

1st Reading: _____
 2nd Reading: _____
 Date Adopted: _____
 Date Published: _____
 Effective Date: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SIOUX FALLS, SD, DECLARING CERTAIN PROPERTY OF THE CITY OF SIOUX FALLS SURPLUS AND APPROVING GRATUITOUS TRANSFER OF REAL PROPERTY BY GIFT AGREEMENT.

WHEREAS, the City deems it advisable and to the best interest of the public to gratuitously convey without payment the real property with legal description of Lot B1 of Sandy Creek Addition to the City of Sioux Falls, Minnehaha County, South Dakota, to Veterans Community Project, Inc., a nonprofit corporation subject to the condition that the real property be used for public, charitable, or humanitarian purposes and accommodation;

BE IT ORDAINED BY THE CITY OF SIOUX FALLS, SD:

Section 1. That the recitals above are adopted and are incorporated herein by this reference as if set out in full.

Section 2. Notwithstanding the provisions of SDCL Chapter 6-13, and pursuant to Section 2.12(7) of the City Charter and SDCL 6-5-5, the City hereby declares the following property to be surplus property that is no longer necessary, useful, or suitable for the purpose for which it was acquired:

Lot B1 of Sandy Creek Addition to the City of Sioux Falls, Minnehaha County, South Dakota

As also shown on the attached Exhibit incorporated herein by reference.

Section 3. That it approves the document titled “Gift Agreement between the City of Sioux Falls and the Veterans Community Project, Inc.” (the “Gift Agreement”). That said Gift Agreement is attached hereto and made part of this ordinance as if set out in full.

Section 4. That the Mayor is authorized to sign on behalf of the City the Gift Agreement and any and all documents or amendments, necessary to make a gratuitous transfer and conveyance of the real property described in Section 2 above to the Veterans Community Project, Inc. on the condition that the real property be used for public, charitable, or humanitarian purposes and accommodation and subject to all other terms and conditions as set forth in the Gift Agreement.

Section 5. Veterans Community Project, Inc. shall not be required to pay the City for the real property conveyed as directed herein.

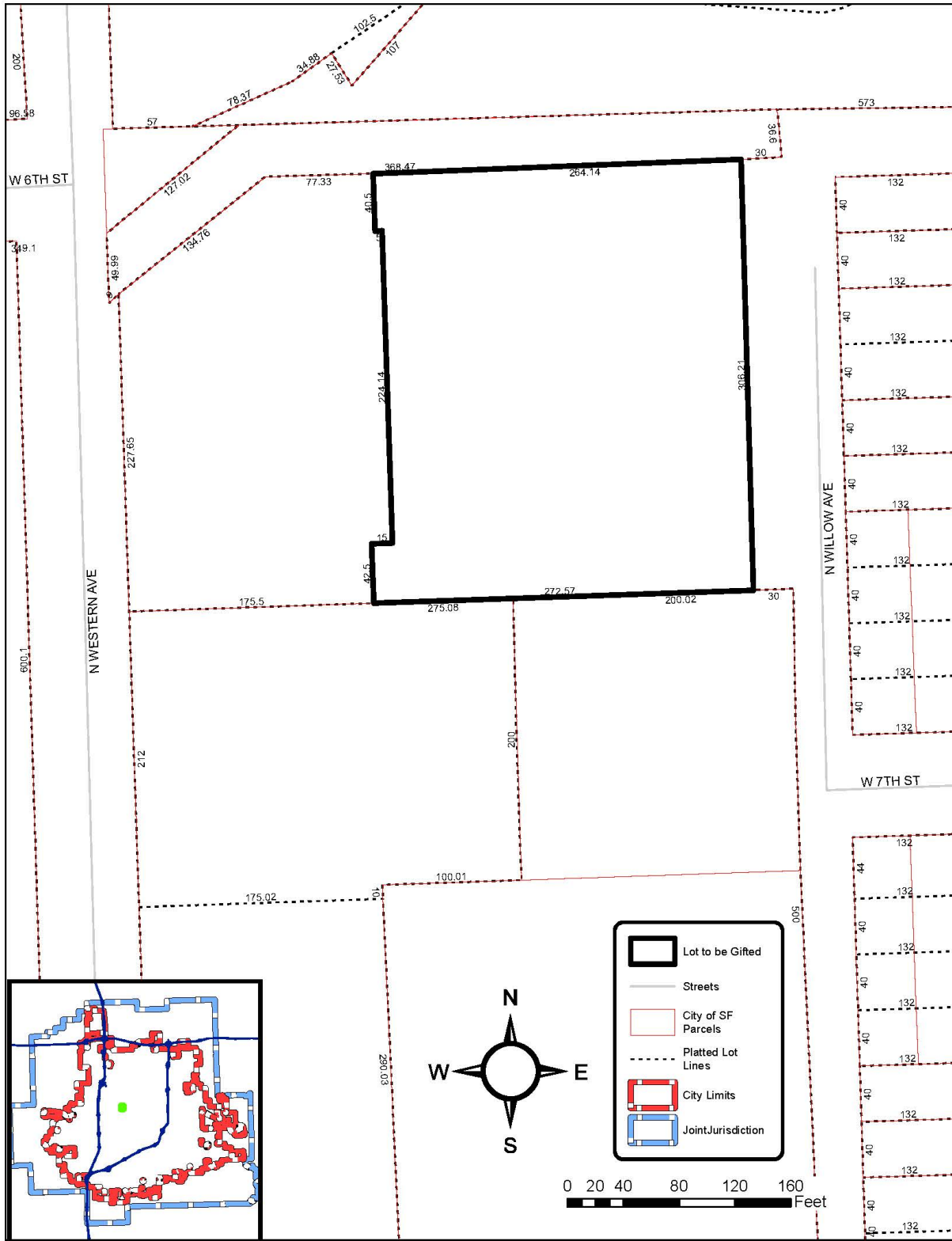
Section 6. That the City shall publish this ordinance, without attachments, after its passage. The attachments are on file and available for inspection in the office of the City Clerk.

Date adopted: _____.

Mayor

ATTEST:

City Clerk



GIFT AGREEMENT

THIS GIFT AGREEMENT (this "Agreement") is entered into this 8th day of July, 2021, by and between the CITY OF SIOUX FALLS, a home-ruled chartered municipality created and existing under the laws of the state of South Dakota (the "City"), and the Veterans Community Project, Inc., a nonprofit corporation organized and existing under the laws of the State of Delaware ("VCP").

RECITALS

WHEREAS, the City owns certain real property legally described as: Lot B1 of Sandy Creek Addition to the City of Sioux Falls, Minnehaha County, South Dakota;

WHEREAS, the City has by resolution deemed it advisable and to the best interest of the public to gratuitously convey without payment all or a portion of the above-described real property to VCP, subject to the condition that the real property be used for public, charitable, or humanitarian purposes and accommodation;

WHEREAS, the VCP is willing to accept the above-described property "AS IS" from the City, to develop and construct a tiny-home village, for homeless veterans with a community center, where residents will receive mentoring, case management, and linkage to other community programs and services;

WHEREAS, the City and VCP desire to enter into this Agreement in order to memorialize various agreements between the City and VCP in connection with the said conveyance;

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

ARTICLE I Definitions

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

Agreement: Has the meaning specified in the introductory paragraph of this Agreement.

City: Has the meaning specified in the introductory paragraph of this Agreement.

Commencement of Construction: Shall mean the physical alteration, more than de minimis, of the property in furtherance of constructing improvements according to Preliminary Design Plans approved by the City.

Property: Shall mean the real estate legally described in Exhibit A.

Site Plan: Shall mean the Preliminary Site Plans submitted to the City.

ARTICLE II Transfer of Property

The City agrees to convey to VCP by quit claim deed, and VCP agrees to accept from the City, the City's interest in the real property described in Exhibit A, the "Property" subject to the easements, covenants, conditions, encumbrances, restrictions of record and the terms and conditions of this Agreement. The City shall not be responsible for any closing costs or transfer fees.

The Property shall be conveyed from City to VCP at closing which shall be scheduled at a mutually agreeable time after final approval of the transfer by ordinance adopted by the Sioux Falls City Council and after the expiration of the time within which the City Council's approval of the Agreement may be challenged by referendum following the publishing of the City Council's ordinance.

ARTICLE III Project

VCP agrees to develop and construct a tiny-home village, for homeless veterans with a community center, where residents will receive mentoring, case management, and linkage to other community programs and services (the Project). The Project will include fifteen tiny homes and a community center with public infrastructure improvements to serve the Property. The tiny home units will be approximately 240 square feet in size for individual homes and approximately 320 square feet for family homes. There shall be no cash consideration paid by the VCP to the City for the Property.

The City will build out and construct Willow Avenue from 7th Street to 1 block north. The City will use Community Development Block Grant (CDBG) funding up to \$447,000 for the necessary public improvements to the site. This includes grading, gravel, asphalt, curb and gutter, sidewalks, storm sewer, street lighting, water main, and sanitary sewer. The roadway will be constructed to City of Sioux Falls design standards. All necessary public improvement costs must be reasonable and necessary.

Initial occupants of eleven of the total constructed tiny home units shall be CDBG-assisted units. All CDBG-assisted units must house homeless veterans. The eleven CDBG-assisted units shall be low income households. A household will be considered homeless pursuant to one of the definitions found at: https://www.hudexchange.info/resources/documents/HomelessDefinition_RecordkeepingRequirementsandCriteria.pdf. Written documentation of homelessness must be kept on file.

Rent shall not be charged on any of the eleven CDBG-assisted units. The rent free CDBG-assisted units shall meet the affordable rents requirement per 24 CFR § 570.208(a)(3)(i)(B).

**ARTICLE IV
Title Insurance**

- A. Title Evidence: VCP may obtain a commitment for a policy of title insurance.
- B. Title Policy: Prior to closing, the City will cooperate with VCP as reasonably necessary to cause a title company to issue to VCP a title policy. VCP understands and agrees that its right, title, and interest in the Property shall not exceed that vested in the City, and neither party is under any obligations to furnish any policy of title insurance or survey in connection with this transfer of Property. City is under no obligation to cure any objection to title.

**ARTICLE V
"AS IS" Condition**

VCP specifically acknowledges and agrees that the City is conveying and VCP is accepting the property on an "as-is with all faults" basis subject to all applicable laws, rules, and ordinances, including, without limitation, any zoning ordinances or other regulations governing the use, occupancy, or possession of the property. VCP is relying solely on its independent investigation and not on any representations or warranties of any kind whatsoever, express or implied, from the City or its agents as to any matters concerning the property.

**ARTICLE VI
Reverter and Right of Entry**

The quit claim deed shall contain a reverter clause whereby the Property will revert back to the City in the event the following conditions occur:

- A. Commencement of Construction does not begin within two years of conveyance;
- B. Completed construction of eleven CDBG-assisted units does not occur within three years of conveyance; and
- C. Completed construction of a total of fifteen units and a community center within three years of commencement of construction.

In the event the above conditions are in any way violated, or not fully complied with, then all right and title shall revert to the City without process of law.

The quit claim deed shall contain a Reserved Right of Entry clause whereby the City may enter and reclaim the Property in the event that the Property is not being used for public, charitable, or humanitarian purposes and accommodation. The Right of Entry and Reverter may be waived or terminated by the Mayor of Sioux Falls at any time.

ARTICLE VII Records

The City, or any of their authorized representatives, shall have the authority to visit the Property site at any reasonable time, and upon completion of the tiny home units or any portion thereof, upon reasonable notice to the VCP, and to review the operation and/or progress of the development in accordance with the terms of this Agreement.

The VCP shall provide the City with demographic data on the initial occupants of all CDBG-assisted units. VCP shall submit a report of people assisted, ethnicity (Hispanic, or not Hispanic), race (American Indian or Alaskan Native, Asian, Black or African American, Native Hawaiian or other Pacific Islander, or White), female head of household, household size, elderly (62 or older), homeless status and people with disabilities. Household Area Medium Income (AMI) will be presumed low-income due to homeless status.

VCP and the City shall maintain records for a period of six years from Project completion and allow access by the City, or their designated representatives, to any books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making an audit, examination, excerpts, transcriptions, or to ascertain compliance with the provisions of this Agreement. VCP shall obtain, maintain, and submit to the City upon request information relative to the statistical data of the clientele.

VCP shall maintain detailed records of all persons served pursuant to this Agreement. Representatives of the City, HUD, or their designees may examine any records or information accumulated pursuant to this Agreement.

The City will conduct monitoring visit(s) with VCP to review and determine that all activities associated with the Agreement are meeting CDBG requirements. The City will provide a checklist of those items it will be reviewing prior to this monitoring visit.

ARTICLE VIII Site Plan

- A. VCP shall submit to the City one or more Preliminary Site Plans.
- B. The final design plans used for construction shall be substantially similar to the Preliminary Site Plans, and shall comply with all applicable laws, ordinances, rules, and regulations.

- C. The approval of any Preliminary Site Plan(s) design plan pursuant to this Article shall not constitute a waiver by the City of any building code or ordinance or other developmental duties imposed in the future upon VCP by law.

ARTICLE IX Insurance

VCP agrees to secure and obtain the insurance coverage specified below and otherwise comply with Sioux Falls Executive Order 109. All insurance secured by VCP under the provisions of this section shall be issued by insurance companies acceptable to the City. The insurance specified in this section may be in a policy or policies of insurance, primary or excess. Certificates of all required insurance shall be provided to the City upon execution of this Agreement.

- A. Workers' compensation insurance providing the statutory limits required by South Dakota law. In addition it shall provide Coverage B, Employer's Liability Coverage, of not less than \$1,000,000 each accident, \$1,000,000 disease-policy limits. The required limit may be met by excess liability (umbrella) coverage.
- B. Commercial general liability insurance providing occurrence form contractual personal injury, bodily injury, and a property damage liability coverage with limits of at least \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 aggregate products and completed operations. The required limit may include excess liability (umbrella) coverage. The policy shall by separate endorsement name the City and its representative as additional insureds. If "occurrence form" insurance is not available, "claims made" insurance will be acceptable. The policy shall be maintained for three years after completion of this Agreement.
- C. Automobile liability insurance covering all owned, nonowned, and hired automobiles, trucks, and trailers. The coverage shall be as broad as that found in the standard comprehensive automobile liability policy with limits of not less than \$1,000,000 combined single limit each occurrence. The required limit may include excess liability (umbrella) coverage.
- D. Professional liability insurance providing occurrence basis coverage for any claim arising from the errors, omissions, failure to render a service, or the negligent rendering of the service by the VCP in the amount of \$1,000,000 each occurrence and \$1,000,000 annual aggregate. If occurrence form insurance is not available, claims made coverage shall be maintained for two years after final completion of the services. The City does not represent that the above coverages and limits are adequate to protect VCP and assumes no responsibility therefor.

VCP will provide the City with at least 30 days' written notice of an insurer's intent to cancel or not renew any of the insurance coverage. VCP agrees to hold the City harmless from any liability, including additional premium due, because of VCP's failure to maintain the coverage limits required.

The City's approval or acceptance of certificates of insurance does not constitute the City's assumption of responsibility for the validity of any insurance policies, nor does the City represent that the above coverages are adequate to protect any individual/group/ business, its consultants' or subcontractors' interests, and assumes no liability therefor.

ARTICLE X VCP's Covenants

- A. The Property shall be used as a tiny-home village, for homeless veterans with a community center. Fifteen tiny homes and a community center will be constructed along with public infrastructure improvements to serve the Property. The tiny home units will be approximately 240 square feet in size for individual homes and approximately 320 square feet for family homes.
- B. VCP shall prior to Commencement of Construction, comply with all applicable state, federal, and local laws in performing its obligations under this Agreement.
- C. VCP shall at all times while owner of the Property maintain its status as a nonprofit corporation with a 501 C3 organization designation with the Internal Revenue Service.
- D. VCP shall be subject to the provisions of Chapter 98 of the Code of Ordinances of Sioux Falls, SD. It is declared to be discrimination for VCP, because of race, color, sex, creed, religion, ancestry, national origin, or disability, to fail or refuse to hire, to discharge an employee, or to accord adverse, unlawful, or unequal treatment to any person or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, discharge, or any term or condition of employment.

If VCP is guilty of discrimination, this Agreement may be terminated in whole or in part by the City and VCP shall be liable for any costs or expense incurred by the City in obtaining from other sources the work and services to be rendered or performed or the goods or properties to be furnished or delivered by VCP under the Agreement so terminated or canceled

Should the Sioux Falls Human Relations Commission in a proceeding brought as provided by the Code of Ordinances of City, find that VCP has engaged in

discrimination in connection with this Agreement and issue a cease and desist order with respect thereto, the City shall withhold all payments and reimbursements hereunder until such time as the Commission's order has been complied with VCP has been adjudicated not guilty of such discrimination.

VCP will permit access to any and all records pertaining to hiring and employment and to other pertinent data and records for the purpose of enabling the Commission, its agencies or representatives, to ascertain compliance with the above provisions.

This subsection D shall be binding on all contractors, subcontractors and suppliers.

ARTICLE XI Warranty and Indemnification

A. No Warranty

VCP has been allowed to make an inspection of the Property. VCP IS ACCEPTING THE PROPERTY ON AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS, INCLUDING THOSE RELATING TO THE ENVIRONMENTAL CONDITION OF THE PROPERTY, AND WILL NOT RELY ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, including, but not limited to the physical condition of the Property; zoning status; tax consequences of this transaction; utilities; operating history or projections or valuation; compliance of the Property with Environmental Laws (defined below) or other laws, statutes, ordinances, decrees, regulations and other requirements applicable to the Property; the presence of any Hazardous Substances (defined below), wetlands, asbestos, lead, lead-based paint or other lead containing structures, urea formaldehyde, or other environmentally sensitive building materials in, on, under, or in proximity to the Property; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Property; the condition of title to the Property, and the leases, easements, permits, orders, licenses, or other agreements, affecting the Property (collectively, the "Condition of the Property"). VCP and Affiliate represent and warrant to City that they have not relied and will not rely on, and City is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Property or relating thereto (including specifically, without limitation, property information packages distributed with respect to the Property) made or furnished by City, the manager of the Property, or any real estate broker or agent representing or purporting to represent City, to whomever made or given, directly or indirectly, orally or in writing. VCP and Affiliate assume the risk that Hazardous Substances or other adverse matters may affect the Property that were not revealed by VCP and Affiliate's inspection(s). VCP will indemnify, hold harmless and waive, release

and discharge forever, the City and the elected officials, employees, the Mayor, council members, representatives of City and affiliates (collectively, "Indemnitees") from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort or asserting a constitutional claim) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown, arising from or in any way related to the Condition of the Property or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Property. Losses shall include without limitation (a) the cost of any investigation, removal, remedial, restoration or other response action that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) losses for or related to injury or death of any person for which VCP is legally liable under the Environmental Laws, (c) losses for or related to injury or damage to animal or plant life, natural resources or the environment, and (d) losses arising under any Environmental Law enacted after transfer. The rights of City under this section shall be in addition to and not in lieu of any other rights or remedies to which it may be entitled under this document or otherwise. This indemnity specifically includes the obligation of VCP or Affiliate to remove, close, remediate, reimburse or take other actions requested or required by any governmental agency concerning any Hazardous Substances on the Property. The term "Environmental Law" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law relating in any way to human health, occupational safety, natural resources, plant or animal life or the environment, including without limitation, principles of common law and equity, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law. The term "Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and includes without limitation petroleum oil and any of its fractions. The provisions of this Section shall be binding on VCP, Affiliate, and their heirs, successors and assigns, shall be included in the deed and shall be covenants running with the land.

B. Indemnification

VCP or Affiliate shall, on a several and not on a joint basis, without a determination of liability or payment being made FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the City (and the elected officials, employees, the Mayor, council members, and representatives of City) from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind

and nature, including but not limited to, bodily injury or death of persons and property damage, made upon City directly or indirectly arising out of, resulting from or related to (i) VCP or Affiliate's respective negligence, willful misconduct or criminal conduct for activities undertaken pursuant to this Agreement and thereafter, including any such acts or omissions of VCP or Affiliate and their respective members, managers, agents, officers, representatives, employees, consultants or sub-consultants while in the exercise or performance of their rights or duties under this Agreement and thereafter, all without, however, waiving any governmental immunity available to City under South Dakota law and without waiving any defenses of the parties under South Dakota law. The provisions of this indemnification obligation are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. VCP or Affiliate, as appropriate, will promptly advise City in writing of any claim or demand against City related to or arising out of VCP or Affiliate's activities under this Agreement and thereafter and will see to the investigation and defense of such claim or demand at VCP or Affiliate's cost to the extent required in this section. City will have the right, at its option and expense, to participate in such defense with attorneys of its choice, without relieving VCP or Affiliate of any of their respective obligations under this Section.

ARTICLE XII Defaults and Remedies Therefor

A. VCP Defaults and Remedies

1. General Events of Default: The following shall be deemed to be general events of default by VCP under the terms and conditions of this Agreement to which the remedies set forth in subparagraph 2 below shall be applicable, except as otherwise set forth in this Agreement.
 - a. VCP shall fail to observe or perform any of the terms, conditions, covenants, or agreements required to be observed or performed by it or any successor or assigns of VCP pursuant to this Agreement, and such failure shall continue for a period of thirty (30) calendar days after City has, pursuant to the provisions of this Agreement, given written notice to VCP of such default.
2. General Remedies: Except as otherwise set forth in this Agreement, the City shall have the following remedies in the event of a default by VCP:
 - a. Terminate this Agreement in whole or in part with no liability upon the City.

- b. Exercise its right to reenter the property and its reversionary rights to the extent provided in Sections VI and Section X of this Agreement, or for other events of default, have the Property reconveyed to the City.
- c. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent VCP's violation of the terms and conditions of this Agreement or to compel VCP's performance of its obligations hereunder.
- d. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to the City.

B. City Defaults and Remedies

- 1. General Events of Default: The following shall be deemed to be general events of default by City under the terms and conditions of this Agreement to which the remedies set forth in subparagraph 2 below shall be applicable except as otherwise set forth in this Agreement.
 - a. City shall fail to observe or perform any of the terms, conditions, covenants, or agreements required to be observed or performed by it pursuant to this Agreement and such failure shall continue for a period of thirty (30) calendar days after VCP has, pursuant to the provisions of this Agreement, given written notice to City of such default.
- 2. General Remedies: Except as otherwise set forth in this Agreement, the VCP shall have the following remedies in the event of a default by the City:
 - a. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent City's violation of the terms and conditions of this Agreement or to compel City's performance of its obligations hereunder.
 - b. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to VCP.

- C. Non-Waiver: The waiver by either party of any default on the part of the other party or the failure of said party to declare default on the part of the other party of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of the defaulting party of the same or of any other obligation of the defaulting party hereunder. To be effective, any waiver of any default by the defaulting party hereunder must be in writing signed by the nondefaulting party.

- D. Remedies Cumulative: Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive, and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

ARTICLE XIII Force Majeure

Under the terms of this Agreement, neither the City nor VCP shall be considered in default or in breach of any of the terms of this Agreement in the event of delay in the performance of its obligations due to causes beyond its control and without its fault or negligence, including, but not limited to, acts of God, acts of a public enemy, acts of the federal government, acts of another party, fire, floods, epidemics, strikes, or embargoes, or for delays of contractors or subcontractors due to such causes. In the event of any such delay, any time for completion or delivery under this Agreement shall be extended for the period of any such delay upon written notice from the party seeking the extension to the other party.

ARTICLE XIV City's Representations and Warranties

The City represents and warrants that as of the date hereof:

- A. It is a lawfully constituted home-ruled chartered municipality under the laws of the State of South Dakota, it is not in material violation of any provisions of State law and that it has full power and authority to enter into this Agreement.
- B. The City has no knowledge that any official or employee or spouse of any official or employee of the City is, or will be, directly or indirectly financially interested in this Agreement or any of the documents or transactions contemplated under this Agreement.

ARTICLE XV VCP's Representations and Warranties

The VCP represents and warrants that as of the date hereof:

- A. VCP has full power and authority to enter into this Agreement.
- B. It is fully competent to construct the Project and operate under all laws, rulings, regulations, and ordinances of any governmental authority having jurisdiction and VCP will comply with all applicable state, federal, and local laws in performing its obligations under this Agreement.
- C. VCP acknowledges that City's Charter and ethics code prohibit a City officer or employee from having a financial interest in any contract with City or any City

agency such as City-owned utilities. VCP warrants and certifies, and this Agreement is made in reliance thereon, that no officer, employee, or agent or spouse of an officer, employee, or agent of City has, or will have, a direct or indirect financial interest in the execution of this Agreement separate from that of the general public.

ARTICLE XVI
Runs With the Land; Successors

All covenants under this Agreement are to be specifically incorporated into the deed and shall be deemed to run with the land and shall inure to the benefit of the parties hereto and to their successors and assigns. The terms and conditions of this Agreement shall survive the closing, and not be merged into the deed.

ARTICLE XVII
Notices

Any notice, demand, or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of City:

City of Sioux Falls
224 West Ninth Street
P.O. Box 7402
Sioux Falls, SD 57117-7402
Attn: Mayor

and

City of Sioux Falls
224 West Ninth Street
P.O. Box 7402
Sioux Falls, SD 57117-7402
Attn: City Attorney

In the case of VCP:

Veterans Community Project
8900 Troost Avenue
Kansas City, MO 64131-3053
Attn: Bryan Meyer

ARTICLE XVIII
Tax Consequences

The parties acknowledge that there may be certain tax consequences pertaining to this Agreement that each party is responsible for consulting their own tax consultant

prior to signing this Agreement and they have had the opportunity to do so or deemed such consultation unnecessary.

ARTICLE XIX
Authorization and Approvals by the City

All requests for action or approvals by the City shall be sent to the City Attorney for decision as to who within the City, including the City Council, must act or approve the matter on behalf of the City.

ARTICLE XX
Applicable Law

This Agreement together with all of its Articles, paragraphs, terms, and provisions is made in the State of South Dakota and shall be construed and interpreted in accordance with the laws of the State of South Dakota. The parties agree that the terms of this Agreement shall be construed neutrally and not against the owner as drafter of this Agreement.

It is the intention of the parties that this Agreement shall not in any way be construed as a waiver of any or all of the governmental immunity possessed by the City of Sioux Falls or the State of South Dakota.

ARTICLE XXI
Voluntary Agreement

The parties acknowledge that they are entering into this Agreement freely and voluntarily, that they have the opportunity to be represented and advised by counsel in the negotiations resulting in this Agreement, that they have ascertained and weighed all the facts and circumstances likely to influence their judgment, that they have given due consideration to the provisions contained herein, and that they thoroughly understand and consent to all provisions herein.

ARTICLE XXII
Authority

Each party executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind.

ARTICLE XXIII
Assignments, Transfers or Change in Identity of VCP

VCP shall not sell or assign all or any portion of its interest in the Property and/or Project without the prior written consent of the City, and the City's consent shall not be unreasonably withheld but may be conditioned upon, among other conditions, the City's receipt of written confirmation that any assignee agrees to assume all of the obligations

of VCP hereunder and sufficient evidence of such assignee's financial ability to undertake and assume such obligations; that assignee is a nonprofit corporation.

ARTICLE XXIV
Additional Federal Requirements

Conditions for Faith-Based Organizations:

Faith-based organizations are eligible to participate in the CDBG program on the same basis as any other organization but may not engage in inherently religious activities such as worship, religious instruction, or proselytization, as part of the Project. If VCP does engage in such religious activities, those activities must be offered separately from the CDBG-assisted activities, and participation by tenants of the Project must be voluntary. Additionally, VCP shall not discriminate against a tenant or prospective tenant on the basis of religion or religious belief.

Conflict of Interest:

VCP agrees to abide by the provisions of 2 CFR 200 Subpart B, Subpart D, and 24 CFR 570.611, which include (but are not limited to) the following:

- A. VCP shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts/agreements supported by Federal funds.
- B. No employee, officer or agent of VCP shall participate in the selection, or in the award, or administration of, a contract/agreement supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- C. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the City, VCP, or any designated public agency.

Certification Regarding Lobbying:

VCP certifies that it will not and, to the best of its knowledge, has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award. VCP further agrees that it shall disclose any lobbying with nonfederal funds that takes place in connection with obtaining any federal award.

Audit Requirements:

If VCP expends \$750,000 or more in federal awards during the VCP's fiscal year, VCP must have an audit conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, by an auditor approved by the Auditor General to perform the audit.

Federal Award Identification:

Information for the Federal Award Identification, as described in 2 CFR 200.331(a) will be sent to VCP in addition to the signed Agreement. This document must be kept on file by VCP with other required records.

Program Income:

No Program Income, as defined in 24 CFR 570.500, will be generated by this Project.

Reversion of assets:

When the Agreement ends, VCP must transfer to the grantee any CDBG funds on hand and accounts receivable attributable to the use of CDBG monies as per 24 CFR § 570.503(b)(7).

Uniform Requirements:

The Agreement shall require the VCP to comply with applicable uniform requirements as described in 24 CFR § 570.502 including Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

[Signature and Acknowledgment Pages and Exhibits Follow]

EXHIBIT A

Legal Description of Property

Lot B1 of Sandy Creek Addition to the City of Sioux Falls, Minnehaha County, South Dakota

Commissioner of the
Department of
Agriculture, South
Dakota
Sioux Falls, SD



EXHIBIT B

Site Plan

{To be added after execution}