

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date:

Action Requested By:
Select...

Agenda Item Type
Resolution

Subject Matter:

Project Agreement

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute the document identified as Notice of Change of Control and Consent Curse, Inc. (Urban Development)

Note: If amendment, please state title and number of the original

Item to be considered for: Select...

Unanimous Consent Required: Select...

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____



Date:

8/24/16

RESOLUTION NO. 16 - _____

WHEREAS, the City of Huntsville, Alabama, is interested in promoting its growth and industrial and economic development;

WHEREAS, a "Project Agreement by and among the State of Alabama, The Chamber of Commerce of Huntsville/Madison County, The City of Huntsville and Curse, Inc." (the "Project Agreement"), attached hereto as **Exhibit A**, was entered into in June 2013 for purposes of promoting growth and industrial and economic development;

WHEREAS, the Project Agreement requires Curse, Inc. to give prior written notice in the event of a merger;

WHEREAS, Curse, Inc. has notified the City of Huntsville, Alabama, that Curse, Inc. has entered into a Merger Agreement with Twitch Interactive, Inc.; and,

WHEREAS, the merger of Curse, Inc. and Twitch Interactive, Inc. is expected to close on or about August 26, 2016.

NOW THEREFORE BE IT RESOVLED by the City Council of the City of Huntsville, AL, that the Mayor be, and he is hereby authorized on behalf of the City of Huntsville, a Municipal Corporation in the State of Alabama, to execute the document identified as "Notice of Change of Control and Consent Curse, Inc." consisting of three (3) pages, plus Exhibit A consisting of seventeen (17) pages, with the date of August 17, 2016, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 25 day of August, 2016.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 25 day of August, 2016.

Mayor of the City of Huntsville,
Alabama

NOTICE OF CHANGE OF CONTROL AND CONSENT
CURSE, INC.

August 17, 2016

Honorable Robert Bentley, Governor
State Capitol
600 Dexter Avenue
Montgomery, Alabama 36130

Finance Director
State Capitol; Room N-105
600 Dexter Avenue
Montgomery, Alabama 36130

Debt Management Division
Alabama Department of Finance
100 North Union Street; Suite 224
Montgomery, Alabama 36130

Chamber of Commerce of Huntsville/Madison County
ATTN: President of the Chamber of Commerce
225 Church Street
Huntsville, Alabama 35803

City of Huntsville
Mayor Tommy Battle
P.O. Box 308
Huntsville, AL, 35804

To Whom It May Concern:

Reference is hereby made to that certain Project Agreement, dated as of June 19, 2013 (the "**Agreement**"), by and among the State of Alabama, the Chamber of Commerce of Huntsville/Madison County, and the City of Huntsville ("**you**") and Curse, Inc. (the "**Company**"). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed thereto in the Agreement.

Pursuant to Section 6(f) of the Agreement the Company hereby provides written notice to you in accordance with the Agreement that the Company has entered into a Merger Agreement (the "**Merger Agreement**") with Twitch Interactive, Inc., a Delaware corporation ("**Twitch**") and certain other parties thereto (the "**Transaction**"). Following the completion of the Transaction, the Company will become a wholly owned subsidiary of Twitch and will continue to have responsibility for the performance of, and will continue to satisfy, all of its obligations and liabilities under the Agreement.

By signing below, you (i) agree not to terminate or amend the Agreement as a result of the Transaction, (ii) acknowledge that this notice is satisfactory assurance to you that the Company will continue to satisfy its obligations under the Agreement following the completion of the Transaction and (ii) agree that all notice requirements under the Agreement with respect to this letter (in regards to form of

delivery and notice, time requirements and otherwise) have been complied with (or are hereby waived). If the Transaction does not close for any reason, this letter will be null and void.

This Notice of Change of Control and Consent may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Notice of Change of Control and Consent may be executed by facsimile or pdf signature.

If the foregoing meets with your approval, please sign and date this letter in the space provided below and email a PDF copy to me at cklingenberg@curse.com at your earliest convenience. We expect the Transaction to close on or about August 26, 2016.

[Signature Page Follows]

Sincerely,

CURSE, INC.



By: _____

Name: Carson Klingenberg
Title: General Counsel

AGREED AND ACKNOWLEDGED:

STATE OF ALABAMA

By: _____

Name:
Title:

CHAMBER OF COMMERCE OF HUNTSVILLE/MADISON COUNTY

By: _____

Name:
Title:

CITY OF HUNTSVILLE

By: _____

Name:
Title:

[Signature page to Notice of Change of Control and Consent]

PROJECT AGREEMENT
BY AND AMONG
STATE OF ALABAMA,
THE CHAMBER OF COMMERCE OF HUNTSVILLE/MADISON COUNTY,
THE CITY OF HUNTSVILLE
AND
CURSE, INC.

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (the "Agreement") is made and entered into by and among the **STATE OF ALABAMA** (the "State"), the **CHAMBER OF COMMERCE OF HUNTSVILLE/MADISON COUNTY** (the "Chamber"), the **CITY OF HUNTSVILLE** (the "City") and **CURSE, INC., a Delaware corporation** (the "Company"). The State, the City, the Chamber and the Company are each a "Party" to this Agreement and are collectively referred to as the "Parties". The City and the Chamber are referred to collectively as the "Local Parties".

RECITALS

WHEREAS, the Company wishes to construct a headquarters facility and expand its existing operations in Huntsville, Alabama wherein the Company shall provide information and products which enhance video game websites (such facility being referred to herein as the "Facility" or the "Project");

WHEREAS, in addition to the twenty (20) Full-Time Employees employed by the Company in Madison County, Alabama (the "Existing Employees") the Company intends to employ not less than twenty (20) new Full-Time Employees at the Facility earning an average wage of not less than \$55,000 per year, exclusive of benefits, and make an investment in the Facility of not less than two hundred fifty thousand dollars (\$250,000); and

WHEREAS, in reliance on the Company's representations of the total capital investment by the Company, employment and wage levels, and the construction, performance and operation schedule for the Project as described herein, and in consideration of the economic impact, the increased tax revenues, and other benefits to be received by the State and its citizens, the State and the Local Parties have committed to make available to the Company certain incentives in the manner and amounts described herein, subject to existing law.

NOW, THEREFORE, in consideration for the mutual promises and covenants contained herein and for other valuable consideration, the receipt, adequacy, and sufficiency of which is hereby acknowledged, the parties enter into this Agreement on the following terms and conditions.

1. **Scope of Agreement.** This Agreement fully sets out the complete agreement of the Parties. This Agreement includes the facts, averments, and representations set out in the Recitals, as well as all exhibits, attachments, or appendices attached hereto or referenced herein, all of which are hereby incorporated by reference.

2. **The Company's Commitments, Representations and Warranties.** In consideration of the State and Local Parties providing the incentives described herein, the Company makes the following commitments to the State and Local Parties:

(a) The Company acknowledges that the citizens of the State of Alabama anticipate the prompt receipt of substantial economic benefit to the local and state economies in return for the investment of public money in the Project. The Company agrees to make commercially reasonable efforts to proceed with development of the Project expeditiously. The Company shall Commence Construction of the Facility by April 10, 2013 and Commence Operations at the Facility by June 30, 2013.

(b) In furtherance of this Project, not later than December 31, 2013 the Company shall have invested in the Facility from its resources not less than two hundred fifty thousand dollars (\$250,000) (hereinafter the Company's "Capital Commitment"), which commitment may be satisfied by the Company through investment in property and equipment (including operating leases), and by investment in such other assets as the Company shall determine in its reasonable discretion.

(c) Not later than December 31, 2014 (the "Jobs Target Date") the Company shall employ, in addition to the twenty (20) Existing Full-Time Employees currently employed by the Company in Madison County, Alabama, not less than twenty (20) new Full-Time Employees (the "New Employees") at the Facility (collectively the "Jobs Target"), at an average wage for such Existing Employees and New Employees in the aggregate of at least \$55,000 per year exclusive of benefits (the "Required Employee Pay Scale").

(d) The Company shall give good-faith consideration to Alabama-based contractors and vendors and Alabama residents to provide products and services in developing, constructing, and operation of the Project. The Company will make commercially reasonable efforts to verify that contractors and vendors selected by the Company are in good standing, licensed and qualified to do business in Alabama, all in accordance with Alabama law. The Parties acknowledge that selection of contractors and vendors for the Project shall be at the sole discretion of the Company.

(e) The Company shall give good faith consideration for employment at the Project to qualified Alabama residents, subject in all cases to the Company's then usual and customary hiring policies.

(f) The Company is in good standing, licensed, and qualified to do business in Alabama, all in accordance with Alabama law, and shall remain licensed, qualified, in good standing and in compliance with all Alabama laws applicable to its operations throughout the duration of this Agreement including any applicable employment and immigration laws. By signing this contract, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

(g) The Company shall make commercially reasonable efforts to satisfy its obligations under any other agreement with local government or private economic development organizations that relates to the Project.

(h) The Company is not prohibited from consummating the transaction contemplated in this Agreement by any law, regulation, agreement, instrument, restriction, order, or judgment.

(i) The Company has the legal power and authority to enter into this Agreement and to make the respective commitments made in this Agreement. To the extent that (i) any authorization, approval, resolution or consent of the Company's board of directors, officers, managers, trustees or any other persons is required under either the Company's organizational and/or governing documents or otherwise is required by law and (ii) any authorization, approval or consent of any governmental authority, body, or agency or third party is required for the Company to enter into this Agreement and make the commitments contained in this Agreement, any such authorizations, approvals, and consents have been duly obtained in accordance with applicable law and procedures. Upon request by the Local Parties or State, reasonable documentation of the foregoing authority and action shall be provided by the Company to the State or Local Parties.

3. Commitments of the State and Local Parties. In consideration of the Company constructing the Facility and conducting the operations there as described in the Recitals to this Agreement and the economic benefit to the State and local community to be realized from that operation:

(a) The State shall make available up to one hundred thousand dollars (\$100,000) (the "State Commitment") to reimburse the Company for capital expenses incurred directly by the Company in developing, constructing and equipping the Facility as set out below. Provided that the Company has satisfied all conditions precedent to payment and is not otherwise in default under this Agreement, the entire State Commitment shall be available to the Company as soon as practicable after the Company reaches the Jobs Target on or before the Jobs Target Date.

(b) Payment to the Company of the State Commitment shall be in accordance with the provisions of Section 5 hereof.

(c) The Chamber has agreed to invest up to \$100,000 of discretionary support to assist with relocation expenses of key employees to Huntsville (maximum of \$20,000 per employee for up to 5 employees). The Company has outlined key employees to include those with the following job titles: Vice President of Content; Video Host; Wiki Platform Manager; Editor and Writer; eSports Manager; and Video Production Staff. A payment of \$20,000 for each relocated key employee (up to a maximum of five such payments) will be made by the Chamber within ninety (90) days of receipt by the Chamber of documentation in a form reasonably acceptable to the Chamber evidencing the relocation of a key employee.

(d) The City shall make available to the Company forty (40) parking spaces for the Company free of charge for a period of twenty four (24) months beginning the month immediately following the execution of the Agreement by the Company, the State, the City and the Chamber. Such spaces shall be reasonably convenient to the Facility and/or the Company's current Huntsville location and shall be in a location agreed upon in good faith between the Company and the City.

(e) All sums payable to the Company pursuant to the terms of this Agreement will be paid to the Company by check or state warrant to an account designated by the Company.

4. **Recapture of State Incentives.** The Company acknowledges that the incentives offered by the State are based, in part, on the estimated economic impact that will be realized from the Company's capital investment and additional payroll, and that those benefits are justified only if the Company fulfills its commitments as described herein. In consideration thereof, the Company agrees to the following provisions for recapture by the State of cash incentives that the State has paid to or for the benefit of the Company:

(a) If the Company has achieved the Jobs Target by the Jobs Target Date and received the entire State Commitment, the Company shall pay to the State five thousand dollars (\$5,000.00) for each Full-Time Employee (or fraction thereof based on the Yearly Average as defined herein) for any year of the period beginning on the first day of the month immediately following the date on which the Company first achieves the Jobs Target and ending on the fifth anniversary thereafter (the "Jobs Maintenance Period"), that the total number of Full-Time Employees is less than the Jobs Target. If the Company has received some but less than all of the State Commitment the amount per job in the formula above shall be replaced by an amount equal to .05 times the amount received.

(b) Not later than March 1st of each year during the Jobs Maintenance Period and/or at such other times as the State may reasonably request, the Company shall furnish to the Debt Management Division of the Department of Finance a Certificate of Compliance, certified as to the accuracy of the facts stated therein by an executive officer of the Company, certifying that the Company does, or does not continue to meet the Jobs Target. The State may require the Company to provide such other documentation which the State deems necessary to confirm the Company's certification. Any payment due to the State under the provisions of Section 4(a) shall be paid with the Certificate of Compliance.

(c) Notwithstanding anything contained herein to the contrary, the maximum recapture amount that the State may recover from the Company will be the portion of the State Commitment actually received by the Company from the State hereunder.

(d) The right of the State to recapture incentives shall survive the termination of this Agreement.

(e) For purposes of this Agreement, a year of the Jobs Maintenance Period shall be a twelve month period beginning on the first day of the Jobs Maintenance Period and the first four (4) anniversaries thereof.

(f) The recapture amount payable to the State for any year of the Jobs Maintenance Period shall be reduced by any recapture amount paid to the State in any prior year of the Jobs Maintenance Period.

5. Disbursements of the Contribution of the State to the Project. All reimbursements by the State to the Company on account of the Project shall be made only in accordance with the following procedure:

(a) Satisfaction of Conditions Precedent. Payment of the State's contribution to the cost of developing, equipping and constructing the Facility shall be by reimbursement of the Company. It shall be the responsibility of the Company to provide to the Debt Management Division of the Alabama Department of Finance, at the address stated in the section of this Agreement governing the giving of notices, satisfactory evidence by the Company's certification that all of the conditions precedent to such payment as established by the terms of this Agreement or by law have been satisfied.

(b) Request for Reimbursement of the Company by the State. To request reimbursement for costs incurred for developing, equipping and constructing the Facility, the Company shall submit to the Debt Management Division of the Alabama Department of Finance a "Request for Payment" using the form which is Exhibit A to this Agreement. This Request shall be accompanied by supporting documentation which demonstrates to the satisfaction of the State that the expenditures for which reimbursement is sought were incurred only for the developing, equipping or constructing

the Facility and satisfies the additional requirements of subsections (a) and (c) of this Item. Payments to an affiliate of the Company shall not be eligible for reimbursement unless such payments are for costs paid by the affiliate to an unrelated third party or parties in one or more arms length transactions for the development and/or construction of the Facility. In such case documentation of such payments by the affiliate to the third party shall also be provided.

(c) Certificate of Compliance. Each Request For Payment shall be accompanied by a Certificate of Compliance, certified as to the accuracy of the facts stated therein by an executive officer of the Company, certifying that the Company did achieve the Jobs Target as of the Jobs Target Date and that the Company has satisfied all of its other commitments and obligations hereunder. The State may require the Company to provide such other documentation that the State deems necessary to confirm the Company's certifications.

(d) Additional State Requirements. In addition to the requirements of subsections (a), (b) and (c) of this item, the Company shall upon request make commercially reasonable efforts to provide to the Debt Management Division of the Alabama Department of Finance the following documents or information:

- (i) a certificate of the Facility Architect, Engineer, or other person or persons acceptable to the State, certifying that the work, materials, or labor for which the Company is requesting reimbursement have been incorporated into, or installed at, the Facility; that they conform to the plans and specifications for the Facility or are items which the Company has previously identified to the State as being necessary to the developing and constructing of the Facility; or are another reimbursable expense;
- (ii) a release by any third party, including a contractor, supplier, or any other entity that may be specified by the State, of claims against the State, and any entity specified by the State to be the subject of the release;
- (iii) all approvals that might be required by statute or regulation before the Facility can be occupied and before Commencement of Operations, including, by way of example and not for limitation, a Certificate of Occupancy, permits, and licenses; and
- (iv) such other documentation as is deemed necessary by the State to establish that the reimbursement will be for costs incurred for the developing, constructing and the equipping of the Facility and will conform to the requirements of applicable law.

(e) Any Request for Payment from the State not received within one hundred eighty (180) days following the Jobs Target Date will not be paid and the State shall have no further obligation to the Company under Sections 3(a) and 3(b) of this Agreement.

6. Grounds for Termination of the Obligation of the State and Local Parties. The obligations of the State and/or Local Parties hereunder may be terminated by the State and/or Local Parties respectively upon the occurrence of any of the following events:

(a) Failure of the Company to achieve the Jobs Target by the Jobs Target Date.

(b) Failure of the Company to file any Certificate of Compliance that is required by the terms of this Agreement.

(c) The determination by the State or Local Parties that any representations made by the Company or its agents to induce the State, Local Parties or any agency or subdivision thereof to offer incentives to the Company are not true in any material respect.

(d) Failure of the Company to Commence Construction at the Facility by the date specified in the Company's Commitments, Representations and Warranties.

(e) Failure of the Company to Commence Operations at the Facility by the date specified in the Company's Commitments, Representations and Warranties or to meet its Capital Commitment by the date specified in the Company's Commitments.

(f) Failure of the Company to give prior written notice to the State in the event of a Change of Control and of the Company (or in the event of a merger, the surviving company) to commit in writing in a form satisfactory to the State that the Company will satisfy each of the Company's obligations under the Agreement.

(g) Failure of the Company to meet any other commitment or satisfy any other of its obligations that relate to the Project described herein, after the Company is provided with notice of such failure, and such failure is not remedied within fifteen (15) business days of such notice.

7. Costs and Expenses. Each Party agrees to pay its own costs and expenses incurred in connection with the proposals, responses, and negotiation of the transactions contemplated herein, including all costs and expenses incurred in connection with the preparation of any studies or reports, surveys, or approvals for this Agreement or otherwise.

8. **Assignment.** This Agreement is not assignable, except that the Company shall have the right at any time to assign all its rights and obligations in and to the Project and to transfer this Agreement or any part thereof to any financially solvent affiliate of the Company that agrees to assume assigned obligations of the Company in and to the Project and if so assigned, the Company shall remain responsible (as well as the assignee) for the performance of its obligations under this Agreement unless specifically excused therefrom by the State in writing signed by an authorized representative of the State.

9. **Further Assurances.** The Parties agree to do all things and take all actions permitted by law required by this Agreement, to assist and enable the Company to establish the Facility during expansion thereof and on an ongoing basis thereafter, including without limitation, the obtaining, negotiation, execution, and delivery of all necessary or desirable agreements, filings, consents, authorizations, approvals, licenses, or deeds.

10. **Section Titles and Headings.** The section titles and headings are for convenience only and do not define, modify, or limit any of the terms and provisions hereof.

11. **Survival of Representations and Warranties.** The representations, warranties, and covenants made by each of the Parties hereto and contained herein shall survive the performance of any obligations to which such representations, warranties, and covenants relate.

12. **Waivers.** Waiver of any of the obligations of any Party under this Agreement will be effective only when stated in writing and signed by the waiving Party. No delay or omission to exercise any right or power by any Party shall be construed to be a waiver. In the event any provision is waived by a Party, such waiver shall not be deemed to waive any other provision. To the extent that any Party's performance is subject to any regulatory or governing body approvals or requires approval by qualified electors under applicable law, that Party or those Parties shall have no obligation to perform and shall not be liable for non-performance, unless and until such regulatory or governing body approves or authorizes such performance, or such approval of the qualified electors is obtained; provided, however, all Parties affected shall use reasonable efforts to secure such approval or authorization.

13. **Time is of the Essence.** The Parties acknowledge and agree that time is of the essence in the performance of their respective duties under this Agreement.

14. **Notices.** All notices required by, or arising out of, or related to this Agreement shall be sent by United States Mail, first class postage affixed, addressed to the receiving Party as described below:

To the State of Alabama:

Honorable Robert Bentley, Governor
State Capitol
600 Dexter Avenue
Montgomery, Alabama 36130

With a copy to:

Finance Director
State Capitol; Room N-105
600 Dexter Avenue
Montgomery, Alabama 36130

And a copy to:

Debt Management Division
Alabama Department of Finance
100 North Union Street; Suite 224
Montgomery, Alabama 36130

To the Company:

Mr. Brandon Byrne
Vice President of Finance
Curse, Inc.
351 California Street
Suite 1450
San Francisco, California

To the City:

Mayor Tommy Battle
P.O. Box 308
Huntsville, AL; 35804

To the Chamber:

Mr. Chip Cherry
President & CEO
Chamber of Commerce of Huntsville/Madison County
225 Church Street
Huntsville, Alabama 35803

or to such other address as the receiving Party shall have most recently forwarded to the sending Party pursuant to the provisions of this Section. All notices shall be effective upon receipt.

15. Definitions. For the purposes of this Agreement, the following terms shall have the meanings set out in this Section:

“Change of Control” shall mean either:

(i) the acquisition by any “Person” (as the term “person” is used for the purposes of Section 13(d) or 14(d) of the Securities Exchange Act of 1934, as amended (the “1934 Exchange Act”)) of direct or indirect beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 50% or more of the combined voting power of the then-outstanding securities of the Company entitled to vote in the election of directors, or

(ii) The consummation of a merger, consolidation, reorganization, statutory share exchange, or similar form of corporate transaction involving the Company, the sale or other disposition of all or substantially all of the Company’s assets, provided that any merger, consolidation, reorganization, statutory share exchange, or any other transaction with or among affiliates of the Company shall be excluded from this definition.

“Commence Construction” or “Commencement of Construction” means that the company has entered into a lease of the Facility indicating a commitment to the Project by the Company reasonably acceptable to the Local Parties and State and that the physical work is being performed, using appropriate equipment and manpower to develop, construct and equip the Facility and install necessary infrastructure to accomplish the objectives of the Project.

“Commence Operations” or “Commencement of Operations” shall mean the Facility is functioning as described in the Recitals to this Agreement.

“Effective Date” means the date upon which this Agreement is signed by the Governor of the State of Alabama.

“Full-Time Employee” shall mean a person (a) who is being paid directly by the Company for working at the Facility for not less than thirty-six (36) hours per work week, (b) who the Company identifies as its employee to the U.S. Internal Revenue Service or the Alabama Department of Revenue or the Alabama Department of Industrial Relations on returns or reports filed with the foregoing, including but not limited to, IRS Form 941 and (c) who is eligible to participate under such benefit plans as are generally applicable to employees holding positions of like kind and character within either the company or other members of its control group within the United States of America. No employee of the Company or any affiliate thereof (other than the twenty (20) Existing Employees set out above) employed in the State of Alabama at the time transferred to the

Facility by the Company or any affiliate thereof shall constitute a Full-Time Employee, except to the extent that the Company certifies to the State with respect to any such employee (a "Transferred Employee") that it has not eliminated the Transferred Employee's previous position and that a new employee has been hired to fill substantially the same job within the State of Alabama and in the same pay category as that held by the Transferred Employee.

"Yearly Average" shall be calculated on an annual basis for each applicable year during the Jobs Maintenance Period. The Yearly Average shall be determined by calculating the sum of the number of Full-Time Employees on the last day of each month during the applicable year and dividing that sum by twelve (12).

16. **Indemnification.** The Company shall release, save, hold harmless, and indemnify the State and Local Parties, their elected officials, officers, employees, and agents (collectively, the "Indemnified Parties") from and against any and all claims arising from the performance of any obligation herein, or arising from or in connection with any activity of the Company or any of the Company's agents, contractors, or employees in connection with the Project, and from and against all costs, attorney fees, expenses, and liabilities incurred in the defense of any such claim or any action against the Indemnified Parties, or any of them individually, by reason of any such claim, and the Company, upon notice from the State or Local Parties, shall defend the same at the Company's expense by counsel satisfactory to the State and/or Local Parties as the case may be. The foregoing indemnity obligation shall include, but is not limited to, indemnification of the Indemnified Parties against any claim for payment brought by any contractor, subcontractor, materialman, supplier, laborer, design professional, or the like in connection with work, labor, and/or materials supplied in connection with the improvements of the Project. The foregoing indemnity obligation shall survive the expiration or earlier termination of this Agreement.

17. **Entire Agreement; Amendment.** This Agreement is the entire agreement and supersedes all prior and collateral communications and agreements of the Parties relating to the subject matter. This Agreement may be amended only by a written modification executed by each of the affected Parties' duly authorized representatives.

WHEREFORE, the Parties hereto, intending to be legally bound by the provisions herein set out, have caused this Agreement to be signed and delivered by their duly authorized representatives on the respective dates as indicated below.

STATE OF ALABAMA

Robert Bentley
Robert Bentley, Governor

June 19, 2013
DATE

RB

Signature Page for Curse, Inc. Project Agreement

CURSE, INC.

By:  _____

Name: Brandon Byrne

Title: VP, Finance

Date: 6/10/13

Signature Page for Curse, Inc. Project Agreement

**CHAMBER OF COMMERCE OF
HUNTSVILLE/MADISON COUNTY**

By:  _____

Name: H.P. AERRY

Title: PRESIDENT & CEO

Date: 6/12/13

Signature Page for Curse, Inc. Project Agreement

CITY OF HUNTSVILLE

By: 

Name: THOMAS BATTLE

Title: MAYOR

Date: 13 JUN 13

Signature Page for Curse, Inc. Project Agreement

**EXHIBIT A
TO CURSE, INC.
PROJECT AGREEMENT
REQUEST FOR PAYMENT NO.**

DATE:

TO:

DEBT MANAGEMENT DIVISION
ALABAMA DEPARTMENT OF FINANCE
100 NORTH UNION STREET; SUITE 224
MONTGOMERY, AL 36130-2617

FROM RECIPIENT: _____

RE: PROJECT _____

PROJECT AGREEMENT DATED: _____

AMOUNT REQUESTED: \$ _____

Pursuant to the Project Agreement for this Project, Recipient hereby requests payment in the amount specified above. Recipient certifies that all conditions for payment under the terms of the Project Agreement have been satisfied and that the expenditures for which reimbursement is being requested qualify for reimbursement under the Project Agreement and that each has been paid either directly by the Company or an affiliate of the Company. Submitted with this Request for Payment are invoices or other evidence of documentation of these expenses and the payment thereof as specified in Section 5(b) of the Project Agreement.

CURSE, INC.

By: _____

Its: Authorized Representative