

OMAHA TRI-PARK COMPLEX DEVELOPMENT AND MANAGEMENT AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into by and among the **City of Omaha, Nebraska ("City")**, a municipal corporation with its principal place of business located at Omaha/Douglas Civic Center, Omaha, Nebraska 68183, **Metropolitan Entertainment & Convention Authority ("MECA")**, a Nebraska nonprofit corporation with its principal place of business located at 455 North 10th Street, Omaha, Nebraska 68102, and **Downtown Riverfront Trust ("DRT")**, a Nebraska nonprofit corporation with its address c/o Heritage Services, 10050 Regency Circle, Suite 101, Omaha, Nebraska 68114. The City, MECA, and DRT are referred to collectively herein as the "Parties".

WHEREAS, the City desires to develop certain real property leading to and along the Missouri River in downtown Omaha, Nebraska (such real property being currently owned by the City or as may be acquired in the future by the City) to improve the quality of life of its citizens and foster the economic and cultural development, growth and improvement of the City and surrounding community; and

WHEREAS, the City and DRT agree that the (City-owned) Lewis & Clark Landing, Heartland of America Park and Gene Leahy Mall should be incorporated into the Tri-Park Complex to create a comprehensive, master-planned redevelopment of public spaces in Omaha's downtown and riverfront area; and

WHEREAS, the City feels that this is a vital next step in its growth and redevelopment; that it is essential to improve public access, use of and redevelop Omaha's riverfront and the corridors leading to it; that by pledging public funds the City can leverage several multiples of private funds for public improvements; and that therefore a commitment by the City of Omaha of \$50,000,000 to this project is warranted; and

WHEREAS, a Riverfront Revitalization Committee has been constituted and which includes the current Mayors of Omaha and Council Bluffs and private sector leaders; which has engaged nationally prominent consultants; developed a Conceptual Master Plan and presented same to the Omaha/Council Bluffs communities for public discussion; and

WHEREAS, the City and DRT have identified prospective project costs and expenditures of approximately \$260,000,000-\$290,000,000, based on the Conceptual Master Plan and Conceptual Estimate of Costs based on same; and

WHEREAS, the project depends upon substantial funding from the private sector (Foundations, Philanthropists, Businesses) in order to commence and complete the project; and

WHEREAS, to that end, DRT was formed in order to raise and secure monies from the private sector to devote to the project; and

WHEREAS, DRT has secured funding commitments from the private sector for the project, in the approximate amount of \$210,000,000; and

WHEREAS, DRT as the project's principal capital-cost funder looks favorably upon successful Public Private Partnerships in Omaha, such as the Arena/Convention Center, Baseball Stadium, Henry Doorly Zoo and others, in which private sector funding and management and leadership creates and sustains world class public/event facilities; and

WHEREAS, MECA has capably managed expenditures of nearly \$500,000,000 in construction of public buildings in Omaha, and operated annually for the public's benefit on a cost efficient basis while maintaining public properties in a first class condition; and

WHEREAS, the City and DRT believe that the development, construction, activation, management, operation, maintenance and all other aspects of this Project can be capably overseen and conducted by MECA; and

WHEREAS, it was contemplated in the Amended and Restated Development Agreement dated November 22, 2000 for the development of Omaha's convention center and arena between MECA, the City, and certain private donor parties (the "Original Development Agreement"), that MECA may operate other public facilities venues in the Metropolitan Omaha area, and pursuant to the Original Development Agreement MECA has the authority to do so; and

WHEREAS, the City, MECA and DRT desire to enter into this Agreement in order to establish as to the project, the rights, commitments and responsibilities of the City, MECA and DRT, and the financial commitments and actions which the City, MECA and DRT shall take in reliance thereon; and

WHEREAS, MECA is willing to assume the responsibility to plan, develop, construct, activate, operate, manage, and maintain the various aspects of the project on behalf of and for the benefit of the public and to relieve the City of this governmental burden.

NOW, THEREFORE, in consideration of these premises, and the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS.

- 1.1. "Bonds" shall mean tax exempt bonds issued by the City to partially fund the project.
- 1.2. "Donor(s)" mean a natural person, corporation, foundation or other legal entity which has entered into a binding Irrevocable Pledge Agreement with DRT and thereby irrevocably pledged monies for the benefit of the project.
- 1.3. "Parcel" shall mean any real estate component of the project.
- 1.4. "Public Funds" shall mean the City's Fifty Million Dollar (\$50,000,000) contribution to the Project and the funds to cover the City's annual contribution of \$3,000,000 to fund the City's initial share of the Annual Operating Shortfall.

- 1.5. "Private Funds" shall mean donations received from corporations, individuals and private foundations in the community.
- 1.6. "Project" means the planning, design, permitting and construction of a new "Tri-Park Complex" on three City owned properties currently referred to as Lewis and Clark Landing, Heartland of America Park and Gene Leahy Mall, and which is specifically set forth in Exhibit A, but of which certain parcels may be excluded after completion of the construction and held for "future development" by the City.
- 1.7. "Riverfront Revitalization Committee" (RRC) shall mean the group of citizens and elected officials who have come together to envision and plan for a comprehensive and master planned redevelopment of the Tri-Park Complex.

2. **SCOPE; AUTHORITY.**

- 2.1. Scope. The purpose of this Agreement is to provide for the planning, design, permitting, construction, activation, operation, management and maintenance and sustaining of the Tri-Park Complex for the benefit of and on behalf of the City and its citizens, on certain public park properties along and near the riverfront. The City and MECA intend by this Agreement to substantially shift from the City to MECA the material administrative, personnel and operational burdens of planning (in collaboration with the City, DRT and RRC), designing, permitting and constructing the Project as well as activating, operating, maintaining and managing the Tri-Park Complex as components are completed and open to the public. The parties acknowledge and agree that the scope of the Project is contingent upon the receipt of sufficient Private Funds and Public Funds.
- 2.2. Title to Property. Nothing in this Agreement shall be construed to provide MECA with legal ownership (title) to any portion of the Tri-Park Complex.
- 2.3. Tri-Park Complex Management. Further terms and conditions for the activation, management, operation and maintenance of the Tri-Park Complex are detailed in Section 5.6. MECA and the City agree that such terms and conditions shall apply to the development and management of all aspects of the Tri-Park Complex, unless the City and MECA agree otherwise in writing via a separate supplement to this Agreement. The parties acknowledge and agree that the Tri-Park Complex will likely include a variety of developments and site uses, and, as such, MECA and the City may need to supplement this Agreement with additional development, activation or management terms that will be specific to a particular Parcel in the Tri-Park Complex.

3. **TERM.**

- 3.1. Term. The term of this Agreement shall commence on the date of execution by the City and terminate on December 31, 2069 (the "Term").
 - 3.2. Renewal. The term may be extended for successive ten (10) year terms, or upon such other reasonable and reciprocal terms as MECA and the City shall then determine.
4. **RIGHTS AND OBLIGATIONS OF THE CITY.** In order to facilitate the development of the Project, the City hereby covenants and agrees to the following:
- 4.1. Public Funds Contributed.
 - 4.1.1. Public Funds for the Planning, Design, and Construction of the Project. The City shall make available for Project planning, design, permitting and construction costs the sum of Fifty Million Dollars (\$50,000,000) with \$15,000,000 available by June 30, 2019, \$15,000,000 available by March 30, 2020, and \$20,000,000 available by March 30, 2021.
 - 4.1.2. Public Funds to Support Annual Operating Shortfalls. For the fiscal years 2019-2028, within ninety (90) days of the start of each fiscal year, the City shall contribute \$3,000,000 per year towards Tri-Park Complex Operating Shortfalls (as defined and more particularly set forth in Article 7).
 - 4.1.3. Extension of City Commitment. While this City commitment is limited by Section 5.17 of the City Charter to 10 years, from and after fiscal 2029, the then current City Council may extend it for periods of ten (10) years at a time unless unforeseeable circumstances prevent same. It is expected that the City Council will extend the term when requested. From and after fiscal 2029, the City's payment shall be made within ten (10) days of the start of the fiscal year.
 - 4.2. Issuance of Bonds. In order to assemble the Public Funds, for planning, design and construction of the Project, the City intends to timely issue tax exempt lease purchase Bonds to satisfy the City's financial commitment to this Project.
 - 4.2.1. The Parties agree to cooperate in good faith with the Omaha Public Facilities Corporation ("Corporation") and with the underwriter or underwriters of each issue of Bonds by providing such documents, opinions and information and entering into such agreements and certifications as shall be necessary or desirable to achieve the issuance of such Bonds consistently with all applicable legal and regulatory requirements and customary standards and practices relating to the issuance, public sale and delivery of municipal securities and that the Corporation can rely on the covenants and agreements between the Parties.

- 4.2.2. The Parties acknowledge and agree that a primary source of the Public Funds will be the issuance by the Corporation, on behalf of Omaha, from time to time of one or more Bonds, including series of its lease purchase bonds, revenue bonds or refunding bonds, the interest on which may be excluded from the gross income of the recipients thereof for federal income tax purposes. The Parties further acknowledge and agree that each such issuance and sale of Bonds will be subject to applicable laws. Accordingly, the Parties represent, warrant, covenant and agree that they, individually and collectively, will not take or permit to be taken any action which would have the effect, directly or indirectly, of subjecting interest on any Bonds to federal income taxation, or that would constitute a violation of any applicable laws and that they, individually or collectively, will take such actions and enter into such agreements relating to federal income tax matters and federal and state securities laws matters as shall, upon the advice of bond counsel, be reasonable, necessary and customary in conjunction with each issuance and sale of bonds.
- 4.2.3. MECA represents that it is an organization described in Section 501(c)(3) of the Code and is named in an exemption letter from the Internal Revenue Service to that effect. Such letter has not been modified, limited or revoked, and MECA is in compliance with all terms, conditions and limitations, if any, which are applicable to it and which are contained in such letter. The facts and circumstances which form the basis of such letter as represented to the Internal Revenue Service continue substantially to exist, and MECA was and is exempt from federal income taxation under Section 501(a) and Section 501(c)(3) of the Code and agrees that it shall not perform any acts or enter into any agreements which shall adversely affect such federal income tax status, nor shall it carry on or permit to be carried on in the facilities financed with the proceeds of the Bonds or permit the facilities financed with the proceeds of the Bonds to be used in or for any trade or business or by any person if such activity would adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds or if such activity would adversely affect MECA's federal income tax status under Section 501(c)(3) of the Code.
- 4.3. Infrastructure and Site Development. Site preparation and development costs inside the physical boundaries of the Project shall be paid as Project costs. Infrastructure and other traditionally public improvements which are outside those boundaries, (including all environmental clean-up, street construction and sewer construction associated with the Project) but which are identified and budgeted for in the Project Cost Estimate at conclusion of the Conceptual Design Process shall be paid from Project Funds. To that end, the City and MECA shall cooperate in such manner and to such extent as to facilitate the timely completion of all projects. The City and MECA agree to take all steps possible during the Project to minimize any adverse impact on visitors to Omaha and users of the

Arena/Convention Center and Baseball Stadium including, but not limited to, minimizing adverse impacts on current MECA parking, traffic and traffic circulation for visitors and patrons thereof.

City agrees to work together with MECA to determine the utility service and other infrastructure changes required for any portion of the Project and to meet the needs of the Tri-Park Complex.

- 4.3.1. No Fees. Inasmuch as the Project is entirely on City-owned property, no City fees shall be charged by the City for any Project related work; however MECA must apply for relevant permits.
- 4.3.2. Future Development Sites. City shall have the sole right and responsibility (and MECA shall reasonably cooperate with City) to develop Parcels designated as "future development" as shown on OJB's Conceptual Master Plan dated July 11, 2018 (Exhibit B). Ground Lease Revenues derived from same shall be available to the City to meet its obligations under Section 8 hereunder.
- 4.4. Other Covenants and Responsibilities. The City shall undertake and accomplish any and all actions of whatsoever kind or nature, including the adoption of additional ordinances or resolutions, and any other action not specifically set forth herein or required hereby, which action is necessary to ensure that the City fully and completely honors and complies with each and every term and condition hereof.
- 4.5. Record and Reports. Upon reasonable notice to MECA, the City shall have the right to conduct audits and examine such books, records and accounts of MECA in connection with the operation of the Project and thereafter the Tri-Park Complex. All such required books, records and accounts shall be made available to the City at a location within the City and shall be retained by MECA for a period of five (5) years after the relevant date of each such activity.
- 4.6. Right of Entry. The City's duly authorized representatives, shall, throughout the term of the Agreement, and any extension thereof, have the right to enter the Tri-Park Complex at any and all times for the purposes of (1) inspecting, observing, or protecting the Tri-Park Complex, (2) performing any obligation of the City under the Agreement, or (3) taking action of an emergency nature, or as otherwise approved by the City Council, in the proper exercise of the City's police powers. City shall not unreasonably interfere with MECA's operation of the Project in exercising such access and entry rights.
- 4.7. Security. The City shall provide normal traffic control and routine police and fire services; all other Security shall be overseen or provided by MECA and as an ongoing cost to the Project.

- 4.8. Snow Removal and Street Maintenance. The City shall be responsible for timely snow removal and street and sewer maintenance on all public streets adjoining or within any of the Tri-Park Complex areas. Sidewalk maintenance and snow removal on Tri-Park Complex properties shall be handled by MECA as an operating cost.

5. **OBLIGATIONS AND RIGHTS OF MECA.** In order to relieve the City's burden of planning, designing, constructing, activating, managing, operating and maintaining the Tri-Park Complex, and in recognition of the obligations and responsibilities assumed by DRT, the following are the obligations and rights of MECA with respect to the Project and Tri-Park Complex:

- 5.1. Authority. MECA, in collaboration with RRC, DRT and City, shall oversee the Project planning, design, construction, activation, management and operation of the Tri-Park Complex, all in accordance with the terms of this Agreement and generally consistent with the OJB's Conceptual Master Plan dated July 11, 2018 (Exhibit B). During the course of planning, designing and constructing the Tri-Park Complex, MECA, in collaboration with DRT, City and RRC shall have the ongoing right to make alterations, additions, improvements and physical changes to the Project and relevant portions of the Tri-Park Complex.

- 5.2. Project Development. MECA, City, DRT and RRC will work collaboratively in developing the Project design and construction budget. MECA and the City shall not be liable for costs exceeding those budgeted and available for the Project. In the event that, without fault of the City or MECA, Project costs appear likely to exceed available Funds, DRT, RRC and the City and MECA shall reasonably cooperate to bring costs back within the Project budget, or to identify sources of additional funds.

MECA, in collaboration with DRT, RRC and City shall assume all responsibility for the planning, design, and construction of the various parcels and components comprising the Project. MECA shall manage the Fiduciary "Capital Funds Account" and handle all income, revenue, receipts, donations, retained earnings and other funds of whatsoever nature or source. MECA shall be reimbursed from Funds for its actual costs incurred in connection with the Project.

- 5.2.1. Information Sharing. The Parties agree to provide each other with complete and timely information on all construction issues, site access timetables and utility interconnection schedules. City shall consult with MECA as to material issues related to infrastructure, including major design issues, access to and from public rights of way, curb cuts, utility locations, parking lot design and construction, utility interconnections and projected timetables. The City shall consult with MECA if there is a need to re-route truck traffic at or near the Tri-Park Complex. The City agrees to implement plans to minimize traffic congestion because of new parking and roadway configurations resulting from the Project.

- 5.2.2. Project Professionals and Consultants. OJB (Office of James Burnett) and HDR are already under contract with DRT, are Project knowledgeable and have done commendable work to conclude the Project Conceptual Master Plan and begin Concept Design. Their existing contracts (along with any subcontracts they are a party to) shall be transferred/assigned from DRT to MECA following execution of this Agreement.

In order to supplement MECA's staffing and capabilities to manage this interim Project, MECA may select and engage a construction manager and other professional services for the Project. MECA shall be reimbursed from Project Funds for all Project professional and consulting fees, construction management, testing procedures, contractor selection, construction costs, construction observation and inspection, taxes, permit and license acquisition, and site landscaping and lighting.

- 5.2.3. Contracting. MECA shall competitively bid and publicly open all Project contracts and purchases in amounts exceeding \$20,000, and select the lowest and best bid therefrom, unless such contract or purchase is necessary to protect the public safety in the event of an emergency. Competitive bidding shall not be required in purchasing professional services, construction management or unique or non-competitive articles.

- 5.2.4. SEB. MECA shall exercise good faith and best efforts to award contracts to small emerging businesses consistent with the goals established by the City Human Rights and Relations Department.

5.3. Operation and Management.

- 5.3.1. General Terms. The Project and Tri-Park Complex will be activated, managed, operated and maintained by MECA throughout the Term in substantially the same manner and level of quality as (i) exhibited in MECA's management of Omaha's Arena/Convention Center and baseball stadium and (ii) the high standard exhibited circa. 2018 at Clyde Warren park in Dallas, Texas, and such public venues as Lauritzen Gardens; and (iii) may otherwise be agreed between MECA and City.

- 5.3.2. Multiple Venues. The Parties contemplate that there will be multiple public facilities, uses and venues at the Tri-Park Complex. MECA shall have the ability to operate same upon terms and conditions which it determines to be reasonable, including but not limited to the establishment of hours of operation; terms of use; prospective lease/license of designated areas/facilities; maintenance and upkeep; food and beverage concessions; and other branding sales and licenses; and the like all consistent with City ordinances.

- 5.3.3. Staffing.** MECA shall be responsible for providing and compensating all personnel necessary to manage, maintain, and operate the Project. MECA may fulfill such obligation directly with its own employees, or through agreement with any person, company, organization or other entity, or with any combination thereof. MECA shall have authority to select, train, schedule and discipline such personnel. MECA shall ensure that all personnel possess and maintain any credentials, certificates, or other qualifications required for his or her assigned duties by any state or local law, ordinance, rule or regulation.
- 5.3.4. Improvements.** After completion of all Project construction, as the property manager for the Tri-Park Complex, MECA shall have the right to make alterations, additions, improvements and physical changes to the Tri-Park Complex as circumstances warrant throughout the Term. Material changes to the use of the Tri-Park Complex (e.g., eliminating an existing use or adding a new use) shall only be made after consultation with the City and DRT (or its successor or designee, if any), and with (i) any requirements for approval by the Urban Design Review Board and (ii) in conformance with any restrictive covenants which are applicable to any Tri-Park Complex property.
- 5.3.5. Mutual Responsibilities.** In addition to the aforementioned obligations and responsibilities, the Parties acknowledge and agree that certain tasks and duties constitute the responsibility and obligation of both MECA and the City, as to which the Parties agree to cooperate and work together in good faith for the best interests of the Tri-Park Complex.
- 5.4. Separation from Arena, Convention Center and Ballpark.** Financial operations of the Tri-Park Complex should not detract from the annual financial results for the arena, convention center and baseball stadium, nor should the financial operations of the arena, convention center and baseball stadium detract from financial results of the Tri-Park Complex. Separate annual accounting shall be maintained for the Tri-Park Complex, though MECA may use existing personnel and other resources when and where possible (on either a 'direct cost' or 'allocated' basis) to operate the Tri-Park Complex.
- (a) In furtherance thereof, at either the election of the City or of MECA, MECA may cause all Project and Tri-Park Complex rights and obligations hereunder to be assigned to and performed by a separate wholly owned subsidiary entity ("MECA Tri-Park Complex, LLC"). In such event:
 - i. MECA Tri-Park Complex, LLC shall be entirely devoted to the Tri-Park Complex and shall maintain separate books

and records which shall be subject to all accountability, inspection and audit rights herein set forth.

- ii. MECA Tri-Park Complex, LLC would in all other respects hold and perform all rights and obligations of MECA hereunder.
- iii. If such subsidiary is formed, due to the fact that public funds will annually be spent on Operating Shortfalls, MECA Tri-Park Complex, LLC shall follow Nebraska Open Meeting and Public Records Laws.
- iv. Such subsidiary may only be formed if it does not materially impair the City's Project Bond issuance as per Section 4.2.

5.5. Tri-Park Complex Activation. The Parties acknowledge Omaha's heretofor success in activating public buildings, event spaces and portions thereof, and in developing and licensing naming rights, marketing opportunities and other revenue generating devices at the Arena, Convention Center and Stadium. The Parties also acknowledge that four major local Foundations are each providing \$50,000,000 to the Project yet they, along with other donors, are not asking for nor receiving any 'naming recognition' for doing so. Although the Parties agree that MECA shall have all rights to exclusively hold, control and market the sponsorship and "naming rights" for any and all physical features of the Tri-Park Complex to generate Operating Revenue, the following shall be observed.

5.5.1. Park Names. The names of "Gene Leahy Mall," "Heartland of America Park," and "Lewis and Clark Landing" can only be changed upon specific City approval.

5.5.2. Facilities. MECA shall create and activate kiosks, food truck areas, restaurant location(s), pavilions and other revenue generating buildings and areas in the Tri-Park Complex development in accordance with City ordinances.

5.5.3. Other. MECA shall identify and pursue various other revenue generating opportunities from and at the Tri-Park Complex.

5.5.4. Activation. MECA shall create entertainment venues and activities for the general public throughout the Tri-Park Complex. Examples of such possible activities are set forth in Exhibit C.

5.5.5. Protection of Investment from Direct Competition. The Parties acknowledge the reasonable goal of protecting this significant capital investment from unfair competition while maximizing use of (and

potential revenues from) the Tri-Park Complex. The Parties also recognize the public nature of the streets, sidewalks and parks, so that the City and MECA shall cooperate on the placement of food trucks, other 'street vendors'; festivals; and other events, so as to encourage maximum utilization of the Tri-Park Complex. Adjacent streets, such as Douglas and Farnam, shall not normally be closed for the purpose of hosting any such private uses (which may compete with MECA's activation activities) without MECA's express permission.

- 5.5.6. Naming. As to any proposed naming rights licenses for buildings or areas in the Tri-Park Complex, MECA may only do so upon obtaining the written consent of each of the four (4) original major foundation donors to the Project (or the designee of any of such) and the City pursuant to applicable City ordinances.
- 5.5.7. Sponsorships. MECA may also freely sell/license sponsorships for events taking place in the Tri-Park complex. MECA's goal shall be to make virtually all of these events free to the public who attends them.
- 5.5.8. Events. Sponsored and other events may have reasonable limitations on the number of attendees for any given event, and reasonable rules or requirements for advance sign-up.
- 5.5.9. Public Access. Non-rented areas shall remain open to the public, and other public rights (ex., First Amendment) shall be preserved.

5.6. Specific Terms Regarding Park Management.

- 5.6.1. Tri-Park Complex Improvements. MECA shall have the power and obligation to equip, furnish, maintain, operate and improve the Tri-Park Complex.
- 5.6.2. Tri-Park Complex Schedules. MECA shall be solely responsible for establishing schedules for the operation of the Tri-Park Complex, and to determine all hours of operation for each development at the Tri-Park Complex. As to setting any "curfews", MECA shall consult with the City. Hours for open space shall be consistent with City ordinance.
- 5.6.3. Tri-Park Complex Removal of Patrons. City grants to MECA and its personnel the authority to eject or to direct the removal of any persons who are boisterous, loud, using improper language, disruptive, interfering with others' use of the Tri-Park Complex, or acting in an unsafe manner consistent with federal, state and local law.
- 5.6.4. Tri-Park Complex Maintenance and Repairs. MECA shall be solely responsible for all Tri-Park Complex maintenance, routine repairs and

upkeep, including pavement, curbs, and lighting located within the Tri-Park Complex parking areas. City shall be responsible for (i) snow removal from the Redevelopment Area public streets in a manner consistent with snow removal practices at other City owned facilities; and (ii) street, curb and sewer maintenance for all public rights of way adjacent to the Tri-Park Complex.

5.7. Fiduciary Funds. MECA shall administer all Funds herein created in a fiduciary manner for the benefit of the Project and Tri-Park Complex. It shall provide annual accounting of all moneys disbursed from said Funds to City and DRT (or its designee).

6. **OBLIGATIONS AND RIGHTS OF DRT.** In order to materially fund the Project and its future activation, management, operation and maintenance, and in recognition of the obligations and responsibilities assumed by the City and MECA herein, DRT hereby covenants and agrees to the following:

6.1. Private Funds for the Planning, Design, and Construction of the Project. DRT shall exercise diligence to obtain for the planning, design, and construction of the Project a total of at least Two Hundred Ten Million Dollars (\$210,000,000) in binding, irrevocable and enforceable pledges ("DRT Pledges") beginning in 2019. City shall have the right to confirm same without compromising the confidentiality committed to any Donor.

6.2. Deposit of DRT Funds. Subject to the terms and conditions set forth herein, DRT shall deposit the DRT Pledge receipts into the Fiduciary Capital Fund Account with a goal of funding the Project in accordance with reasonable schedules.

6.3. Project Architectural/Design Oversight. MECA, in collaboration with DRT, RRC and the City shall oversee the preliminary and final architectural, design and site planning elements of the Project.

6.4. Private Funds to Support Annual Operating Shortfalls. DRT shall exercise diligence to obtain \$3,000,000 per year for the period Fiscal 2019-2028 (10 years), which is estimated as one-half (1/2) of the Maximum Annual Operating Shortfall (as defined and more particularly set forth in Article 8) during that 10 year period. To the extent possible such funds shall be available to timely fund Annual Operating Expenses.

7. **FUNDING THE PLANNING, DESIGN, PERMITTING AND CONSTRUCTION OF THE PROJECT.** All costs of planning, designing, and constructing the Project shall be paid for from a combination of Private Funds and Public Funds, which shall be made available to MECA for the benefit of the Project. MECA and City may also seek funds from the Federal government and other non-private sources to augment Public Funds and Private Funds. All of the above-described funds and monies intended to be used in

connection with the planning, design, permitting and construction of the Project are collectively called the "Project Funds."

- 7.1. Fiduciary Capital Fund Account. The City, DRT and MECA shall create an interest bearing account into which all "Project Funds" shall be deposited (the "Fiduciary Capital Fund Account"). Public and Private Funds deposited into the Fiduciary Capital Fund Account shall be withdrawn by MECA only for the purposes of paying for planning, designing, permitting and constructing the Project. Fiduciary Capital Fund Account Funds shall be paid to MECA generally upon request by MECA in order that MECA can make timely payments in furtherance of the objectives set forth herein. All of MECA's actual expenses related to the planning, designing, permitting and construction of the Project shall be reimbursed from the Funds.
- 7.2. Reimbursement of MECA Direct and Indirect Costs During the Planning, Design, Permitting and Construction of the Project. During the planning, design, permitting and construction of the Project, MECA, in its oversight role, will incur and be reimbursed by Project Funds for both direct costs solely attributable to the Project and indirect costs wherein a percentage of various MECA staff members time is spent on various items of work related to the Project.

8. **FUNDING ANNUAL OPERATING EXPENSES**

- 8.1. Annual Operating Expenses. "Annual Operating Expenses" include the annual cost of activating, managing, operating and maintaining the Tri-Park Complex (including each component of the complex as it is activated and open to the public after its construction is completed).

Included in the Annual Operating Expenses are all direct and indirect costs incurred by MECA in providing ongoing management, supervision, and other personnel along with legal and consulting services to the ongoing operation of the Tri-Park Complex.

Also included in the annual budget of the Tri-Park Complex will be a contribution to a separate fund, the "Capital Reserve Fund", of \$500,000 for future capital replacement and improvements to the Tri-Park Complex.

- 8.2. Annual Operating Revenues. As components of the Tri-Park Complex are activated and thereafter opened to the public, MECA shall receive and administer all receipts from Tri-Park Complex activities, rentals of spaces and equipment, event sponsorships, food and beverage sales, concessions and fees and any other income directly derived from the Tri-Park Complex and activities thereon, the "Annual Operating Revenues". MECA shall lead (or be responsible for delegating) all negotiations for same, as well as any and all leases and other contracts for the use of portions of the Tri-Park Complex. Such licenses and contracts shall include, but not be limited to, direct financial support, advertising

contracts, sponsorships, concessions, licenses, rentals, approved contracts for naming rights related to specific venues (as per Section 5.5.6), and all other contracts associated with operation of a particular venue at the Tri-Park Complex. All such revenues shall be used solely for operations and maintenance of the Tri-Park Complex.

- 8.3. Annual Operating Shortfall. When the Tri-Park Complex is activated, it is anticipated, as it is with most comparable park complexes, that the Annual Operating Expenses will exceed the Annual Operating Revenues. The difference between Annual Operating Expenses and Annual Operating Revenues is the "Annual Operating Shortfall".

As each component of the Tri-Park Complex is activated, it is anticipated that the Annual Operating Shortfall will increase during the "Forecast Period" (i.e., 2019-2028 or FY). A hypothetical example of this is attached as Exhibit D, based on best-guess estimates prepared in 2018 for 12 years into the future.

- 8.4. Funding the Annual Operating Shortfall.

The City and DRT will fulfill their respective obligations in Sections 4.1.2 and 6.4 to contribute \$3 million per year for the 10 years from FY2019 through FY2028 into the "Annual Operating Shortfall Fund" to be used to fund the actual Operating Shortfall incurred each year for the 10 year period from FY2019 through FY2028.

The Annual Operating Shortfall Fund will be administered by MECA and conservatively invested.

It is anticipated that in the early years of Tri-Park construction and activation, the actual Annual Operating Shortfall will be less than the annual \$6 million contributed by the City and DRT into the "Annual Operating Shortfall Fund."

If so, the Fund will accumulate excess funds that may be used as a reserve to be used in the event that:

- ✓ Actual Operating Shortfalls are greater than currently estimated Operating Shortfalls.
- ✓ Unforeseen events such as tornadoes, fires, etc., cause significant damage to the Tri-Park Complex.
- ✓ Beginning in Fiscal 2029, five percent (5%) of this Fund shall be allocated to the Operating Shortfall for the next fiscal year.

In no event will Annual Operating Shortfall Funds be used for any uses other than the support or enhancement of the Tri-Park Complex.

8.5. Annual Budgeting. As elements of the Tri-Park Complex are beginning to be activated, the City and MECA will cooperate in developing annual budgets for the activation, management, operation, and maintenance of the complex.

8.5.1. Annual Determination. The annual determination of Operating Revenue, Operating Expenses and Operating Shortfall shall be based upon the annual financial statements prepared by MECA and provided to the City. MECA and City shall collaborate and MECA shall share information on generation of Operating Revenues and prioritization of Operating Expenses.

8.5.2. Fiscal Year. MECA shall have the ability to establish a fiscal year for operation of the Project and Tri-Park Complex.

8.6. Long-term Operating Shortfalls. Beginning in Fiscal 2029, the City agrees to assume full responsibility for all Annual Operating Shortfalls, and neither DRT or MECA shall have any responsibility therefor. Through its annual budget process, the City will strive to maintain a contribution level at least equal to the previous fiscal year. If the Annual Operating Shortfall fully depletes the Annual Operating Shortfall Fund, then the City and MECA will work together to develop a sustainable funding approach that will ensure that the Tri-Park Complex is operated, maintained and activated at the level outlined in this Agreement (which may include DRT (or its successor) and MECA seeking additional Private Sector support for same).

8.7. Long-term Capital Needs. City and MECA hereby establish the "Capital Reserve Fund". It shall be funded with \$500,000 per year, be administered by MECA, and be used solely for capital replacements and improvements to the Tri-Park Complex.

9. GENERAL DEVELOPMENT CONSIDERATIONS.

9.1. Other Public Investments. Omaha has invested over \$500,000,000 in the success of the arena, convention center and ballpark. Any future development of the Tri-Park Complex shall appropriately consider access, ingress, egress, parking and other pedestrian and patron amenities to these existing venues.

9.2. Parking. All parcels developed at the Tri-Park Complex shall be adequately served by newly created parking on or within the Tri-Park Complex, except to the extent that MECA exhibits to the City's satisfaction adequate alternative long-term parking commitments for additional off-site parking serving the proposed parcel development's onsite parking needs. It is a fundamental consideration to the Parties that development of the Tri-Park Complex not create material new parking problems for MECA or in the neighborhood. The City shall control and operate all parking garages and on street parking within the Project while MECA

shall control and oversee operations of all surface parking and parking inside or underneath any buildings within the Project.

- 9.2.1. New Parking for Park Administrative Building in Heartland of America Park (the "Administrative Building"). Approximately 100 new parking stalls will be created on or adjacent to the Tri-Park Complex to serve the new Administrative Building. Preliminarily these may be located at 8th and Douglas on a City site designated for Future Development. City agrees to require a minimum of 100 dedicated public parking stalls to be included in any such Future Development, the utilization of which parking shall be controlled by MECA for the benefit of the Tri-Park Complex. While MECA shall "control" said parking for the benefit of the Tri-Park Complex, it and City shall collaborate with MECA on such parking, reserving same as needed for Tri-Park events but with consideration to public parking needs at other times. The lot shall be operated by the City's Parking Division under the direction of MECA and any proceeds from the parking in excess of the City's cost shall be turned over to MECA for the operation of the Tri-Park Complex.
- 9.3. Pedestrian Experience. The Parties acknowledge and agree that inclusion of significant greenspace and well-designed pedestrian walkways at the Tri-Park Complex is critical because of the periodic very high pedestrian volume near the Tri-Park Complex, and its proximity to the Baseball Stadium and Arena/Convention Center.
- 9.4. Traffic. Any future redevelopment of the Tri-Park Complex shall be supported by a satisfactory comprehensive professional traffic analysis, which takes into account (a) traffic flows from the any redevelopment, including but not limited to normal traffic, weekday peak hour traffic, and event traffic, (b) traffic flows impacted by new and replacement parking, including the impact of ingress and egress, (c) required street closures during events, (d) required parking closures during events, (e) required police presence during events, and (f) required handicap accessibility. Such traffic analysis shall involve consultation with the Omaha Police Department, Public Works Department, and MECA operations staff.
- 9.5. Environmental Considerations. The Parties acknowledge that Lewis and Clark Landing and the Heartland of America Park are remediated environmental sites and any ground penetration requires following appropriate protocols. Any future redevelopment of the Tri-Park Complex must comply with applicable federal laws, state laws, contractual restrictions, and restrictive covenants, as applicable and in light of actual uses proposed. All known costs associated with environmental compliance shall be budgeted for and borne by the Project. This shall include (i) identification and assessment of environmental issues and (ii) compliance.

- 9.6. Site Planning. The City and MECA will cooperate in any necessary rezoning and replatting of the Tri-Park Complex.
- 9.7. Other Site Issues Impacted by Project Developments. The City and MECA shall reasonably cooperate to address and minimize negative impact from the redevelopment of the Tri-Park Complex upon MECA managed properties and facilities adjacent thereto.
- 9.7.1. Lot A. In particular, the area east of the Arena (currently designated as 'Lot A') shall not be impaired or developed unless (i) MECA and Creighton University first complete a study and report regarding the impacts of same and parking replacement required, and (ii) MECA consents to any subsequent development.
- 9.8. Site Reservation. It is currently anticipated that at Lewis & Clark Landing, there may be a "pad" site designated and reserved for future development as a "Discovery Pavilion" which might emphasize Science, Technology, Engineering and Mathematics learning. Project Funds themselves will not go towards constructing same, but the site may be leased to an entity that would raise its own funds to pay for costs of building and separately operating it. The City, DRT and MECA shall have no capital or operating responsibility or financial risk associated with this potential project, which shall be subject to routine City approval processes.
- 9.9. City Personnel. City designated personnel shall have the unrestricted right to observe the construction of the various aspects of the Project, provided that MECA shall not rely upon such occasional City inspections to provide any level of construction inspection services. If any such designated City personnel shall see anything materially impairing MECA's duties hereunder or any material violation of applicable City, state or federal law or regulation, he or she shall immediately notify the President/CEO of MECA. City inspectors shall have the right to enter the property to perform their duties. During construction, City and MECA shall participate in periodic construction budget review meetings.
- 9.10. Cooperation. City and MECA shall cooperate in such manner and to such extent as to facilitate the efficient, on budget completion of all projects in the shortest possible time. MECA shall periodically and upon request provide to appropriate City personnel relevant information regarding the progress of design and construction of the Project. The parties agree to reasonably cooperate with one another in all aspects of Project and infrastructure development.
- 9.11. Annual Review Process. The Parties shall use their respective best efforts to coordinate their activities to enhance the Tri-Park Complex for the benefit of the community. To promote this long-term public-private partnership, the Parties shall participate in an annual review and planning session ("Annual Meeting")

each year. The purposes of the Annual Meeting shall include: (i) review of the preceding year, including MECA's management and Operating Expenses and Operating Revenues from the Tri-Park Complex and (ii) preliminary budgeting for the next fiscal year.

9.12. Long-Term Review Process. At a time mutually agreeable to the Parties but not less than every five (5) years during the Term, the Parties shall undertake a comprehensive evaluation and assessment of the Tri-Park Complex and evaluate Operating Expenses, Operating Revenues, long-term trends which have a direct impact on the operation and usage of the Tri-Park Complex, and identify prospective capital costs (both new and 'replacement') and where/how same may be funded. The Parties may mutually agree to engage an independent third-party reviewer with expertise in areas of public parks or riverfront developments to assist with and advise such long-term review process. The costs arising out of the engagement of an independent third-party reviewer shall be considered an Operating Expense.

9.13. Preliminary Schedule. A preliminary Project schedule is attached as Exhibit E.

10. MUTUAL OBLIGATIONS. In addition to the aforementioned obligations and responsibilities, the Parties acknowledge and agree that certain tasks and duties constitute the responsibility and obligation of all Parties. To that end, the Parties hereby agree as follows:

10.1. Confidentiality. Unless prior written consent is given by DRT, required by law or necessary to issue the Bonds or to protect the rights of bondholders in the Project, no Party shall disclose the identity of a Donor or the amount pledged thereby.

10.2. Damage or Destruction. In the event a venue or development at the Project, or any portion thereof, is damaged or destroyed by fire, explosion, the elements, the public enemy, or other casualty, the parties shall cooperate in the repair and reconstruction thereof on as timely a basis as possible, so that normal activities can be resumed at the earliest possible time.

10.3. Community Participation. The Parties agree to support and encourage "community-wide" participation in the Tri-Park Complex, including (i) the participation, specifically, of Council Bluffs, Iowa and, generally, of all surrounding communities and counties in Nebraska and Iowa; and (ii) collaboration on events between the Tri-Park Complex and Rivers Edge.

10.4. Termination. As a result of material reliance by numerous private parties who have made large financial contributions to the Project in reliance upon the existence of this Agreement, absent mutual agreement among the Parties, it is not contemplated that this Agreement is subject to termination prior to the satisfaction by the Parties of all obligations hereunder.

11. PROJECT OVERSIGHT AND TRANSITIONS.

- 11.1. General. MECA, in collaboration with the Riverfront Revitalization Committee, shall oversee Project design and completion for its (approximate) 3-4 year initial build-out. The City shall make available for Project Consultation the following departments to assist in the evaluation of park and recreation issues, zoning, traffic, utility, legal and other relevant public works and planning issues as appropriate, who shall perform customary evaluations and recommendations for the mutual benefit of the Project and the City: the City Parks & Recreation, Planning, Public Works, Law Department and related staff.
- 11.2. Park Transition from City to MECA. The City shall continue to operate and manage the three (3) parks until each one is closed to the public and construction barricades are erected for the Project to commence. The City Parks Department and MECA shall communicate and coordinate throughout each of these transitions.
- 11.3. Public Art. RRC and MECA shall work with the Public Arts Commission on the placement of art, monuments, statues etc. currently in the Tri-Park Complex and the cost of any such movement shall be paid from Project Funds. New art to be placed in the Tri-Park Complex shall be approved by the Public Arts Commission.

12. LIABILITY AND INDEMNITY.

- 12.1. Casualty. City and MECA hereby release each other from any and all liability or responsibility to the other (or anyone claiming through or under them by way of subrogation or otherwise) for any destruction of or damage to property caused by fire or other casualty to the Project or any portion thereof, even if such fire or other casualty shall be caused by the negligence of such other party hereto, or any of its agents, employees, representatives, visitors or guests or anyone for whom such other party hereto may be responsible; and provided further each party shall secure from their insurance carriers endorsements or policies permitting such Waiver of Subrogation.
- 12.2. MECA Indemnity. MECA covenants and agrees to indemnify and hold harmless the City of Omaha, RRC and DRT, their officers, agents and employees, their successors and assigns, individually or collectively from and against all liability for any fines, claims, suits, demands, actions, or causes of action of any kind and nature asserted by MECA or anyone else, for personal injury or death, or property damage in any way arising out of or resulting from any activity or operation of MECA fulfilling its obligations under the Agreement at the Tri-Park Complex or in connection with its development, construction, operation, management and maintenance and use of the Project. MECA further agrees to pay all expenses in defending against any claims made against the City, RRC or DRT; provided, however, that MECA shall not be liable for any injury, damage or loss occasioned

by the negligence or willful misconduct of the City, RRC or DRT, or their agents or employees.

12.3. City Indemnity. City covenants and agrees to indemnify and hold harmless MECA, RRC and DRT, their officers, directors, agents and employees, their successors and assigns, individually or collectively from and against all liability for any fines, claims, suits, demands, actions, or causes of action of any kind and nature asserted by City or anyone else, for personal injury or death, or property damage in any way arising out of or resulting from any determination or action of the City fulfilling its obligations under the Agreement (or in connection with its participation in the development, construction, operation, management and maintenance, operation or use of the Project or Tri-Park Complex), and the City further agrees to pay all expenses in defending against any claims made against MECA, RRC or DRT; provided, however, that City shall not be liable for any injury, damage or loss occasioned by the negligence or willful misconduct of MECA, RRC or DRT, or their agents or employees.

12.4. Notice of Claims. MECA and the City, with copies to RRC and DRT, shall give prompt and timely notice of any claim made or suit instituted which, in any way, directly or indirectly, contingently or otherwise, affects or might affect either party.

12.5. Environmental Indemnity. City covenants and agrees to indemnify and hold harmless MECA, RRC and DRT, and their officers, directors, agents and employees, their successors and assigns, individually or collectively, from and against all liability for any environmental costs, not part of the Project Budget, governmental fines, penalties, liabilities, claims, actions, causes of action, damages, losses, costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by MECA, RRC or DRT, their employees, agents, contractors, consultants, occupants, licensees, permittees, invitees, tenants or other third parties for property damage or bodily injuries arising out of contamination of the Tri-Park Complex site, performance of any remediation work performed by City; provided however, that the City shall not be liable for any injuries, damage or loss, occasioned by the neglect or willful misconduct of MECA, RRC or DRT, or their agents and employees.

13. INSURANCE.

13.1. General. The City shall either self-insure or maintain customary property insurance on the land, including but not limited to, drives, walkways, pavement, buildings and improvements on the Project. Any such policies shall name MECA as a loss payee as their interest may appear. During the construction phase, MECA shall maintain customary Builders Risk insurance. The City, DRT, and MECA will be Named Insureds on said policy.

13.2. Minimums. Throughout the term of the Agreement, and any extension thereof, MECA, as a cost of operating the Tri-Park Complex, agrees to procure and maintain in force with companies licensed to do business in the State of Nebraska, (1) public liability insurance with, at minimum, policy limits of \$1,000,000/\$5,000,000 for bodily injury or death and \$500,000 for property damage, (2) property damage insurance to cover physical loss or damage to property from fire, theft and extended coverage hazard insurance, including damage from vandalism, on the contents and equipment at the Project, and (3) workers' compensation insurance in accordance with the laws of the State of Nebraska. Said policies shall expressly include the City of Omaha as an additional named insured except as to workers' compensation insurance policies.

13.3. Copies. A certified copy of the policies, or a certificate evidencing the existence thereof, shall be delivered to the City. Each such copy shall contain a valid provision or endorsement that the policy may not be canceled, terminated or materially changed or modified without giving thirty (30) days written advance notice thereof to the City. Each such policy shall if reasonably possible contain an additional endorsement providing that the insured's carrier shall not, without obtaining express advance permission from the City, raise any defense involving in any way the immunity of the City, its officers, agents or employees, the governmental nature of the City, or the provisions of any statutes respecting suits against the City.

14. MISCELLANEOUS.

14.1. Independent Contractor. It is understood and agreed by and between MECA and City that any and all acts that MECA or its personnel, employees, agents, contractors, or servants, perform pursuant to the terms of the Agreement shall be undertaken as independent contractors and not as employees of the City. MECA shall have no authority to bind the City by or with any contract or agreement, nor impose any liability upon the City. All acts and contracts of MECA shall be in its own name and not in the name of the City, unless otherwise provided herein.

14.2. Material Breach. The Parties hereby covenant and agree that if a party hereto materially breaches any covenant or provision hereof, such breach shall be cured within thirty (30) days after the non-breaching party provides written notice of same to the breaching party in accordance with Section 14.12 hereof; provided, however, that if such breach is monetary in nature, such monetary breach shall be cured within seven (7) days after the non-breaching party provides written notice of same to the breaching party in accordance with Section 14.12 hereof. The Parties also covenant and agree that a non-breaching party is fully and explicitly authorized to and may, if the legal remedy of damages, or monetary compensation is inadequate or impracticable, seek specific performance of the breaching party as the remedy for a material breach hereof.

14.3. Survival. Anything herein to the contrary notwithstanding, all rights, remedies, obligations and all covenants and agreements in this Agreement which, by their

terms, require or contemplate performance which is to extend beyond or occur after the execution of this Agreement, shall survive the execution and shall remain in effect and be enforceable against the Parties in accordance with their terms.

- 14.4. Specific Performance. Each Party acknowledges that a Party will have no adequate remedy at law if the other Party fails to perform any of its obligations under this Agreement. Therefore, in addition to and not in limitation of its rights provided elsewhere in this Agreement or otherwise at law or in equity, each Party shall have the right to obtain specific performance of this Agreement.
- 14.5. Further Assurances. At any time, or from time to time after the date hereof, at any Party's request and without further consideration, each other Party shall execute and deliver such other instruments, provide such materials and information and take such other actions, as such other Party may reasonably deem necessary or desirable in order more effectively to confirm, implement or effect the transactions contemplated by this Agreement.
- 14.6. Entire Agreement. This Agreement, together with all Exhibits hereto and documents referenced herein, constitutes the entire agreement among the Parties pertaining to the subject matter hereof and supersedes all prior contracts, agreements, understandings, negotiations and discussions, whether oral or written, of the Parties.
- 14.7. Amendment; Waiver. Any amendment to or waiver of this Agreement or any of the rights or obligations created herein shall be in writing and signed by all Parties. No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 14.8. Governing Law and Venue. This Agreement shall be governed, construed and interpreted in accordance with Nebraska law, without regard to conflict of laws principles. The parties agree to the exclusive jurisdiction of the District Court of Douglas County, Nebraska.
- 14.9. Assignment; Binding Effect. This Agreement and the rights and obligations hereunder may not be assigned by either Party without the prior written consent of the other Party, which consent may be granted or withheld in the sole and absolute discretion of the non-assigning Party. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, legal representatives and permitted assigns.
- 14.10. No Third Party Beneficiaries. This Agreement shall be for the sole benefit of the Parties hereto and their respective successors, legal representatives and permitted assigns. Nothing in this Agreement is intended to confer any rights or remedies

on any third persons nor is anything herein intended to relieve or discharge the obligation or liability of any third persons to any Party hereto.

- 14.11. Notices.** Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted hereunder (each, a "notice") shall be in writing. All such notices shall be delivered personally, by certified mail, return receipt requested, or by reputable overnight courier (costs prepaid), and shall be deemed given (a) when delivered personally to the recipient, (b) one (1) business day after the date when sent to the recipient by reputable overnight courier service (costs prepaid), or (c) three (3) business days after the date when mailed to the recipient by certified, return receipt requested and postage prepaid. All such notices are to be given or made to the Parties at the following addresses (or to such other address as any Party may designate by a notice given in accordance with the provisions of this Section):

If to the City:

Mayor of the City of Omaha
Omaha/Douglas Civic Center
1819 Farnam Street
3rd Floor
Omaha, NE 68183

With a copy to:

City Attorney
Omaha/Douglas Civic Center
1819 Farnam Street
Suite 804
Omaha, NE 68183

If to MECA:

Metropolitan Entertainment & Convention Authority
Attn: President & CEO
455 North 10th Street
Omaha, NE 68102

With a copy to:

Fraser Stryker PC LLO
500 Energy Plaza
409 South 17th Street
Omaha, NE 68102-2663
Attn: Bob Freeman

If to DRT:

Downtown Riverfront Trust, LLC
c/o Heritage Services
10050 Regency Cir #101

Omaha, NE 68114

- 14.12. Severability.** If any term or provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, then unless the effect thereof is to materially deprive one or more of the Parties hereto of the economic benefit of their bargain, such determination shall not affect any other term or provision of this Agreement, each of which shall continue in full force and effect. Upon such determination, such term or other provision shall be reformed so as to best accomplish the intent of the Parties within the limits of applicable law.
- 14.13. Interpretations.** Any uncertainty or ambiguity existing herein shall not be interpreted against either Party because such Party prepared any portion of this Agreement, but shall be interpreted according to the application of rules of interpretation of contracts generally. The recitals to this Agreement are hereby included in, and by this reference, constitute an integral part of this Agreement and shall be considered a part of this Agreement for any construction or interpretation of this Agreement. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Where specific language is used to clarify a general statement, such specific language shall not be deemed to modify, limit or restrict in any manner the construction of the general statement to which it relates. Time is of the essence of each and every provision of this Agreement.
- 14.14. Exhibits.** The Exhibits attached hereto, which are incorporated herein by this reference.
- 14.15. Execution.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement may be executed by facsimile transmission or electronic mail, shall be binding and shall be construed as an original.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

Dated: _____, 2018.

CITY OF OMAHA

A Nebraska municipal corporation

ATTEST:

BY: _____
Jean Stothert, Mayor

BY: _____
City Clerk

APPROVED AS TO FORM:

BY: _____
Paul Kratz, City Attorney

**METROPOLITAN ENTERTAINMENT &
CONVENTION AUTHORITY**

A Nebraska nonprofit corporation

BY: _____
Roger A. Dixon, President & CEO

BY: _____
Diane Duren, Board Chair

Approved:

DOWNTOWN RIVERFRONT TRUST

BY: _____
Its

1897754

Exhibits

- A - Tri-Park Complex (1.6)
- B - OJB Conceptual Master Plan dated July 11, 2018 (16 pages; Sections 4.3.2 and 5.1)
- C - Activation Examples (5.4.4)
- D - Annual Operating Shortfall/Fund - Hypothetical Examples (8.3)
- E - Preliminary Project Schedule (9.13)

EXHIBIT A

The Tri-Park Complex

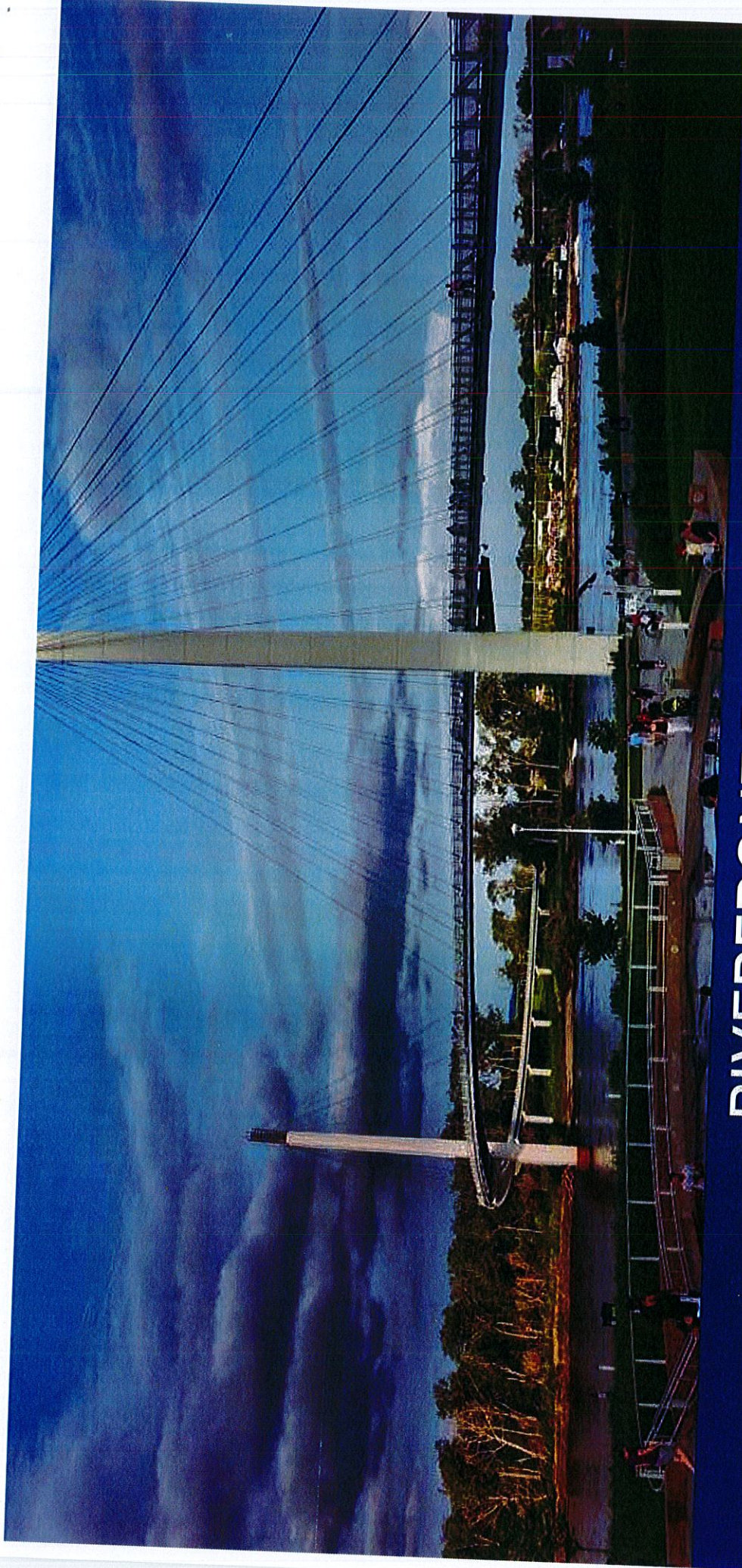
- Lot 1, Smelter Plant replat also known as Lewis and Clark Landing.
- Lot 1, *Heartland of America Park Addition* as may be replatted in the future.
- *Gene Leahy Mall* as currently constituted and hereafter expanded or altered less Lot 8, Block 120, City Lots (between 13th and 14th) and the 9th Street ROW east of the Greenhouse Apartments (Lot 8, Block 124) and Lots 7 & 8, Block F.
- *Diagram A-1* depicts same as currently constituted; it shall be updated and a new Diagram A-1 substituted following Project completion.
- Maintenance Facilities on said parcels

Attachment - Diagram A-1

12/14/18

EXHIBIT B

OJB Conceptual Master Plan dated July 11, 2018



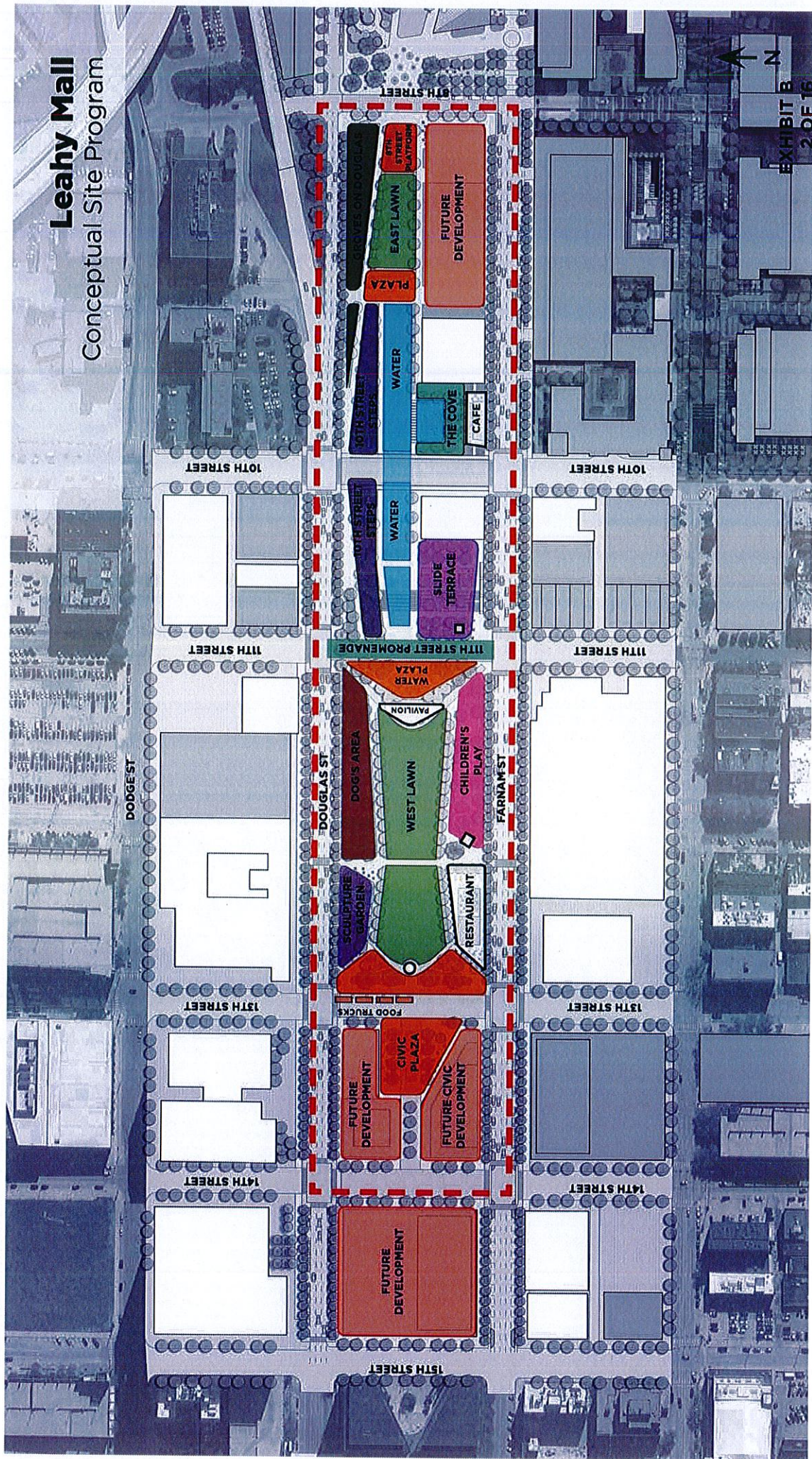
RIVERFRONT REVITALIZATION PLAN

CONCEPTUAL MASTER PLAN - OMAHA TRI-PARK COMPLEX 07/11/2018

EXHIBIT B
1 OF 16

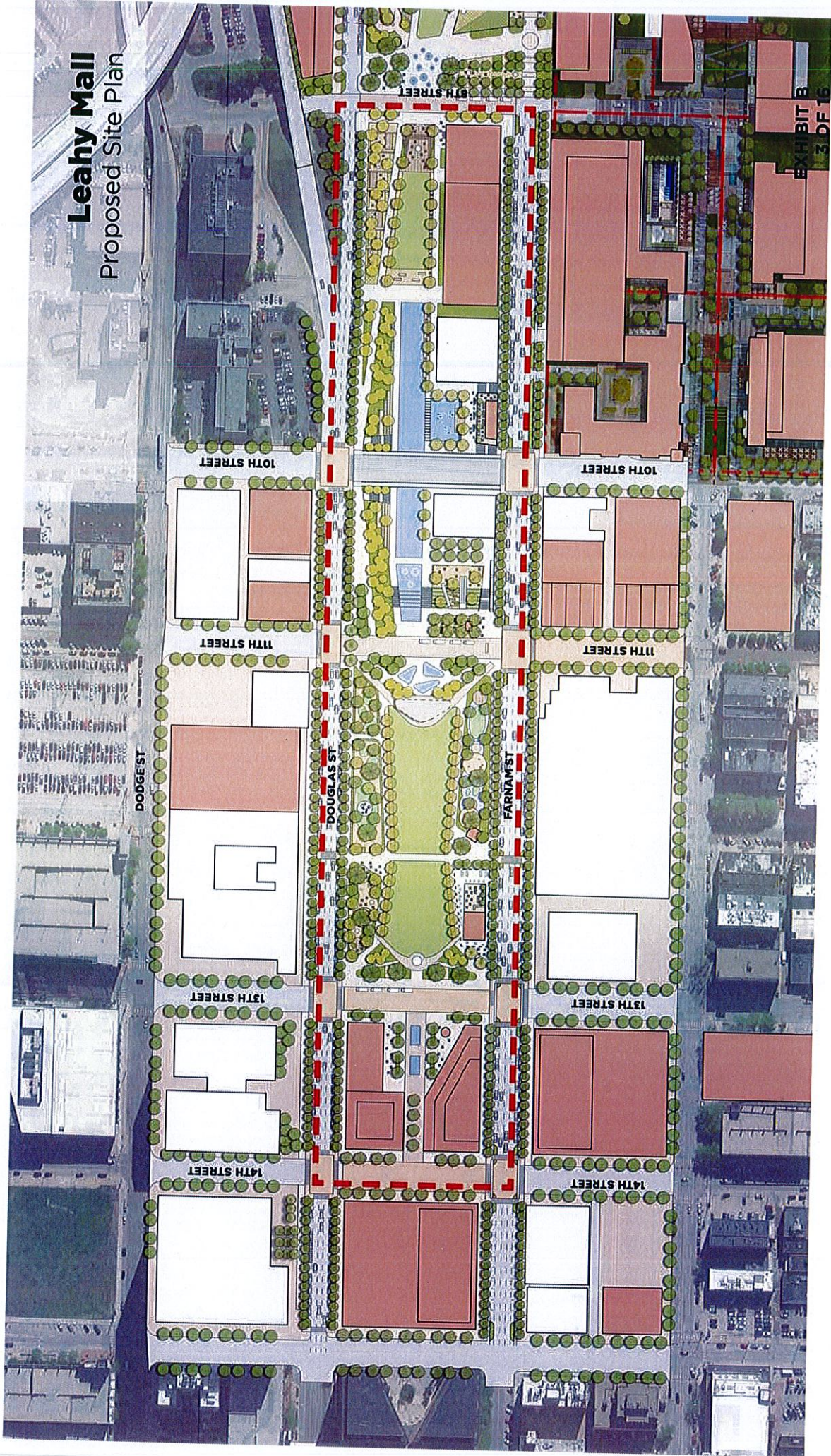
Leahy Mall

Conceptual Site Program



Leahy Mall

Proposed Site Plan



Leahy Mall

Performance Pavilion



Leahy Mall

Slide Terrace



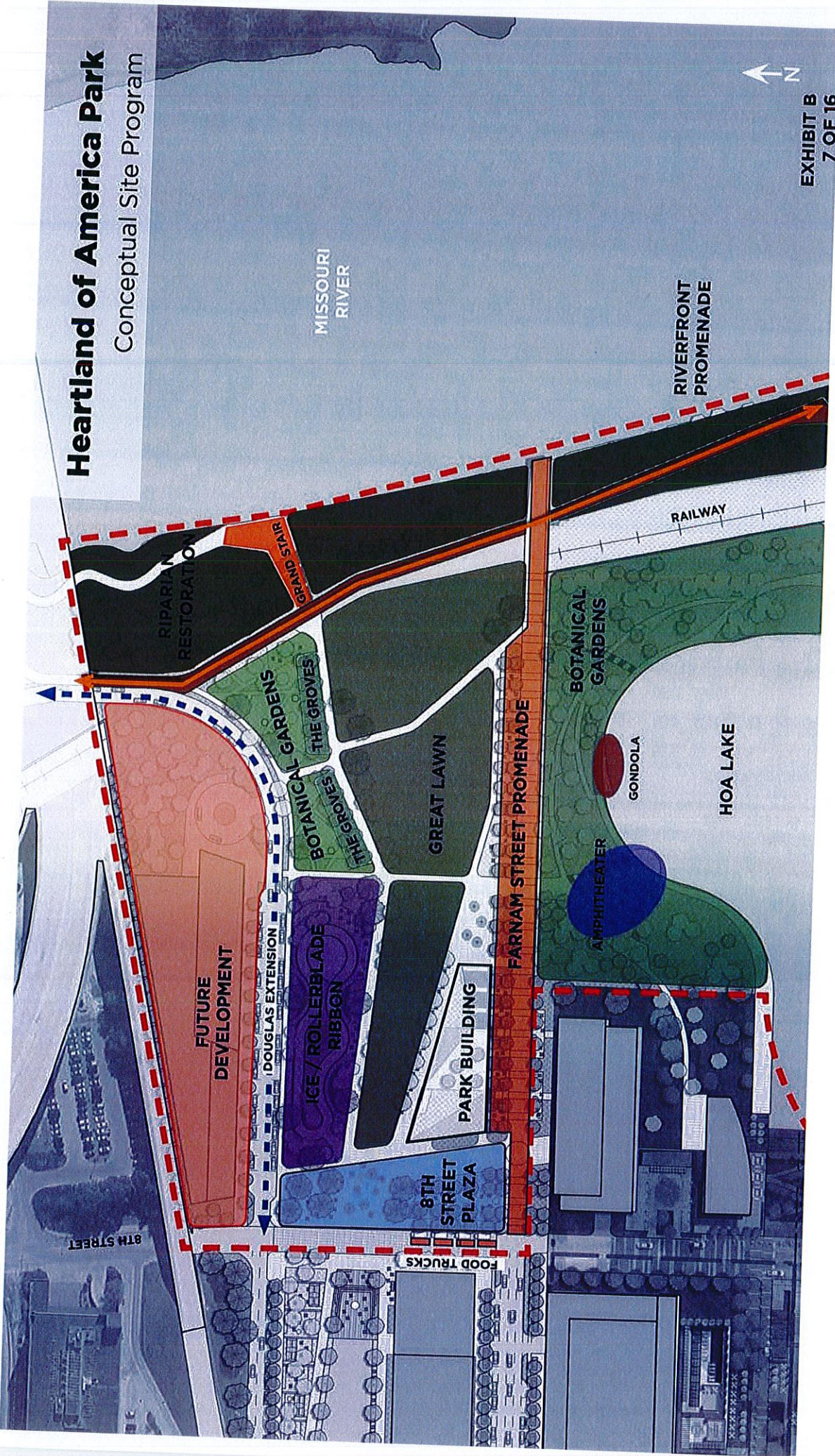
Leahy Mall

East Lawn



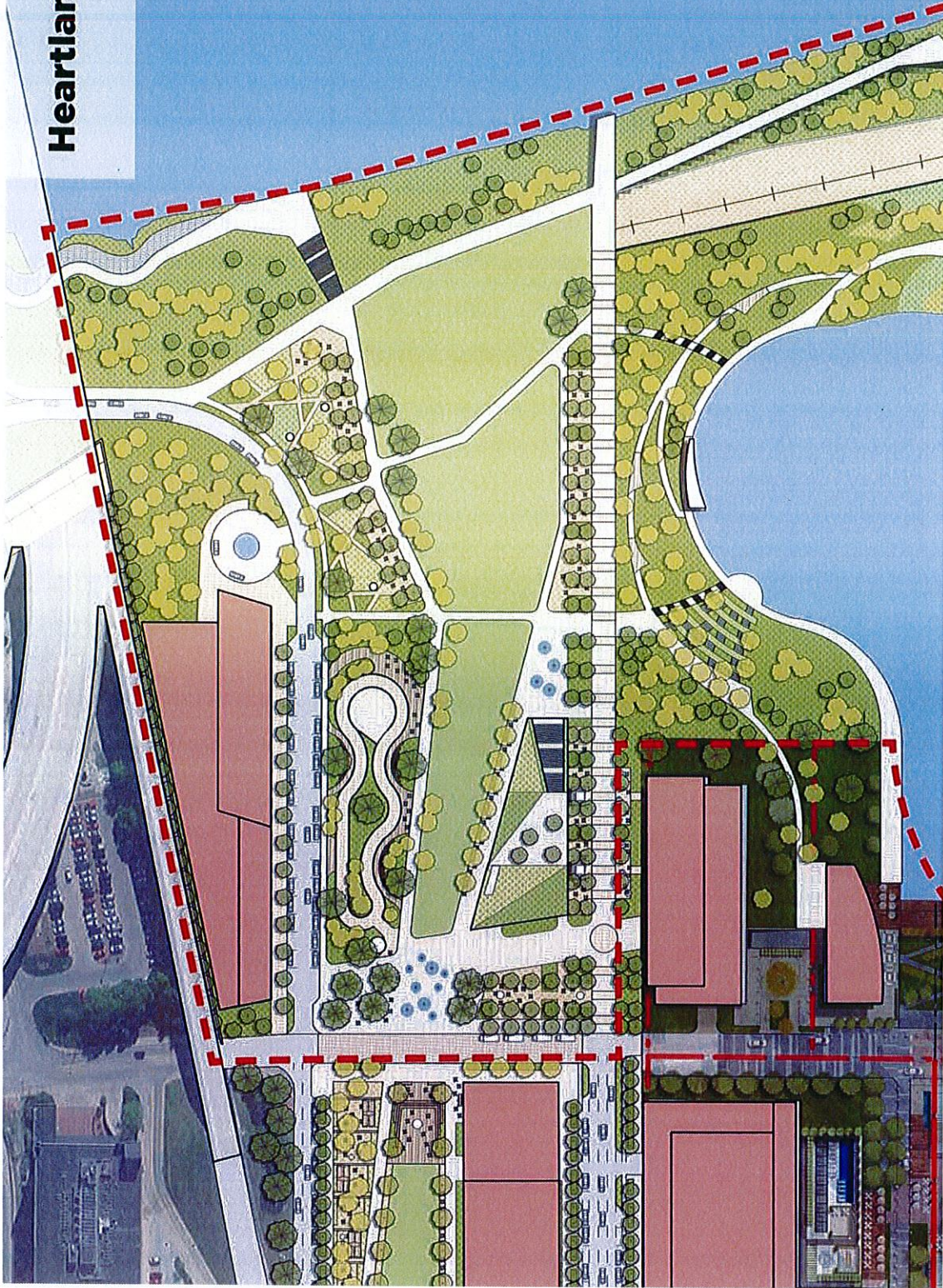
Heartland of America Park

Conceptual Site Program



Heartland of America Park

Enlarged Site Plan



Heartland of America Park

Farnam St. Pier & Grand Stair



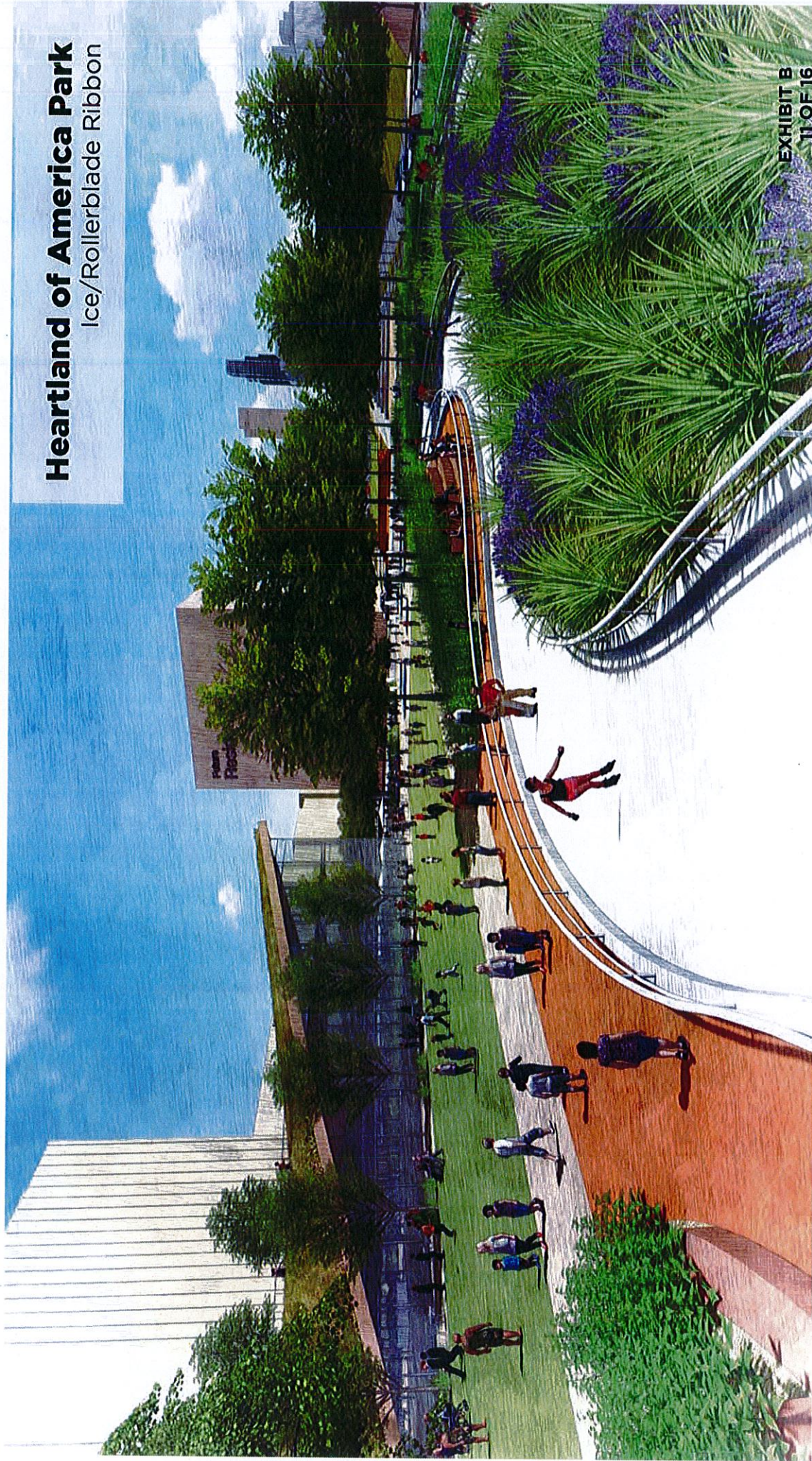
Heartland of America Park

Riverfront Promenade



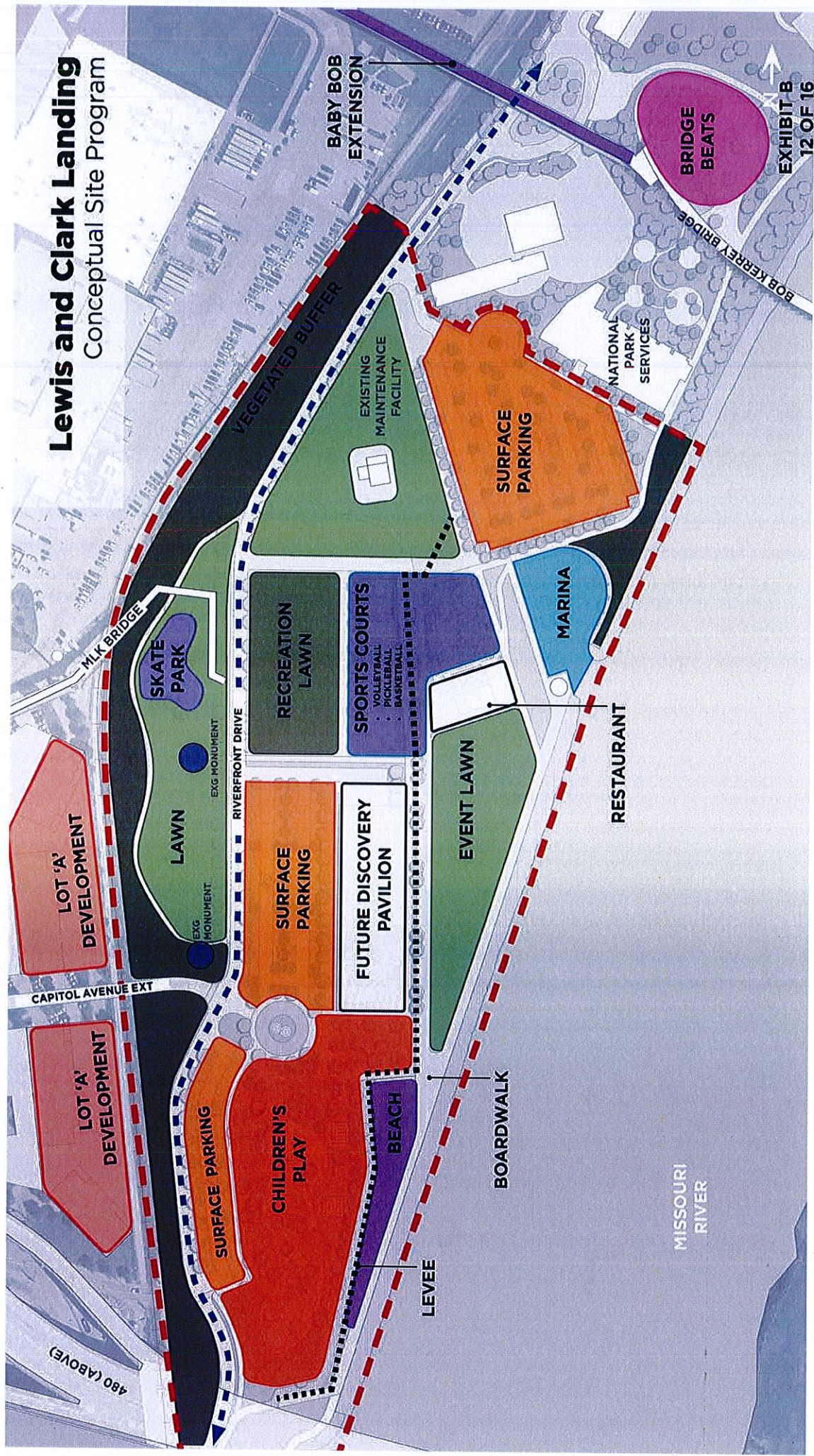
Heartland of America Park

Ice/Rollerblade Ribbon



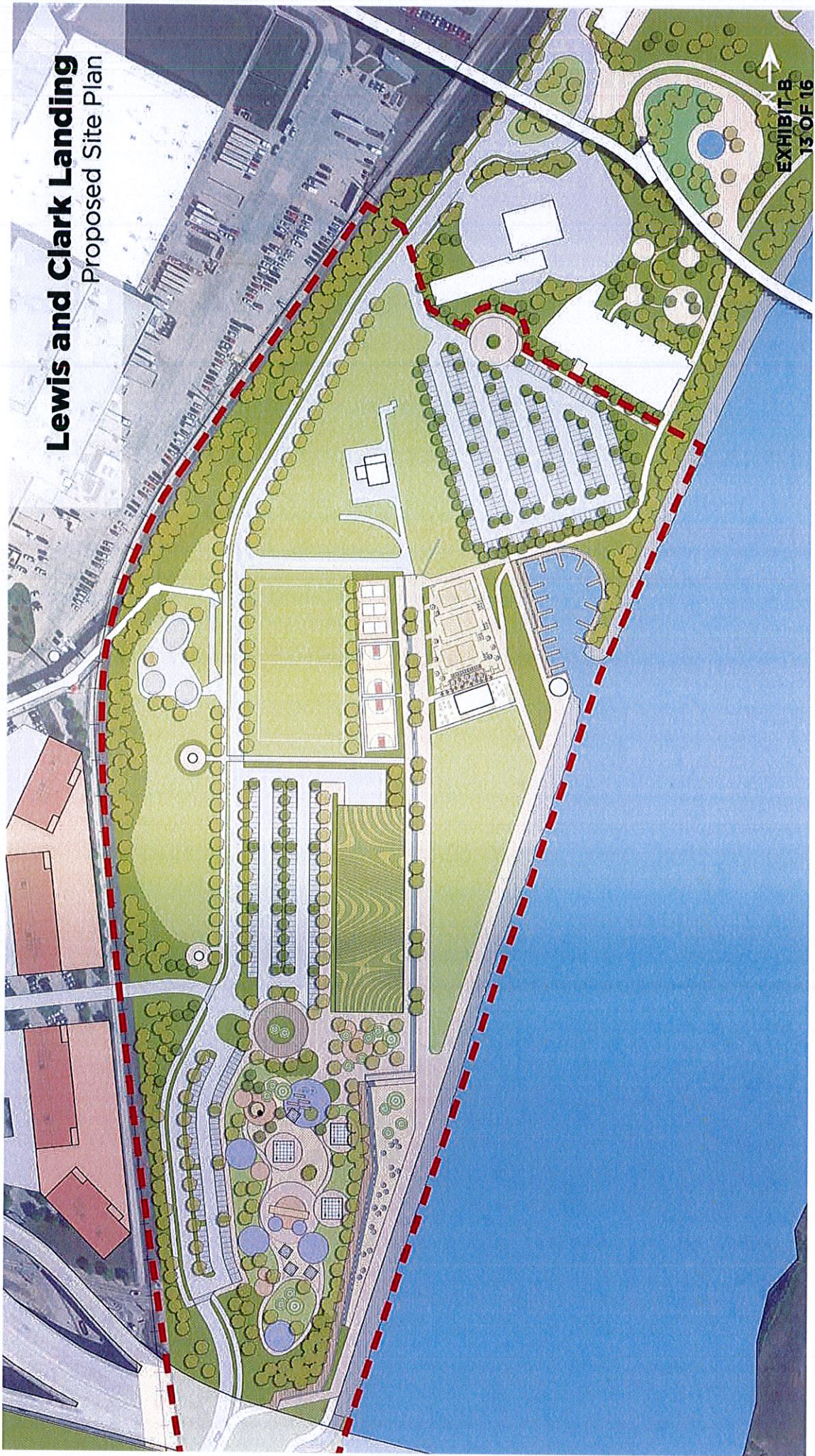
Lewis and Clark Landing

Conceptual Site Program



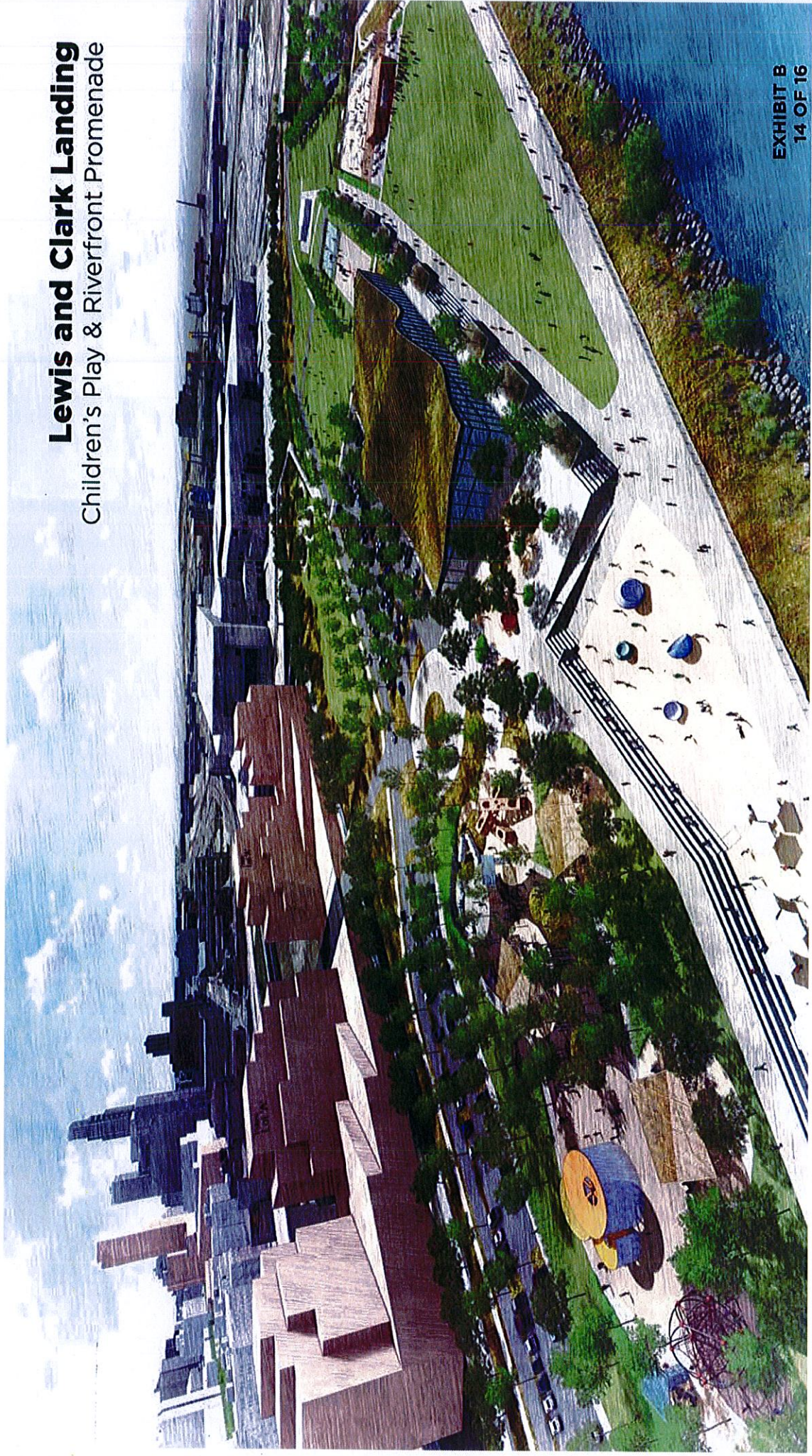
Lewis and Clark Landing

Proposed Site Plan



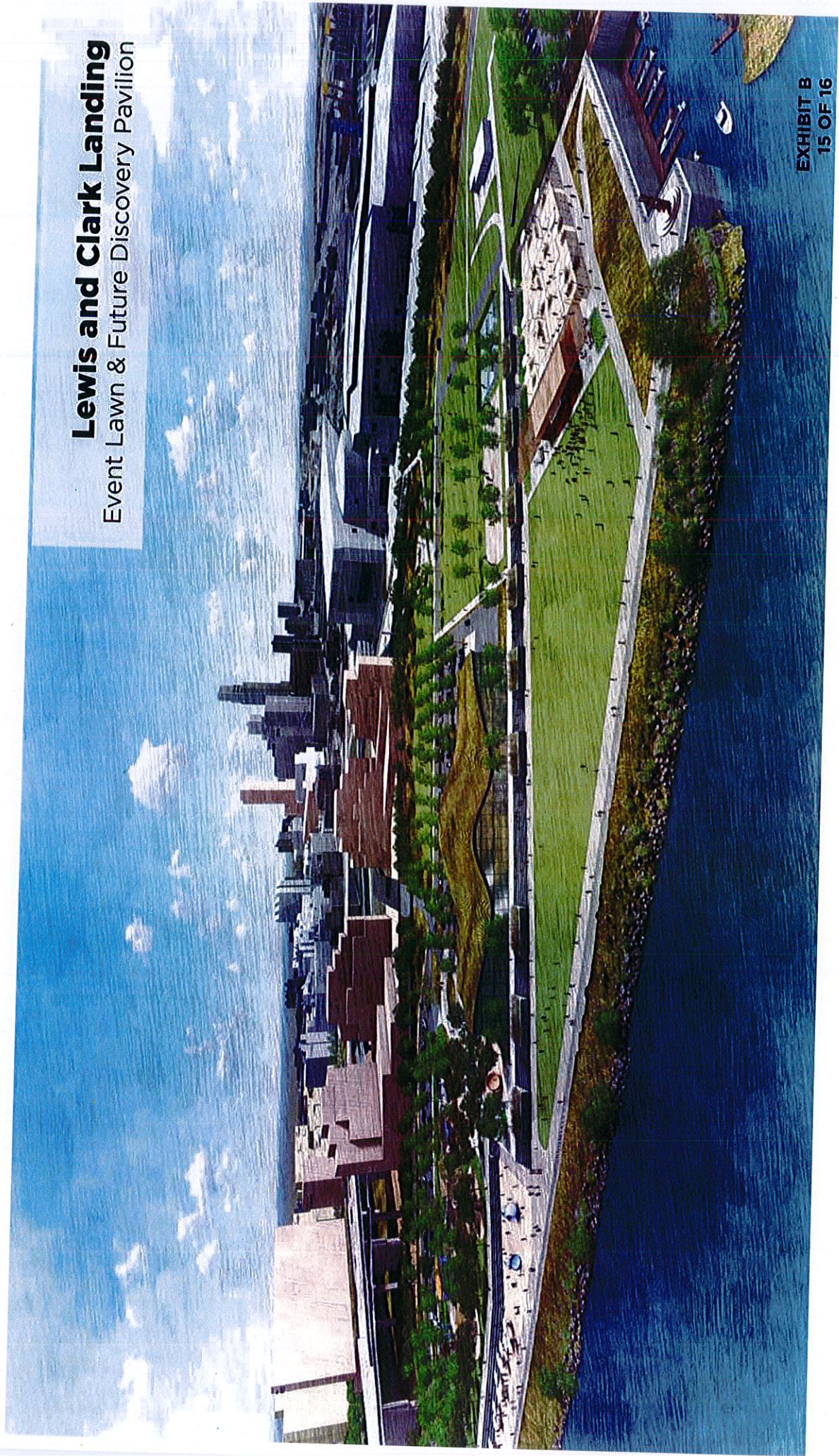
Lewis and Clark Landing

Children's Play & Riverfront Promenade



Lewis and Clark Landing

Event Lawn & Future Discovery Pavilion



Lewis and Clark Landing Children's Play



EXHIBIT C
Activation Examples

Adult Education Classes	Gardening Workshops
Art Studio Space/Art Cart	Giant Games (Jenga, Connect Four, etc.)
Art Walk	Ice Sculptures
Art/Craft Classes	Igloo Building
Art/Maker Spaces	Imagination Playground
Artist-in-residence	Interactive Installations
Author Talks	Jazz Combos
Board Games Cart	Kids Crafts
Book Club Meetings	Lecture Series
Book Racks for Reading Room	Lighting/Projection Displays
Boot Camp	Live Piano
Coffee Cart	Pet Portrait Photography
Concerts – Pavilion	Photography Classes
Cornhole Games	Ping Pong
Cross-Country Skiing	Run Club Meetups
Dance Performances	Small Musical Performances
DIY Workshops	Snow Mini Golf Course
DJs	Storytelling
Dog Fashion Shows	Storytime – Children's
Dog Grooming	Tai Chi
Dog Training Seminars	Toy Boat Making/Demos
Family Fitness	Umbrellas
Film Festival	Walking Tours
Fitness Classes	Wi-Fi Internet
Fitness Equipment Cart	Writer's Circle
Flower Stall	Yoga
Food Trucks	Zumba
Foosball	

12/14/18

EXHIBIT D
Annual Operating Shortfall/Fund - Hypothetical Examples

DRAFT - PRELIMINARY ESTIMATES
PRIVILEGED AND CONFIDENTIAL
RIVERFRONT REVITALIZATION BUDGET FORECAST 2019 -2030

REVISION 7 - 12/20/18

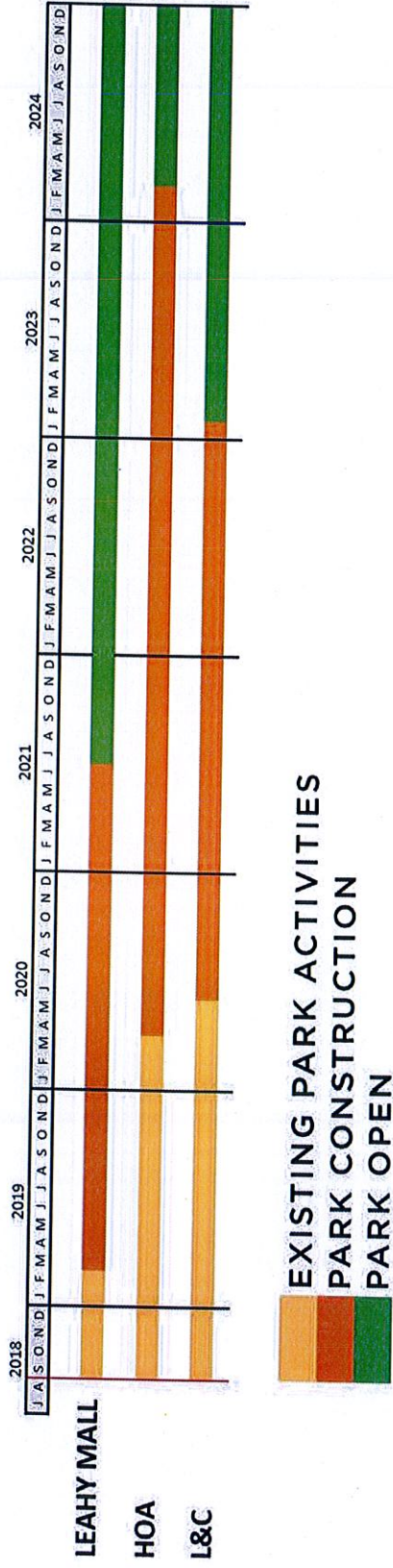
YEAR	MONTHS PARK OPEN			SELF-GENERATING PARK REVENUE	ANNUAL OPERATING EXPENSE	ANNUAL CAPITAL RESERVE	ANNUAL OPERATING SHORTFALL	CITY DRT FUNDS (10 YRS)	INTEREST INCOME	TOTAL ANNUAL INCOME (LOSS)	BASE CASE CUMULATIVE FUND
	GLM	HOA	LCL								
FY19	1	8	12	\$ -	\$ (630,431)	\$ (500,000)	\$ (1,130,431)	6,000,000	\$ -	\$ 4,869,570	\$ 4,869,570
FY20	2	0	9	\$ -	\$ (1,283,258)	\$ (500,000)	\$ (1,783,258)	6,000,000	\$ 84,559	\$ 4,954,129	\$ 9,170,870
FY21	3	0	0	\$ -	\$ (2,755,947)	\$ (500,000)	\$ (3,255,947)	6,000,000	\$ 155,858	\$ 2,899,911	\$ 12,070,781
FY22	4	12	0	\$ 407,108	\$ (4,157,397)	\$ (500,000)	\$ (4,250,289)	6,000,000	\$ 203,913	\$ 1,953,624	\$ 14,024,405
FY23	5	12	0	\$ 729,466	\$ (4,869,398)	\$ (500,000)	\$ (4,639,932)	6,000,000	\$ 239,089	\$ 1,599,157	\$ 15,623,561
FY24	6	12	4	\$ 925,676	\$ (6,609,022)	\$ (500,000)	\$ (6,183,346)	6,000,000	\$ 255,638	\$ 72,292	\$ 15,695,854
FY25	7	12	12	\$ 1,247,984	\$ (6,637,476)	\$ (500,000)	\$ (5,889,492)	6,000,000	\$ 260,022	\$ 370,530	\$ 16,066,384
FY26	8	12	12	\$ 1,304,781	\$ (6,903,106)	\$ (500,000)	\$ (6,104,325)	6,000,000	\$ 265,284	\$ 160,959	\$ 16,227,343
FY27	9	12	12	\$ 1,412,048	\$ (6,923,674)	\$ (500,000)	\$ (6,011,626)	6,000,000	\$ 269,431	\$ 257,804	\$ 16,485,147
FY28	10	12	12	\$ 1,480,507	\$ (7,168,118)	\$ (500,000)	\$ (6,187,612)	6,000,000	\$ 272,827	\$ 85,215	\$ 16,570,363
FY29	11	12	12	\$ 1,545,213	\$ (7,244,982)	\$ (500,000)	\$ (6,199,769)				
FY30	12	12	12	\$ 1,620,503	\$ (7,495,805)	\$ (500,000)	\$ (6,374,902)				

YEAR	SENSITIVITY ANALYSIS CUMULATIVE FUND		
	10% Inc. Exp. 10% Dec. Rev.	15% Inc. Exp. 15% Dec. Rev.	20% Inc. Exp. 20% Dec. Rev.
FY19	\$ 4,806,526	\$ 4,775,005	\$ 4,743,483
FY20	\$ 8,976,957	\$ 8,880,001	\$ 8,783,044
FY21	\$ 11,594,639	\$ 11,356,568	\$ 11,118,497
FY22	\$ 13,077,725	\$ 12,604,385	\$ 12,131,045
FY23	\$ 14,092,463	\$ 13,326,915	\$ 12,561,364
FY24	\$ 13,373,129	\$ 12,211,766	\$ 11,050,403
FY25	\$ 12,900,773	\$ 11,312,967	\$ 9,735,162
FY26	\$ 12,168,817	\$ 10,139,554	\$ 8,710,291
FY27	\$ 11,503,543	\$ 9,012,741	\$ 6,521,939
FY28	\$ 10,615,615	\$ 7,638,241	\$ 4,660,868

- NOTES
- Months Park Open is reflected as a fiscal year, July 1 to June 30.
 - DRT funding is for a 10 year period.
 - Cumulative Fund assumes 2% interest annually.
 - Revenues and expense are estimated at 2% inflation.

EXHIBIT E
Project Schedule (Current Est.)

PRELIMINARY CONSTRUCTION SCHEDULE OMAHA TRI-PARK COMPLEX RIVERFRONT REVITALIZATION PLAN



LEAHY MALL - GENE LEAHY MALL
HOA - HEARTLAND OF AMERICA PARK
L&C - LEWIS & CLARK