

## **AGREEMENT FOR PRIVATE DEVELOPMENT**

THIS AGREEMENT FOR PRIVATE DEVELOPMENT (“Agreement”), is made on or as of the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the CITY OF JOHNSTON, IOWA, a municipality (the “City”), established pursuant to the Code of Iowa and acting under the authorization of Chapters 15A and 403 (“Urban Renewal Act”) of the Code of Iowa, 2021, as amended; UNDERGROUND MAGNETICS, INC., an Iowa corporation having offices for the transaction of business at 5504 NW Beaver Drive, Johnston, Iowa (“Developer”); and BLUE TREE, LLC, an Iowa limited liability company (“Landowner”). The City, Developer, and Landowner are the Parties to this Agreement.

### WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Act, the City has undertaken a program for the development of an economic development area in the City and is engaged in carrying out urban renewal project activities in an area known as the East Central TIF Urban Renewal Area (the “Urban Renewal Area” or “Area”), which is described in the Urban Renewal Plan originally approved for such area on September 20, 1993, and subsequently amended several times, most recently by an Amendment No. 11 to the Plan approved on July 27, 2020 (the “Urban Renewal Plan” or “Plan”); and

WHEREAS, the City has also adopted Ordinance No. 952 and related prior ordinances (the “Ordinance”), under which incremental tax revenues from the Urban Renewal Area are to be deposited into a special tax increment fund of the City pursuant to Section 403.19 of the Code; and

WHEREAS, the City has been presented with a proposal to be undertaken by the Developer and Landowner to develop the property legally described in Exhibit A attached hereto and made a part hereof (which property as so described is hereinafter referred to as the “Development Property”), which is located within the Urban Renewal Area; and

WHEREAS, under the terms of the proposal the Developer will cause the construction of certain Minimum Improvements, as described on the attached Exhibit B, on the Development Property, which property is owned by Landowner, and thereafter Developer will operate its business at the Development Property and commit to hire and retain employees in the community (hereinafter the “Project”), in return for the payment of certain “Economic Development Grants” to Developer as further described in Article II of this Agreement; and

WHEREAS, Developer has applied for and anticipates receiving financial incentives from the Iowa Economic Development Authority (“IEDA”) through the High Quality Jobs Program pursuant to an Economic Development Assistance Contract (the “State Agreement”), which State Agreement requires Developer to employ a certain number of “Qualifying Jobs” (as defined by the terms of the State Agreement); and

WHEREAS, the City believes that the development of the Development Property pursuant to this Agreement and the fulfillment of this Agreement are in the vital and best interests of the

City and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the foregoing project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the Parties hereto, each of them does hereby covenant and agree with the other as follows:

**ARTICLE I-A**  
**STATE AGREEMENT**

1. Condition Precedent. The execution of the State Agreement for the Project under the High-Quality Jobs Program on or before December 31, 2021, is a condition precedent to any rights or obligations of any party to this Agreement.

2. Local Match. The Economic Development Grants that may be provided by the City to the Developer under this Agreement are intended to serve as the local match to the incentive that may be provided by IEDA under the State Agreement.

**ARTICLE I**  
**DEVELOPER AND LANDOWNER REPRESENTATIONS AND COVENANTS**

1. Minimum Improvements. Landowner will permit Developer to and Developer will cause the improvements described in Exhibit B to this Agreement (the “Minimum Improvements”) to be constructed on the Development Property in accordance with the terms of this Agreement, the Urban Renewal Plan, and all local, State, and federal laws and regulations. Developer and/or Landowner shall obtain or cause to be obtained, in a timely manner, all required permits, licenses, and approvals, and shall meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed and completed.

2. Employment. Following completion of construction of the Minimum Improvements, Developer shall operate its business within the Minimum Improvements on the Development Property. Developer currently employs 8 full-time equivalent employees in its business operations (the “Existing Jobs”). Developer shall create a minimum of 4 Qualifying Jobs on the Development Property by no later than July 1, 2022, and thereafter Developer shall retain a total Monthly Average of at least 12 Qualifying Jobs and Existing Jobs working at the Development Property until at least the Termination Date of this Agreement. Developer’s Annual Certifications shall show a Monthly Average of at least 12 Qualifying Jobs and Existing Jobs at the Development Property from July 1, 2022 until the Termination Date.

For the purposes of this Agreement, a “Qualifying Job” has the same definition as in the State Agreement, and “Monthly Average” means the average number of Qualifying Jobs employed as of October 1 of each year and as of the first day of each of the preceding eleven (11) months, as shown in the Annual Certifications (submitted pursuant to Article I, Section 13).

3. No Violations or Claims. To Developer’s and Landowner’s knowledge and with respect to the Project, the Developer and Landowner are not in material violation of any local, state

or federal environmental law or regulation and is not aware of any pending or threatened claim against the Developer with respect to such laws.

4. Total Investment. The Developer represents that its total investment in the Development Property will be not less than \$6,500,000, and that without the Economic Development Grants contemplated herein, Developer would not undertake the Project.

5. Insurance. The Developer and Landowner agree during construction of the Minimum Improvements and thereafter until the Termination Date to maintain builder's risk, property damage, and liability insurance coverages with respect to the Minimum Improvements in such amounts as are customarily carried by like organizations engaged in activities of comparable size and liability exposure with insurance companies reasonably satisfactory to the City, together with such additional coverages as the City may reasonably request, and shall provide evidence of such coverages to the City upon request.

6. Cooperation. Developer and Landowner will cooperate fully with the City in resolution of any traffic, parking, trash removal or public safety problems which may arise in connection with the construction and operation of the Minimum Improvements.

7. Completion Date. Developer expects that, barring delays resulting from acts or occurrences outside its reasonable control, including but not limited to storms, floods, fires, explosions or other casualty losses, unusual weather conditions, extraordinary project conditions, strikes, boycotts, lockouts or other labor disputes, delays in transportation or delivery of material or equipment, litigation commenced by third parties, or the acts of any federal, State or local governmental unit (other than the City), the Minimum Improvements will be completed by July 1, 2022.

8. Operation of Minimum Improvements. Developer will occupy the Minimum Improvements on the Development Property until at least the Termination Date as that term is defined in Article VI, Section 10. Landowner will permit Developer to occupy and operate its business in the Minimum Improvements until at least the Termination Date.

9. Compliance with Laws. Developer and Landowner will comply with all state, federal, and local laws, rules, and regulations relating to the Project, including laws prohibiting discrimination against any applicant, employee, or tenant because of age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status.

10. Available Information. Upon request, Developer and Landowner shall promptly provide the City with copies of information requested by City that are related to this Agreement and the Project so that City can determine compliance with the Agreement.

11. Inspection. Developer and Landowner agree that they shall permit designated representatives of the City, upon reasonable notice (which does not have to be written), to enter upon the Development Property during the construction of the Minimum Improvements to inspect such construction and the progress thereof.

12. Real Property Taxes and Assessments. Developer and/or Landowner, or their respective successors, shall pay, when due, all real property taxes and assessments payable with respect to all and any parts of the Development Property acquired and owned or leased by them and pursuant to the provisions of this Agreement. Until their obligations have been assumed by any other person pursuant to the provisions of this Agreement or legal title to the property is vested in another person, Developer and Landowner shall be responsible for all assessments and taxes on the Development Property. Developer and Landowner agree that prior to the Termination Date:

- a. They will not seek administrative review or judicial review of the applicability or constitutionality of any tax statute relating to the taxation of real property contained on the Development Property determined by any tax official to be applicable to the Development Property, Minimum Improvements, or Developer or Landowner, or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings;
- b. They will not seek any tax exemption deferral or abatement either presently or prospectively authorized under any State, federal, or local law with respect to taxation of real property contained on the Development Property between the date of execution of this Agreement and the Termination Date; and
- c. They will not seek to change the current land assessment category from commercial or industrial, or to change the zoning classification, of the Development Property or the Minimum Improvements.

13. Annual Certification. To assist the City in monitoring the Agreement and performance of Developer and Landowner hereunder, duly authorized officers of Developer and Landowner shall provide an Annual Certification to the City.

Developer and Landowner shall annually provide to the City (i) proof that all ad valorem taxes on the Development Property have been paid for the prior fiscal year and any taxes due and payable for the current fiscal year as of the date of certification; (ii) the date the Minimum Improvements were first fully assessed, the value at such assessment and the current assessed value; (iii) a certification of the number of Qualifying Jobs employed at the Development Property as of October 1 and as of the first day of each of the preceding eleven (11) months (pro-rated for the first Annual Certification); and (iv) a certification that such officer is familiar with the terms and provisions of this Agreement and that at the date of such certification, there is no Event of Default by Developer or Landowner hereunder, or if the signer is aware of any such Event of Default, said officer shall disclose in such statement the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto.

Such statement, proof and certificates required above shall be provided not later than October 15 of each year, commencing October 15, 2023 and ending on October 15, 2028, both dates inclusive. Developer and Landowner shall provide supporting information germane of its Annual Certification upon request of the City. *See Exhibit C* for the form required for the Annual Certification.

**ARTICLE II.**  
**ECONOMIC DEVELOPMENT GRANTS**

1. **Economic Development Grants.** For and in consideration of the obligations of the Developer and Landowner as set forth herein, and as a necessary means of achieving the goals and objectives of the Urban Renewal Plan, the City agrees (subject to the conditions set forth in this Article and this Agreement) to make up to five (5) consecutive annual payments reimbursing certain incremental property taxes from the increased valuation due to the construction of the Minimum Improvements on the Development Property (the “Economic Development Grants”) to the Developer in the amount and calculated according to the formula set forth below in Section 2, subject to the other terms and conditions of this Article II.

The Economic Development Grant payments shall be payable solely and only from incremental property taxes allowable to be collected under Iowa Code Section 403.19 based on the TIF tax rate for the City of Johnston (the “Tax Increments”) received on the Minimum Improvements (building value only) from the County Auditor consistent with Section 403.19 and the Ordinance. The local debt services and physical plant and equipment levies (PPEL) and any other levies excluded from collection under Section 403.19 are not included in the Tax Increments. The City will rebate to Developer the amount of Tax Increments calculated under the terms of Article II, Section 2 and received resulting from the construction of the Minimum Improvements (building value increase), measured from the January 1, 2021 assessment for the Development Property (the “Existing Value”).

Developer, Landowner, and City agree that the Existing Value of the Development Property (and any existing improvements thereon) as of January 1, 2021 (combined building and land value) is \$366,000 and will not be considered part of the incremental value when determining the amount of Economic Development Grants to which Developer is entitled. Developer will not receive any rebate for taxes paid on this Existing Value.

2. **Calculation of Economic Development Grants.** Subject to the maximum amount limitation set forth in Article II, Section 4, the amount of each annual Economic Development Grant will be calculated based on 90% of the Tax Increments generated by the construction of the Minimum Improvements. All Economic Development Grants shall be funded solely and only from the Tax Increments actually received under Iowa Code Section 403.19 and the Ordinance for the Minimum Improvements (building value only and excluding the Existing Value) on the Development Property, and shall not be paid from any other source. The City shall pay an Economic Development Grant for five (5) fiscal years beginning with fiscal year 2024-2025, assuming the first full valuation of the Minimum Improvements is as of January 1, 2023, according to the following schedule:

<b>1<sup>st</sup> Full Assessment Date*</b>	<b>Payment Nos.</b>	<b>Certification Date</b>	<b>FY of Tax Rebate for Property Taxes</b>	<b>Estimated Payment Dates</b>
1/1/23	1	10/15/23	24/25	6/1/25
	2	10/15/24	25/26	6/1/26

	3	10/15/25	26/27	6/1/27
	4	10/15/26	27/28	6/1/28
	5	10/15/27	28/29	6/1/29

**\*All dates will change if the first full assessment date changes. No Economic Development Grants will be made for partial assessments. All payments subject to Developer’s compliance with the terms of the Agreement at the time of payment.**

3. Conditions Precedent. Notwithstanding the provisions of Article II, Section 2, the City’s obligation to make any Economic Development Grant payment under this Agreement shall be subject to satisfaction of the following conditions precedent:

- a. The Developer and Landowner shall be in material compliance with all the terms and provisions of this Agreement at the time of payment, including the payment of property taxes, employment obligations, and submission of the Annual Certification; and
- b. The Minimum Improvements shall be completed and fully assessed, and a certificate of occupancy shall have been issued for the Minimum Improvements; and
- c. The Developer shall have commenced its business operations on the Development Property.

4. Maximum Amount. The total aggregate amount of the Economic Development Grants paid by the City to Developer shall not exceed the amount calculated under Article II, Section 2 above, or \$803,290, whichever is less. The City makes no guarantee as to the actual aggregate amount of the Economic Development Grants that Developer receives. The Economic Development Grants shall be the only monetary consideration given by the City to the Developer or the Landowner in connection with this Agreement.

The Economic Development Grants are only for the Minimum Improvements described in this Agreement and not any future expansions which, to be eligible for additional incentives, would be the subject of an amendment or new agreement, at the sole discretion of the City Council.

5. Annual Appropriation; Limitations. Each Economic Development Grant payment is wholly contingent upon a finding that Developer and Landowner are in compliance with the conditions set forth in Article II of this Agreement and is subject to the following limitations:

- a. Each Economic Development Grant is subject to annual appropriation by the City Council each fiscal year. The City has no obligation to make any payments to Developer as contemplated under this Agreement until the City annually appropriates the funds necessary to make such payments. The right of non-appropriation reserved to the City in this paragraph is intended by the parties, and shall be construed at all times, so as to ensure that the City’s obligation to make future Economic Development Grants shall not constitute a legal indebtedness of the City within the meaning of any applicable constitutional or statutory debt

limitation prior to the adoption of a budget which appropriates funds for the payment of that installment or amount. In the event that any of the provisions of this Agreement are determined by a court of competent jurisdiction to create, or result in the creation of, such a legal indebtedness of the City, the enforcement of the said provision shall be suspended, and the Agreement shall at all times be construed and applied in such a manner as will preserve the foregoing intent of the parties, and no Event of Default by the City shall be deemed to have occurred as a result thereof. If any provision of this Agreement or the application thereof to any circumstance is so suspended, the suspension shall not affect other provisions of this Agreement which can be given effect without the suspended provision. To this end the provisions of this Agreement are severable.

- b. The City shall have no obligation to make an Economic Development Grant to Developer if at any time during the term hereof the City fails to appropriate funds for payment, incremental property taxes are not made available to the City, or the City receives an opinion from its legal counsel to the effect that the use of the Tax Increments resulting from the Minimum Improvements to fund an Economic Development Grant to Developer is not authorized or otherwise an appropriate urban renewal activity permitted to be undertaken by the City under the Urban Renewal Act or other applicable provisions of the Code, as then constituted or under controlling decision of any Iowa Court having jurisdiction over the subject matter hereof. In such event, the City shall promptly forward notice of the same to Developer and Landowner. If the non-appropriation or circumstances or legal constraints continue for a period during which two (2) annual Economic Development Grants would otherwise have been paid to Developer, the City may terminate this Agreement, without penalty or other liability to the City, by written notice to Developer.
  
- c. Should Developer or Landowner successfully protest the assessed value of the Minimum Improvements and be reimbursed by the County for overpaid taxes for any fiscal year in which Developer has already received Economic Development Grants, the City may: (i) reduce any subsequent Grants by an amount equivalent to the portion of the prior Economic Development Grants that would not have been paid if the Minimum Improvements had originally been assessed at the adjusted value; or (ii) recoup from Developer an amount equivalent to the portion of the prior Economic Development Grants that would not have been paid if the Minimum Improvements had originally been assessed at the adjusted value if the set-off in (i) is not available or feasible. If there is an open PAAB appeal or related proceeding or protest that is unresolved as of the Termination Date with respect to any fiscal year for which an Economic Development Grant was paid to Developer, then the terms of this Section shall survive the termination of the Agreement.

**ARTICLE III**  
**INDEMNIFICATION**

1. **Release and Indemnification.** Developer and Landowner release the City and the governing body members, officers, agents, servants and employees thereof (hereinafter, for purposes of this Article III, the “Indemnified Parties”) from, covenant and agree that the Indemnified Parties shall not be liable for, and agree to indemnify, defend, and hold harmless the Indemnified Parties against, any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements or Development Property. Should the City fail to perform under the State Agreement due to an Event of Default by the Developer and/or Landowner under this Agreement or another separate agreement entered into between the parties, then the Developer and Landowner shall indemnify and hold the City harmless from any loss, including repayment of any grant monies, arising out of or related to the City’s failure to fulfill the terms of the State Agreement.

Except to the extent arising from any willful misrepresentation, gross negligence, or any willful or wanton misconduct or any unlawful act of the Indemnified Parties, Developer and Landowner agree to protect and defend the Indemnified Parties, now or forever, and further agree to hold the Indemnified Parties harmless, from any claim, demand, suit, action or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from: (i) any violation of any agreement or condition of this Agreement (except with respect to any suit, action, demand or other proceeding brought by Developer or Landowner, respectively, against the City to enforce its rights under this Agreement); (ii) the acquisition and condition of the Development Property and the construction, installation, ownership, and operation of the Minimum Improvements and Development Property; or (iii) any hazardous substance or environmental contamination located in or on the Development Property.

The Indemnified Parties shall not be liable for any damage or injury to the persons or property of Developer or Landowner or their officers, agents, servants or employees or any other person who may be about the Minimum Improvements or Development Property due to any act of negligence of any person, other than any act of negligence on the part of any such indemnified party or its officers, agents, servants or employees.

The provisions of this Article III shall survive the termination of this Agreement.

**ARTICLE IV**  
**PROHIBITION AGAINST ASSIGNMENT AND TRANSFER**

1. **Status of Developer; Transfer of Substantially All Assets; Assignment.** As security for the obligations of Developer under this Agreement, Developer represents and agrees that, prior to the Termination Date, Developer will maintain its existence as a company and will not wind up or otherwise dispose of all or substantially all of its assets or transfer, convey, or assign its interest in the Development Property, Minimum Improvements, or this Agreement to any other party unless: (i) the transferee partnership, corporation, limited liability company or individual assumes in writing all of the then-outstanding obligations of Developer under this Agreement; and (ii) the City consents thereto in writing in advance thereof. Notwithstanding the foregoing, however, or

any other provisions of this Agreement, Developer may pledge any and/or all of its assets as security for any financing of the Minimum Improvements, and the City agrees that Developer may assign the Economic Development Grants that may be paid under this Agreement for such purpose.

2. Status of Landowner; Transfer of Substantially All Assets; Assignment. As security for the obligations of Landowner under this Agreement, Landowner represents and agrees that, prior to the Termination Date, Landowner will maintain its existence as a company and will not wind up or otherwise dispose of all or substantially all of its assets or transfer, convey, or assign its interest in the Development Property, Minimum Improvements, or this Agreement to any other party unless: (i) the transferee partnership, corporation, limited liability company or individual assumes in writing all of the then-outstanding obligations of Landowner under this Agreement; and (ii) the City consents thereto in writing in advance thereof.

3. Prohibition Against Use as Non-Taxable or Centrally Assessed Property. During the term of this Agreement, Developer, Landowner, and their respective successors or assigns, agree that the Development Property cannot be transferred or sold to a non-profit entity or used for a purpose that would exempt the Development Property or Minimum Improvements from property tax liability. Nor can the Development Property or Minimum Improvements be used as centrally assessed property (including but not limited to, Iowa Code § 428.24 to 428.29 (Public Utility Plants and Related Personal Property); Chapter 433 (Telegraph and Telephone Company Property); Chapter 434 (Railway Property); Chapter 437 (Electric Transmission Lines); Chapter 437A (Property Used in the Production, Generation, Transmission or Delivery of Electricity or Natural Gas); and Chapter 438 (Pipeline Property)).

## **ARTICLE V** **DEFAULT AND REMEDIES**

1. Events of Default Defined. The following shall be “Events of Default” under this Agreement and the term “Event of Default” shall mean, whenever it is used in this Agreement, any one or more of the following events during the Term of this Agreement:

- a. Failure by Developer to cause the construction of the Minimum Improvements to be completed pursuant to the terms and conditions of this Agreement;
- b. Transfer of Developer’s or Landowner’s interests in the Development Property, Minimum Improvements, or this Agreement in violation of the provisions of this Agreement;
- c. Failure by Developer and/or Landowner to pay or cause to be paid ad valorem taxes on the Development Property or Minimum Improvements;
- d. Failure by Developer or Landowner to substantially observe or perform any covenant, condition, or obligation under this Agreement, including but not limited to the Developer’s employment obligations;

- e. The holder of any mortgage on the Development Property, or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable mortgage documents;
- f. Failure by Developer or Landowner to substantially observe or perform any covenant, condition, or obligation under the State Agreement;
- g. Developer or Landowner shall:
  - i. file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended, or under any similar federal or state law; or
  - ii. make an assignment for the benefit of its creditors; or
  - iii. admit in writing its inability to pay its debts generally as they become due; or
  - iv. be adjudicated as bankrupt or insolvent; or if a petition or answer proposing the adjudication of Developer or Landowner as bankrupt or either entity's reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of Developer or Landowner or the Minimum Improvements, or part thereof, shall be appointed in any proceedings brought against Developer or Landowner and shall not be discharged within ninety (90) days after such appointment, or if Developer or Landowner shall consent to or acquiesce in such appointment; or
- h. Any representation or warranty made by Developer and/or Landowner in this Agreement or in any written statement or certificate furnished by Developer and/or Landowner pursuant to this Agreement, shall prove to have been incorrect, incomplete or misleading in any material respect on or as of the date of the issuance or making thereof.

2. Developer Breach. If any Event of Default occurs, and Developer and/or Landowner fails to cure said Event of Default within thirty (30) days after written notice from the City to the Developer and Landowner, the City may: (i) suspend its performance under this Agreement, (ii) terminate this Agreement upon written notice to the Developer, or (iii) take any other legal or equitable action deemed appropriate to enforce the Developer's and/or Landowner's obligations under this Agreement, as applicable; furthermore, City will have no obligation to make payment of Economic Development Grants to Developer subsequent to the Event of Default.

3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every remedy

shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

4. No Implied Waiver. In the event any agreement or obligation contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

5. Enforcement Costs. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of Developer and/or Landowner herein contained, Developer and Landowner agree that they shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses as may be reasonably and appropriately incurred by the City in connection therewith.

## **ARTICLE VI** **MISCELLANEOUS**

1. Conflict of Interest. Developer and Landowner each represent and warrant that, to its best knowledge and belief after due inquiry, no officer or employee of the City, or their designees or agents, nor any consultant or member of the governing body of the City, and no other public official of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the Project, has had or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work or services to be performed in connection with the Project, or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.

2. Notices. Notices, demands, or other communications under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- a. In the case of Developer, is addressed or delivered personally to Underground Magnetics, Inc. at 5504 NW Beaver Drive, Johnston, Iowa 50131, Attn: Yuyang Jin, Co-Owner;
- b. In the case of Landowner, is addressed or delivered personally to Blue Tree, LLC at 5504 NW Beaver Drive, Johnston, Iowa 50131, Attn: Yuyang Jin, Trustee;
- c. In the case of the City, is addressed to or delivered personally to the City at 6221 Merle Hay Road, PO Box 410, Johnston, Iowa 50131, Attn: City Clerk;

or to such other designated individual or officer or to such other address as either party shall have furnished to the other in writing in accordance herewith.

3. Iowa Law Controlling. This Agreement shall be governed and construed under the laws of the State of Iowa.

4. Entire Agreement. This Agreement and the Exhibits here referenced shall constitute the entire agreement between the City, Developer, and Landowner, and supersedes all other written and oral agreements, discussions and negotiations.

5. Amendments. This Agreement may not be amended or assigned by either party without the express written permission of the other party.

6. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

7. Severability. In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

8. Successors and Assigns. This Agreement is intended to and shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

9. No Third-Party Beneficiaries. No rights or privileges of either party hereto shall inure to the benefit of any landowner, contractor, subcontractor, material supplier, or any other person or entity, and no such contractor, landowner, subcontractor, material supplier, or any other person or entity shall be deemed to be a third-party beneficiary of any of the provisions contained in this Agreement.

10. Termination. This Agreement shall terminate and be of no further force or effect after December 31, 2029, unless terminated earlier under the provisions of this Agreement.

11. Authority of Developer. Underground Magnetics, Inc. is an Iowa corporation duly organized and validly existing under the laws of and registered to do business in the State of Iowa, and has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under the Agreement. This Agreement has been duly and validly authorized, executed and delivered by Developer and, assuming due authorization, execution and delivery by the City and Landowner, is in full force and effect and is a valid and legally binding instrument of Developer enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

12. Authority of Landowner. Blue Tree, LLC is an Iowa limited liability company duly organized and validly existing under the laws of and registered to do business in the State of Iowa, and has all requisite power and authority to own and operate its properties, to carry on its business

as now conducted and as presently proposed to be conducted, and to enter into and perform its obligations under the Agreement. This Agreement has been duly and validly authorized, executed and delivered by Landowner and, assuming due authorization, execution and delivery by the City and Developer, is in full force and effect and is a valid and legally binding instrument of Landowner enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws relating to or affecting creditors' rights generally.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by its Mayor and its seal to be hereunto duly affixed and attested by its City Clerk, and the Developer and Landowner have each caused this Agreement to be duly executed in its name and behalf by its authorized representative, all on or as of the day first above written.

*[Signature pages follow]*



UNDERGROUND MAGNETICS, INC.,  
an Iowa corporation

By: \_\_\_\_\_  
Yuyang Jin, Co-Owner

STATE OF IOWA                    )  
  ) SS  
COUNTY OF POLK                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021, before me the undersigned, a Notary Public in and for said State, personally appeared Yuyang Jin, to me personally known, who, being by me duly sworn, did say that he is the Co-Owner of Underground Magnetics, Inc., and that said instrument was signed on behalf of said corporation; and that the said Yuyang Jin as such officer, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by him voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

*[Signature page to Agreement – Developer]*



EXHIBIT A  
DEVELOPMENT PROPERTY

The Development Property is described as follows:

LOT 6 NW BEAVER OFFICE PARK IN POLK COUNTY, IOWA

EXHIBIT B  
MINIMUM IMPROVEMENTS

Minimum Improvements means an approximately 38,000 square foot building to be constructed on the Development Property, comprised of approximately 18,000 square feet of high-end offices and approximately 20,000 square feet of warehouse space, together with all related site improvements. The building will include natural stone flooring, with 100% coverage (excluding windows) of exterior walls with natural stone, and an aesthetic finish to the insulated precast concrete.

The Minimum Improvements will be used for the operations of Developer's business. The construction of the Minimum Improvements is expected to be completed by July 1, 2022.

See Exhibit B-1 for site plans of the Minimum Improvements.



**EXHIBIT C**  
**ANNUAL CERTIFICATION**  
**(due by October 15th as required under terms of Development Agreement)**

Developer and Landowner certify that, during the time period covered by this Certification, each of them is and was in compliance with the Agreement as follows:

(i) Attached hereto is proof that all ad valorem taxes on the Minimum Improvements and Development Property have been paid for the prior fiscal year and any taxes due and payable for the current fiscal year as of the date of certification;

(ii) The Minimum Improvements were first fully assessed on January 1, 20\_\_\_\_, at a full assessment value of \$\_\_\_\_\_ and are currently assessed at \$\_\_\_\_\_;

(iii) The number of Qualifying Jobs and Existing Jobs employed by Developer at the Development Property as of October 1, 20\_\_\_\_ and as of the first day of each of the preceding eleven (11) months are follows:

October 1, 20____:	_____	April 1, 20____:	_____
September 1, 20____:	_____	March 1, 20____:	_____
August 1, 20____:	_____	February 1, 20____:	_____
July 1, 20____:	_____	January 1, 20____:	_____
June 1, 20____:	_____	December 1, 20____:	_____
May 1, 20____:	_____	November 1, 20____:	_____

(iv) The undersigned officers of Developer and Landowner are familiar with the terms and provisions of this Agreement and certify that Developer and Landowner are not in default in the fulfillment of any of the terms and conditions of this Agreement, or if the signer is aware of any such Event of Default, said officer has disclosed the nature thereof, its period of existence and what action, if any, has been taken or is proposed to be taken with respect thereto.

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct to the best of my knowledge and belief.

**DEVELOPER:**  
**UNDERGROUND MAGNETICS, INC.,**  
**an Iowa corporation**

By: \_\_\_\_\_  
Yuyang Jin, Co-Owner

Date: \_\_\_\_\_

**LANDOWNER:**  
**BLUE TREE, LLC,**  
**an Iowa limited liability company**

By: \_\_\_\_\_  
Yuyang Jin, Trustee

Date: \_\_\_\_\_

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