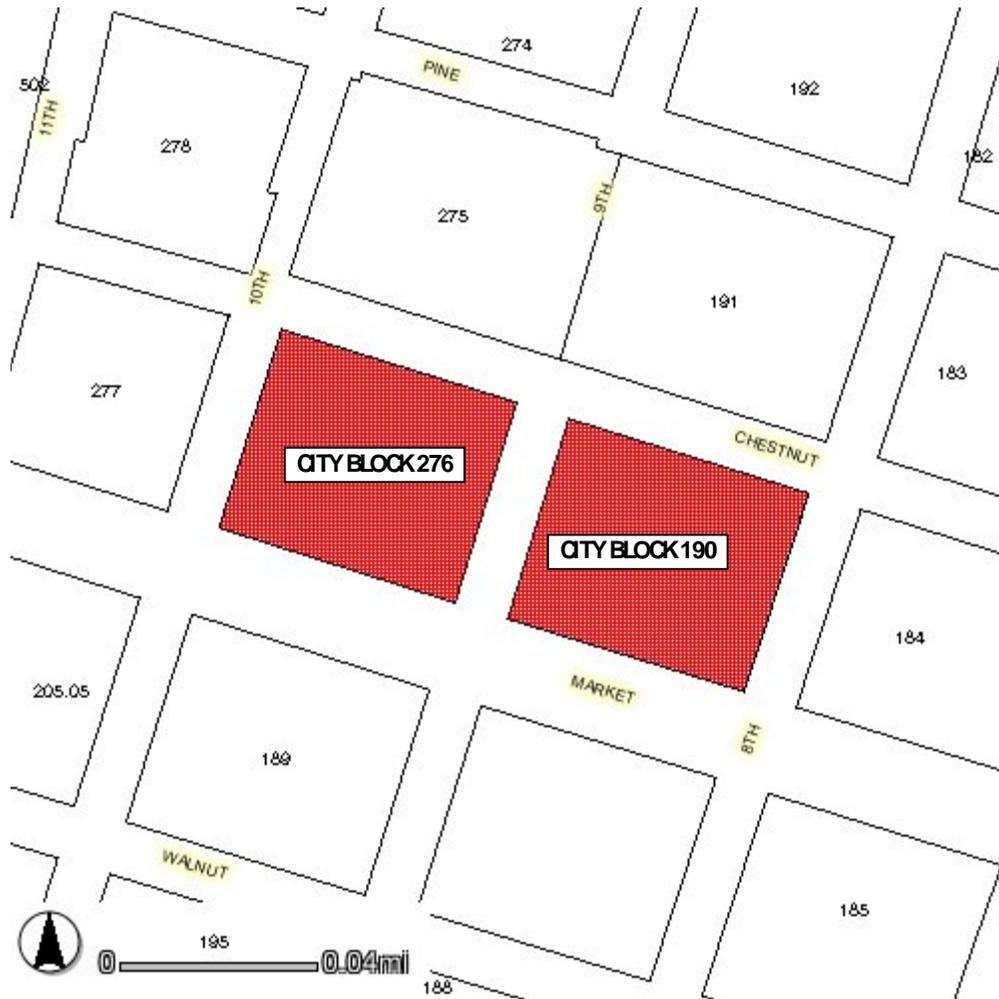


Exhibit B to Board Bill # _____

(Form of Cooperation Agreement)

Follows on the next page.

EXHIBIT B

COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT (this “**Agreement**”) is entered into as of the _____ day of _____, 2007 (the “**Date Hereof**”) by and between Gateway Foundation, a not-for-profit trust organized under the laws of the State of Missouri (the “**Foundation**”), and The City of St. Louis, Missouri, a constitutional charter city of the State of Missouri (the “**City**”).

WHEREAS, the City owns certain real property located in the downtown area of the City of St. Louis, Missouri, which consists of eighteen (18) blocks and is commonly known as the Gateway Mall (the “**Mall**”);

WHEREAS, an existing master plan for the Mall, which was commissioned by the City in 1999, recommended that a two-block portion of the Mall be developed as a sculpture garden;

WHEREAS, the City desires, and the Foundation wishes to cooperate with the City in effecting, the improvement of such two-block portion of the Mall, which portion is bounded on the east by Eighth Street, on the west by Tenth Street, on the south by Market Street, and on the north by Chestnut Street, and is generally depicted on Exhibit A attached hereto and incorporated herein (“**City Blocks 190 and 276**”), by the addition of certain landscape improvements, hardscape improvements, a structure capable of accommodating a café, and water features, and by the provision of areas for the display of public artwork and sculpture (such improvements being referred to herein as the “**Urban Garden**”);

WHEREAS, City Blocks 190 and 276 and the Urban Garden thereon will be, at all times (except as otherwise herein provided), City property and free and open to the public;

WHEREAS, the Foundation is willing to fund the preparation of a plan for the development of the Urban Garden on City Blocks 190 and 276 as provided above (the “**Design Documents**”);

WHEREAS, upon the completion of the Design Documents and mutual acceptance of the Design Documents by the City and the Foundation pursuant to the terms of this Agreement, the Foundation is willing to implement the Design Documents and effect the development of the Urban Garden on City Blocks 190 and 276 in accordance with the Design Documents and pursuant to the terms of this Agreement, and to donate the Urban Garden (other than the Artwork, as hereinafter defined) to the City;

WHEREAS, the City and the Foundation desire to enter into this Agreement, which provides procedures for their cooperation in the design and completion of the Urban Garden and for their cooperative operation and maintenance of the Urban Garden after construction of the Urban Garden is completed;

WHEREAS, the presently estimated cost of the improvement of the Urban Garden (including a 10% contingency, but not including the cost of the Artwork, as hereinafter defined) is Ten Million Dollars (\$10,000,000) (the “**Project Cost**”);

WHEREAS, pursuant to Sections 70.210-70.325 RSMo municipalities and private entities are authorized to contract and cooperate for the planning, development, construction, acquisition, or operation of any public improvement or facility, or for a common service;

WHEREAS, the execution and delivery by the City of this Agreement is authorized by Sections 70210-70.325 RSMo, and has been authorized by City Ordinance No. _____ (BB ____);

WHEREAS, pursuant to that certain Lease (the “**Lease**”) dated as of October 24, 2000 between the City (as lessor) and St. Louis Municipal Finance Corporation (“**SLMFC**”) (as lessee), SLMFC currently leases a portion of the Mall, including City Blocks 190 and 276, from the City; and

WHEREAS, pursuant to that certain Leasehold Deed of Trust (the “**Deed of Trust**”) dated as of November 17, 2000 between SLMFC (as grantor), Husch Trustee, Inc. (as trustee), and the Secretary of Housing and Urban Development (“**HUD**”) (as beneficiary), SLMFC pledged as partial collateral a portion of the Mall, including City Blocks 190 and 276, to HUD to secure certain indebtedness in an amount not to exceed \$20,000,000.00.

NOW, THEREFORE, for and in consideration of the above-stated premises and other good and valuable consideration, the parties hereto agree as follows.

1. **General Provisions.**

(a) License to Enter City Blocks 190 and 276. The City hereby grants to the Foundation, and its agents, employees, consultants, contractors, successors, and assigns during the term of this Agreement, the continuous and unrestricted, non-exclusive right, subject to the provisions of this Agreement, to enter upon City Blocks 190 and 276 for the purpose of developing the Design Documents and otherwise designing and completing the Urban Garden, implementing the loan of the Artwork (hereinafter defined) and cooperating with the City in maintaining the Urban Garden, all in accordance with this Agreement.

(b) Term.

(i) Term. The initial term of this Agreement shall commence on the later of (a) the Date Hereof or (b) the date on which this Agreement has been executed by the Foundation and the City and countersigned by SLMFC in the space indicated below, by which countersignature SLMFC acknowledges and consents to the transactions and actions authorized and contemplated by this Agreement, and the initial term shall expire on the date that is fifteen (15) years thereafter (the “**Initial Term**”). Thereafter, the term of this Agreement shall automatically renew for successive ten (10) year periods (each such successive period being a “**Renewal Term**”), subject to the termination rights contained in this Agreement (including

Section 1(b)(ii) below). The Initial Term and each successive Renewal Term shall be referred to herein collectively as the “**Term.**”

(ii) Termination.

(1) By the Foundation prior to the Commencement of Construction. The Foundation shall have the right to terminate this Agreement for convenience and without cause at any time prior to commencement of construction (hereinafter defined) of the Urban Garden by providing the City with thirty (30) days prior written notice, in which event the Foundation shall have no obligation to complete the design of the Urban Garden. As used herein, “**commencement of construction**” shall mean the first physical alteration of City Blocks 190 and 276 by or on behalf of the Foundation. Upon commencement of construction, except as otherwise provided in this Agreement, the Foundation shall not have any right to terminate this Agreement until construction is completed in accordance with the Construction Drawings (hereinafter defined).

(2) By the Foundation after the Completion of Construction. After completion of construction, the Foundation shall have the right at any time during the remainder of the Initial Term of this Agreement to terminate this Agreement for convenience and without cause by providing the City with one hundred eighty (180) days prior written notice, in which event this Agreement automatically shall terminate on the one hundred eightieth day after such written notice is given.

(3) By Either Party During any Renewal Term. Following expiration of the Initial Term, either party may terminate this Agreement for convenience and without cause by providing the other party one hundred eighty (180) days written notice, in which event this Agreement automatically shall terminate on the one hundred eightieth day after such written notice is given.

(4) The Parties’ Rights and Obligations Upon Termination. Upon expiration or termination of this Agreement, thereafter, (i) neither party shall have any further obligation or liability hereunder, except for matters which expressly survive termination, (ii) all improvements and fixtures located in the Urban Garden (except for the Artwork) shall remain in the Urban Garden as the property of the City, and (iii) the Foundation shall have the right to remove the Artwork (hereinafter defined) from the Urban Garden as provided in Section 4(g) below. Notwithstanding anything contained herein to the contrary, if the Foundation elects to terminate this Agreement for convenience and without cause during the Initial Term and after construction has been completed pursuant to Section 1(b)(ii)(2) above, then the Foundation shall continue to maintain and repair the improvements located in the Urban Garden as provided in Section 6 below until the originally-scheduled expiration of the Initial Term.

Additionally, if the City breaches this Agreement and the Foundation terminates this Agreement during the Initial Term due to such breach, or if the Foundation otherwise is forced by the City (or SLMFC or HUD) to remove the Artwork from the Urban Garden prior to the expiration of the Initial Term, then (i) the City shall be responsible for any costs and expenses incurred by the Foundation to remove the Artwork from the Urban Garden, provided that the

City's liability for such removal costs and expenses shall not exceed \$50,000.00, and expenses incurred by the Foundation to store the Artwork in a suitable storage facility during the remainder of the Initial Term, provided that the City's liability for such storage costs shall not exceed \$50,000.00, and (ii) all of the Foundation's obligations under this Agreement, including but not limited to the Foundation's repair, maintenance, insurance and security obligations shall immediately cease and be of no further force or effect.

(c) Communication with the Public. A representative of the City shall be the primary spokesperson for the Urban Garden. The City representative shall endeavor to cooperate fully with the Foundation in all communications.

(d) Designated Representatives.

(i) The Foundation's "**Designated Representative**" is:

Christy B. Fox
Gateway Foundation
720 Olive Street, Suite 1977
St. Louis, Missouri 63101
Facsimile: 314.241.3559
Telephone: 314.241.3337

(ii) The City's "**Designated Representative**" is:

Barbara A. Geisman
Executive Director for Development
City of St. Louis Mayor's Office
Room 200 City Hall
1200 Market Street
St. Louis, Missouri 63103
Facsimile: 314.622.3240
Telephone: 314.622.4792

Either party hereto may replace its Designated Representative by providing written notice thereof to the other party.

(e) Lease and Deed of Trust. Notwithstanding anything contained herein to the contrary, the City shall use reasonable efforts to obtain from both Husch Trustee, Inc. and HUD written consent to the transactions and actions authorized and contemplated by this Agreement. Subject to the receipt of consent from SLMFC, Husch Trustee, Inc. and HUD as provided above, the City hereby represents and warrants to the Foundation that (i) the City is authorized to enter into and consummate the transaction contemplated by this Agreement and (ii) the execution of this Agreement and the performance by the City of its obligations under this Agreement do not conflict with any other agreements to which the City (or any of its departments or affiliates) is a party.

2. **The Design Phase.**

(a) **The Design Documents.** Subject to the terms of this Agreement, including the termination rights contained herein, the parties agree that the Foundation will engage, at the Foundation's sole cost and expense, one or more design firms chosen by the Foundation, in its sole discretion, to prepare the Design Documents for the proposed development of the Urban Garden. The Design Documents shall include complete information relating to the proposed appearance and infrastructure of the Urban Garden, including but not limited to information relating to traffic and pedestrian flow, the use of natural and artificial light and materials, the common area and green space landscapes, and the location and types of hardscape improvements and water features. The Design Documents will not reference any specific works of art or sculptures. The Foundation anticipates that a draft of the Design Documents will be presented to the Foundation in October of 2007.

(b) **Preliminary Review.** While the Foundation is working with the design professionals in the development of the Design Documents, the Foundation and the City shall cooperate through an informal meeting or meetings so that the City Representative and the City Representative's designees may review the Design Documents and discuss the City's initial reactions and/or comments thereto with the Foundation in an effort to address issues so that the formal review process is expedited to the greatest extent possible. Thereafter, the Foundation may, but shall not be obligated to, cause its design firm to revise the Design Documents before the Foundation submits the Design Documents to the City for formal approval pursuant to Section 2(c) below.

(c) **The Approval Process.** After the informal preliminary review contemplated in Section 2(b) above and upon the Foundation's approval of any revisions to the Design Documents, the Foundation shall submit four (4) complete sets of the Design Documents to the City for review and approval as provided in this Section. The Foundation shall deliver the Design Documents to the City's Designated Representative. Within five (5) business days after his or her receipt of the Design Documents, the City's Designated Representative shall present the Design Documents to the City's Board of Public Service ("BPS") and to the City's Preservation Board (collectively, the "**Reviewing Parties**"). Within thirty (30) days after their receipt of the Design Documents, the Reviewing Parties shall notify the Foundation in writing as to whether or not they have approved the Design Documents. If any of the Reviewing Parties have not approved the Design Documents, then their written notifications to the Foundation shall specify the reasons therefor, in which event the Foundation may, but shall not be obligated to, revise the Design Documents and re-submit the same to the Reviewing Parties for review and approval. If the Foundation re-submits the Design Documents to the Reviewing Parties as provided in the immediately preceding sentence, then within ten (10) days after their receipt of the re-submitted Design Documents, the Reviewing Parties shall notify the Foundation in writing as to whether or not they have approved the Design Documents. If any of the Reviewing Parties have not approved the Design Documents, then their written notifications to the Foundation shall specify the reasons therefor. The foregoing procedure shall be repeated until either the

Foundation ceases its efforts to obtain approval of the Design Documents or the Design Documents have been finally approved by the Foundation and the Reviewing Parties. Notwithstanding the ten- and thirty-day periods of time referenced in the foregoing provisions, the Reviewing Parties shall use their best efforts to expedite their review and approval processes; provided, however, that the foregoing shall not require any Reviewing Party to take any action that would violate or otherwise be contrary to any ordinance to which said Reviewing Party is subject. The provisions of any ordinance to the contrary notwithstanding, approval of the Design Documents by the Reviewing Parties shall be sufficient to bind the City with respect thereto and shall be the only Design Documents approval required on behalf of the City.

3. **The Construction Phase.**

(a) **The Construction Drawings.** Upon the completion of the Design Documents and the City's approval of same as provided in Section 2 above, the parties agree that the Foundation will engage an architect to prepare plans and specifications for the construction of the Urban Garden (the "**Construction Drawings**"), which shall include, among other things, the location of the Artwork (hereinafter defined) and the location and types of shrubs, trees and other plants within the Urban Garden and which shall be subject to the City's approval as provided in this Section.

(b) **The Approval Process.** Upon completion of the Construction Drawings, the Foundation shall deliver four (4) complete sets of the Construction Drawings to the City's Designated Representative. Within five (5) business days after his or her receipt of the Construction Drawings, the City's Designated Representative shall present the Construction Drawings to BPS for review and approval and to the Plan Examination Section of the City's Building Division solely for the purpose of confirming whether the Construction Drawings comply with the applicable building codes (collectively, the "**CD Reviewing Parties**"). Within twenty (20) business days after their receipt of the Construction Drawings, the CD Reviewing Parties shall notify the Foundation in writing as to whether they have approved or disapproved the Construction Drawings. If any of the CD Reviewing Parties elects not to approve the Construction Drawings, then such CD Reviewing Party's written notification to the Foundation shall specify the reasons therefor. If any of the CD Reviewing Parties elect not to approve the Construction Drawings, then the Foundation may, but shall not be obligated to, revise the Construction Drawings and re-submit the same to the CD Reviewing Parties for review and approval. If the Foundation re-submits the Construction Drawings to the CD Reviewing Parties as provided in the immediately preceding sentence, then within ten (10) days after their receipt of the re-submitted Construction Drawings, the CD Reviewing Parties shall notify the Foundation in writing as to whether or not they have approved the Construction Drawings. If any of the CD Reviewing Parties have not approved the Construction Drawings, then their written notifications to the Foundation shall specify the reasons therefor. The foregoing procedure shall be repeated until either the Foundation ceases its efforts to obtain approval of the Construction Drawings or the Construction Drawings have been finally approved by the Foundation and the CD Reviewing Parties. Notwithstanding the ten- and twenty-day periods of time referenced in the foregoing provisions, the CD Reviewing Parties shall use their best efforts to expedite their review and approval processes; provided, however, that the foregoing shall not

require any CD Reviewing Party to take any action that would violate or otherwise be contrary to any ordinance to which said CD Reviewing Party is subject. If the CD Reviewing Parties approve the Construction Drawings, the provisions of any ordinance to the contrary notwithstanding, the City shall be deemed to have approved the Construction Drawings and no further City review or approval shall be required and the City and any applicable departments of the City shall issue any building permits or other authorizations that are required for the Foundation to commence construction of the Urban Garden; provided, however, that the Foundation's contractor or contractors shall be required to secure a building permit and, in addition, separate permits for plumbing, electrical, heating/ventilation, and fire protection installations to the extent the Construction Drawings contemplate such work.

(c) Changes to the Construction Drawings prior to Construction. If, after the City's approval of the Construction Drawings as provided above and prior to the commencement of construction, the Foundation desires to make a material change to the Construction Drawings, then such change shall be subject to the approval of the CD Reviewing Parties on behalf of the City, as required above. As used in this Agreement, a "**material change**" means a change that would affect the types or locations of the improvements within the Urban Garden (including significant changes to lighting and landscaping).

(d) Compliance with Laws. All work performed by or on behalf of the Foundation in connection with the Urban Garden shall be done in a professional and workmanlike manner, according to the best practices of the respective trades, and so as to comply with all applicable statutes, laws, ordinances, rules, codes, orders and specifications of all federal, state and local agencies, utilities or other bodies having jurisdiction, including but not limited to occupational safety and health acts and regulations, and the following state statutes pertaining to public works: prevailing wages on public works, §§ 290.210-290.340, RSMo; public works during excessive unemployment §§ 290.550-290.580, RSMo; and prompt payment §§ 34.057, 34.058, RSMo. Furthermore, the Foundation shall cause the Design Documents and the Construction Drawings to comply with the federal Americans with Disabilities Act and other applicable laws relating to access for persons with disabilities. If, after completion and acceptance of the Urban Garden, alterations must be made to the Urban Garden due to the enactment of any new law or any amendment of a law existing on the Date Hereof, then the Foundation shall be obligated to complete such alterations or improvements if the cost of such alterations or improvements does not exceed \$100,000. If the cost of such alterations or improvements exceeds \$100,000, the City and Foundation shall cooperate to resolve said issue, provided that the Foundation shall not be required to incur costs in excess of \$100,000. The Foundation shall file with the Secretary of BPS the name and address of all contractors and subcontractors who will work on the construction of the Urban Garden, together with the dollar amount of all contracts for the construction of the Urban Garden. All such contractors and subcontractors shall be licensed by the City and current on payment of all applicable City taxes, and the Foundation shall secure and pay for (or shall cause its contractors and subcontractors to secure and pay for) all necessary licenses, permits and inspection fees relating to the Urban Garden.

(e) MBE/WBE Policy. The Foundation will comply, and it will require its contractors and subcontractors to comply, with the MBE/WBE policy that is attached hereto as Exhibit B (the “**MBE/WBE Policy**”), which implements Mayor’s Executive Order No. 28, as amended and extended, for purposes of the Urban Garden project.

(f) Bidding Procedure. Prior to issuing a bid package for the Urban Garden, the Foundation may issue a request for qualifications for contractors for the Urban Garden. Based on the responses to said request for qualifications that are received by the Foundation, the Foundation may issue a bid package for the Urban Garden to those contractors and/or subcontractors whose responses to the request for qualifications were acceptable to the Foundation, in its sole discretion. The Foundation’s bid package, as well as its construction and design contracts, shall require that the City shall receive all the rights and benefits of contractor and supplier warranties and, upon completion of the Urban Garden, the City shall receive copies of the “as-built” drawings for the Urban Garden.

(g) Inability to Secure a Qualified Contractor. If, after receiving construction bids for the Urban Garden, the Foundation determines that qualified contractors cannot be secured to construct the Urban Garden in accordance with the Construction Drawings for the Project Cost, it shall immediately notify the City’s Designated Representative. Unless the Foundation indicates that it is willing to pay the additional costs, the Foundation shall meet as soon as practical with the President of BPS or designee, the City’s Designated Representative and the Foundation’s design representative to determine what changes might be made in the Construction Drawings to secure an acceptable bid for the Project Cost. The parties shall have thirty (30) days to evaluate such changes and agree on modifications to the Construction Drawings. If the parties cannot agree to proceed with revised Construction Drawings, either the City or the Foundation may notify the other that the Urban Garden project is terminated, in which event this Agreement shall cease and terminate.

(h) Selection of Contractors. Upon determination by the Foundation, based upon its own criteria, that acceptable bids which conform to the Construction Drawings for the Urban Garden have been received from one or more contractors, the Foundation shall have the authority to select the contractor(s) for the Urban Garden project in the Foundation’s sole discretion, provided, however that such selection(s) shall conform to the requirements of the MBE/WBE Policy.

(i) Payment and Performance Bonds. The Foundation shall secure, or cause its contractors to secure, and file with the City, payment and performance bonds for work to be performed by its contractors, in the amounts and types recommended by BPS, and naming the City as an additional obligee. Unless recommended otherwise by BPS, the following shall be minimum requirements for any such payment and performance bonds:

(i) Bonds shall be executed by a surety company satisfactory to the City and duly authorized to transact business in Missouri as evidenced by a Certificate of Authority granted by the Director of the Department of Insurance for the State of Missouri; and

(ii) The surety company shall have a policy holder's rating of "A-" or better and a financial rating of "V" or higher as indicated in the latest edition of Best's Key Rating Guide; and

(iii) The bonds shall be for the full dollar amount of the contract and any amendments thereto.

(j) Insurance.

(i) Commercial General Liability Insurance. The Foundation shall obtain and maintain a commercial general liability insurance ("CGL") policy, which provides insurance to protect against claims for bodily injury and property damage arising out of premises operations, products and completed operations and advertising and personal injury liability. The City, its officers, and employees shall be included as "additional insureds" under the CGL policy. The CGL policy shall provide limits no less than the following:

	<u>Per Occurrence</u>	<u>In the Aggregate</u>
Personal and Bodily Injury	\$3,000,000	\$3,000,000
Property	\$1,000,000	\$2,000,000
Umbrella		\$4,000,000
Fire Damage	\$50,000	
Medical Expense	\$10,000	

(ii) Workers Compensation Insurance. The Foundation shall obtain and maintain insurance sufficient to discharge its obligations under all applicable workers compensation laws in the state that work is to be performed, including any of the federal or maritime laws.

(iii) Miscellaneous. The Foundation shall cause each of its contractors employed by or contracted with the Foundation to purchase and maintain insurance of the types and limits specified herein (including appropriate motor vehicle insurance). The Foundation shall furnish the City with standard certificates of insurance as evidence of confirmation of all such insurance prior to commencement of the construction contemplated by this Agreement. All certificates shall provide for thirty (30) days written notice to the City prior to the cancellation, expiration or reduction of the limits of any insurance referred to therein and shall name the City, its officers, and employees as additional insureds. All insurers shall have an A.M. Best rating of A-, IX or higher and be fully authorized to conduct business in the State of Missouri.

Any such required minimum amounts shall not be construed to limit the liability of the Foundation or its contractor(s). The Foundation shall file certificates of insurance with BPS and the City's Comptroller reflecting the coverage required in Section 3(j)(i) above, naming the City, its officers, and employees as additional insureds.

From time to time, but not more frequently than once every five (5) years, the levels or nature of insurance required to be maintained by the Foundation under this Section 3(j) shall be reviewed upon the written request of the City's Comptroller or the Foundation to determine whether such levels or nature of coverage is consistent with that maintained by other parties engaged in similar activities in similar locations, and the levels of required coverage shall be reasonably adjusted as agreed to by the parties.

Upon written notice from the City's Comptroller that the limitations on liability of the City under section 537.610 RSMo. have been increased pursuant to subsection 537.610.5 above the amounts of coverage provided by the Foundation as of the time of such notice, the Foundation shall within ten business days cause its liability coverage to be increased to the amount determined pursuant to subsection 537.610.5, and shall provide evidence of such increase to the Comptroller.

(k) Construction Contracts. Upon compliance with Section 3(h) above, the Foundation shall negotiate and execute construction contract(s) with the successful bidder(s), which contracts shall be in a form acceptable to the Foundation in its sole discretion (other than provisions that are required to be included in said contracts pursuant to the terms of this Agreement). Thereupon, the City shall issue all necessary building permits subject to Section 3(b) above (provided that the selected contractor(s) have made application for such permits, such applications reflect compliance with all applicable codes, ordinances and laws, and the requisite permit fees have been paid) and other authorizations to allow the Foundation and its contractors to commence construction of the Urban Garden and authorize entry of the Foundation and its contractors onto City Blocks 190 and 276 for the purpose of constructing the Urban Garden.

(l) Termination of Construction Contracts. The Foundation shall have the right, in its sole discretion, to terminate any construction contract and/or replace any contractor or subcontractor engaged in connection with the Urban Garden. The Foundation shall notify the City's Designated Representative, in writing, within seven (7) days of such action.

(m) City Monitor. The City Representative shall designate a City monitor (the "**Monitor**") in connection with the Urban Garden. The Monitor may be changed by the City Representative upon one (1) week's prior written notice to the Foundation. The Foundation shall furnish the Monitor with a copy of the bid package pursuant to Section 3(f) for review and comment within a reasonable time prior to its issuance, and shall advise the Monitor of the process for soliciting bids for the Urban Garden. The Foundation shall notify the Monitor when it believes acceptable bids have been received for the Urban Garden. The Monitor shall review all bonds and insurance posted or tendered by the Foundation and its contractors in connection with the Urban Garden for compliance with this Agreement and shall notify the Foundation of any deficiency, including any deficiency with respect to the MBE/WBE Policy. If the Monitor reasonably believes any material provision of this Agreement has been violated by the Foundation or that work being done or facilities being installed do not conform to the plans and specifications approved pursuant to this Agreement, he shall notify the Foundation, and the Monitor, the President of BPS and the City's Designated Representative shall confer with the Foundation about the matter. If in the reasonable judgment of such President the matter is not

satisfactorily resolved within ten (10) days after notice to the Foundation, the President may, but need not, cause suspension of the building permits or other authorization to the Foundation and its contractors to enter City property for project installation purposes until the matter is resolved. If the City (or the President of BPS) suspends any building permits or other authorization to the Foundation (or its contractors) in connection with the Urban Garden, then the Foundation shall have the right to terminate this Agreement by providing the City with five (5) days prior written notice, in which event this Agreement automatically shall terminate on the sixth day after such written notice is given. If the Foundation terminates this Agreement as provided in the immediately preceding sentence, then the Foundation and the City shall jointly devise a plan to mitigate the impact of the termination of this Agreement by returning City Blocks 190 and 276 to the same condition as such blocks existed prior to the commencement of construction or with such modifications to such condition as BPS determines to be acceptable.

(n) Liens. The Foundation shall, in its construction contracts, require each contractor to agree that no labor performed or materials furnished and incorporated in the Urban Garden shall be the basis for filing a lien against the City or City Blocks 190 and 276. Furthermore, the Foundation shall indemnify and hold harmless the City from and against any liability arising from the claim of any lien against the City or against City Blocks 190 and 276 for construction performed or for labor, materials, services or other products incorporated into the Urban Garden. The Foundation shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien charge, encumbrance or claim on or with respect to the Urban Garden or any part thereof other than as provided herein. The Foundation shall reimburse the City for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

(o) Change to the Construction Drawings during Construction.

(i) The Foundation shall furnish any request for a change order to the City Monitor within one (1) business day of the Foundation's receipt thereof, and shall notify the Monitor of any changes in the Construction Drawings proposed by the Foundation. If the Foundation receives a request for a change order or desires to make such a change in the Construction Drawings which would result in a material change (as defined in Section 3(c) above) in the Urban Garden as designed, or would cause the Urban Garden to be inconsistent with the approved plans and specifications, it shall, prior to approving such change, secure the approval of the City to such change order, which approval shall not be unreasonably withheld, conditioned, or delayed. If a proposed change order is not a material change, then the Foundation shall have the right to approve or reject such change order in its sole discretion.

(ii) If any change order would increase the cost of the Urban Garden beyond the Project Cost, the City and the Foundation shall endeavor to determine ways to reduce the Project Cost to cover the change. However, if the Foundation and the City agree on the design change and the Foundation agrees to pay the increased cost, the Foundation may, in its sole discretion, proceed with the change order. If the parties determine, after their analysis that the cost of a change order makes the completion of the Urban Garden financially infeasible, they shall jointly devise a plan to mitigate the impact of the termination or abandonment of the Urban

Garden by returning City Blocks 190 and 276 to the same condition as such blocks existed prior to the commencement of construction or with such modifications to such condition as BPS determines to be acceptable.

(p) Review of Records. The Foundation shall retain at its offices copies of all Urban Garden invoices, lien waivers and payment records showing the amounts paid and retainage, which shall be available during normal business hours to the City. If the City desires copies of such records, the Foundation shall provide them within seven (7) days of a written request for them from the City.

(q) Inspections during Construction. Prior to the commencement of construction, the Foundation shall notify the City of the dates of commencement and anticipated completion of construction on the Urban Garden. BPS, in conjunction with the City's Designated Representative, shall determine an inspection schedule and perform inspections at appropriate times during construction solely for the purpose of confirming that the Urban Garden is being completed in accordance with the Construction Drawings and applicable laws.

(r) Final Inspection. Upon completion of the Urban Garden and prior to final payments and release of retainage, the Foundation shall notify the City, which shall inspect the Urban Garden. If the Urban Garden has been completed according to the Construction Drawings, BPS shall issue a Certificate of Completion to the Foundation and BPS shall accept the donation of the Urban Garden from the Foundation on behalf of the City. The Foundation shall then make the final payment to the contractors and suppliers and shall thereafter deliver copies of the "as built" drawings and warranties to BPS. Upon delivery and acceptance of the proposed donation of the completed Urban Garden by BPS, the completed Urban Garden (other than the Artwork) shall be the property of the City.

(s) Construction Deadline. Subject to the termination rights contained in this Agreement (including Section 1(b)(ii) above) and subject to force majeure, the Foundation and the City intend for the Urban Garden to be completed prior to the 2009 Major League Baseball All-Star Game, which is scheduled to take place in St. Louis in July of 2009. As used in the immediately preceding sentence, "**force majeure**" shall mean failure to perform, in whole or in part, due to contingencies beyond the Foundation's reasonable control, including unusual weather conditions, strikes, riots, war, fire, explosions, acts of God, injunctions, failure to obtain any necessary governmental approvals, and failure of equipment suppliers to timely provide the equipment needed for the Urban Garden. The City agrees to cooperate with the Foundation to enable the Foundation to complete construction of the Urban Garden as provided above.

4. The Artwork.

(a) Selection. The Foundation intends to purchase and install high quality sculptures and other works of art which may include so-called "video art" (collectively, the "**Artwork**") in the Urban Garden.

The parties agree that after completion of the Urban Garden the Foundation will loan Artwork to the City for installation in the Urban Garden, all of which will be selected by the

Foundation in its sole discretion, as well as any bases, supports, lighting, labels, and equipment installed by the Foundation in connection with the Artwork. Plans for supports, bases, lighting and equipment installed by the Foundation in connection with the Artwork, to the extent not approved as part of the City's approval of the Design Documents and the Construction Drawings, shall be subject to the prior approval of BPS, which shall not be unreasonably withheld, conditioned, or delayed.

The Foundation shall be responsible for ensuring that no piece of Artwork in the Urban Garden can reasonably be considered to be immoral, pose a physical danger to persons or property, create a dangerous distraction or obstruction to drivers on adjacent streets or cause irreparable harm to the City's image as a desirable place to live work and visit. The Foundation shall also be responsible for ensuring Artwork placed in the Urban Garden is in fact of high quality. The City acknowledges and agrees that Artwork in the Urban Garden may stimulate debate and commentary and evoke emotion, and may be controversial, and that such debate, commentary, emotion and controversy are fundamental to the nature of art. The City acknowledges and agrees that the Artwork may be displayed in the Urban Garden throughout the Term of this Agreement and that the City will not require removal of the Artwork until this Agreement expires or is terminated by either party pursuant to the terms of this Agreement.

Notwithstanding the foregoing, prior to any final decision by the Foundation with respect to the selection of Artwork for installation in the Urban Garden or replacement of the Artwork pursuant to Section 4(f) below, the Foundation and the City's Director of Planning and Urban Design shall confer with respect to such selection of Artwork. If the Director of Planning and Urban Design reasonably believes that any element of Artwork proposed for installation in the Urban Garden is immoral, poses a physical danger to persons or property, creates a dangerous distraction or obstruction to drivers on adjacent streets, or will cause irreparable harm to the City's image as a desirable place to live, work and visit, then the Director shall bring his or her concerns to the attention of the Foundation in a timely manner and the Director and the Foundation shall work cooperatively to resolve the concerns prior to the installation of the Artwork element.

(b) Ownership. Notwithstanding anything contained herein to the contrary, at all times, the Foundation shall retain ownership of the Artwork. The Foundation shall indemnify, defend, and hold harmless the City from and against any liability arising from any claim made against the City by any person or persons claiming that the Foundation does not own or have possessory rights to the Artwork.

(c) Installation and Maintenance. The Foundation shall arrange for the installation, care, and maintenance of the Artwork. The City shall not clean or otherwise treat the Artwork without obtaining the prior written consent of the Foundation. The Foundation may regularly inspect the Artwork and may arrange for surface cleanings or other needed treatments. Except as provided in Section 6(a) hereof, the City shall not perform any required maintenance within close proximity to the Artwork without the prior written consent of the Foundation.

(d) Damage. If any of the Artwork sustains significant damage as a result of the negligence or willful misconduct of the City or its consultants, contractors, agents, or employees, then, to the extent that the Foundation does not recover insurance proceeds sufficient to cover all losses and costs associated with the damage, including costs of repair and restoration, the City shall be responsible for such damage and shall reimburse the Foundation, upon demand, for all losses and costs associated with the damage, including costs of repairs and restoration. The City shall notify the Foundation immediately by telephone if the City discovers that any of the Artwork has been damaged. If any of the Artwork sustains significant damage (whether as a result of the City's negligence or willful misconduct or otherwise), then the Foundation shall have the option to either (i) have such Artwork repaired, in which case such repair shall commence within sixty (60) days after the date of the damage, or (ii) remove such Artwork from the Urban Garden. If the Foundation elects to remove such damaged Artwork from the Urban Garden, then the Foundation may, at its sole discretion, replace the damaged Artwork with another sculpture or work of art selected by the Foundation in its sole discretion, which, if so installed, shall be considered part of the Artwork for all purposes under this Agreement. As used in this Section, "**significant damage**" means damage that (i) affects the structural integrity of the Artwork, (ii) if un-repaired will cause a deterioration in the physical components of the Artwork, or (iii) a reasonably prudent person would recognize has an immediate negative effect on the value of the Artwork.

(e) Rotation. While it is anticipated that much of the Artwork will remain on long-term loan to the City for the Term of this Agreement, it is recognized and understood that the Foundation may rotate the Artwork within the Urban Garden on a periodic basis.

(f) Removal and Replacement during the Term. Notwithstanding anything contained herein to the contrary, the Foundation shall have the right, at any time and for any reason or no reason, to remove all or any portion of the Artwork from the Urban Garden. Further, the Foundation shall have the right, at any time and for any reason or no reason, to replace all or any portion of the Artwork with other sculptures or works of art selected by the Foundation in its sole discretion, which, if so installed, shall be considered part of the Artwork for all purposes under this Agreement.

(g) Removal upon Expiration of the Term. Upon the expiration or earlier termination of this Agreement, the Foundation shall have the right, at its sole cost and expense (subject to Section 1(b)(ii)(4) above and Section 4 (h) below), to remove the Artwork from the Urban Garden. The Foundation shall repair any damage caused to the Urban Garden by the Foundation's removal of the Artwork.

(h) Restoration after Removal. Except as otherwise provided in this Agreement, upon any removal by the Foundation of any or all of the Artwork, the Foundation shall, at the direction of the City, remove pedestals, bases, lighting, equipment and labels installed in connection with the removed Artwork, and shall restore the affected area to a state compatible with the Urban Garden.

(i) Insurance. In addition to the insurance required by Section 3(j) above, throughout the Term of this Agreement, the Foundation shall procure and maintain a fine arts all-risk policy of insurance covering the Artwork.

(j) Photography. The Foundation shall retain all of its rights of reproduction with respect to the Artwork. If the City wishes to obtain photographs of the Artwork for publicity or publication or wishes to reproduce any images of the Artwork for publicity or publication, then the City must obtain the prior written consent of the Foundation, provided, however, that such prior written consent requirement shall not apply to photographs of the Urban Garden in whole or in part, as long as such photographs shall not have as their sole subject a particular piece of the Artwork. Information about the Artwork used for catalogs, labels or for any other purposes shall conform to data furnished by the Foundation. The Foundation may provide display labels for all of the Artwork, which, if so provided, shall be displayed with the respective Artwork throughout the Term of this Agreement.

(k) Failure of Foundation to Maintain or Repair. Should the City determine that any of the Artwork has deteriorated and is in need of maintenance or repair, the City shall so notify the Foundation with specificity as to the deterioration and the recommended repairs. If the Foundation fails to address such deterioration within one hundred eighty (180) days following notice from the City, the City shall have the right (but not the obligation) to make repairs in a manner deemed appropriate by City, in City's sole discretion.

5. Café

(a) The Concept. The parties agree that the Foundation may, subject to all procedures and approvals required hereunder with respect to the Urban Garden, designate an area in the Urban Garden within which it may, as part of the Urban Garden, design and construct a café (the "**Café**") with indoor and/or outdoor seating that would provide food and beverage service to members of the public visiting the Urban Garden.

(b) Ownership. Upon completion of the construction of the Urban Garden in accordance with the applicable Design Documents and Construction Drawings, the Café shall be deemed to be the property of the City and the City shall operate, maintain, and repair the Café as provided in Section 6 below. Notwithstanding the foregoing, if the Foundation reasonably believes that the City is operating or maintaining the Café in a manner that is inconsistent with the overall image, operation and maintenance of the Urban Garden, then the Foundation shall notify the City of its concerns, the parties shall promptly schedule a meeting to discuss the Foundation's concerns, and the parties shall reasonably cooperate with one another to address the Foundation's concerns. Notwithstanding the foregoing, if the City determines that the continued use of the Café facility and area for food and beverage service is (i) not economically feasible, (ii) not conducive to the enjoyment by the public of the Urban Garden, or (iii) harmful or dangerous to the public peace, safety and welfare, it shall notify the Foundation and the parties shall endeavor to agree on a resolution of the matter that is consistent with and does not detract from the use of the Urban Garden, which may include removal of the Café or its use by

the Foundation for some other purpose; if the parties fail to agree on a resolution of the matter after thirty (30) days, the City may take any action with respect to the Café which it deems in the public interest and which is consistent with the continued operation of the Urban Garden, which may also include removal of the Café.

(c) Food and Beverage Service. Subject to the prior written approval of the Foundation and the provisions of Section 5(b) above, the City shall negotiate and enter into a contract with a food and beverage vendor for the provision of food and beverage services at the Café.

(d) Insurance. The City shall procure and maintain, or cause to be procured and maintained, all-risk property insurance covering the Café in an amount equal to the replacement value thereof including, without limitation, protection against any peril included within the classification “fire and extended coverage,” together with insurance against flood or water damage, sprinkler damage, vandalism, explosion and malicious mischief. The City may comply with the provisions of this Section 5(d) by self-insuring the Café or by requiring any operator of the Café to provide the insurance described in this Section 5(d).

6. Maintenance and Security.

(a) Improvements (excluding the Artwork). Except as otherwise set forth in this Agreement, during the Term of this Agreement, the Foundation shall be responsible for the operation, maintenance, and repair of the improvements (including all lighting and landscaping) located in the Urban Garden. The City shall be responsible for (i) mowing the grass located on the Urban Garden in accordance with the City’s existing practices therefor (unless otherwise contracted therefor by the Foundation), (ii) the on-going cost of providing electricity and water to the Urban Garden, and (iii) the operation, maintenance, and repair of the Café in accordance with the City’s existing practices for similar improvements owned by the City.

(b) Coordination with the Missouri Botanical Garden. As of the Date Hereof, the Foundation anticipates that, during the design phase of the Urban Garden, the Foundation will consult with the Missouri Botanical Garden regarding the selection of grass, shrubs, trees, and other plants for the Urban Garden and regarding the installation and maintenance of infrastructure necessary for such plants to thrive (including, for example, appropriate soils and irrigation systems). Further, the Foundation intends to engage the Missouri Botanical Garden to maintain or otherwise care for the shrubs, trees and other plants located within the Urban Garden. The President of BPS and the City’s Designated Representative shall meet with the Foundation’s Designated Representative during the last quarter of each calendar year and develop a written maintenance plan for the Urban Garden (other than the Artwork) for the following calendar year.

(c) Security. The City shall be responsible for the protection and safekeeping of the Urban Garden to the same degree that the City is responsible for the protection and safekeeping of other property owned by the City. Notwithstanding the foregoing, the Foundation

shall, as part of its maintenance function, have the right, but not the obligation, to engage a private security firm licensed by and in good standing with the St. Louis Board of Police Commissioners at its cost and expense to patrol and provide security for the Urban Garden.

(d) Improvements Made by the City. During the Term of this Agreement, except as otherwise expressly set forth herein, the City shall not install and/or construct any new improvements or alter any existing improvements in the Urban Garden or install any signage on the exterior of the Café or elsewhere in the Urban Garden (collectively referred to in this Section 6(d) as “alterations”), without the prior written consent of the Foundation. If the City performs any such alterations without the prior written consent of the Foundation, then the Foundation shall have the right, but not the obligation, to immediately terminate this Agreement upon written notice to the City, in which event the Foundation immediately may remove the Artwork from the Urban Garden as provided in Section 4(e) above. Further, unless the Foundation agrees otherwise in writing, the City shall be responsible for the operation, maintenance, and repair of any alterations performed by the City. Notwithstanding the foregoing, the City or an operator may make interior improvements to the Café without the prior written consent of the Foundation.

(e) Special Events. During the Term of this Agreement, the City shall not permit the occurrence of special events including, but not limited to, exhibitions, demonstrations, carnivals, fairs, rallies, parades, concerts, or other similar events, at the Urban Garden without the prior written consent of the Foundation. Similarly, if any such special event is scheduled to occur on the City’s property (including roadways) adjacent to, or within close proximity to, the Urban Garden and is reasonably likely to increase the number of visitors to the Urban Garden, then the City shall notify the Foundation of such event as soon as reasonably possible (and in any event at least twenty four (24) hours) before the occurrence of such event so that the City and the Foundation may coordinate and provide for appropriate security measures to ensure the safety and security of the improvements and the Artwork located within the Urban Garden.

(f) Failure of Foundation to Maintain or Repair. Notwithstanding anything herein to the contrary, should the City determine that any portion of the Urban Garden has deteriorated and is in need of maintenance or repair, the City shall so notify the Foundation with specificity as to the deterioration and the recommended repairs. If the Foundation fails to address such deterioration within one hundred eighty (180) days following notice from the City, the City shall have the right (but not the obligation) to make repairs in a manner deemed appropriate by City, in City’s sole discretion.

7. **Default.** If either party is in default of this Agreement by reason of failure or refusal to comply with any of the terms of this Agreement and such defaulting party fails to cure such default within thirty (30) days after such party’s receipt of written notice thereof from the non-defaulting party, then the non-defaulting party shall have the right, but not the obligation, (i) to terminate this Agreement upon two (2) business days written notice to the defaulting party (in which event this Agreement automatically shall terminate on the third day after such written notice is given) and/or (ii) to exercise any other rights or remedies available to the non-defaulting party at law or in equity.

8. **Notices.**

(a) Any notice, report, demand, request or other instrument or communication authorized, required, or desired to be given under this Agreement shall be in writing and shall be deemed given if addressed to the party intended to receive the same, at the address of such party set forth below, (i) when delivered at such address by hand or by overnight delivery service, (ii) two (2) days after its deposit in the United States mail as certified mail, return receipt requested, or (iii) when delivered by facsimile at the facsimile number listed below.

If to the Foundation: Christy B. Fox
Gateway Foundation
720 Olive Street, Suite 1977
St. Louis, Missouri 63101
Facsimile: 314.241.3559
Telephone: 314.241.3337

With a copy to: David A. Linenbroker
Blackwell Sanders Peper Martin LLP
720 Olive Street, Suite 2400
St. Louis, Missouri 63101
Facsimile: 314.345.6060
Telephone: 314.345.6409

If to the City: Barbara A. Geisman
Executive Director for Development
Office of the Mayor
Room 200 City Hall
1200 Market Street
St. Louis, Missouri 63103
Facsimile: 314.622.3240
Telephone: 314.622.3201

With a copy to: City Counselor
314 City Hall
1200 Market Street
St. Louis, Missouri 63103
Facsimile: 314.622.4956
Telephone: 314.622.3361

(b) Either party may change the address to which any such notice, report, demand, request or other instrument or communications to such party is to be delivered or mailed, by giving written notice of such change to the other parties, but no such notice of change shall be effective unless and until received by such other parties.

(c) The attorneys for the respective parties hereto have the authority to send any notice that may be sent by any party hereto.

9. **Miscellaneous.**

(a) **Exhibits.** Each of the Exhibits attached hereto is hereby incorporated by reference into this Agreement.

(b) **Entire Agreement.** The terms of this Agreement (together with the Exhibits attached hereto) constitute the entire agreement between the Foundation and the City concerning the transaction contemplated herein. This Agreement supersedes any and all other agreements concerning the transaction, whether oral or written between the Foundation and the City.

(c) **Binding Effect.** This Agreement shall be binding upon the parties and their respective heirs, legal representatives, successors and assigns.

(d) **Nonwaiver.** Failure of either party to insist on the strict performance of any provision of this Agreement shall not be construed or deemed to be a waiver of that provision or any other provision of this Agreement. Any waivers must be in writing and signed by the party waiving.

(e) **Amendments.** Any amendment to this Agreement must be in writing and signed by the Foundation and the City.

(f) **No Personal Liability.** No alderman, alderwoman, commissioner, director, officer, board member, employee, or other agent or representative of the Foundation or the City shall be personally liable under or in connection with this Agreement.

(g) **Applicable Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Missouri, without regard to principles of conflicts of law.

(h) **Severability.** If any provisions of this Agreement are held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement, provided that both parties may still effectively realize the complete benefit of the transaction contemplated hereby.

(i) **Business Day; Calculation of Time.** A “**business day**” shall be any day other than a Saturday, Sunday or legal holiday in the State of Missouri. When any period of time stated in this Agreement would end on a day that is not a business day, such period shall be deemed to end on the next business day.

(j) **Limitation of Liability.** Under no circumstances shall either the Foundation or the City be liable to the other in connection with this Agreement under any theory of tort, contract, strict liability or other legal or equitable theory for any punitive, special,

incidental, indirect or consequential damages, each of which is excluded by agreement of the parties regardless of whether or not any of the parties have been advised of the possibility of such damages.

(k) Counterpart Execution. This Agreement and any companion documents, deeds, or instruments referred to herein, may be executed in one or more counterparts, each of which, when so executed and delivered, shall be deemed to be an original and all of which, taken together, shall constitute one and the same agreement, document, deed or instrument.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the Foundation and the City have hereunto set their hands and seals to this Agreement as of the Date Hereof.

THE FOUNDATION:

GATEWAY FOUNDATION

By: _____

Name: _____

Title: _____

THE CITY:

The foregoing Cooperation Agreement was approved by the City of St. Louis by Ordinance No. _____, approved _____, 2007.

THE CITY OF ST. LOUIS, MISSOURI

By: _____

Name: _____

Title: Director of Parks, Recreation & Forestry

By: _____

Name: _____

Title: Director of the Board of Public Service

By: _____

Name: _____

Title: Comptroller

APPROVED AS TO FORM:

By: _____

Name: _____

Title: City Counselor

ATTEST:

By: _____

Name: _____

Title: Register

Date: _____

ACKNOWLEDGED AND CONSENTED TO:

ST. LOUIS MUNICIPAL FINANCE CORP.

By: _____

Name: _____

Title: _____

EXHIBIT A

(Depiction of City Blocks 190 and 276)

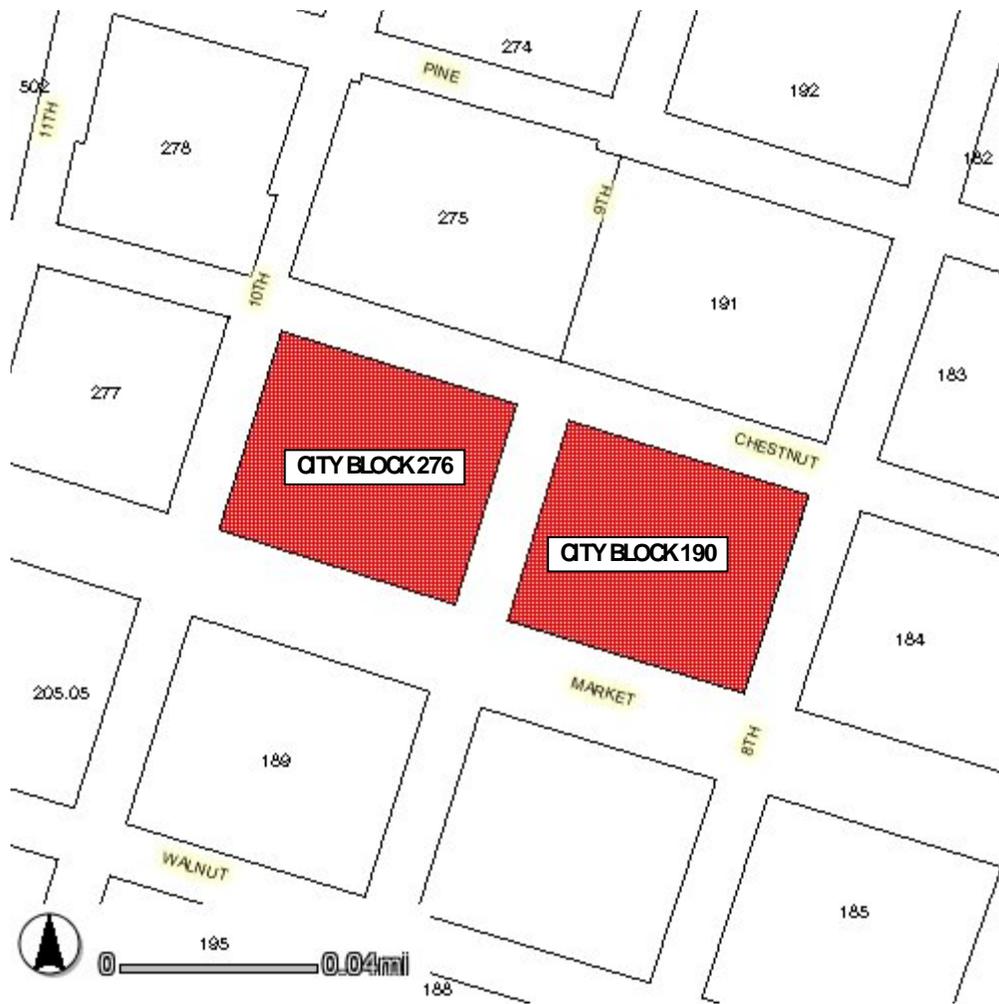


EXHIBIT B

(MBE/WBE Policy)

It is the policy of Gateway Foundation (the “**Foundation**”) to ensure the maximum utilization of qualified minority business enterprises (“**MBEs**”) and qualified women’s business enterprises (“**WBEs**”) in the proposed permanent improvements upon City Blocks 190 and 276 while at the same time achieving a competitive contract price for goods and services of high quality.

An “**MBE**” is defined as a sole proprietorship, partnership or corporation that is at least fifty-one percent (51%) owned, operated and controlled by minority group members. “**Controlled**” means that the minority group member(s) must have and exercise actual day-to-day operational and managerial control and receive an interest in capital and earnings commensurate with the member(s)’ percentage of ownership. Minority groups covered by this policy include Black-Americans, Hispanic-Americans, Native-Americans, and Asian-Pacific Americans legally residing in the United States.

A “**WBE**” is defined as sole proprietorship, partnership or corporation that is at least fifty-one percent (51%) owned, operated and controlled by a woman or women. “**Controlled**” means that the woman or women must have and exercise actual day-to-day operational and managerial control and receive an interest in capital and earnings commensurate with the member(s)’ percentage of ownership.

“**Certified**” is defined as recognized and certified by the City as an legitimate MBE and/or WBE.

“**Maximum utilization**” means, with respect to the proposed improvement project, that the general contractor shall take all reasonable steps: (i) to provide MBEs and WBEs with the maximum opportunity to compete for all construction contracts and subcontracts, and to furnish supplies and labor (“**Subcontracts**”); and (ii) to award the maximum possible dollar volume of contracts to Certified MBEs and WBEs while at the same time achieving a competitive contract price for goods and services of high quality. The goals for maximum utilization are that at least twenty-five percent (25%) of the dollar volume of all contracts let for the project be awarded to Certified MBEs and that at least five percent (5%) of the dollar volume of all contracts let for the project be awarded to Certified WBEs. Participation by MBE and WBE firms located outside the St. Louis Metropolitan Statistical Area shall not count towards the goals established in this Policy. All MBEs and WBEs to which contracts are awarded shall perform commercially useful functions commensurate with the dollar amount of the contract. Joint venture, manufacturer and supplier participation shall be counted in the manner such participation is typically counted by the City. A MBE and/or WBE shall be considered to perform a commercially useful function when the MBE and/or WBE is responsible for the execution of a distinct element of the work of a contract and the carries out such responsibility by actually performing, managing and supervising all of the work involved.

Following the selection of a general contractor for the project, the Foundation and the general contractor shall work with the City to formulate a plan for maximum utilization of Certified MBEs and WBEs. If a bid or proposal provided by an MBE or WBE is rejected, the general contractor shall provide a legitimate and non-discriminatory reason for rejecting the bid or proposal. Prior to the commencement of construction, the Foundation shall cause the general contractor to submit to the City an M/WBE Utilization Plan, which Plan shall be reasonably acceptable to the City. During the construction process, the Foundation shall also cause the general contractor to submit Monthly M/WBE Utilization Reports to the City, which Reports shall document the actual utilization of and payments to MBEs and WBEs during the course of the construction process.

If following the award of any contract to an MBE or WBE, the MBE or WBE is unable to perform the work in a satisfactory manner in accordance with the required schedule, the general contractor shall make a good faith effort to replace such MBE or WBE with another Certified MBE or WBE

Each general contract shall make adequate provision to compensate the Foundation for damages in the event the actual utilization of and payments to MBEs and WBEs do not meet or exceed the utilization and payment amounts set forth in the M/WBE Utilization Plan approved by the City.

A general contractor's good faith efforts to meet the MBE and/or WBE goals may include, but are not limited to, such items as the following:

- (a) Worked throughout the bidding, planning and execution of the construction process with the City to ensure that available MBEs and WBEs are appropriately matched to contracting opportunities commensurate with such MBEs' and WBEs' skills, experience and capacity;
- (b) Advertised in general circulation trade association and socially and economically disadvantaged business-directed media concerning the subcontracting opportunities;
- (c) Provided written notice to a reasonable number of specific MBEs and/or WBEs that their interest in the contract is solicited, in sufficient time to allow the MBEs and/or WBEs to participate effectively;
- (d) Followed up on initial solicitations of interest by contracting MBEs and/or WBEs to determine with certainty whether the MBEs and/or WBEs were interested;
- (e) Selected portions of the work to be performed by MBEs and/or WBEs in order to increase the likelihood of meeting the MBE and/or WBE goal (including, where appropriate, breaking down contracts into economically feasible units to facilitate MBE and/or WBE participation);
- (f) Provided interested MBEs and WBEs adequate information about plans, specifications and requirements of the contract;

(g) Negotiated in good faith with interested MBEs and WBEs not rejecting MBEs and/or WBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;

(h) Made efforts to assist interested MBEs and WBEs in obtaining bonding, lines of credit, or insurance required by the Foundation or by the bidder; and

(i) Made effective use of the services of available disadvantaged business trade organizations, minority contractors' group, local, state and federal disadvantaged business assistance offices and other organizations that provide assistance in the recruitment and placement of MBEs and WBEs.

The general contract for the Urban Garden project shall provide a reasonable retainage to be withheld until the date of substantial completion. Pending completion of the contract, amounts paid to MBEs and WBEs shall be reported to the Foundation and the City on a monthly basis. Prior to the release of the retainage, the general contractor shall file a list with the Foundation showing the MBEs and WBEs used, the work performed, and the dollar amount paid to each Certified MBE and WBE. The general contract shall provide that in the event the actual dollar amount paid to MBEs and WBEs falls short of the amount to be paid as set forth in the M/WBE Utilization Plan approved by the City, the Foundation may sustain damages, the exact extent of which would be difficult or impossible to ascertain. Therefore, in order to liquidate such damages, the contract shall provide that the monetary difference between the amount to be paid to the MBEs and/or WBEs as set forth in the Plan as approved less the amount actually paid to the MBEs and/or WBEs for performing a commercially useful function will be deducted from the contractor's payments as liquidated damages. No such deduction will be made when, for reasons beyond the reasonable control of the contractor, the MBE and/or WBE participation set forth in the Plan is not met. Any amount so deducted will be donated to organizations offering scholarship and/or internship programs for disadvantaged or disabled youth. The Foundation shall report to the City the occurrence and amount of any such deduction and the organization to which the money is donated or the use made thereof by the Foundation for scholarship and/or internship programs.