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This Agreement has important legal and insurance consequences. Consultation with an attorney and insurance consultant is encouraged with respect to its completion or modification.

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ANNEX 1 – [Intentionally omitted]

ANNEX 2 - PROPERTY DESCRIPTION

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EXHIBIT B - DESIGN/BUILDER’S EQUIPMENT WITH AGREED UPON RENTAL RATES (to be included with GMP
Amendment)

EXHIBIT C - WAGE DETERMINATION

EXHIBIT D – HOTEL BRAND PROJECT COMPLETION REQUIREMENTS (to be included upon selection of Operator)

EXHIBIT E - DESIGN & PRE-CONSTRUCTION BUDGET SCHEDULE

EXHIBIT F - INSURANCE REQUIRED OF DESIGN/BUILDER

EXHIBIT G – FORM OF PAYMENT & PERFORMANCE BOND

EXHIBIT H – FORM OF AFFIDAVIT OF ENROLLMENT IN FEDERAL WORK AUTHORIZATION PROGRAM
AMENDMENT (GMP)

**DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS
BETWEEN OWNER AND DESIGN/BUILDER**

(Where the Basis of Payment is the Cost of the Work plus a Fee, with a Guaranteed Maximum Price)

AGREEMENT

This Agreement is made this 3rd day of November in the year 2025, by and among the

"DESIGN/BUILDER"

**McCownGordon Construction, L.L.C.
850 Main St.
Kansas City, Missouri 64105**

and the

"OWNER"

**Capital City Corporation for Growth
320 E. McCarty St.
Jefferson City, Missouri 65101**

&

**City of Jefferson, Missouri
320 E. McCarty
Jefferson City, Missouri 65101**

for services in connection with the following:

"PROJECT"

The Project consists of the design and construction of a coordinated unified development consisting of three components in accordance with this Agreement and consistent with the Brand Standards: (1) an Upper-Upscale, multistory 200-room minimum, full-service hotel with appropriate support facilities such as a restaurant(s), a lounge(s), or bar(s), supporting back-of-house areas and food preparation facilities, together with such other amenities and features characteristic of a full-service conference center hotel (the "Hotel" or "Hotel Component"), (2) a conference center facility consisting of a grand ballroom, junior ballroom, meeting rooms, a board room and allocable common areas within the same building structure as the Hotel, with related infrastructure and other public facilities or infrastructure (the "Conference Center Component"), and (3) a public structured parking facility directly connected to the Hotel and Conference Center facilities (the "Parking Component" and, collectively with the Hotel and Conference Center Facilities, the "Project"). The Project will be constructed on land owned by the City of Jefferson, Missouri (the "City") as described in **Annex 2**, attached hereto and made a part hereof (the "Property"). The services required of the Design/Builder to design and construct the Project, and each of its components, are set forth in this Agreement. The Hotel Site is subject to a ground lease between the City, as landlord, and the Capital City Corporation for Growth ("Hotel Owner"), as tenant (the "Ground Lease").

Notice to the parties shall be given at the above addresses as set forth in Section 14.10.

ARTICLE 1 DEFINITIONS

1.1 "Additional Services" is defined in Section 3.8.

1.2 "Applicable Laws" means all laws, statutes, ordinances, building codes, regulations, rules, orders and resolutions of all national, administrative, state, local, municipal, and other governing bodies relating to the Project or to the performance of the Services or the Work.

1.3 "Architect" means collectively **DLR Group** and any successor architect firm that Design/Builder may retain in connection with the Project, provided, however, any successor architect is subject to prior approval of Owner and further provided any consultants or subconsultants of the Architect are subject to the prior approval of Owner.

1.4 "Brand Standards" means the policies, practices and standards generally employed by Operator or its affiliates in operating system hotels and branded ancillary operations associated with Operator or its affiliates, if applicable.

1.5 "Bond Indenture" means Bond Trust Indenture to be entered into between the Bond Issuer and the Bond Trustee providing for the issuance of the Bonds and the use of proceeds thereof to fund construction of the Project.

1.6 "Bonds" means the bonds to be issued pursuant to the Bond Indenture for the purpose of financing the Project.

1.7 "Bond Trustee" means the bank or trust company serving as trustee under the Bond Indenture.

1.8 "Change Order" means a written order to Design/Builder executed by the Owner in accordance with the Agreement authorizing and directing an addition to, deletion from, or adjustment or revision to the requirements of the Contract Documents, or an adjustment to the compensation payable to Design/Builder, or to the time for performance of the Agreement or completion of the Project, or any combination thereof.

1.9 "City" means the City of Jefferson, County of Cole, State of Missouri.

1.10 "Construction Contingency" means a sum, included in the GMP, established by the Design/Builder and approved by Owner, such approval not to be unreasonably withheld, for use by the Design/Builder to reimburse for costs which are properly reimbursable as a Cost of the Work, but are not the basis of a Change Order as further provided in Section 3.2.2.

1.11 "Construction Fund" means the fund established by the Bond Trustee for the sole use of funding the Design/Builder's GMP for the Project and an amount for changes in the Work.

1.12 "Construction Phase" means that phase of the Work commencing as described in Section 3.3.1 to construct the Project.

1.13 "Construction Phase Services" means Services rendered during the Construction Phase of the Project.

1.14 "Contract Documents" means this Agreement, any amendments to this Agreement, drawings, specifications and other documents referenced in Section 2.4.

1.15 "Contract Time" means the period of time afforded by this Agreement for the Substantial Completion of the Work and the period of time afforded by this Agreement for the Final Completion of Work (as each of these terms are defined herein), as such times may be adjusted in accordance with the terms and provisions of this Agreement.

1.16 "Contract Value" means the total Cost of the Work, General Conditions, Construction Contingency, and Design/Builder's Fee.

1.17 "Conference Center Component" means the conference center portion of the Project as defined in the "Project" paragraph on page 1 of this Agreement.

1.18 "Cost of the Work" means all costs necessarily incurred in the proper performance of the Work, including without limitation, all costs set forth in Section 8.1 and 8.2, costs for all labor, materials, supplies, equipment, taxes, fees, expenses and other items or amounts incurred or owing under the contracts entered into pursuant to this Design/Build Agreement.

1.19 "Day" means calendar day.

1.20 [Intentionally omitted.]

1.21 "Design/Builder" means McCownGordon Construction, LLC, and its permitted successors and assigns, the entity engaged as the design/build contractor for the Project.

1.22 "Design/Builder's Fee" as described in Article 7 and calculated in accordance therewith, includes both the Design/Builder's fee associated with the Design Phase and the Design/Builder's fee associated with the Construction Phase.

1.23 "Design/Builder's Representative" means the individual named by Design/Builder to act on Design/Builder's behalf in the administration of this Agreement.

1.24 "Design Phase" means the phase of the Project ending upon completion by the Architect of the Construction Documents and execution of the GMP Amendment for the Project.

1.25 "Design Phase Services" means all Services required during the Design Phase of the Project.

1.26 "Development Manager" means Garfield Public/Private LLC or such other entity designated by written notice of the Owner to the Design/Builder.

1.27 "Effective Date" means the date of execution of this Agreement by all parties.

1.28 "Extreme Weather" means those weather delays that exceed the number of Days contained in the Construction Schedule designated in accordance with Section 6.3.1.1 to compensate for delays due to weather events during the construction of the Project. An Extreme Weather delay shall be measured as a delay only if it directly affects the critical path in accordance with the monthly updated Construction Schedule and exceeds those Days already contained in the Construction Schedule.

1.29 "FF&E" means furniture, fixture and equipment purchased to be used in the Project.

1.30 "Final Completion" means the completion of all Work required by, and in strict compliance with, the Contract Documents for the Project, including: (i) all work and punch list items have been inspected and satisfactorily completed as determined by the Owner; (ii) consent of sureties have been obtained; (iii) start-up, testing, training, regulatory approvals from all applicable authorities have been obtained; (iv) all close-out documents, including warranty and operation manuals, have been received by Owner, (v) all requirements for Final Payment have been met; (vi) all preparations necessary to successfully operate and maintain the Project have occurred; (vii) a Certificate of Occupancy for 100% of the Hotel Component, the Conference Center Component and the Parking Component has been received by the Owner; (viii) all requirements of Operator reasonably necessary for the operation of the Project in accordance with the Brand Standards have been met; and (viii) the Owner has accepted the Project.

1.31 "Final Completion Date" is that certain date set forth in the GMP Amendment and in Section 6.2 as the date the Design/Builder agrees to achieve Final Completion of the Project as same may be extended in accordance with this Agreement.

1.32 "Force Majeure" means war, riots, civil commotion, strikes, labor disputes, embargoes, natural disasters, acts of God, materially adverse litigation relating to the Project or any other cause or contingency similarly beyond the reasonable control of

the parties. A delay or default of performance hereunder by any party due to Force Majeure shall not be an Excusable Delay unless, pursuant to Section 6.11.1, timely notice is given to the other parties of the Force Majeure event making performance impossible.

1.33 "GMP" means the Guaranteed Maximum Price for the Project, as defined and subsequently established in the GMP Amendment, and includes the Design/Builder's Fee as defined in Section 1.23 and the Cost of the Work as defined in Article 7 and Article 8.

1.34 "GMP Amendment" means the amendment to this Agreement as set forth in Section 3.2.7 by which the GMP is established.

1.35 "GMP Proposal" means the proposal prepared by the Design/Builder whereby the Design/Builder shall submit to Owner the definitive Cost of the Work and other components of the GMP, along with dates for Substantial Completion and other milestones for the Project, as more fully described in Section 3.2.

1.36 "Hotel Component" means the Hotel portion of the Project as defined in the "Project" paragraph on page 1 of this Agreement.

1.37 "Intellectual Property" means all intellectual property rights of any kind, including patent rights (whether design or utility), copyrights, trademark and service mark rights, trade dress rights, utility model rights, moral (personal) rights, rights of publicity, trade secret rights, industrial design rights, and website and internet domain rights. The Owner shall own all Intellectual Property related to the Project as set forth in Section 3.1.7 herein.

1.38 "Notice to Proceed" means that certain written notice issued by the Owner to the Design/Builder pursuant to Section 3.3.1 notifying the Design/Builder to proceed with the Work.

1.39 "OFCl" (Owner Furnished Contractor Installed) means any FF&E, such as, carpet, LVT, wall covering, decorative lighting, guest bathroom vanities, guest bathroom vanity electric mirrors, guestroom drapery valances, etc. that are part of the Work and which are purchased by the Owner but installed by Design/Builder.

1.40 "Operator" means a Separate Contractor who enters into a contract with the Hotel Owner to operate the Hotel Component of the Project.

1.41 "OS&E" means the Owner's operating supplies and equipment purchased to be used in the Project. The OS&E is not included in the Work.

1.42 "Owner" means, collectively, the City and the Capital City Corporation for Growth; provided,

whenever any action is required by the Owner hereunder (whether consent, direction or otherwise), action by the City alone shall be sufficient unless this Agreement explicitly calls for consent of the Hotel Owner.

1.43 "Owner's Commissioning Agent" means an independent, third-party specialist hired by the Owner to review that all the building's systems, including without limitation HVAC, electrical, etc., function as designed and intended to comply with Owner's needs (including requirements of Operator reasonably necessary for the operation of the Project in accordance with the Brand Standards).

1.44 "Owner's Contingency" means an amount or amounts set forth in the Project Budget by Owner outside of the GMP, which at Owner's direction and only through Owner's written approval may be allocated to cover Owner-approved changes to the Project. Design/Builder shall have no right to any money held in the Owner's Contingency.

1.45 "Owner's Representative" means the City Administrator of the City or such other person as may be designated in writing by the City Administrator of the City as its representative for the Project.

1.46 "Parking Component" means the Parking Facilities as defined in the Project paragraph on page 1.

1.47 "Project Budget" means the budget for the Project included in the Program.

1.48 "Program" means the initial description of the Owner's and Development Manager's objectives for the Project, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

1.49 "Revised Substantial Completion Date" or "Revised SC Date" means the new date established for Substantial Completion of the Project resulting from extensions of time permitted by this Agreement which extend the date of Substantial Completion for either the Conference Center Component, the Parking Component, or the Hotel Component.

1.50 "Schedule of Work" (sometimes herein referred to as the "Construction Schedule") is described in Section 3.3.4.

1.51 "Separate Contractor" means any contractor, but not including Design/Builder or the Subcontractors, with whom Owner enters into a direct contract for the performance of services not included in the GMP.

1.52 "Services" means those services, functions, roles, responsibilities, obligations and duties required

of Design/Builder pursuant to the terms of the Contract Documents.

1.53 "Subcontractor" means any person or entity having a direct contract or purchase order with Design/Builder for the performance or supply of all or any portion of the Work required by the Contract Documents or the supply of any materials, services, equipment or installation services required by the Contract Documents. The term Subcontractor does not include the Architect or any Separate Contractor employed by the Owner. The term Subcontractor shall also mean the Design/Builder in regard to any portion of the Work self-performed by the Design/Builder as permitted in this Agreement.

1.54 "Subcontractor Default Insurance" or "SDI" means insurance coverage for the full and faithful performance of Design/Builder's Subcontractors as described in Section 3.2.13.

1.55 "Subcontracts" means the contracts between Design/Builder and any Subcontractor but does not include those with the Architect. Owner acknowledges that some of the subcontracts will be fixed price or lump sum agreements and will be exempted from any financial audit pursuant to Section 8.3.

1.56 "Substantial Completion" means the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, including being sufficiently complete for the Operator to open the Project for business to the public. Notwithstanding any provision of the Contract Documents to the contrary, including but not limited to Section 6.2 hereof, Substantial Completion shall not occur for the Project unless and until (i) Owner's Commissioning Agent has been provided adequate time and opportunity under commercially reasonable standards to complete Owner's third-party commissioning of applicable building systems; and (ii) the Contractor achieves sign-off from the Owner's Commissioning Agent by demonstrating that the building systems commissioned by the Owner perform according to the design intent, requirements, and operational needs as set forth in the approved Contract Documents, inclusive of agreed upon Brand Standards requirements; and (iii) the Owner, operator and/or brand for the Project, or designated portion thereof, based on the approved Project schedule including Owner, Operator and/or brand items, has had sufficient access to and availability of the Project, or designated portion thereof, for the training of its onsite personnel and the installation of FF&E, OS&E, and IT, subject only to Owner approved punch list items, of which the Design/Builder will diligently pursue completion no later than the Final Completion date.

1.57 "Substantial Completion Date" or "SC Date" is that certain date set forth in the GMP Amendment, or

in an applicable subsequent Change Order, as the date the Design/Builder agrees to achieve Substantial Completion of the Project.

1.58 "Sub-Subcontractor" means any person or entity which has a subcontract or purchase order with a Subcontractor to perform or provide any portion of the Subcontractor's work.

1.59 "Upper-Upscale" means the hotel chain scale segment upper upscale as determined by STR which includes brands such as Hilton, Hyatt, Hyatt Regency, Kimpton, Le Meridien, Marriott, Millennium, Omni, Renaissance, Sheraton, Westin, and Wyndham Grand, among others.

1.60 "Value Engineering" means the detailed analysis of systems, equipment, materials, services, facilities, and supplies required by the Contract Documents for the purpose of achieving the desired and essential functions of the Project, and when applicable, at the lowest Life Cycle Cost consistent with required and necessary performance, reliability, quality and safety. Value Engineering is to be performed during the Design Phase as a part of the Services required to reach a GMP for the Project acceptable to all parties. "Life Cycle Cost" means the sum of all costs of the Project over its useful life, and includes the cost of design, construction, acquisition, operation, maintenance, and salvage/resale value.

1.61 "Warranties" means warranties obtained from the Design/Builder, Subcontractors, Sub-Subcontractors, consultants and sub-consultants of the Design/Builder pursuant to this Agreement, together with any and all manufacturer's warranties in the name of or to be assigned to the Owner covering the design of the Project, the work performed or materials furnished to the Project or any subcomponent portion thereof by the Design/Builder.

1.62 "Work" is defined in Section 2.5.

ARTICLE 2 GENERAL PROVISIONS

2.1 TEAM RELATIONSHIP The Owner and the Design/Builder agree to proceed with the Project on the basis of good faith and fair dealing, and shall take such actions that are reasonably necessary to perform this Agreement in an economical and timely manner, including consideration of design modifications and alternative materials or equipment that will permit the Work to be constructed within the Guaranteed Maximum Price ("GMP") and by the Substantial Completion and Final Completion Dates. The Design/Builder shall cause the Architect and all design professionals to design the Work in accordance with the GMP; however, the Design/Builder may take reasonable actions necessary to maintain the GMP including minor changes to the drawings or

specifications for a particular material, device, or system after the GMP is accepted subject to the prior written consent of the Owner. The Design/Builder may also utilize Value Engineering, subject to the prior written consent and approval of the Owner and alternative systems analysis so long as the original intent of the systems or components within the Project is maintained. The Design/Builder agrees to procure the architectural and engineering services set forth below, and to furnish construction and administration of the Work. Nothing in this Agreement or any other Contract Document shall be construed or interpreted to establish a fiduciary relationship between the Design/Builder and the Owner or any other party.

2.2 ARCHITECT Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Design/Builder or furnished by licensed employees of the Design/Builder. **DLR Group** has been selected as Architect for the Project. The person or entity providing architectural and engineering services is referred to as the Architect. The Architect is an independent design professional. The architectural and engineering services shall be procured pursuant to a separate agreement between the Design/Builder and the Architect subject to the approval of the Owner's Representative, which approval shall not be unreasonably withheld. Design/Builder shall contractually obligate Architect to indemnify the Owner and Development Manager, and to maintain insurance for the benefit of the Owner and Development Manager and their officers and employees as additional insureds (where applicable), in each case in form and substance not less than is customary for a project with a similar scope as the Work. Furthermore, it is agreed that the Owner has reviewed the insurance of the Architect and finds it to be acceptable. It is understood that the Owner, Development Manager and Design/Builder are third-party beneficiaries under the insurance coverages to be provided by the Architect (except with respect to the Architect's professional liability insurance policy), but no other third-party beneficiary relationship is created herein. All contracts relating to the architectural and engineering services of the Work shall contain provisions that: (i) indemnify the Owner and Development Manager, and their officers and employees against any costs or liabilities thereunder to the extent allowed by Missouri law, (ii) acknowledge that Owner and Development Manager have no obligations and liability thereunder, (iii) identify the Owner and Development Manager as intended third-party beneficiaries thereof entitled to enforce their rights thereunder in their own name (except with respect to the professional liability insurance policies); (iv) list the Owner and the Development Manager along with their officers and employees as additional insureds on policies excluding Professional Liability and Workers Compensation; and (v) otherwise comply with the other requirements of this Agreement. The Architect may not be changed by the Design/Builder without prior written consent of the Owner.

2.3 EXTENT OF AGREEMENT This Agreement and the Contract Documents are solely for the benefit of the parties, represent the entire and integrated agreement among the parties, and supersede all prior negotiations, representations or agreements, either written or oral.

Certain sections and provisions of that certain Master Development Agreement executed by and between the City and the Development Manager as of even date herewith are included in Exhibit ____ in order that the Design/Builder may more readily understand the context and scope of its obligations hereunder.

2.4 CONTRACT DOCUMENTS The Contract Documents consist of:

- .1 Change Orders and written amendments to this Agreement signed by the Owner, Design/Builder and, where applicable, Architect, including the GMP Amendment and its attachments;
- .2 this Agreement and all Exhibits attached hereto;
- .3 the most current Contract Documents approved by the Owner pursuant to Sections 3.1.4, 3.1.5, or 3.1.6;
- .4 the information provided by the Owner pursuant to Section 4.1.2.1.

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the Contract Documents shall govern in the order in which they are listed above.

2.5 WORK The Work includes (i) Design Phase Services procured in accordance with Section 3.1; (ii) the labor, materials, equipment and other costs along with Design/Builder' Fee set forth in the GMP Amendment provided in accordance with Section 3.2; (iii) the Construction Phase Services provided in accordance with Section 3.3; (iv) Additional Services that may be provided in accordance with Section 3.8; (v) owner furnished contractor installed items (OFCI) of FF&E, OS&E and IT; and (vi) other services which are necessary to the Project in accordance with and reasonably inferable from the Contract Documents. All responsibility for the acquisition, storage and installation of FF&E other than OFCI shall not be included in the Work.

ARTICLE 3 DESIGN/BUILDER'S RESPONSIBILITIES

The Design/Builder shall be responsible for procuring the design and for the construction of the Work consistent with this Agreement and the Contract Documents. The Design/Builder shall exercise reasonable skill and judgment in the performance of its Services but does not warrant or guarantee schedules and estimates other than those that are part of the GMP Amendment. The Design/Builder's representative is Steve Jones.

3.1 DESIGN PHASE SERVICES

3.1.1 PRELIMINARY EVALUATION The Design/Builder has provided a preliminary evaluation of the feasibility Project based on the Program and other relevant information.

3.1.2 PRELIMINARY SCHEDULE The Design/Builder shall prepare a preliminary schedule of the Work for Owner's written approval. The schedule shall show the activities of the Development Manager, Owner, Architect and Design/Builder necessary to meet the Project completion requirements. The schedule shall be updated periodically with the level of detail for each schedule update reflecting the information then available. If an update indicates that the end date of a previously approved schedule will not be met, the Design/Builder shall recommend corrective action to the Owner in writing.

3.1.3 PRELIMINARY ESTIMATE When sufficient information has been identified, the Design/Builder shall prepare for the Owner's and Development Manager's written approval a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques, for the Project. The cost estimates shall be updated periodically with the level of detail for each estimate update reflecting the information then available. If the preliminary cost estimate or any update exceeds the Project Budget, the Design/Builder shall make written recommendations to the Owner.

3.1.4 SCHEMATIC DESIGN DOCUMENTS In accordance with the Project Schedule, the Design/Builder shall submit to Owner for Owner's approval, Schematic Design Documents, based on the Program, Brand Standards, and other relevant information. The Schematic Design Documents include drawings, outline specifications and other conceptual documents illustrating the Project components basic elements, scale, and their relationship to the Site. One set of these documents shall be furnished to each of the Owner. The Design/Builder shall update the preliminary schedule and cost estimate based on the Schematic Design Documents.

3.1.5 DESIGN DEVELOPMENT DOCUMENTS In accordance with the Project Schedule, the Design/Builder shall submit to the Owner for Owner's approval Design Development Documents based on the approved Schematic Design Documents. The Design Development Documents further define the components of the Project including drawings and outline specifications fixing and describing the Hotel Component, Conference Center Component, and Parking Component size and character, and other appropriate elements incorporating the structural, architectural, mechanical and electrical systems for the overall Project. One set of these documents shall be furnished to the Owner. If and when the Owner approves the Design Development Documents, the Design/Builder shall update the schedule and issue the GMP Amendment based on the Design Development Documents.

3.1.6 CONSTRUCTION DOCUMENTS The Design/Builder shall submit for the Owner's written approval Construction Documents based on the approved Design Development Documents for the Project. These Documents shall set forth in detail the requirements for construction of the Work, and shall consist of drawings and specifications based upon codes, laws or regulations enacted at the time of their preparation, Brand Standards, and other relevant information. Construction shall be in accordance with these approved Construction Documents subject to changes in the Work provided for in this Agreement. One set of these documents shall be furnished to the Owner prior to commencement of construction.

3.1.7 OWNERSHIP OF DOCUMENTS

3.1.7.1 It is mutually agreed that all materials prepared by Design/Builder and all Subcontractors and Sub-Subcontractors under this Agreement will become the property of the Owner upon payment for the materials by Owner. Immediately upon payment for the materials by Owner, Owner will be entitled to, and Design/Builder will deliver to Owner, all data, drawings, specifications, reports, estimates, summaries and other such materials as may have been prepared or accumulated to date by Design/Builder and all Subcontractors and Sub-Subcontractors in performing this Agreement, which is not Design/Builder's privileged information, as defined by law, or Design/Builder's personnel information. It is expressly understood and agreed that if this Agreement is terminated, the Design/Builder must tender all such materials within ten (10) Days of receipt of payment.

3.1.7.2 Additionally, it is agreed that Owner and Design/Builder intend this to be a contract for services, and each considers the products and results of the services to be rendered by Design/Builder under this Agreement in connection with the Project to be a work made for hire. Design/Builder acknowledges and

agrees that this work product (and all rights in this Agreement, including, without limitations, Intellectual Property) (hereinafter "Work Product") belongs to and will be the sole and exclusive property of Owner. Notwithstanding the foregoing, ownership of the Work Product shall not vest in the Owner unless and until the Design/Builder is paid in full for all amounts properly due for such Work Product under this Agreement. To the extent any portion of the Work Product is determined not to constitute a work made for hire under applicable law, the Design/Builder shall assign, effective upon full payment as described above, all right, title, and interest in and to such Work Product to the Owner. The foregoing shall not apply to, and Design/Builder expressly reserves all rights, in, its standard details, designs, specifications, components, or other pre-existing or reusable materials developed independently of this Project, provided that Owner shall have a perpetual, irrevocable, royalty-free license to use such excluded materials solely as incorporated into the Work Product for the design, construction, occupancy, operation, and maintenance of the Project. Owner shall have the right to use such Work Product in connection with the construction of, and any repairs or alterations to, the Project. Owner releases the Architect, the Design/Builder and the Development Manager from any claims or damages resulting from any alteration of the Work Product by Owner in connection with the Project which is not approved by Design/Builder and the Architect and/or the use of such Work Product in the construction, repair or alteration of something other than the Project.

3.1.8 SCHEDULE OF FEES AND EXPENSES

Attached to this Agreement as **Exhibit E** and made a part hereof, is a schedule of (i) pre-construction fees paid to Design/Builder; (ii) anticipated fees, expenses and costs to be incurred by Design/Builder and its design team, including Architect, any engineer and any subconsultants, relating to design or preconstruction services to be incurred prior to submission of the GMP Proposal (the "Pre-Construction Budget Schedule"). Prior to the Effective Date the Design/Builder shall not incur any cost to be reimbursed as part of the Cost of the Work for the Design Phase, except as authorized in the Design-Build Pre-Construction Agreement, if any.

3.1.9 COORDINATION OF CONSTRUCTION

The structures constituting the components of the Project, viz. the Conference Center Component, the Parking Component and the Hotel Component, will be connected with one another as part of an integral whole. Accordingly, the Architect, and many of the Subcontractors and Sub-Subcontractors, will be providing services on more than one component of the Project and in certain situations a Subcontract may include work on more than one component of the Project. In these situations, the Design/Builder will allocate the cost of any such Subcontract in accordance with any written instructions provided Owner that accurately reflect the cost of the services

performed for that portion of the Project. If no such written instructions are timely provided by Owner, Design/Builder will allocate the cost of any such Subcontract among the applicable structures based on Design/Builder's best estimate as to the value of the services or material provided for each structure. Design/Builder shall provide Owner with its reason and justification of each Subcontract allocation with the applicable Application for Payment.

3.1.10 MODEL ROOMS AND EXTERIOR MOCKUP COMPLETION

The model rooms for the Hotel Component and exterior skin mock up for the Project will be completed and delivered by Design/Builder on time in accordance with the scheduled date for delivery of each such item. Such scheduled dates shall be agreed upon by Design/Builder and Owner on or before the date of the GMP Amendment to this Agreement. Such dates shall be scheduled to occur early in the Construction Phase to allow for timely design and construction adjustments, Hotel Brand approval, and Value Engineering changes to the model rooms and/or exterior skin, as applicable. In the event either or both of such schedule dates are delayed without any approval by Owner for any such delay, each Day of unexcused delay for each of the items shall be automatically deducted from the number of days for any excused delays previously, or otherwise to be, granted to Design/Builder in accordance with Section 6.3 of this Agreement.

3.2 GUARANTEED MAXIMUM PRICE

3.2.1 GUARANTEED MAXIMUM PRICE PROPOSAL

When the Design Development Documents have been approved by Owner, Design/Builder shall provide a GMP Proposal for all Components of the Project, which shall be the sum of the estimated Cost of the Work as defined in Article 8 and the Design/Builder's Fee as defined in Article 7. The GMP is subject to modification only as provided in Article 9. The Owner and Design/Builder understand and agree that the intent of this Agreement is to cause the Design/Builder to construct all Components of the Project within the scheduled time period at or below the GMP as adjusted for changes provided in accordance with this Agreement.

3.2.2 The GMP Proposal shall include amounts for approval by Owner for Construction Contingency for the entire Project. The Construction Contingency shall not be allocated to any particular item of the Cost of the Work and is established for increases in the Cost of the Work incurred by Design/Builder due to any scope gaps, exigencies or unforeseen causes at the time of execution of this Agreement. It is not intended for changes in the scope of the Work or for reimbursement of expenses and costs not otherwise recoverable as a Cost of the Work under Article 8 of

this Agreement. It is understood that the amount of the Construction Contingency is the maximum sum available to the Design/Builder to cover the Cost of the Work not included in the GMP which is incurred by the Design/Builder as a result of such unforeseeable causes and exigencies, and it is further understood that cost overruns in excess of the amount of the Construction Contingency or other costs not reimbursable as Cost of the Work will be borne by the Design/Builder. The Design/Builder will not be allowed to use any part of the Construction Contingency except as expressly authorized and approved by Owner, such approval not to be unreasonably withheld. Design/Builder will provide a monthly written statement summarizing the Construction Contingency activity and any balance adjustment from the previous period, which shall be subject to approval by Owner. To avoid confusion, the Design/Builder shall have no right at any time to any monies held by Owner within Owner's Contingency.

3.2.3 BASIS OF THE GUARANTEED MAXIMUM PRICE

The Design/Builder shall include with the GMP Proposal a written statement of the basis of the proposal, organized by Project Component and including all Work Packages (described in Section 3.2.8 below), the details of which shall include but not be limited to:

- .1 a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP Proposal;
- .2 a list of allowances, if any, by item and amount and a statement of their basis;
- .3 a list of the assumptions, clarifications and exclusions made by the Design/Builder in the preparation of the GMP Proposal to supplement pricing and the information contained in the drawings and specifications;
- .4 the GMP, including a statement of the estimated cost organized by Project Component;
- .5 the dates for Substantial Completion and Final Completion upon which the proposed GMP is based, and the Schedule of Work upon which these dates are based;
- .6 schedule of applicable alternate prices;
- .7 schedule of applicable unit prices, including, without limitation, the finish costs per square foot of typical guest rooms, suites, guest room corridors and public areas;

- .8 the results of Design/Builder's Value Engineering analysis of applicable components of the Project;
- .9 statement of Additional Services included, if any; and
- .10 the time limit for acceptance of the GMP Proposal or which shall not be less than 30 Days.

When Design/Builder submits the GMP Proposal, Design/Builder shall note those portions of the GMP that are the subject of previously approved Work Package Authorizations (as defined below).

3.2.4 The Design/Builder shall meet with the Owner to review the GMP Proposal. In the event that the Owner discovers any inconsistencies or inaccuracies in the information presented, the Owner shall promptly give written notice to the Design/Builder, who shall make appropriate adjustments to the GMP, its basis, or both.

3.2.5 Unless the Owner accepts the GMP Proposal on or before the date specified in the proposal for such acceptance and so notifies the Design/Builder, the GMP Proposal shall not be effective.

3.2.6 Owner reserves the right to approve various work packages ("Work Packages") before the GMP Amendment is executed, by and through the process detailed below:

3.2.6.1 It is anticipated that the Work may be divided into one or more phases or packages which may be ready for commencement of construction before it is appropriate to arrive at the GMP. If Owner elects to proceed before the parties agree to the GMP Amendment, Design/Builder shall bid and procure proposals from trade contractors for any pre-GMP Work and/or packages of the Work identified by the Design/Builder as required to maintain the Project Schedule. Unless an alternate approach is approved in writing by Owner for any specific scope of work, Design/Builder shall competitively bid such work with specific trades.

- .1 When the price proposal for any portion of the Work is agreed upon by the Owner and Design/Builder it shall be set forth in a Work Package Authorization which (1) describes the specific scope of the Work to be performed thereunder; (2) establishes a price based on Costs of the Work as defined in Article 8 plus Design/Builder's Fee; and (3) establishes a completion date for such Work and liquidated damage provision, if any, as the parties may agree. No Work will be authorized to commence hereunder until the Design/Builder has

complied with the requirements of this Section 3.2.6.1 and Owner and Design/Builder have entered into a written work package authorization (a "Work Package Authorization").

- .2 The price and scope of Work identified with each approved Work Package Authorization will be included in the GMP. Prior to Owner's acceptance of the GMP Proposal, Design/Builder shall not incur any cost to be reimbursed as part of the Cost of the Work for Construction Phase Services, except as Owner may specifically authorize in an executed Work Package Authorization. The Fee, if any, to be charged by Design/Builder on any Work performed under any Work Package Authorization will not exceed the Fee for Construction Services set forth in Article 7.

3.2.6.2 By entering into this Agreement, Owner is not obligating itself to award any Work Packages to the Design/Builder or to continue to award subsequent Work Packages to the Design/Builder once it has awarded one or more Work Packages to the Design/Builder. All executed Work Packages are to be included in and specifically detailed in the GMP Proposal.

3.2.7 The GMP and its basis shall be set forth in the GMP Amendment to this Agreement. The GMP Amendment shall supersede any amendment related to the pricing of the Project. The GMP, the date of Substantial Completion and the date of Final Completion shall be subject to modification only by Change Order as provided in Articles 6 and 9 of this Agreement.

3.2.7.1 The GMP Amendment shall not alter or modify any language or provision of this Agreement unless such modification is clearly and explicitly noted and includes (i) the numerical reference to the section of this Agreement that is to be modified, and (ii) the rationale for such modification.

3.2.8 Rejection of the GMP Proposal. If Owner in its discretion, is unwilling to approve the Design/Builder's GMP Proposal and enter into a GMP Amendment, Owner may, at Owner's election, with assistance from the Development Manager, take one or more of the following actions:

- .1 terminate this Agreement by providing the Design/Builder with notice of termination. Promptly after such termination, receipt of final conditional releases from the Design/Builder, its Subcontractors, Sub-Subcontractors, material suppliers, and Architect, and the receipt of all documents, including, without limitation,

the Construction Documents, requested by Owner, Owner shall pay the Design/Builder all costs incurred to the date of termination, supported by appropriate documentation, subject to Owner's approval, as full payment for all Work and Services performed by the Design/Builder to that point, which shall be the exclusive and total amount due the Design/Builder in connection with this Agreement and the termination thereof pursuant to this Section; or

- .2 direct the Design/Builder to continue to participate in Value Engineering exercises so that the Design/Builder can submit another GMP Proposal at a reduced cost, in which case, Owner shall decide whether to accept the revised GMP Proposal or terminate this Agreement and shall have the right to proceed or terminate as to that revised GMP Proposal as set forth in this Section. Unless otherwise agreed by the Design/Builder, the Design/Builder shall not be required to perform Value Engineering exercises to attempt to get the GMP within the budget for more than thirty (30) Days after the GMP Proposal has first been rejected by Owner. The Design/Builder shall not be required to perform Value Engineering exercises if the amount of the GMP in the GMP Proposal is within the budget.

Prior to the issuance of the GMP Amendment and a written Notice to Proceed with the Construction Phase, the Design/Builder shall not incur any cost to be reimbursed as part of the Cost of the Work for the Construction Phase, except as Owner may specifically authorize in writing.

3.2.9 SALES TAX Unless the Owner provides the Design/Builder a tax exemption certificate from the State of Missouri, the Design/Builder, shall be responsible for all taxes, if any, applicable to the Project which shall be included in the GMP, and reimbursed as a Cost of the Work.

3.2.10 PAYMENT, PERFORMANCE, AND MAINTENANCE BONDS

- a. The Design/Builder shall furnish separate performance, maintenance and payment bonds, each in the sum of one hundred percent (100%) of the total contract price, in such forms as the Owner may approve and with sureties as the Owner may approve, for this purpose, guaranteeing faithful performance of the contract, faithful performance of work during the warranty period and faithful

payment to all persons supplying labor and materials or furnishing any equipment in the execution of the Agreement. The payment bond for the Project shall be in the form provided in **Exhibit G** and Design/Builder shall execute a memorandum of contract for filing of the payment bond, as provided in **Exhibit G**. The cost of the performance and payment bonds shall be 1% of the Contract Value. The cost of the maintenance bond shall be submitted for approval as part of the GMP Proposal. A maintenance bond is not required if the performance bond covers in duration and scope the warranty period for the facilities to be constructed under this Agreement.

- b. All performance and payment bonds required herein shall remain in effect throughout the term of this Agreement and the maintenance bond shall remain in effect for a period of one (1) year after the completion of the work and shall be extended for any warranty work to cover the warranty period.
- c. If at any time during the term of this Agreement or in the required period thereafter, the bond or bonds become invalid or ineffective for any reason, the Design/Builder shall promptly supply within ten (10) Days such other bond or bonds, which bond or bonds shall assure performance, maintenance or payment as required. Such replacement bond(s) shall be issued by a surety acceptable to the Owner.
- d. Subject to Article 9, the Design/Builder shall make such changes and alterations as the Owner may see fit in the work herein contemplated, or any part thereof without affecting the validity of this Agreement and any work accompanying payment & performance bond. If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for any claim for damages or anticipated profits on the work that may be dispensed with.
- e. The Bond Trustee shall be named as a dual obligee on the bonds required by this Section 3.2.10.

3.2.11 SUBCONTRACTOR DEFAULT INSURANCE In addition to and not in lieu of the Design/Builder's payment and performance bonds, the Design/Builder shall obtain Subcontractor

Default Insurance to cover one hundred percent (100%) of the subcontracted volume. The cost of the Subcontractor Default Insurance shall be included in the GMP and shall be 1.4% of the applicable subcontracted volume attributed to the Project.

3.3 CONSTRUCTION PHASE SERVICES

3.3.1 The Construction Phase of the Project will commence upon the issuance by the Owner to the Design/Builder of a written Notice to Proceed with construction of the Project. The Notice to Proceed shall not be issuable until the following items have been obtained or established; (a) all offsite utilities are developed and/or relocated to allow construction of the Project to proceed in accordance with the Contract Documents, (b) the Construction Fund has been established in an amount not less than the GMP, (c) a building permit has been issued for the Work, (d) all zoning, platting and other governmental approvals and regulations, as applicable, associated with the Project have been obtained and satisfied, and (e) Owner's approval and acceptance of the Design/Builder's GMP Proposal or Owner's issuance of a Work Package Authorization, as applicable.

3.3.2 In order to complete the Work, the Design/Builder shall provide all necessary construction supervision, inspection, construction equipment, labor, materials, tools, and subcontracted items as part of the Cost of the Work.

3.3.3 Development Manager, on behalf of Owner, shall provide for all construction materials testing by an independent third-party testing firm. All test results obtained from such independent testing firms shall be communicated promptly to Owner, City, and Design/Builder.

3.3.4 Design/Builder shall provide services related to training of maintenance personnel, assisting with the commissioning, startup of systems and the adjusting and balancing of systems.

3.3.5 The Design/Builder shall give all notices and comply with all laws and ordinances which govern the proper performance of the Work, including noise ordinances and construction work hours as detailed in the City ordinances; provided, however, in the event City enacts any law or ordinance following the date of execution of this Agreement, that causes the Cost of the Work to increase, Owner acknowledges and agrees that the GMP will be adjusted appropriately.

3.3.6 The Design/Builder shall prepare and submit a Schedule of Work for the Owner's written approval. This schedule shall indicate the dates for the start and completion of the various stages of the construction of the Hotel Component, Conference Center Component, and Parking Components and

the overall Project, including the dates when information and approvals are required from the Development Manager or Owner. It shall be revised as required by the conditions of the Work.

3.3.7 The Design/Builder shall secure the building and any other permits necessary for the construction of the Project.

3.3.8 The Design/Builder shall take necessary precautions for the safety of its employees on the Project and shall comply with all applicable provisions of federal, state and municipal safety laws to prevent accidents or injury to persons on, about or adjacent to the Project Site. The Design/Builder, directly or through its Subcontractors and Sub-Subcontractors, shall erect and properly maintain at all times, as required by the conditions and progress of the Work, necessary safeguards for the protection of workers and the public. The Design/Builder, however, shall not be responsible for the elimination or abatement of safety hazards created or otherwise resulting from work at the Project Site carried on by the Development Manager and/or Owner or its employees, agents, Separate Contractors or tenants. The Owner agrees to cause their employees, agents, Separate Contractors and tenants to abide by and fully adhere to all applicable provisions of federal, state and municipal safety laws and regulations. The above provision shall not relieve Subcontractors or Sub-Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with all applicable provisions of relevant laws.

3.3.9 The Design/Builder shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. Without cost to the Owner, the Design/Builder shall allow Owner the right at any time and from time to time, during normal business hours, to have access to any or all of Design/Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to the Project and this Agreement. Design/Builder agrees to make such records available to Owner at a convenient location at the Project upon two business days' notice from Owner. The Design/Builder shall preserve all such records for a period of three years after the final payment or longer where required by law.

3.3.10 The Design/Builder shall provide a copy of the daily jobsite reports and monthly written reports to the Owner on the progress of the Work and the Project overall as agreed to by the Owner and Design/Builder. The Design/Builder's Representative shall meet at least weekly with Owner's Representative at the Site, or on a virtual call, to review the progress of the Work and any

substantive issues that could delay or otherwise negatively impact the Work and the Project overall.

3.3.11 The Design/Builder has developed a system of cost reporting for the Work and the Project overall, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes in the Work and/or Project. Design/Builder will share the appropriate project cost reports generated by Design/Builder's cost management software as requested and appropriate as required by this Agreement. The Owner will advise the Design/Builder promptly if the project cost reports generated by Design/Builder are not acceptable for use under the terms and provisions of this Agreement.

3.3.12 At all times, the Design/Builder shall maintain the Site free from debris and waste materials resulting from the Work. At the completion of the Work, the Design/Builder shall remove from the premises all construction equipment, tools, surplus materials, waste materials and debris.

3.3.13 The Design/Builder shall provide space within a construction trailer to house the Owner's designated field representative, and the Development Manager's designated field representative for the construction period. The Design/Builder shall provide electricity, regular cleaning, and tables and chairs. The Development Manager and Owner will provide their own equipment and supplies to carry out their work.

3.4 HAZARDOUS MATERIAL

3.4.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or clean-up.

3.4.2 Design/Builder shall not be obligated to commence or continue Work until any Hazardous Material discovered at the Site and existing at the Site prior to Notice to Proceed ("Pre-Existing Hazardous Material") has been removed, rendered or determined to be harmless. If any Pre-Existing Hazardous Material is discovered at the Project Site, Design/Builder shall immediately stop Work in the affected area and notify Owner and Architect. Upon receipt of Design/Builder's notice, Owner shall obtain the services of a certified independent testing laboratory, approved by the appropriate government agency, to investigate, render a decision on the nature of the alleged Pre-Existing Hazardous Material, and if found to be hazardous remove and clean up the Site. Owner may rely conclusively and without inquiry on the independent testing laboratory

hired. The Design/Builder shall resume Work in the area affected by any Pre-Existing Hazardous Material only after the Pre-Existing Hazardous Material has been removed or rendered harmless with written mutual agreement among the parties. **To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design/Builder and its agents and employees from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance is Pre-Existing Hazardous Material and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the Design/Builder. The parties acknowledge that the City of Jefferson is a political subdivision of the State and that Missouri law limits the ability of a political subdivision to indemnify private third parties and as such the indemnifications set forth in this paragraph may be subject to such limitations.**

3.4.3 [Intentionally omitted]

3.4.4 If the Design/Builder incurs additional costs and/or is delayed due to the presence of Pre-Existing Hazardous Material, the Design/Builder shall be entitled to an equitable adjustment in the GMP and/or the date of Substantial Completion and Final Completion and such additional costs shall be considered a Cost of the Work.

3.4.5 Design/Builder shall be solely responsible for any costs of testing or remediation of Hazardous Materials brought onto the Site by Design/Builder, Architect, any Subcontractor or Sub-Subcontractor or any other person for whom the Design/Builder is responsible. **To the fullest extent permitted by law, Design/Builder shall defend, indemnify and hold harmless, Development Manager and Owner and the agents, officers, directors, members and employees of each of them, from and against any and all claims, damages, losses, costs and expenses including, but not limited to, reasonable attorney's fees, cost and expenses whether direct or indirect incurred in connection with litigation, mediation or arbitration arising out of or resulting from Hazardous Substances at the property brought on site by the Design/Builder, its Subcontractors, Sub-Subcontractors and material suppliers, the Architect and the agents and employees of each of them.**

3.4.6 The terms of this Section 3.4 shall survive the completion of the Work under this Agreement and/or any termination of this Agreement.

3.5 ROYALTIES, PATENTS AND COPYRIGHTS The Design/Builder shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Design/Builder and incorporated in the Work. The Design/Builder shall defend, indemnify and hold the Development Manager and Owner, their employees, and officers, harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to withdraw any request the Owner may make for the inclusion of any materials, methods, or systems in the Project, if Design/Builder or Architect has a reasonable belief that such materials, methods, and systems may violate a specific copyright or patent.

3.6 CONFIDENTIALITY Design/Builder shall treat as confidential and not disclose to third persons, except Subcontractors, Sub-Subcontractors, material suppliers, the Architect and their respective employees and agents as is necessary for the performance of the Work, including authorities having jurisdiction, or use for its own benefit any of Development Manager's and Owner's development strategies, confidential information, know-how, discoveries, production methods and the like that may be disclosed and identified as confidential to Design/Builder by the Owner or the Development Manager in connection with the Work. Owner (to the extent permitted by Law) shall treat as confidential information, and not disclose to any unnecessary third persons or parties, all of Design/Builder's estimating systems, historical and parameter cost data, or any other confidential information that may be disclosed and identified as confidential to Owner by Design/Builder in connection with the performance of this Agreement. Notwithstanding the foregoing or anything to the contrary contained herein, the Design/Builder acknowledges that Owner is a governmental entity subject to the Sections 610.010 to 610.035 of the Revised Statutes of Missouri, and Design/Builder acknowledges that this Agreement and confidential information received from Design/Builder, Owner and Development Manager that is covered by this Agreement will be considered public records and will be subject to disclosure in compliance with Missouri law, except for information falling within one of the exemptions therefrom. The Owner is required to and shall comply with all Applicable Laws with regard to any records, documents and information related to Owner's dealings and relationship with the Design/Builder. Nothing in this Agreement shall be deemed or construed as a limitation on Owner's discretion relating to compliance with Applicable Laws.

3.7 WARRANTIES AND COMPLETION

3.7.1 Subject to the warranty periods described in this Section 3.7.1, the Design/Builder warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. All warranties shall commence on the Substantial Completion Date of the Project and end one (1) year after the Substantial Completion Date. The Design/Builder will clearly communicate the date of commencement of the warranty period to its Subcontractors and Sub-subcontractors during the bidding period to ensure that such date is properly accounted for in calculating the Cost of Work in the approved GMP. Warranty certificates submitted during Closeout with the incorrect warranty commencement date, such as the date of install, will not be accepted by Owner, and additional costs, if any, to correct work during the warranty period will be borne by the Design/Builder. The Design/Builder agrees to correct any breach of this warranty and to correct all construction performed under this Agreement which proves to be defective in workmanship and materials prior to or within a period of one (1) year from the Substantial Completion Date; including, without limitation, the mechanical, electrical, or plumbing workmanship and materials. All warranties required beyond these periods shall be from manufacturers or suppliers and, except those in the name of the Owner already, shall be assigned directly to the Owner. Nothing contained herein shall be construed as a waiver of Owner's rights to enforce the full extent of any repose period under Missouri law and nothing contained in this Agreement shall constitute the modification of a contracted warranty period by any repose period under Missouri law.

3.7.2 Products, equipment, systems or materials incorporated in the Work at the direction of or upon the specific request of the Owner over the written objection of Design/Builder shall not be warranted by Design/Builder except to the extent of a manufacturer's warranty.

3.7.3 The Design/Builder shall secure required certificates of inspection, testing or approval for materials and equipment incorporated into the Work and deliver them to the Owner. Design/Builder shall assign all manufacturer and material supplier warranties to Owner upon Final Completion.

3.7.4 The Design/Builder shall collect all written warranties and equipment manuals and deliver them to the Owner no later than Final Completion.

3.7.5 Design/Builder shall be responsible for startup, functional testing, and commissioning of the Project systems and equipment in accordance with the requirements set forth in the Contract Documents (the "Commissioning Requirements"). When the

Project systems and equipment have met the Commissioning Requirements, Design/Builder shall notify Development Manager. Development Manager shall then notify the Owner's Building Systems Commissioning Agent (the "Agent") to verify that all Commissioning Requirements have been met and that all Project systems and equipment function correctly. The Agent then shall ask the Design/Builder to run the systems and equipment through a series of checks to confirm conformance. If non-conformance is found, a punch list of items to be corrected will be provided to the Design/Builder. Once all such punch list items are found to be in conformance, the Agent shall provide a Final Commissioning Report.

3.7.6 Design/Builder shall, with Operator's assistance and in accordance with applicable specifications, train the Owner's and Operator's personnel in the use and functioning of the systems and equipment in accordance with industry standard and the Brand Standards.

3.7.7 Design/Builder shall immediately proceed to correct Work rejected in accordance with this Agreement by Owner as defective or failing to conform to the Contract Documents, unless such Work is accepted in accordance with other provisions of this Agreement. Design/Builder as a charge against the GMP shall bear all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections and any fees and expenses of the Architect made necessary thereby, without adjustment to the GMP, provided, however, in the event such damaged or nonconforming Work cannot be assigned or otherwise attributed to any Subcontractor or other responsible party, the Design/Builder may use the Construction Contingency within the GMP to pay for any such costs and expenses with prior written approval of the Owner.

3.7.8 Owner may, at its sole discretion, choose to accept defective or nonconforming Work. Such acceptance shall not be effective unless specifically and expressly stated in writing by Owner's Representative. In such event, the GMP shall be reduced by the reasonable diminishment of value of the Work as determined by a third-party value appraiser acceptable to both Owner and Design/Builder. Owner may request this appraisal prior to making its choice. The cost of such value appraiser shall be borne by Design/Builder. If the unpaid portion of the GMP, if any, is insufficient to compensate Owner for the acceptance of defective or nonconforming Work, Design/Builder shall, upon written demand from Owner, pay Owner any shortfall of compensation for accepting defective or nonconforming Work.

3.7.9 THE WARRANTIES SET FORTH IN THIS SECTION 3.7 ARE SOLE, AND IN LIEU OF ANY AND ALL OTHER WARRANTIES OF DESIGN/BUILDER RELATED TO THE CONSTRUCTION OF THE PROJECT, WHETHER EXPRESS OR IMPLIED, AND DESIGN/BUILDER DISCLAIMS ANY SUCH OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY AND ALL WARRANTIES OF MERCHANTABILITY AND WARRANTIES ARISING FROM A COURSE OF DEALING AND/OR USAGE OF TRADE. ANY OTHER STATEMENT OF FACT OR DESCRIPTIONS EXPRESSED IN THE CONTRACT DOCUMENTS SHALL NOT BE DEEMED TO CONSTITUTE A WARRANTY BY DESIGN/BUILDER OF THE CONSTRUCTION OF THE PROJECT OR ANY PART THEREOF, PROVIDED, HOWEVER, THIS SECTION 3.7.8 DOES NOT WAIVE, RELEASE OR OTHERWISE LIMIT OR AFFECT ANY WARRANTY (i) BY DESIGN BUILDER RELATED TO THE DESIGN OF THE PROJECT; (ii) BY DESIGN BUILDER AS EXPRESSLY SET FORTH IN THE CONTRACT DOCUMENTS, (iii) BY ANY SUBCONTRACTOR, SUB-SUBCONTRACTOR, SUPPLIER, CONSULTANT, SUB-CONSULTANT OR MANUFACTURER IN CONNECTION WITH THE PROJECT, WHICH WARRANTIES WILL MEET COMMERCIAL MARKET STANDARDS AND THE STANDARDS OF HOTEL OPERATOR AND HOTEL FRANCHISOR, AS APPLICABLE, AND WILL BE ASSIGNED TO OWNER IN ACCORDANCE WITH THIS AGREEMENT, OR (iv) WHICH IS EXPRESSLY GRANTED TO OWNER, IN ITS CAPACITY AS A POLITICAL SUBDIVISION OF THE STATE OF MISSOURI, BY THE LAWS OF THE STATE OF MISSOURI.

3.7.10 Following the warranty period for correction or replacement of the Work as described above, Design/Builder's sole obligation for work found defective or not conforming shall be to assist Owner in its enforcement of any remedies available against the applicable Subcontractor, Sub-Subcontractor or supplier or manufacturer in connection with such Work. Design/Builder shall provide all assistance reasonably required by Owner to enforce such remedies and shall execute such documents, including an assignment of Design/Builder's rights under any subcontract agreement or purchase order, in order to allow Owner to enforce such remedies.

3.8 ADDITIONAL SERVICES The Design/Builder shall provide or procure the following Additional Services upon the written request of Owner. Any Additional Services approved by Owner shall define the extent of such Additional Services and shall be identified in the GMP Amendment. Such Additional Services shall be considered a change in the Work, unless they are specifically included in the GMP Amendment. Additional Services may include, but are not limited to, the following:

- .1 Artistic models for any part of the Project or the Work.
- .2 Making revisions to the Schematic Design, Design Development, Construction Documents or documents forming the basis of the GMP after they have been approved by the Owner, and which are due to causes beyond the control of the Design/Builder and upon which the Design/Builder has relied and has expended funds in accordance therewith.
- .3 Estimates, proposals, appraisals, consultations, negotiations and services in connection with the repair or replacement of an insured loss.
- .4 Services requested by the Owner or required by the Work which are not specified in the Contract Documents, and which are not normally part of generally accepted design and construction practice.
- .5 Serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project.

3.9 STATUTORY REQUIREMENTS

3.9.1 Construction Safety Program Requirements. Design/Builder shall comply with all applicable requirements imposed on it by Section 292.675 of the Missouri Revised Statutes where it is stated among other things that:

- a. Design/Builder shall require all on-site employees to complete the ten-hour safety training program required if they have not previously completed the program and have documentation of having done so. All employees working on the Project are required to complete the program within sixty (60) days of beginning work on the Project.
- b. Any employee found on the worksite subject to this section without documentation of the successful completion of the course required under subsection (a.) shall be afforded twenty (20) days to produce such documentation before being subject to removal from the project.
- c. Design/Builder shall forfeit as a penalty to City Two Thousand Five Hundred Dollars (\$2,500.00) plus One Hundred Dollars (\$100.00) for each employee employed by Design/Builder or subcontractor, for each calendar day, or portion thereof,

such employee is employed without the required training. The penalty shall not begin to accrue until the time periods in subsections (a.) and (b.) have elapsed. City shall withhold and retain from the amount due Design/Builder under this Agreement, all sums and amounts due and owing City as a result of any violation of this Section 3.9.1.

3.9.2 Illegal Immigration. Prior to commencement of the work Design/Builder shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the Project and affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the Project. Such affidavit shall be in substantial compliance with the attached Exhibit H and documentation shall include a page from the E-Verify Memorandum of Understanding (MOU) listing the contractor's name and the MOU signature page completed and signed, by the bidder/contractor and the Department of Homeland Security – Verification Division.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES PROVIDED BY OWNER

4.1.1 The Owner shall provide full information in a timely manner regarding requirements for the Project, including the various Components of the Project, the Program and other relevant information.

4.1.2 The Owner shall provide:

- .1 general information describing the physical characteristics of the Site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations; the definition of the wetland boundaries; and
- .2 tax exempt certificate, if applicable.

4.1.3 The Owner shall provide reasonable evidence satisfactory to the Design/Builder and in compliance with Missouri law, prior to commencing the Work, and during the progress of the Work, that sufficient funds are available and committed for the entire cost of the Project, including an allowance for changes in the Work as may be approved in the course of the Work.

4.1.4 The Design/Builder shall review and verify the information for completeness and accuracy as to the information and services required by this

Section 4.1. The Owner does not warrant the accuracy of any information provided pursuant to this Section 4.1; however, the Design/Builder may rely on the accuracy of such information to the same extent the Owner is entitled to rely on such information.

4.1.5 Any unforeseen condition or any evidence of dispute which may arise between the Owner and the Development Manager resulting in default of the Development Manager, shall not affect the Design/Builder's right, if otherwise enforceable, to be paid under this Agreement.

4.1.6 The Owner and Design/Builder acknowledge that each shall communicate with and timely respond to Development Manager with regard to (i) any matter requiring the Owner's review or approval pursuant to this Agreement and (ii) any other matter raised by Development Manager related to the Project in connection with its role as development manager. Development Manager shall participate in, and lead where necessary, all meetings between Owner and Design/Builder related to the Project.

4.1.7 Unless otherwise indicated, Owner shall, within ten (10) Days of presentation by Design/Builder, reach agreement on decisions related to the Project which require approval.

4.2 OWNER'S RESPONSIBILITIES DURING DESIGN PHASE

4.2.1 The Owner provided the Program at the inception of the Design Phase and Owner shall review and timely approve schedules, estimates, Schematic Design Documents, Design Development Documents and Construction Documents furnished during the Design Phase as set forth in Section 3.1. The Owner shall provide written approval of these documents and shall be responsible for obtaining approvals from any other third party, tenant, or Separate Contractor for which approval is required. The Owner shall obtain the necessary approvals in a timely manner consistent with the Design/Builder's schedule for the Project.

4.3 OWNER'S RESPONSIBILITIES DURING CONSTRUCTION PHASE

4.3.1 The Owner shall review and approve the Schedule of the Work as set forth in Section 3.3.4, in a timely manner.

4.3.2 If the Owner becomes aware of any error, omission or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, the Owner shall give prompt written notice to the Design/Builder.

4.3.3 The Owner shall communicate with the Design/Builder's Subcontractors, and suppliers only through the Design/Builder. The Owner shall have no contractual obligations to Subcontractors, Sub-Subcontractors, suppliers, manufacturers or the Architect.

4.4 DESIGN/BUILDER'S, OWNER'S AND DEVELOPMENT MANAGER'S REPRESENTATIVES

Subject to Section 1.45, the Owner's Representative is Brian Crane, the Design/Builder's representative is Steve Jones, and the Development Manager's representative is Steve Galbreath, all of whom are agreed to by the parties. Design/Builder and Development Manager shall seek the consent of the City before making a change to their respective representatives, such consent not to be unreasonably withheld. The City need provide only written notice of any change to its representative. The representatives:

- .1 shall be fully acquainted with the Project;
- .2 agree to furnish the information and services required of the parties pursuant to Section 4.1 so as not to delay the Work; and
- .3 shall have authority to bind their respective participants in all matters requiring the Owner's approval, authorization or written notice (except, in the case of Owner, subject to the penultimate sentence of Section 14.8). If the Owner changes its representative's authority as listed above, the parties shall be notified in advance in writing.

ARTICLE 5 SUBCONTRACTS

Work not performed by the Design/Builder with its own forces shall be performed by Subcontractors.

5.1 RETAINING SUBCONTRACTORS The Design/Builder shall not retain any Subcontractor to whom the Owner has a reasonable and timely objection, provided that the objecting party agrees to compensate the Design/Builder for any additional costs, time, or other obligations incurred by the Design/Builder as a result of such objection. The Design/Builder shall not be required to retain any Subcontractor to whom the Design/Builder has a reasonable objection. Design/Builder will provide Owner with a list of acceptable Subcontractors prior to subcontracting and allow Owner fourteen (14) Days to review and provide comment to Design/Builder prior to Design/Builder subcontracting with Subcontractors including, without limitation, Design/Builder or its affiliate as a Subcontractor.

5.1.1 BIDDING AND CONTRACT AWARD

Design/Builder shall provide all necessary Services related to the bidding of Subcontracts for the

construction of the entire Project: (a) preparing lists of prospective qualified bidders; (b) preparing appropriate bid documents, including proposed forms of Contract and purchase order; (c) establishing bid schedules; (d) developing bidder interest; (e) furnishing information concerning the entire Project to prospective bidders; (f) conducting pre-bid conferences; (g) receiving and analyzing bids and providing notification to Development Manager and Owner regarding bid awards; (h) investigating the acceptability and responsibility of Sub-Subcontractors or suppliers proposed by any Subcontractor and advising Development Manager and Owner of such evaluations, and (i) negotiating with Subcontractors concerning any matter related to the Hotel Component, the Conference Center Component and the Parking Component of the Project. Design/Builder shall include in its bid specifications and any subsequent contract or other agreement that it will not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to an organization. Design/Builder shall provide written certification satisfactory to Owner of its compliance with Section 5.1 and this Section 5.1.1 at the time of bidding.

5.1.2 COMPETITIVE PROCUREMENT

Design/Builder shall use competitive procurement methods, and subject to market availability by trade, shall use reasonable efforts to secure at least three (3) competitive proposals for each unit of work over \$50,000.00. To the extent Design/Builder wishes to submit a bid for the performance of work by its own forces (including without limitation excavation, concrete, reinforcing steel, miscellaneous steel, structural steel, carpentry) it shall include such information in the bids with the other competitive bids noting that it is the designated bidder. All such bids shall be considered as any other competitive bid. Owner represents that public bidding procedures are not required, and Design/Builder is authorized to negotiate with apparent responsive bidders to search out best value for Project. Design/Builder will comply with statutory requirements as follows:

- .1 Design/Builder shall at all times comply with the prevailing wage requirements for the Project which are attached hereto as **Exhibit C**.

5.2 MANAGEMENT OF SUBCONTRACTORS The Design/Builder shall be responsible for the management of the Subcontractors and the Sub-Subcontractors in the performance of the Work.

5.3 ASSIGNMENT OF SUBCONTRACT AGREEMENTS The Design/Builder shall provide for assignment of subcontract agreements and Warranties, express or implied, in the event that the

Owner terminates this Agreement for cause as provided in Section 12.2. Following such termination, the Owner shall notify in writing, those Subcontractors whose assignments will be accepted, subject to the rights of sureties.

5.4 COMPLIANCE WITH LAWS All agreements between Design/Builder and any Subcontractors shall include the agreement of such Subcontractors to comply with Applicable Laws.

5.5 BOND TRUSTEE REQUIREMENTS

Design/Builder agrees to execute agreements, provided Design/Builder does not take exception to said agreements, or documents with or for the Bond Trustee as are usual and customary for design/builders with regard to similar project financing provided such agreement or documents do not increase the cost, obligations or risks, of the Design/Builder under this Agreement, modify the terms or provisions of this Agreement, or impair its rights or expectations to receive any monies or benefits when due under this Design/Build Agreement.

ARTICLE 6 CONTRACT TIME

6.1 COMMENCEMENT OF THE WORK The Design Phase Work commenced on the Effective Date of the Design-Build Pre-Construction Services Agreement, if any. Design/Builder shall commence Work on the Construction Phase when Notices to Proceed are issued by the Owner. Notices to proceed with any Work Package shall be set forth in the Work Package Authorization.

Work shall proceed in general accordance with the Schedule of Work as such schedule may be amended from time to time, subject, to the provisions of this Agreement.

6.2 SUBSTANTIAL COMPLETION. At such time as a GMP is accepted by Owner, dates for Substantial Completion and Final Completion shall be established and set forth in the GMP Amendment. Thereafter, Design/Builder will reasonably and diligently pursue the Work and completion of the Project, in conformance with those dates and the deadlines included in **Exhibit I, Operator's Project Completion Requirements (if any)**. Time is of the essence in the completion of the Project.

6.3 LIQUIDATED DAMAGES. The Design/Builder acknowledges and agrees that the Owner will suffer damage due to the failure of the Design/Builder to achieve Substantial Completion of the Project by the Substantial Completion Date. The Design/Builder acknowledges and agrees that these damages will be comprised of such things as, but not necessarily limited to, increased project management costs, additional employee compensation, additional consultant

compensation, and other increased costs associated with delays in the opening of the Project to the public and that these damages may additionally be comprised of such things as, but not necessarily limited to, lost profits and damages, liabilities and judgments arising from claims of third parties against the Owner for breach of promises or commitments to third parties associated with delay and/or potential delay in the opening of the Project. Accordingly, the Owner and the Design/Builder agree that the Design/Builder and Design/Builder's surety, if any, shall immediately pay directly to the Owner as "liquidated damages" an amount for each day of delay equal to the following:

For the Garage portion of the Project:

Five Hundred Dollars (\$500) per day after [REDACTED], 2026

For the Hotel and Conference Center portions of the Project:

Days 0 – 7: One Thousand Five Hundred Dollars (\$1,500.00) per day;

Days 8-14: Two Thousand Five Hundred Dollars (\$2,500) per day;

Days 15 – 30: Five Thousand Dollars (\$5,000) per day;

Days 31 through Substantial Completion: Ten Thousand Dollars (\$10,000) per day.

Notwithstanding the foregoing, the aggregate amount of the liquidated damages for delay under this Agreement for all Components of the Project shall not exceed fifty percent (50%) of Design/Builder's Fee. Permitting the Design/Builder to continue and substantially complete the Work after the SC Date and/or permitting the Design/Builder to continue and finally complete the Work on or before the Final Completion Date, as applicable, shall in no way operate as a waiver on the part of the Owner of any of its rights under this Agreement, including the Owner's rights to recover from the Design/Builder the liquidated damages set forth herein.

6.4 When the Design/Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design/Builder shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design/Builder to complete all Work in accordance with the Contract Documents.

6.5 Upon receipt of the Design/Builder's list in accordance with Section 6.4, the Architect, Owner and Development Manager will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's

inspection discloses any item, whether or not included on the Design/Builder's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design/Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Design/Builder shall then submit a request for another inspection by the Architect, Owner and Development Manager to determine Substantial Completion.

6.6 When the conditions for Substantial Completion as set forth in Section 1.56 have been met, Development Manager shall recommend to the Owner that the Owner direct the Architect to perform its own requisite diligence, and if in the Architect's professional opinion, Substantial Completion has been met, the Architect shall prepare a Certificate of Substantial Completion that shall make record of the date on which Substantial Completion has been achieved. Architect shall at the same time establish responsibilities of the Owner and Design/Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design/Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work for the whole of the Project unless otherwise provided in the Certificate of Substantial Completion.

6.7 The Certificate of Substantial Completion shall be submitted to the Owner and Design/Builder for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

Notwithstanding anything to the contrary, the Substantial Completion Certificate Date shall be a single date, unless otherwise mutually agreed by the Owner and Design/Builder.

6.8 Notwithstanding any provision of this Agreement to the contrary, in the event Design/Builder gives Owner notice at least 180 Days prior to the SC Date that Design/Builder will achieve Substantial Completion of the Project prior to the SC Date set forth in the GMP Amendment, Design/Builder shall be entitled to a bonus fee in addition to Design/Builder's Construction Phase Compensation, consisting of \$2,000 per Day for each Day up to and including the sixtieth (60th) Day prior to the SC Date, conditioned upon availability of funds in the Construction Fund. Once Design/Builder provides the notice required herein, the SC Date will then become the Revised SC Date which shall be the date Design/Builder must achieve Substantial Completion of the Project.

6.9 FINAL COMPLETION Final Completion of the Project shall occur not later than thirty (30) Days after the SC Date or Revised SC Date, if applicable.

6.10 EXTENSION OF CONTRACT TIME. Owner acknowledges and agrees that if the Design/Builder is entitled to an extension of the Contract Time pursuant to the terms of this Agreement, the SC Date for the entire Project will be extended by the length of the extension of time to which the Design/Builder is entitled.

6.11 DELAYS IN WORK

6.11.1 If causes beyond the Design/Builder's control delay the critical path of Design/Builder's Work, then the GMP, compensation for Design Phase Services, the Design/Builder's Fee and the SC Date shall be modified by Change Order, as appropriate. Such causes, to the extent they impact the critical path of the Design/Builder's Work, shall include but not be limited to: changes ordered in the Work, acts or omissions of the Development Manager or Owner or Separate Contractors employed by the Owner which prevent the Design/Builder from performing the Work, the Owner preventing the Design/Builder from performing the Work pending dispute resolution, Pre-Existing Hazardous Materials, and differing site conditions which have or will have a material adverse effect on the Work, Force Majeure, or Extreme Weather (collectively "Excusable Delay"). Any such Excusable Delay to the critical path of the schedule shall be identified by the Design/Builder and written notice of such critical path delay and the cause given to the Owner within seven (7) Days of the occurrence of the event or (7) Days of Design/Builder's knowledge of the event, whichever is later, giving rise to the Excusable Delay. Any disagreement as to the significance or effect of said Excusable Delay, including Extreme Weather, to critical path, or to the Work and its progress will be handled in accordance with Article 13. Notwithstanding the foregoing, the Design/Builder acknowledges and agrees that neither adjustment in the SC Date, nor adjustment in the GMP will be permitted to the extent that (a) any delay is caused by the negligence, errors, omissions or fault of the Design/Builder or its Subcontractors or (b) Design/Builder failed to provide Owner with written notice as set forth above.

6.11.1.1 Extreme Weather (to include, but not be limited to, rain, mud, wind, ice, cold weather or acts of nature). Delays caused by an extreme weather event will be managed monthly, with an allowance for a reasonable number of Days for weather delay in each month already being included in the Construction Schedule. Design/Builder shall include an estimate for extreme weather delays in the GMP Amendment. Such extreme weather delay estimate shall be made utilizing historical weather data from the National Oceanic and Atmospheric Administration (NOAA) or other generally

accepted weather data sources. The Extreme Weather delay days shall be tracked and reported to Owner on a monthly basis. If Extreme Weather delay days are encountered on the Project in excess of the allowance provided in the GMP Amendment and such excess days impact the critical path of the schedule, Design/Builder shall be entitled to an extension of the Contract Time equal to the number of Extreme Weather delay days that impact the critical path, but only if such request is made to Owner by the seventh Day of the month after such Extreme Weather impacting the critical path occurred.

6.11.2 In the event delays to Project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays. If the delays to the critical path of the Project are the result of causes beyond the Design/Builder's control, the Design/Builder shall be compensated for any and all additional costs and expenses incurred by the Design/Builder to mitigate the effect of such critical path delays as approved by the Owner, such approval not to be unreasonably withheld, and the GMP shall be increased by a Change Order by the amount of the additional costs and expenses incurred by the Design/Builder to mitigate such critical path delays. Reasonable costs, expenses and damages incurred by the Design/Builder to mitigate a critical path delay shall be considered a Cost of the Work.

6.11.3 It is understood by the parties to this Agreement that any additional costs resulting from critical path delays outside the control of the Design/Builder (as described in Section 6.3.1), may be funded from Owner's Contingency or any other available source as approved by Owner as an increase to the GMP. Such Additional costs and/or expenditures for critical path delays outside of the Design/Builder's control shall be available to Design/Builder after notice given on or before the time set forth in Section 6.11.1, and presentation of sufficient evidence to demonstrate a delay occurred and was beyond the control of Design/Builder.

6.11.3.1 General Conditions related costs (staff supervision and job office related expense) shall be adjusted per work Day for Extreme Weather critical path delay days in excess of the allowance set forth in the GMP Amendment, and the GMP will be increased by the lump sum value of the pro rata share of the general conditions divided by the construction duration.

ARTICLE 7 COMPENSATION/ LIMITS

NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE 7 OR ELSEWHERE IN THIS AGREEMENT, OWNER'S LIABILITY FOR PAYMENT OF ANY AMOUNTS TO ANY PERSON HEREUNDER SHALL

BE LIMITED TO AMOUNTS OF AVAILABLE MONEYS AS DEFINED IN SECTION 14.9.

7.1 PAYMENTS. Payments shall be made to the Design/Builder in the amount and at the times as set forth in the draw schedules for the Project, as approved by Owner; provided Work has progressed to the extent described in the applicable draw request. The Design/Builder shall invoice monthly during the Design Phase Services with payment subject to the terms of Section 7.2.

7.2 DESIGN PHASE COMPENSATION

7.2.1 The cost of services performed directly by the Architect is part of the Design Phase Compensation and the GMP; however, it shall be detailed separately from the Design/Builder's proposal for Design Phase Services. The payments to the Architect shall be as detailed in a separate Agreement between the Design/Builder and Architect.

7.2.2 The Owner shall compensate the Design/Builder for the Design Phase Services described in Section 3.1.8, including for preparation of the GMP Proposal as described in Section 3.2. The Design/Builder shall then compensate the Architect for its Design Phase Services.

7.2.3 Design/Builder Design Phase Compensation. The Design/Builder's Total Design Phase Compensation is set forth in the Design & Pre-Construction Budget Schedule attached as **Exhibit E**.

7.2.4 Total Fees and Costs. Total Design Phase fees and costs payable by Owner to the Design/Builder and the design team for the Project shall be as set forth in the attached **Exhibit E** - the Design & Pre-Construction Budget Schedule. Also set forth in **Exhibit E** is the amount of Total Design Phase fees and costs that have previously been paid to the Design/Builder and the design team. Any remaining Design Phase amount to be paid shall be paid in installments over the duration of the remaining Design Phase. Notwithstanding anything contained herein to the contrary, Design/Builder shall not be responsible for the fees and costs to be paid to the Development Manager as part of the Project nor shall the Design/Builder be responsible for any services to be provided by the Development Manager in connection with the project.

7.2.5 Payments for both the Design/Builder and Architect Design Phase Services shall be due and payable monthly within thirty (30) Days from receipt of an application for payment, but only to the extent funds are available for such payment and the Work has progressed to the extent described in the draw request. If the Owner fails to pay the Design/Builder

as stated herein and in accordance with applicable law, then the Design/Builder shall have the right to stop the Work and be entitled to payments due plus interest as provided in Sections 10.1.4, 10.1.5., and 10.1.6.

7.3 CONSTRUCTION PHASE COMPENSATION

7.3.1 The Owner shall compensate the Design/Builder for Work performed following the commencement of the Construction Phase on the following basis:

- .1 the Cost of the Work (including General Conditions costs) as allowed and defined in Article 8, (less retainage as provided herein) excluding any Construction Contingency.
- .2 the Construction Phase fee of three percent (3.0%) (which is not part of the General Conditions cost) times an amount equal to the Cost of the Work exclusive of the Design/Builder's Fee. The Construction Phase fee shall be earned and billed in equal monthly installments spread out over the agreed upon Construction Schedule.

7.3.2 The compensation to be paid under this Section 7.3 shall be limited to the GMP established in the GMP Amendment, as the GMP may be adjusted under Article 9. In the event the Cost of the Work, plus the Design/Builder's Fee shall be less than the GMP as adjusted by Change Orders, the resulting savings shall be shared by the Owner and the Design/Builder as follows: forty percent (40%) allocated to the Owner, thirty percent (30%) allocated to the Design/Builder and thirty percent (30%) allocated to the Development Manager. Any sharing with the Architect shall be handled by the Design/Builder.

7.3.3 Payment for Construction Phase Services shall be as set forth in Article 10. If Design Phase Services continue to be provided after construction has commenced, the Design/Builder shall be compensated as provided in Section 7.3.1 or as mutually agreed by Owner and Design/Builder. Notwithstanding any provision of this Agreement to the contrary, for the purpose of applying the Design/Builder's Fee of 3.0% to the Cost of the Work for both the Design Phase and the Construction Phase, architectural and engineering fees and expenses of the Architect and the Architect's consultants and subconsultants shall be excluded from the Cost of the Work.

7.4 APPLICATION OF THE DESIGN/BUILDER'S FEE The Design/Builder's Fee shall be applied as follows:

- .1 for changes in the Work as provided in Article 9, the Design/Builder's Fee shall be three percent (3.0%) of the Cost of the Work associated with the change.
- .2 for delays in the Work caused by Owner, to the extent such Owner caused delays are not the responsibility of the Design/Builder, Design/Builder will be allowed 3% Fee in addition to its increased expenses (as approved by Owner) except that such expenses shall not be duplicated as Fee and as a Cost of the Work; and
- .3 if the Design/Builder is placed in charge of managing an insured or uninsured loss on the Project at the express written request of the Owner, the Design/Builder shall be paid a Fee calculated on a fair and equitable basis as approved by Design/Builder and Owner unless the loss is caused by the Design/Builder or its Subcontractors or the Architect.

ARTICLE 8 COST OF THE WORK

The Owner agrees to pay, solely and exclusively from lawfully available funds, the Design/Builder for the Cost of the Work as defined in this Article. This payment shall be in addition to the Design/Builder's Fee stipulated in Article 7. The Cost of the Work, the Design/Builder's Fee, and the Construction Contingency are all included in the GMP.

8.1 COST ITEMS FOR DESIGN PHASE SERVICES

8.1.1 Compensation for Design Phase services as provided in Section 7.2.

8.2 COST ITEMS FOR CONSTRUCTION PHASE SERVICES

8.2.1 The cost of labor at the hourly rate for labor in the direct employ of the Design/Builder in the performance of the Work as set forth in **Exhibit A**.

8.2.2 Salaries of Design/Builder's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office listed in **Exhibit A**, at the hourly rates provided for in **Exhibit A**, for such part of their time as devoted to the Work and may be adjusted annually as approved in writing by Owner

provided such adjustment shall not increase the GMP.

8.2.3 Cost of all employee benefits and taxes, including, but not limited to, workers' compensation, unemployment compensation, Social Security, health, welfare, retirement, incentive compensation and other fringe benefits as required by law, labor agreements, or paid under the Design/Builder's standard personnel policy, insofar as such costs are paid to employees of the Design/Builder who are included in the Cost of the Work under Sections 8.2.1 and 8.2.2. These costs (exclusive of holidays) are agreed to be considered Cost of the Work at the fixed hourly rates as shown in **Exhibit A**.

8.2.4 Reasonable transportation, travel, hotel and moving expenses of the Design/Builder's personnel incurred in connection with the Work.

8.2.5 Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection, testing, transportation, storage and handling.

8.2.6 Payments made or payments due by the Design/Builder to Subcontractors for Work performed under this Agreement.

8.2.7 Fees and expenses for Design Phase Services procured by the Design/Builder in accordance with Section 7.3.3.

8.2.8 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value; and cost less salvage value on such items used, but not consumed that remain the property of the Design/Builder.

8.2.9 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the site of the Work, whether rented from the Design/Builder or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs at rental charges consistent with those prevailing in the area. Equipment owned by Design/Builder may be used when and if available from Design/Builder's fleet. Design/Builder has provided Owner with a list of equipment (stipulated and agreed to in **Exhibit B**) it commonly uses from its fleet with its rental rates agreed to by Owner.

8.2.10 Cost of all insurance for the Project as set forth in **Exhibit F**. The cost of General Liability Insurance shall be included in the GMP and shall be 1% of Contract Value. The Design/Builder, as part of its normal business practice, has implemented a

Subcontractor Default Insurance Program. Should the Design/Builder elect to enroll this Project in the SDI Program, the cost for the SDI Program shall be included in the Cost of the Work and reimbursed at a fixed rate of the value of Subcontract volume, as set forth in **Exhibit F**. The cost for required insurance per the Agreement shall be included in the Cost of the Work and reimbursed, as set forth in **Exhibit F**.

8.2.11 Sales, use, gross receipts or other taxes, tariffs or duties related to the Work for which the Design/Builder is liable, except to the extent the Project is designated to be sales/use tax exempt.

8.2.12 Fees, licenses, tests, royalties, damages for infringement of patents and/or copyrights, including costs of defending related suits for which the Design/Builder is not responsible as set forth in Section 3.5, and deposits lost for causes other than the Design/Builder's negligence.

8.2.13 Losses, expenses or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work during the Construction Phase.

8.2.14 All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office.

8.2.15 Reproduction costs, photographs, cost of telegrams, facsimile transmissions, long distance telephone calls, data processing services, postage, express delivery charges, telephone service at the site and reasonable petty cash expenses at the field office, and at the Design/Builders branch office for the portion incidental to this Project to the extent it is included in the GMP.

8.2.16 All water, power and fuel costs necessary for the Work, unless specifically noted in the GMP.

8.2.17 Cost of removal of all non-hazardous substances, debris and waste materials.

8.2.18 Costs incurred due to an emergency affecting the safety of persons and/or property.

8.2.19 Trade Association fees, to the extent they are incurred based on the award of the Project to the Design/Builder.

8.2.20 Pre-construction expenses incurred by the Design/Builder in estimating and Value Engineering. These expenses shall not be duplicated if already paid as part of Design Phase Services.

8.2.21 Reasonable legal, mediation and arbitration fees and costs, other than those arising from

disputes between the Owner or Development Manager and the Design/Builder, resulting from the Design/Builder's performance of the Work.

8.2.22 All other costs directly incurred in the performance of the Work and not included in the Design/Builder's Fee as set forth in Article 7, which are reasonably inferable from the Contract Documents as necessary to produce the intended results, but only with the pre-approval of Owner, not to be unreasonably withheld.

8.2.23 [Intentionally omitted].

8.2.24 Costs to correct defective or non-conforming work performed or supplied by Design/Builder or a Subcontractor or material supplier and not corrected by them, provided such defective or non-conforming work did not result from the gross negligence or willful misconduct of the Design/Builder and only to the extent that the cost of correcting the defective or non-conforming work is not recoverable by the Design/Builder from the Subcontractor or material supplier. It is understood and agreed that costs described in this Section 8.2.24 may be covered by the Construction Contingency, but any use of the Construction Contingency must be approved by Owner, not to be unreasonably withheld.

8.2.25 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Design/Builder's personnel stationed at the Design/Builder's principal office or offices other than the site office, except as specifically provided in Section 8.2.2;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Design/Builder or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Design/Builder's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article 8;
- .5 The Design/Builder's capital expenses, including interest on the Design/Builder's capital employed for the Work;
- .6 Any cost not specifically and expressly described in Article 8;

- .7 Costs, other than costs included in Change Orders approved by the Owner that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Fines, penalties, sanctions or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Design/Builder or its Subcontractors of any tier;
- .9 Costs incurred by Design/Builder resulting from the negligent or wrongful failure of Design/Builder or its Subcontractors to coordinate their work with that of Owner and its Separate Contractors, if any, after agreeing to the schedules therefor, or negligent or wrongful failure of Design/Builder to comply with directives of Owner not in conflict with said schedules; and
- .10 Costs to repair defective Work and other costs to comply with Design/Builder's warranty obligations under the Contract, except as may be expressly included in Section 8.2.24 above.

8.3 Owner has the right at any time and from time to time, during normal business hours, at the expense of Owner, to audit any or all of Design/Builder's records with regard to any or all cost item(s) under this Article 8 except with respect to lump sum subcontracts pursuant to Section 1.55 herein. Design/Builder agrees to make such records available to Development Manager and Owner at a convenient location at the Project upon 4 business days' notice from Owner.

8.4 Costs of Construction Materials Testing. Any costs of construction materials testing performed by independent testing firm(s) shall not be a Cost of Work and such firm(s) shall be engaged by Owner. Testing results and reports shall be made available to Design/Builder on a timely basis. In the event, any such construction materials testing results in a need for retesting or additional testing through no fault of Owner, the costs for such retesting or additional testing shall be paid timely by Design/Builder and not subject to any reimbursement by Owner.

ARTICLE 9 CHANGES IN THE WORK

Changes in the Work which are within the general scope of this Agreement may be accomplished by Change Order without invalidating this Agreement.

9.1 CHANGE ORDERS A Change Order is a written instrument, issued after execution of the GMP Amendment, signed by the Owner, Architect and

Design/Builder stating their agreement upon a change and the adjustment, if any, in the GMP, the compensation for Design Phase Services, the Design/Builder's Fee and/or the date of Substantial Completion and/or Final Completion. Each adjustment in the GMP resulting from a Change Order shall clearly state the Component of the Project for which the Change Order is applicable and separate the amount attributable to compensation for Design Phase Services, other Cost of the Work and the Design/Builder's Fee.

9.2 DETERMINATION OF COST An increase or decrease in the GMP resulting from a change in the Work shall be determined by one or more of the following methods:

- .1 unit prices set forth in the Agreement or as subsequently agreed;
- .2 a mutually accepted, itemized lump sum;
- .3 costs determined as defined in Section 7.2 and Article 8 and a mutually acceptable Design/Builder's Fee as determined in Section 7.5.1; or
- .4 if an increase or decrease cannot be agreed to as set forth in Sections 9.2.1 through 9.2.3 and Owner issues a written order for the Design/Builder to proceed with the change, the cost of the change in the Work shall be determined by the reasonable expense and savings of the performance of the Work resulting from the change. If there is a net increase in the GMP, the Design/Builder's Fee shall be paid in the amount set forth in Section 7.5.1. The Design/Builder shall maintain a documented, itemized accounting evidencing the expenses and savings.

9.3 NO OBLIGATION TO PERFORM The Design/Builder shall not be obligated to perform changed Work until a Change Order has been executed by the Owner, Architect and Design/Builder, except as provided in Section 9.2.4. The Design/Builder shall not be authorized to perform changes in the Work outside of the GMP unless authorized in writing by the Owner.

9.4 ADJUSTMENT OF UNIT PRICES If a proposed Change Order alters original quantities to a degree that application of previously agreed to unit prices would be inequitable to either the Owner or the Design/Builder, the unit prices and the GMP may be equitably adjusted upon approval by Owner.

9.5 UNKNOWN CONDITIONS If in the performance of the Work the Design/Builder finds latent, concealed or subsurface physical conditions which differ from the conditions the Design/Builder reasonably anticipated,

or if the soil associated with the Site is found to be unsuitable for reuse or structurally unsound and such issue could not reasonably have been anticipated, or if physical conditions are different from those normally encountered and generally recognized as inherent in the kind of work provided for in this Agreement, then the GMP, compensation for Design Phase Services, the Design/Builder's Fee, and the date of Substantial Completion and Final Completion (including any deadlines in **Exhibit I, Operator's Completion Requirements**) may, upon approval by Owner, be equitably adjusted by Change Order within a reasonable time after the conditions are first observed.

9.5.1 Submission of the GMP Proposal shall constitute a representation by the Design/Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed. The Design/Builder, Architect, Consultant and each Subcontractor represent that they have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed to the extent that such conditions and limitations can be observed with reasonable diligence, including, without limitation (1) the location, condition, layout, and nature of the Project site and surrounding areas including all access, hoisting requirements and conditions, site logistics, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, (5) any applicable policies, procedures, rules and restrictions of Owner relating to construction on the real property that have been provided to Design/Builder, and (6) Applicable Laws.

9.6 CLAIMS FOR ADDITIONAL COST OR TIME For any claim for an increase in the GMP, compensation for Design Phase Services, the Design/Builder's Fee and/or an extension in the SC Date, the Design/Builder shall give the Owner written notice of the claim within twenty-one (21) Days after the occurrence giving rise to the claim or within twenty-one (21) Days after the Design/Builder first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, written notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by the Owner, but which do not proceed, shall be made within twenty-one (21) Days after the decision is made not to proceed. If Owner were to approve the expense or change in the GMP, the compensation for Design Phase Services, the Design/Builder's Fee, or the SC Date, such expense or change will be authorized only by Change Order executed by Owner. Owner shall be copied on all notices transmitted under this Section 9.6.

9.7 EMERGENCIES In any emergency affecting the safety of persons and/ or property, the Design/Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the GMP,

compensation for Design Phase Services, the Design/Builder's Fee and/or extension of the SC Date on account of emergency work shall be determined as provided in this Article.

ARTICLE 10 PAYMENT FOR CONSTRUCTION PHASE SERVICES

10.1 PROGRESS PAYMENTS

10.1.1 PROGRESS PAYMENTS. Design/Builder shall submit, as a part of the GMP Amendment and the normal progress payments, a schedule of values for all of the Work, which will subdivide the Work into its respective parts and will include values for all items comprising the Work. The schedule of values shall serve as the basis for monthly progress payments made to Design/Builder throughout the Project. On or about the 25th day of each month, the Design/Builder shall review with the Owner's Representative and the Development Manager a pencil draw of the proposed application for payment for costs, including all the supporting documentation, incurred during that month and projected through the end of that month. Any invoices for costs which are not included in such pencil draw will be held over until the next monthly pay period. The amount agreed to at the pencil draw review meeting shall be processed and submitted, together with all supporting documentation, as an approved Application for Payment on or about the first Day of the following calendar month (an "Approved Application for Payment").

10.1.2 APPLICATIONS FOR PAYMENT. On or about the first Day of each month, the Design/Builder shall submit to the Owner and the Development Manager an Approved Application for Payment for Work on the Project, as outlined herewith, consisting of an estimate of the Cost of the Work performed during the previous month, including the cost of material stored on the site, or at other approved locations, on terms and conditions acceptable to Owner, including all appropriate paperwork as required and approved by the Owner or Owner's Representative, less all previous payments and Subcontractor reserves withheld. Such Subcontractor reserves will be based on retainage of 5%; and the balance shall be paid when their work achieves Final Completion, subject to receipt of final lien waivers and any other document reasonably required for final payment. In any circumstance where Design/Builder performs direct work (work that would otherwise be done by a Subcontractor) the retainage provisions of the preceding sentence shall apply relative to such work performed by the Design/Builder. Prior to submission of the next Approved Application for Payment, the Design/Builder shall furnish to the Owner's Representative and the Development Manager a

staggered waiver accounting for the disbursement of funds received under the previous Application. The extent of such statement shall be as agreed upon between the Owner's Representative and Design/Builder. For the purpose of this Agreement, the definition of the Architect is not that of a Subcontractor. Owner shall approve the Application for Payment, in accordance with this Section 10.1 and any requirements imposed pursuant to the Bond Indenture.

10.1.3 In addition to other items required by Owner, each Approved Application for Payment shall be accompanied by the following documentation, statements and information, all in form and substance reasonably satisfactory to the Owner and in compliance with Applicable Laws:

- .1 a duly executed statement from Design/Builder detailing all moneys paid out or costs incurred by it on account of the Cost of the Work and for which payment is sought, including such amounts being sought from the Construction Contingency (if any);
- .2 with regard to work performed by Design/Builder or its own forces, Design/Builder must provide an accurate description of the work performed and for which payment is sought, including such supporting documentation required by this Agreement;
- .3 a duly executed Conditional Waiver and Release on Progress Payment from the Design/Builder and each Subcontractor with a subcontract value of \$25,000 or more, regardless of tier, waiving all such liens or claims for payment for the Work covered by the Application for Payment being submitted conditioned only upon receipt of payment; and
- .4 a duly executed Unconditional Waiver and Release on Progress Payment, from Design/Builder waiving all liens or claims for payment for the Work covered by previously paid Applications for Payment.

10.1.4 PAYMENT TIME FRAMES. Commencing with the first Application of Payment, if an Approved Application for Payment is received by the Owner or Owner's Representative after the first Day of the month, Owner shall make payment on such Approved Application for Payment within 30 Days after receipt of such monthly Application for Payment and all other documents required for payment as described herein along with verification by the Owner's Representative that such application matches the agreed upon pencil draw amounts. All funds will be paid directly via electronic wire transfer

to the Design/Builder, the appropriate amounts for which Approved Application for Payment is made, less amounts previously paid by the Owner and less the applicable retainage. Any Approved Application for Payment received prior to the first Day of the month shall be treated as if it had been submitted on the first Day of the month and shall not be obligated to be paid any earlier than the thirtieth (30th) day of the month.

10.1.5 If the Owner fails to pay the Design/Builder for any Approved Application for Payment at the time payment of any amount becomes due, then the Design/Builder, after serving written notice of the amount due and of the possibility that the Work being stopped if payment is not received within ten (10) Days after receipt of the notice by Owner, may stop the Work until payment of the amount owing has been received; provided, however, Owner shall be entitled to withhold payment to Design/Builder as a result of (i) defective design or Work nor remedied; (ii) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design/Builder; (iii) failure of the Design/Builder to make payments properly to Architect, Subcontractors or suppliers (of any tier) for design, labor, materials or equipment; (iv) failure to carry out the Work in accordance with the Contract Documents; (v) material breach of the Agreement; or (vi) failure of the Design/Builder to submit its Application for Payment in the form required by the Owner and/or with the required certifications and supporting documentation. If Owner withholds payment for one of the reasons stated above, Design/Builder shall not be entitled to stop the Work. If the Design/Builder properly stops the Work as provided above, a Change Order may be issued to increase the GMP for remobilization costs, if any, incurred by the Design/Builder as a result of having to stop the Work and restart the Work. In addition, the Design/Builder shall be entitled to an extension of the Contract Time equal to any delays that are incurred in the performance of the Work from the date of the stoppage of Work by the Design/Builder to the date that payment is received by the Design/Builder.

10.1.6 Payments due but unpaid shall bear interest in accordance with applicable Missouri law from the 30th Day after the later of (i) the date Owner received an Approved Application for Payment or (ii) the date the Work progressed to the extent described in the draw schedule.

10.1.7 The Design/Builder warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the Owner upon receipt of such payment by the Design/Builder free and clear of all liens, claims,

security interests or encumbrances, hereinafter referred to as "liens".

10.1.8 The Owner's progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents.

10.1.9 Upon Substantial Completion and after delivery of all documents listed in this Section 10.1.9 herein and in **Exhibit I** to the Owner, the Owner shall pay the Design/Builder the unpaid balance of the Cost of the Work including retainage, compensation for Design Phase Services and the Design/Builder's Fee, less a sum equal to one hundred fifty percent (150%) of the Design/Builder's estimated cost of completing any unfinished items, as agreed to among the Owner and Design/Builder as to extent and time for completion. The Owner thereafter shall pay the Design/Builder monthly the amount retained for unfinished items as each item is completed.

10.1.10 The Design/Builder shall provide to the Owner the following documents prior to Final Completion, as a condition precedent to final payment:

- .1 an affidavit that (i) the improvements have been completed in accordance with the Contract Documents except for punch list items; (ii) payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered have been paid or will be paid out of funds advanced under the Final Application for Payment, and (iii) with respect to the Application for Final Payment or other Applications for Payment for which the Design/Builder has not received full payment, such indebtedness will be paid only, as a condition precedent, promptly after the Design/Builder's actual receipt of full payment from the Owner;
- .2 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 Days' prior written notice has been given to the Owner;
- .3 a written statement that the Design/Builder knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- .4 consent of surety, if any, to final payment;

- .5 Waivers and Release of Lien on Final Payment documents from Design/Builder, Architect, and all Subcontractors and suppliers furnishing materials, equipment or labor on the Project, in such form as required by applicable law,
- .6 all governmental or other approvals and permits required for the beneficial use and occupancy of the Project, including a Certificate of Occupancy, have been received;
- .7 one set of Record Drawings, in form and substance as required by Owner, showing all utility lines, piping, ducts and similar work installed or altered by Design/Builder;
- .8 all Warranties as required on specific products or portions of the Work;
- .9 operations and maintenance manuals, records, instructions and data;
- .10 a written statement that all commissioning and training on identified equipment has been scheduled and has occurred;
- .11 keys, access cards, and any other items for access to and security of the premises, as well as spare parts, overages, and maintenance materials; and

Within thirty (30) Days of final payment from Owner, the Design/Builder shall provide an unconditional waiver and release from Design/Builder, Architect, and all Subcontractors (of any tier) and suppliers furnishing materials, equipment or labor on the Project, in a form satisfactory to Owner.

10.1.11 The Design/Builder shall assist the Owner, and its Separate Contractors, if any, in obtaining the Final Certificate of Occupancy for all Components of the Project.

10.1.12 [Intentionally omitted]

10.2 FINAL PAYMENT

10.2.1 Final payment, consisting of the unpaid balance of the Cost of the Work, compensation for Design Phase Services and the Design/Builder's Fee shall be due and payable when the Project has reached Final Completion and all documents required under Section 10.1 have been received. Before issuance of final payment, the Owner may request satisfactory evidence that all payrolls, materials bills and other indebtedness connected with the Work have been paid or otherwise satisfied

and all other Owner requirements as a condition to Final Payment have been met or have occurred.

10.2.2 In making final payment the Development Manager and Owner waive all claims except for:

- .1 outstanding liens or liens that could be filed within the time periods provided under applicable law;
- .2 improper workmanship or defective materials as provided in Section 3.7.1 of this Agreement;
- .3 Work not in conformance with the Contract Documents;
- .4 terms of any special warranties required by the Contract Documents;
- .5 unknown or latent defects in the Design/Builders Services and Work through the applicable Statutes of Repose; and
- .6 claims made in writing, but which remain unsettled.

10.2.3 In accepting final payment, the Design/Builder waives all claims except those previously made in writing and which remain unsettled.

ARTICLE 11 INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION

11.1 INDEMNITY

11.1.1 INDEMNITY — GENERAL. DESIGN/BUILDER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OWNER, DEVELOPMENT MANAGER, THE CITY, BOND TRUSTEE, AND THEIR MEMBERS, OFFICERS, EMPLOYEES, AND APPOINTEES ("INDEMNITEES") FROM AND AGAINST ANY AND ALL THIRD-PARTY CLAIMS, ACTIONS, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, ACCOUNTANTS, CONSULTANTS AND OTHER EXPERTS, LITIGATION AND COURT COSTS) OF ANY CONCEIVABLE NATURE, KIND OR CHARACTER UNDER ANY CONCEIVABLE THEORY, FOR OR RELATING TO PERSONAL INJURY (INCLUDING DEATH) PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, ARISING OUT OF OR RESULTING FROM DESIGN/BUILDER'S BREACH OF THIS

AGREEMENT, OR BY ANY NEGLIGENT, WILLFUL OR STRICTLY LIABLE ACT OR OMISSION OF DESIGN/BUILDER, ITS OFFICERS, AGENTS, EMPLOYEES, OR SUBCONTRACTORS AND INCLUDING THE ARCHITECT (COLLECTIVELY "DESIGN/BUILDER'S PARTIES"), IN THE PERFORMANCE OF THIS AGREEMENT. IT IS THE EXPRESSED INTENTION OF THE PARTIES HERETO, DESIGN/BUILDER, DEVELOPMENT MANAGER, AND OWNER, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY DESIGN/BUILDER TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF DESIGN/BUILDER'S PARTIES' OWN WILLFUL MISCONDUCT, JOINT OR SOLE NEGLIGENCE AS WELL AS DESIGN/BUILDER'S PARTIES' INTENTIONAL TORTS, INTELLECTUAL PROPERTY INFRINGEMENTS, AND FAILURES TO PROPERLY MAKE PAYMENTS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. SUCH INDEMNITY SHALL NOT APPLY, HOWEVER, TO LIABILITY ARISING FROM THE PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE OF PERSONS THAT, IN WHOLE OR IN PART, IS CAUSED BY OR RESULTS FROM THE NEGLIGENCE OF ANY PERSON OTHER THAN DESIGN/BUILDER'S PARTIES. IN THE EVENT THAT ANY ACTION OR PROCEEDING IS BROUGHT AGAINST THE OWNER FROM WHICH THE OWNER IS INDEMNIFIED, DESIGN/BUILDER FURTHER AGREES AND COVENANTS TO DEFEND THE ACTION OR PROCEEDING BY LEGAL COUNSEL REASONABLY ACCEPTABLE TO THE OWNER. THE INDEMNITY PROVIDED HEREINABOVE SHALL SURVIVE THE TERMINATION AND/OR EXPIRATION OF THIS AGREEMENT.

11.1.2 INDEMNITY — EMPLOYEE INJURY CLAIMS. IN ADDITION TO THE INDEMNIFICATION PROVIDED IN SECTION 11.1.1. ABOVE, DESIGN/BUILDER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER AND ALL INDEMNITEES FROM AND AGAINST ANY THIRD PARTY CLAIM, DAMAGE, LOSS, OR EXPENSE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND COSTS), ARISING OUT OF, RESULTING FROM OR ATTRIBUTABLE TO ANY CLAIM OF BODILY INJURY, SICKNESS, DISEASE OR DEATH OF ANY EMPLOYEE OF DESIGN/BUILDER, ARCHITECT, OR OF ANY SUBCONTRACTOR OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF ITS SUBCONTRACTORS, BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS' COMPENSATION INSURANCE CARRIER ("HEREINAFTER REFERRED TO AS AN EMPLOYEE INJURY CLAIM"), EVEN TO THE EXTENT SUCH CLAIM, DAMAGE, LOSS OR

EXPENSE IS ALLEGED TO BE CAUSED, IN PART, BY THE NEGLIGENCE OF OWNER OR ANY INDEMNITEE. IT BEING THE EXPRESSED INTENT OF THE OWNER AND THE DESIGN/BUILDER THAT, IN SUCH EVENT, THE DESIGN/BUILDER IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE OWNER AND INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN CONCURRENT NEGLIGENCE BUT SHALL NOT BE OBLIGATED TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE OWNER AND THE INDEMNITEES TO THE EXTENT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS DUE TO THEIR SOLE NEGLIGENCE. IN THE EVENT THAT ANY ACTION OR PROCEEDING IS BROUGHT AGAINST THE OWNER FROM WHICH THE OWNER IS INDEMNIFIED, DESIGN/BUILDER FURTHER AGREES AND COVENANTS TO DEFEND THE ACTION OR PROCEEDING BY LEGAL COUNSEL REASONABLY ACCEPTABLE TO THE OWNER, THE DESIGN/BUILDER AND THE DESIGN/BUILDER'S INSURERS. THE INDEMNITY PROVIDED HEREINABOVE SHALL SURVIVE THE TERMINATION AND/OR EXPIRATION OF THIS AGREEMENT.

11.1.3 The provisions of this Section are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Design/Builder further agrees to defend, at its own expense, and on behalf of Owner and the other Indemnitees and in the name of Owner and the other Indemnitees, any claim or litigation brought in connection with any such injury, death, or damage.

11.1.4 The Development Manager or Owner, as applicable, shall cause its Separate Contractors, if any, to agree to indemnify the Design/Builder or any Subcontractors or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable and hold them harmless from all claims for bodily injury and property damage, other than property insured under Section 11.5, that may arise from that Separate Contractor's operations. Such provisions shall be in a form reasonably satisfactory to the Design/Builder.

11.1.5 IMMUNITY RETAINED. The Design/Builder and Owner hereby acknowledge and agree that Owner is entering this Agreement pursuant to its governmental function and that nothing contained in this Agreement shall be construed as constituting a waiver of the Owner's governmental immunity from suit or liability, which is expressly reserved to the extent allowed by law.

11.1.6 [Intentionally omitted.]

11.1.7 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the

validity or enforceability of the indemnification obligations under this Section 11.1 or the Additional Insured requirements in Section 11.2, such legal limitations are made a part of the contractual obligations and shall operate to amend the obligations to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect. Should any provision in this Agreement be held invalid, unenforceable or contrary to public policy, law, statute or ordinance, then the remainder of the provision, paragraph, Section and/or Agreement shall not be affected thereby and shall remain valid and fully enforceable.

11.1.8 The obligations contained in this Section 11.1 shall survive the expiration, completion, abandonment and/or termination of this Agreement and Final Completion of the Project and any other services to be provided pursuant to this Agreement but in no event shall survive beyond the term of the applicable Statute of Repose.

11.2 DESIGN/BUILDER'S LIABILITY INSURANCE

11.2.1 The Design/Builder shall obtain and maintain insurance coverage for the following claims which may arise out of the performance of this Agreement, whether resulting from the Design/Builder's operations or by the operations of the Architect or any Subcontractor, Sub-Subcontractor, or anyone in the employ of any of them, or by an individual or entity for whose acts they may be liable:

- .1 workers' compensation, disability and other employee benefit claims under acts applicable to the Work;
- .2 under applicable employers' liability law, bodily injury, occupational sickness, disease or death claims of the Design/Builder's employees;
- .3 bodily injury, sickness, disease or death claims for damages to persons not employed by the Design/Builder,
- .4 personal injury liability claims for damages directly or indirectly related to the person's employment by the Design/Builder or for damages to any other person;
- .5 damage to or destruction of tangible property, including resulting loss of use, claims for property other than the Work itself and other property insured under Section 11.5;
- .6 bodily injury, death or property damage claims resulting from motor vehicle liability in

the use, maintenance or ownership of any motor vehicle; and

- .7 contractual liability claims involving the Design/Builder's obligations under Section 11.1.1.

The Design/Builder, to the extent allowed by law, shall name the Owner, the Development Manager, and the Bond Trustee and their respective officers, directors, members, shareholders, agents and representatives as additional insureds on Design/Builder's liability policies, in accordance with **Exhibit F**.

11.2.2 The Design/Builder's Insurance as required by Section 11.2.1 shall be written in accordance with the requirements of **Exhibit F** attached hereto and incorporated herein by reference.

11.2.3 The insurance policies will state that the insurance carrier will endeavor to provide written notice of cancellation or non-renewal to the Owner at least thirty (30) Days in advance. Certificates of insurance showing required coverage to be in force shall be filed with the Owner prior to commencement of the Work. If there are any subsequent changes to any insurance policies after commencement of the Work, Design/Builder shall promptly notify Owner and issue updated certificates as applicable. However, new limits cannot be lower than what is required in this Agreement for Design/Builder.

11.2.4 Products and Completed Operations insurance shall be maintained for a period of 10 (ten) year(s) after the date of Substantial Completion of the Project.

11.3 PROFESSIONAL LIABILITY INSURANCE The Architect and Design/Builder shall each be responsible to obtain professional liability insurance for claims arising from the negligent performance of professional services under this Agreement and the design agreement between Architect and Design/Builder. Policies shall both be written for not less than \$3,000,000 per claim and \$3,000,000 in the aggregate with a deductible or self-insured retention not to exceed \$ 500,000.00 without Owner's approval. These requirements shall be continued in effect for two (2) year(s) after the date of Substantial Completion. If the Architect retains consultants for a portion of the design, their professional liability insurance coverage, including deductible/retention amounts, shall be as set forth above.

11.4 OWNER'S LIABILITY INSURANCE The Owner shall be responsible for obtaining and maintaining at its discretion its own general liability and pollution legal liability insurance in amounts to support its obligations under this Agreement.

Owner represents and covenants that it will require each of its Separate Contractors to assume responsibility for all liabilities, including errors and omissions, relating to any rework, modifications, upgrades and/or maintenance of the Project and associated FF&E done by such Separate Contractors; and Separate Contractors shall indemnify and hold harmless the Design/Builder and its Subcontractors and Consultants at all tiers for any such claims or liabilities.

11.5 INSURANCE TO PROTECT PROJECT

11.5.1 As set forth in **Exhibit F**, the Design/Builder shall obtain and maintain Builder's Risk insurance at the rate of 0.35% of the Contract Value in a form acceptable to the Owner and the Bond Trustee upon the entire Project, for the full cost of replacement at the time of any loss during the Construction Phase. This insurance shall include Design Builder as the first named insured and the Owner, Development Manager, Bond Trustee, Design/Builder, Subcontractors and Sub-Subcontractors at all tiers as additional named insureds. This insurance shall insure against loss from the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage including without duplication of coverage at least: theft, vandalism, malicious mischief, transit, collapse, falsework, temporary buildings, debris removal, flood, earthquake, high wind, water damage, tornadoes, and testing. The Design/Builder shall increase limits of coverage, if necessary, to reflect estimated replacement cost. The Design/Builder shall be responsible for any co-insurance penalties or deductibles resulting from Design/Builder's negligence as a Cost of the Work in the GMP, but such costs shall not increase the GMP. For clarity, the Design/Builder will not be responsible for all other deductibles required by the Builder's Risk insurance policy procured, including but not limited to flood, named windstorm and loss of use (if applicable). The Owner, at Owner's option and expense, may purchase a Differences in Coverage policy to provide coverage on an equal basis to Owner's customarily required Builder's Risk and loss of use coverages.

11.5.2 If the Owner or other Separate Contractors (Operator) occupy or use a portion of the Project prior to its Substantial Completion, such occupancy or use shall not commence prior to a time mutually agreed to by the Owner and the Design/Builder and to which the insurance company or companies providing the property insurance have consented by endorsing the policy or policies. This insurance shall not be cancelled or lapsed on account of partial occupancy. Consent of the Design/Builder to such early occupancy or use shall not be unreasonably withheld.

11.5.3 Design/Builder shall purchase and maintain insurance to protect the Owner, Development Manager, Bond Trustee, Design/Builder, Architect, Subcontractors and Sub-Subcontractors against loss of use of Owner's property due to delayed completion or caused by those perils insured pursuant to Section 11.5. Such policy will provide coverage for expediting expenses of materials, continuing overhead of the Design/Builder, Subcontractors and Sub-Subcontractors, and necessary labor expense including overtime, and other determined exposures, including damages for delays caused by such insurable perils. Exposures of the Design/Builder, Architect, Subcontractors and any Sub-Subcontractors, shall be determined by mutual agreement with separate limits of coverage fixed for each item.

11.5.4 Upon the Bond Trustee's or Owner's request, the Design/Builder shall provide a copy of all policies before an exposure to loss may occur. Copies of any subsequent endorsements to the policies shall be furnished to the Bond Trustee or Owner. The Bond Trustee or Owner shall be given thirty (30) Days' notice of cancellation, non-renewal, or any endorsements restricting or reducing coverage.

11.5.5 At Substantial Completion of the Project, the Owner shall provide property insurance for Project in forms and amounts reasonably acceptable to the Design/Builder, to replace the Design/Builder's Builders' Risk Insurance provided as defined in Section 11.5.

11.6 PROPERTY INSURANCE LOSS ADJUSTMENT

11.6.1 Any insured loss shall be adjusted with the Owner and the Design/Builder and made payable to the Owner and Design/Builder for the insureds, as their interests may appear, subject to any applicable mortgagee clause.

11.6.2 Unless the Owner and the Design/Builder otherwise agree in writing, upon the occurrence of an insured loss, monies received will be deposited in a separate account and shall be distributed in accordance with the agreement of the parties of interest, including the Bond Trustee or in the absence of such agreement, in accordance with any judgment issued by a court of competent jurisdiction. If the parties are unable to agree between themselves on the settlement of the loss, such dispute shall also be submitted for resolution pursuant to Article 13.

11.7 WAIVER OF SUBROGATION

11.7.1 The Design/Builder, Owner, and Development Manager waive all rights against each other and any of their respective consultants, including the Architect, Subcontractors,

Sub-Subcontractors, employees, designated representatives, and agents, for damages caused by risks covered by insurance provided in Section 11.5 and **Exhibit F** to the extent of actual recovery of any insurance proceeds of such insurance, except such rights as they may have to the proceeds of such insurance held by the Owner, Development Manager and Design/Builder. The Design/Builder and Development Manager shall require similar waivers (as appropriate) from the Architect and all Subcontractors, Sub-Subcontractors, Consultants, and Separate Contractors and shall require each of them to include similar waivers in their respective contracts, Subcontracts, Sub-Subcontracts and consulting agreements. The Owner shall also provide similar waivers in its Agreement with the any Separate Contractors.

11.7.2 If the policies of insurance referred to in this Section require an endorsement to provide for continued coverage where there is a waiver of subrogation, the providers of such policies will cause them to be so endorsed.

11.8 WAIVER OF CONSEQUENTIAL DAMAGES

The Owner and Development Manager waive claims against Design/Builder and Design/Builder waives claims against Owner and Development Manager for indirect, special, punitive, exemplary and/or consequential damages arising out of or relating to this Agreement, except for the following damages, losses and liabilities incurred by the Owner: (i) any actual, direct, or not-consequential damages incurred by Owner for any reason; (ii) damages, losses, or costs incurred by Owner to the extent such loss or damage arises out of or relates to fraud, intentional misconduct, violation of any statute or ordinance, or criminal acts of the Design/Builder or its Subcontractors of any tier; and (iii) Design/Builder's obligation to pay liquidated damages as set forth in Section 6.3 herein. This waiver includes damages incurred by any party for rental expenses, for losses of use, income, profit, financing, business and reputation, and loss of management or employee productivity or of the services of such persons (except to the extent such damages are incurred by Owner and fall within the exception to the waiver of consequential damages set forth above in this Section 11.8 (i) – (iii)). This waiver is applicable, without limitation, to all consequential damages due to any party's termination in accordance with Section 12.2 provided the waiver does not affect, release, or waive the last paragraph in Section 12.2.2.

ARTICLE 12 TERMINATION OF THE AGREEMENT AND DEVELOPMENT MANAGER'S RIGHT TO PERFORM DESIGN/BUILDER'S RESPONSIBILITIES

12.1 TERMINATION BY THE DESIGN/BUILDER

12.1.1 Upon fifteen (15) Days' written notice to the Owner the Design/Builder may terminate this Agreement for any of the following reasons:

- .1 If the Work has been stopped for a thirty (30) Day period, which period shall be extended by a maximum of 15 Days if the Owner is pursuing relief from such stoppage,
 - a. under court order or order of other governmental authorities having jurisdiction, unless caused by the Design/Builder; or
 - b. as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Design/Builder, materials are not available; or
 - c. because of the Owner's failure to pay the Design/Builder in accordance with this Agreement;
- .2 if the Work is suspended by the Owner for sixty (60) Days;
- .3 if the Owner or any Separate Contractor materially delay the Design/Builder in the performance of the Work;
- .4 if the Owner otherwise materially adversely breaches this Agreement; or
- .5 if the Owner fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project in accordance with Section 4.1.3 of this Agreement.

12.1.2 Upon termination by the Design/Builder in accordance with Section 12.1.1, the Design/Builder shall be entitled to recover payment for all Work executed and for any proven loss, cost or expense, including fee earned under this Agreement in connection with the Work, plus all demobilization costs and reasonable damages other than incidental or consequential damages. In addition, the Design/Builder shall be paid an amount calculated as set forth either in Sections 12.3.1 or 12.3.2, depending on when the termination occurs, plus those costs defined in Sections 12.3.3 and 12.3.4.

12.2 OWNER'S RIGHT TO PERFORM DESIGN/BUILDER'S OBLIGATIONS AND TERMINATION BY THE OWNER FOR CAUSE

12.2.1 If the Design/Builder fails to perform any of its obligations under this Agreement, the Owner

may, after fifteen (15) Days' written notice, during which the Design/Builder fails to commence to perform such obligation, undertake to perform or commence to perform such obligation. The GMP shall be reduced by the cost to the Owner of performing such obligations.

12.2.2 Upon fifteen (15) Days' written notice to the Design/Builder and the Design/Builder's surety, if any, and provided the Design/Builder does not commence to cure such condition or non-performance within such fifteen (15) Day period, the Owner may terminate this Agreement for any of the following reasons:

- .1 if the Design/Builder utilizes improper materials and/or inadequately skilled workers; or
- .2 if the Design/Builder does not make proper payment to the Architect or to laborers, material suppliers or Subcontractors pursuant to the terms of the applicable design services or subcontract agreements; or
- .3 if the Design/Builder fails to abide by the orders, regulations, rules, ordinances or laws of governmental authorities having jurisdiction; or
- .4 if the Design/Builder otherwise materially breaches this Agreement;

If the Design/Builder has not commenced a continuing path of cure within the fifteen (15) day period, Owner may, without prejudice to any other right or remedy, take possession of the Site and complete the Work utilizing any reasonable means. In this event, the Design/Builder shall not have a right to further payment until the Project is completed.

If the costs of finishing the Work and other actual damages incurred by the Owner, not expressly waived, exceed the unpaid balance of the Guaranteed Maximum Price, the Design/Builder shall pay the difference to the Owner promptly upon demand from Owner.

12.2.3 If the Design/Builder files a petition under the Bankruptcy Code, and/or if an involuntary petition is filed against the Design/Builder, this Agreement shall terminate if the Design/Builder or the Design/Builder's trustee rejects the Agreement or such involuntary or voluntary petition is not dismissed within 60 Days of the filing or, if there has been a default, the Design/Builder is unable to give adequate assurance that the Design/Builder will perform as required by this Agreement or otherwise is unable to comply with the requirements for

assuming this Agreement under the applicable provisions of the Bankruptcy Code.

12.2.4 In the event the Owner exercises their rights under Sections 12.2.1 or 12.2.2, upon the request of the Design/Builder the Owner shall provide a detailed accounting of the cost incurred by the Owner.

12.2.5 This Agreement may be terminated by the Owner without cost or penalty, in accordance with Sections 12.3 and 12.3.1, if Bonds are not issued by June 30, 2026, unless such date is extended by mutual agreement of the parties (the Mayor of the City may approve any extension by up to ninety (90) days, but any further extension will require approval of the City Council.

12.3 TERMINATION BY OWNER WITHOUT CAUSE OR FOR SPECIAL CIRCUMSTANCES If the Owner terminates this Agreement (i) other than as set forth in Section 12.2, the Owner shall pay the Design/Builder for all Work executed and for any proven loss, cost or expense in connection with the Work, plus all demobilization costs, to the extent of lawfully available funds. In addition, the Design/Builder shall be paid an amount calculated as set forth below:

- .1 if the Owner so terminates this Agreement prior to commencement of the Construction Phase, whether or not financing is obtained, the Design/Builder shall be paid from funds obtained by the Owner from other sources, the Design/Builder's and Architect's Design Phase Compensation as set forth in Section 7.2.2.
- .2 if the Owner terminates this Agreement after commencement of the Construction Phase, the Design/Builder shall be paid the Design/Builder's and Architect's Design and Construction Phase Compensation as set forth in Section 7.3 and that amount of the Design/Builder's Fee earned as of the date of termination.
- .3 in either event, all payments as provided in Section 7.1 shall be credited to the Owner at the time of termination.
- .4 the Owner shall also pay the Design/Builder fair compensation, either by purchase or rental at the election of the Owner, for any equipment retained. The Owner shall assume and become liable for obligations, commitments and unsettled claims that the Design/Builder has previously undertaken or incurred in good faith in connection with the Work or as a result of the termination of this Agreement. As a condition of receiving the payments provided under this

Article 12, the Design/Builder shall cooperate with the Owner by taking all steps necessary to accomplish the legal assignment of the Design/Builder's rights and benefits to the Owner, including the execution and delivery of required papers.

12.4 SUSPENSION BY OWNER FOR CONVENIENCE

12.4.1 The Owner may order the Design/Builder in writing to suspend, delay or interrupt all or any part of the Work without cause, for such period of time as the Owner may determine to be appropriate for its convenience; however, the dates for Substantial Completion and Final Completion shall be adjusted as appropriate if approved by Owner.

12.4.2 Adjustments caused by suspension, delay or interruption as set forth in Section 12.4.1 shall be the basis for increases in the GMP, compensation for Design Phase Services, the Design/Builder's Fee and/or the dates of Substantial Completion and Final Completion as and when appropriate pursuant to this Agreement. No adjustment shall be made if the Design/Builder is or otherwise would have been responsible for the suspension, delay or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

12.4.3 NOTICE TO OWNER The Owner shall be copied on all notices transmitted under this Article 12.

12.5 OWNER'S RIGHT TO TERMINATE FOR SPECIAL CIRCUMSTANCES Upon thirty (30) Days' written notice to the Design/Builder and the Design/Builder's surety, if any, the Owner may terminate this Agreement if the GMP proposed by Design/Builder in accordance with Section 3.2 is rejected by Owner. If the Owner terminates this Agreement other than as set forth in Section 12.2, Design/Builder shall be paid amounts owed in accordance with 12.3.

ARTICLE 13 DISPUTE RESOLUTION

13.1 INITIAL DISPUTE RESOLUTION If a dispute arises out of or relates to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties may endeavor to settle the dispute by mediation before recourse to litigation. The location of the mediation, if any, shall be in the City of Jefferson, Missouri, unless the parties mutually agree otherwise. Once one party files a request for mediation with the other contracting party, the parties agree to endeavor to conclude such mediation within sixty (60) Days of the filing of the request. If the parties are unable to agree on a

mediator for a dispute arising under this Agreement, either party may request the American Arbitration Association to appoint a mediator in accordance with the Construction Industry Mediation Procedures.

13.2 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, or unless there are not available funds to compensate Design/Builder, the Design/Builder shall continue the Work and maintain the approved schedules during any mediation proceedings. If the Design/Builder continues to perform, the Owner shall continue to make payments in accordance with this Agreement.

Design/Builder agrees that if, at any time, the Owner elects to undertake or cause the completion of construction of the Work on any portion or Component of the Project without the Development Manager and gives Design/Builder written notice of such election; then, so long as the Design/Builder has received, receives and continues to receive the compensation called for under this Agreement, Design/Builder shall continue to perform its obligations under (i) this Agreement and in accordance with the terms hereof or (ii) under a new contract, the terms and provisions of which are substantially the same as this Agreement. Design/Builder's contract with the Architect will include a provision comparable to this Section 13.2.

13.3 MULTIPARTY PROCEEDING The parties agree that all parties necessary to resolve a claim shall be parties to the same mediation proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the consolidation of mediations.

13.4 LIMITATION OF LIABILITY FOR DESIGN ERRORS Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability for design errors, in the aggregate, of Design/Builder to the Owner and anyone claiming by, through, or under the Owner for any and all claims, losses, costs, or damages caused by the negligence, professional errors or omissions of Design/Builder or those working under Design/Builder shall not exceed three million dollars (\$3,000,000).

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 ASSIGNMENT Design/Builder shall not assign its interest in this Agreement without the written consent of Owner. The City and the Hotel Owner shall be entitled to pledge and assign all of their right, title and interest herein to the Bond Trustee pursuant to the Bond Indenture, with the exception of certain "Reserved Rights" as defined therein; and the Design/Builder acknowledges and consents to such assignment.

14.2 GOVERNING LAW/VENUE This Agreement shall be governed by the laws of the State of Missouri. Venue for any legal proceeding shall be proper in the state or federal courts of competent jurisdiction located in Cole County, Missouri. By executing and delivering this Agreement, each party hereto irrevocably: (i) accepts generally and unconditionally the exclusive jurisdiction and venue of such courts; (ii) waives any defense of forum non conveniens; and (iii) agrees not to seek removal of such proceedings to any court or forum other than as specified above. The foregoing shall not be deemed or construed to constitute a waiver by the Owner of its lawful immunities or any prior notice or procedural requirements applicable to actions or claims against or involving Owner.

14.3 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.4 NO WAIVER OF PERFORMANCE The failure of any party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

14.5 TITLES The titles given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.6 NO JOINT VENTURE It is acknowledged and agreed by and among the parties that the terms hereof are not intended to, and shall not be deemed to, create any partnership or joint venture among the parties. The past, present and future officers, elected officials, employees and agents of the Owner do not assume any responsibilities or liabilities to any third party in connection with the development, design, construction or operation of any of the improvements contemplated by this Agreement.

14.7 ENVIRONMENTAL COMMITMENT AND COMPLIANCE Design/Builder is knowledgeable of the many laws, ordinances, and regulations, whether local, state or federal, relating to the protection of the environment as they relate to the Work which Design/Builder is performing under this Agreement. Design/Builder will comply with all Applicable Laws and ensure all requirements imposed by these laws are met. Owner shall provide all the environmental reports, surveys and test results in its possession prior to Design/Builder's commencement of the Work. The Design/Builder makes no representation that the Project would be able to obtain U.S. Green Building Council LEED certification.

14.8 OWNER AGENCY The Owner may retain and appoint such consultants and advisers that it, in its sole

discretion, deems necessary or appropriate to advise or represent the Owner on the development of all portions of the Project and otherwise perform any act and exercise any decision-making authority on behalf of Owner in relation to this Agreement or any other agreement related to the Project. The Owner shall notify the Design/Builder as to such delegation, if any, in writing. The Design/Builder may rely on the Owner's delegation (i.e. to the Owner's Representative) for any purpose under this Agreement, provided that Owner's Representative shall not have the power to act on behalf of or to bind Owner to (i) amend this Agreement; (ii) terminate this Agreement; (iii) waive any right of the Owner under this Agreement; (iv) commence an action to enforce Owner's rights under this Agreement; (v) appear, defend, compromise, settle, or otherwise attempt to act on Owner's behalf in respect of any claim or legal proceeding brought against Owner under this Agreement; (vi) approve a Change Order in accordance with the requirements of the Master Development Agreement between the City and the Development Manager or (vii) perform any act that is expressly prohibited under any contract or agreement to which Owner is a party.

14.9 LIMITATION ON OWNER LIABILITY

Notwithstanding anything contained in this Agreement or any of the other agreements or documents referred to herein or otherwise, Owner shall not be liable for payment of any liabilities due to the Design/Builder, or any other person under this Agreement, or any liabilities under or by reason of, or in connection with, this Agreement, any of the other agreements or documents referred to herein, the Project, or otherwise, except and to the extent of the Construction Fund.

14.10 NOTICES Any notice and/ or statement required and permitted to be delivered to the parties shall be given at the following address, or at such other address provided to the parties in writing. Any notice or statement required or permitted to be given to Owner shall also be given to Development Manager

To Owner:

Office of the City Administrator
320 E. McCarty
Jefferson City, MO 65101

With a Copy to:

Office of the City Attorney

320 E. McCarty
Jefferson City, MO 65101

To Development Manager:

Garfield Public/Private LLC
14911 Quorum Drive
Suite 380
Dallas, TX 75254
Attn: Steve Galbreath
Steve.g@garfieldpublicprivate.com

To Design/Builder:

McCownGordon Construction, LLC
850 Main St.
Kansas City, MO 64105
Attn: Steve Jones
sjones@mccowngordon.com

With a Copy to:

McCownGordon Construction, LLC
850 Main St.
Kansas City, MO 64105
Attn: Ryan Manies
rmanies@mccowngordon.com

14.11 EXHIBITS Each exhibit, annex, and addendum referred to in this Agreement is attached to and incorporated by reference in this Agreement.

14.12 COMPLIANCE WITH GOVERNMENT CODE

During the term of the Agreement, Design/Builder on behalf of itself, parent companies, and any wholly- or majority-owned subsidiaries, and other affiliates, makes the following representations and agreements. For purposes of this section, "Affiliate" means any entity that controls, is controlled by, or is under common control with Design/Builder and exists to make a profit.

14.12.1 Solely for purposes of complying with § 34.600 of the Missouri Revised Statutes, and to the extent such Section does not contravene applicable State or federal law, Design/Builder does not boycott Israel and will not boycott Israel during the term of this Agreement, and represents that Design/Builder understands and complies with all requirements of § 34.600 of the Missouri Revised Statutes.

SIGNATURE PAGE FOLLOWS

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

This Agreement is entered into as of November 3, 2025.

DESIGN/BUILDER:

McCownGordon Construction, L.L.C.

By: 
DocuSigned by:
42A25ACF4014488...

PRINT NAME: Chris Martin

PRINT TITLE: Vice President - Business Unit Leader

Initial
SJ

DS
RM

OWNER:

Capital City Corporation for Growth

By: 

PRINT NAME: Ron Fitzwater

PRINT TITLE: President

City of Jefferson, Missouri

By: 

PRINT NAME: Ron Fitzwater

PRINT TITLE: Mayor

AMENDMENT NO. _____, (GMP)
DATED _____
DESIGN-BUILD AGREEMENT BETWEEN OWNER & DESIGN/BUILDER

Pursuant to Section 3.2 of the Agreement dated _____, among
the Owner, **Capital City Corporation for Growth and the City of Jefferson, Missouri**,
and the Design/Builder, **McCownGordon Construction, L.L.C.**
for the **Project**,

the Owner and Design/Builder desire to establish a Guaranteed Maximum Price ("GMP") for the Work.
Therefore, the Owner and Design/Builder agree as follows.

ARTICLE 1. GUARANTEED MAXIMUM PRICE

The Design/Builder's GMP for the Work, including the Cost of the Work as defined in Article 8 and the Design/Builder's Fee as set forth in Article 7, is _____ dollars (\$_____).

The Design/Builder guarantees that the Cost of the Work plus the Design/Builder's fee will not exceed the GMP as defined in the Agreement, subject to additions and deductions by Change Orders, as provided in the Agreement. The GMP is based on the following documents, which shall become attachments to this Amendment:

Attachment No.	Description
1	Detailed itemization of the GMP including the estimated Cost of the Work, organized by specification division, with all design costs and construction trade categories, labor, materials and equipment for the Work, Design/Builder's general conditions costs, insurance and bonding costs, Subcontractor default insurance costs, professional staff estimates, and other items that comprise the GMP, including any Work Package Authorizations and the Design-Build Pre-Construction Agreement, if any.
2	A list of the drawings and specifications, including addenda, which were used in preparation of the GMP.
3	A listing of the Design/Builder's Assumptions and Clarifications in preparation of the GMP.
4	A list of alternates approved by Owner.
5	A list of unit prices.
6	A statement of Additional Services, if any.
7	The Project Schedule upon which the GMP is based.
8	Confirmation of the various coverages to be supplied under the insurance program and the limits of the policies as required in Article 11.

ARTICLE 2. DATES OF COMPLETION

From and after the date of this Amendment, the following dates apply:

Substantial Completion of the Project shall be achieved within _____ Days after issuance of the approved "Notice to Proceed", subject to approved Change Orders as defined in the Agreement or as specified in Section 6.2 of the Agreement.

Final Completion of the Project shall be achieved within 30 Days of the date of Substantial Completion of the Project subject to approved Change Orders as defined in the Agreement, or as specified in the GMP Amendment.

All milestone deadlines for completion and turnover of specific components of the Project identified in Exhibit D, Hotel Brand Project Completion Requirements attached to the Agreement.

This GMP Amendment is subject to acceptance by Owner, after which the GMP and dates of Substantial and Final Completion may only be adjusted, if at all, in accordance with Articles 6 and 9 of the Agreement, as applicable.

This Amendment is entered into as of _____, _____.

DESIGN/BUILDER:

McCownGordon Construction, L.L.C.

By: _____

PRINT NAME: _____

PRINT TITLE: _____

OWNER:

Capital City Corporation for Growth

By: _____

PRINT NAME: _____

PRINT TITLE: _____

City of Jefferson, Missouri

By: _____

PRINT NAME: _____

PRINT TITLE: _____

ANNEX 1

[Intentionally omitted.]

ANNEX 2
PROPERTY DESCRIPTION

[See Attached]

P:\2021\21-033 Garfield Public Private\21-033 Property Boundary Survey 5-6-25.dwg, 5/9/2025 3:10:43 PM, HP 4100

ANNEX 2 - Property Description

PROPERTY BOUNDARY SURVEY

CITY OF JEFFERSON INLOTS 339, 340, 341, 342
AND PART OF CITY OF JEFFERSON INLOTS 344, 345 AND 346
CITY OF JEFFERSON, COLE COUNTY, MISSOURI

PROPERTY BOUNDARY DESCRIPTION

All of Inlot Nos 339, 340, 341 and 342, in the City of Jefferson, Cole County, Missouri.
Part of Inlot Nos 344, 345 and 346, in the City of Jefferson, Missouri, being the same property described as Lot No. 2 in deed of record in Book 309, page 356, Cole County Recorder's Office, more particularly described as follows:

From the northeasterly corner of said Inlot No. 346; thence S41°45'38"W, along the easterly line of said Inlot No. 346, 5.00 feet to the northeasterly corner of the property described in said Lot No. 2 and the POINT OF BEGINNING for this description; thence along the boundary of said Lot No. 2 the following courses: S41°45'38"W, 84.64 feet; thence N48°43'45"W, 83.75 feet; thence S41°45'38"W, 110.02 feet to the northerly line of High Street; thence N48°44'32"W, along the northerly line of High Street, 25.00 feet; thence N41°45'38"E, 131.63 feet; thence N48°45'03"W, 100.55 feet; thence S41°52'06"W, 5.00 feet; thence N48°45'03"W, 20.20 feet; thence N41°52'06"E, 68.00 feet; thence S48°45'06"E, 229.38 feet to the point of beginning. Containing 19,657.16 s.f. (0.45 of an acre)

Included in the above described tract is part of Lot 1 and Lot 4, all of Lots 2, 3 and 10, the northerly part of Lots 11, 12, 13 and 14, sometimes referred to as being a subdivision of Inlots Nos. 345 and 346.

NOTES:

- BEARING BASE: Grid North - Missouri State Plane - Central Zone,
DESIGNATION: MODOT JEFF CITY COGS ARP
CORS ID: MOJC
POSITION: 38°34'47.29647 (N) 092°17'40.74721 (W)
NAD 83 (2011) EPOCH - 2010.00
The following values were computed from NAD 83 (2011)
Position: North East Units Scale Factor Convergence
304,807.383(M) 517,892.107(M) MT 0.99993727 +0 07 41.0
- Record Source: Book 167, page 469, Book 166, page 504, Book 755, page 226 & Book 309, page 356, Cole County Recorder's Office.
- Except as shown or stated on this plat, this survey does not reflect any of the following which may apply to the subject property: Recorded or unrecorded easements, building setbacks, restrictions or any other land use regulations, or any other facts which an accurate and current title search may disclose.
- X = Set Chiseled "X"
Rec = Record

LEGEND

LOT LINE & INLOT LINE
PRIMARY PROPERTY LINE
CENTERLINE
EXISTING PROPERTY LINE
BUILDING

STATE OF MISSOURI }
COUNTY OF COLE }
Filed for record ____ day of _____, 20____
at ____ O'clock and ____ Minutes ____M.
recorded in Book ____ Page ____
Judy K. Ridgeway, Recorder
_____, Deputy

Document No. _____

SURVEYOR'S CERTIFICATE

This is to certify that at the request of Mark Bullard of Garfield Public/Private LLC, a Property Boundary Survey, was made under my personal direction and the results are represented on this plat. This survey was made in accordance with the Missouri Standards for an Urban Property Boundary Survey.

In Witness whereof, I have hereunto set my seal and signature this 9th day of May, 2025.



Central Missouri Professional Services, Inc.			
ENGINEERING - SURVEYING - MATERIALS TESTING			
2500 E. McCARTY			
JEFFERSON CITY, MISSOURI 65101			
Phone (573) 634-3455			
FAX (573) 634-8898			
TITLE PROPERTY BOUNDARY SURVEY			
CITY OF JEFFERSON INLOTS 339-346, JEFFERSON CITY, MO 65109			
FOR GARFIELD PUBLIC/PRIVATE LLC			
DATE 5/9/25	DRAWN BY JM	SCALE 1" = 30'	BOOK
REV.	CHECKED BY KB	SHEET 1 OF 1	ICB NO. 21-033
DATE			

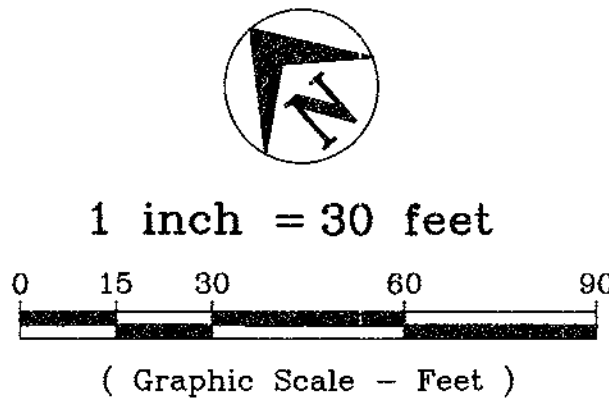


EXHIBIT A
DESIGN/BUILDER'S PERSONNEL LIST

[To be completed and submitted along with the GMP Amendment.]

EXHIBIT B
DESIGN/BUILDER'S EQUIPMENT WITH
AGREED UPON RENTAL RATES

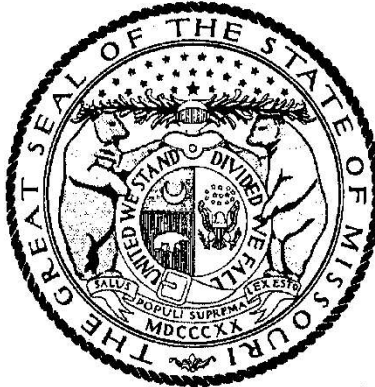
[To be completed and submitted along with the GMP Amendment.]

EXHIBIT C
WAGE DETERMINATION

Missouri

Division of Labor Standards

WAGE AND HOUR SECTION



MIKE KEHOE, Governor

Annual Wage Order No. 32

Section 026
COLE COUNTY

In accordance with Section 290.262 RSMo 2000, within thirty (30) days after a certified copy of this Annual Wage Order has been filed with the Secretary of State as indicated below, any person who may be affected by this Annual Wage Order may object by filing an objection in triplicate with the Labor and Industrial Relations Commission, P.O. Box 599, Jefferson City, MO 65102-0599. Such objections must set forth in writing the specific grounds of objection. Each objection shall certify that a copy has been furnished to the Division of Labor Standards, P.O. Box 449, Jefferson City, MO 65102-0449 pursuant to 8 CSR 20-5.010(1). A certified copy of the Annual Wage Order has been filed with the Secretary of State of Missouri.

Original Signed by

Logan Hobbs, Director
Division of Labor Standards

Filed With Secretary of State: March 10, 2025

Last Date Objections May Be Filed: April 9, 2025

Prepared by Missouri Department of Labor and Industrial Relations

Building Construction Rates for
COLE County

REPLACEMENT PAGE

Section 026

OCCUPATIONAL TITLE	**Prevailing Hourly Rate
Asbestos Worker	\$64.96
Boilermaker	\$32.28*
Bricklayer-Stone Mason	\$32.28*
Carpenter	\$54.62
Lather	
Linoleum Layer	
Millwright	
Pile Driver	
Cement Mason	\$32.28*
Plasterer	
Communication Technician	\$61.08
Electrician (Inside Wireman)	\$61.85
Electrician Outside Lineman	\$82.94
Lineman Operator	
Lineman - Tree Trimmer	
Groundman	
Groundman - Tree Trimmer	
Elevator Constructor	\$32.28*
Glazier	\$49.32
Ironworker	\$85.05
Laborer	\$44.70
General Laborer	
First Semi-Skilled	
Second Semi-Skilled	
Mason	\$62.12
Marble Mason	
Marble Finisher	
Terrazzo Worker	
Terrazzo Finisher	
Tile Setter	
Tile Finisher	
Operating Engineer	\$68.28
Group I	
Group II	
Group III	
Group III-A	
Group IV	
Group V	
Painter	\$43.73
Plumber	\$73.50
Pipe Fitter	
Roofer	\$55.60
Sheet Metal Worker	\$60.62
Sprinkler Fitter	\$69.41
Truck Driver	\$32.28*
Truck Control Service Driver	
Group I	
Group II	
Group III	
Group IV	

*The Division of Labor Standards received fewer than 1,000 reportable hours for this occupational title. The public works contracting minimum wage is established for this occupational title using data provided by Missouri Economic Research and Information Center.

**The Prevailing Hourly Rate includes any applicable fringe benefit amounts for each occupational title as defined in RSMo Section 290.210.

Heavy Construction Rates for
COLE County

Section 026

OCCUPATIONAL TITLE	**Prevailing Hourly Rate
Carpenter	\$57.08
Millwright	
Pile Driver	
Electrician (Outside Lineman)	\$82.94
Lineman Operator	
Lineman - Tree Trimmer	
Groundman	
Groundman - Tree Trimmer	
Laborer	\$52.43
General Laborer	
Skilled Laborer	
Operating Engineer	\$69.38
Group I	
Group II	
Group III	
Group IV	
Truck Driver	\$32.28*
Truck Control Service Driver	
Group I	
Group II	
Group III	
Group IV	

Use Heavy Construction Rates on Highway and Heavy construction in accordance with the classifications of construction work established in 8 CSR 30-3.040(3).

Use Building Construction Rates on Building construction in accordance with the classifications of construction work established in 8 CSR 30-3.040(2).

If a worker is performing work on a heavy construction project within an occupational title that is not listed on the Heavy Construction Rate Sheet, use the rate for that occupational title as shown on the Building Construction Rate Sheet.

*The Division of Labor Standards received fewer than 1,000 reportable hours for this occupational title. Public works contracting minimum wage is established for this occupational title using data provided by Missouri Economic Research and Information Center.

**The Prevailing Hourly Rate includes any applicable fringe benefit amounts for each occupational title.

OVERTIME and HOLIDAYS

OVERTIME

For all work performed on a Sunday or a holiday, not less than twice (2x) the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed or the public works contracting minimum wage, whichever is applicable, shall be paid to all workers employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work.

For all overtime work performed, not less than one and one-half (1½) the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed or the public works contracting minimum wage, whichever is applicable, shall be paid to all workers employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work or contractual obligation. For purposes of this subdivision, "**overtime work**" shall include work that exceeds ten hours in one day and work in excess of forty hours in one calendar week; and

A thirty-minute lunch period on each calendar day shall be allowed for each worker on a public works project, provided that such time shall not be considered as time worked.

HOLIDAYS

January first;
The last Monday in May;
July fourth;
The first Monday in September;
November eleventh;
The fourth Thursday in November; and
December twenty-fifth;

If any holiday falls on a Sunday, the following Monday shall be considered a holiday.

EXHIBIT D
HOTEL BRAND PROJECT COMPLETION REQUIREMENTS
[See attached.]

EXHIBIT E
DESIGN & PRE-CONSTRUCTION BUDGET SCHEDULE

EXHIBIT E
Design Pre-Construction Budget Schedule

Jefferson City Hotel & Conference Center											
Project Budget (By Month)											
Design / Preconstruction Period											
October 6, 2025 Notes: 1. Costs do not include costs from original or restated PSA. 2. Costs currently include potential escalation from March to June start.		Schematic Design			Design Development			Construction Documents			
		2025	2025	2025	2025	2025	2025	GMP Bidding/Pricing		Review/Approval	Bond Sale/Close
		Jun 18	Jul 18	Aug 18	Sep 18	Oct 18	Nov 18	Dec 18	Jan 18	Feb 18	Mar 18
Based Upon Design Start Date = June 18, 2025		Design Period Total			M.R. Start			M.R. Complete			
		month 1	month 2	month 3	month 4	month 5	month 6	month 7	month 8	month 9	month 10
Development Fee - Base Portion ⁴	\$2,363,606.94	\$183,836.10	\$183,836.10	\$183,836.10	\$183,836.10	\$183,836.10	\$183,836.10	\$183,836.10	\$183,836.10	\$183,836.10	\$709,082.08
Development Fee - Completion Portion (Payable at Initial Occupancy)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Developer Reimbursable Expenses ²	\$24,000.00	\$2,400.00	\$2,400.00	\$2,400.00	\$2,400.00	\$2,400.00	\$2,400.00	\$2,400.00	\$2,400.00	\$2,400.00	\$2,400.00
Developer Construction Supervisor Fee	\$85,317.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$10,409.00	\$18,727.00	\$18,727.00	\$18,727.00	\$18,727.00
Developer FF&E Service Fee	\$74,887.29	\$0.00	\$0.00	\$0.00	\$10,698.18	\$10,698.18	\$10,698.18	\$10,698.18	\$10,698.18	\$10,698.18	\$10,698.18
Developer OS&E Service Fee	\$35,598.47	\$0.00	\$0.00	\$0.00	\$5,085.50	\$5,085.50	\$5,085.50	\$5,085.50	\$5,085.50	\$5,085.50	\$5,085.50
Developer IT Service Fee	\$13,023.82	\$0.00	\$0.00	\$0.00	\$1,860.55	\$1,860.55	\$1,860.55	\$1,860.55	\$1,860.55	\$1,860.55	\$1,860.55
Developer Legal Services ²	\$235,452.11	\$30,711.14	\$30,711.14	\$30,711.14	\$20,474.10	\$20,474.10	\$20,474.10	\$20,474.10	\$20,474.10	\$20,474.10	\$20,474.10
Developer Insurance Costs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
GPP Developer Fee Total per month		\$2,831,885.63	\$216,947.24	\$216,947.24	\$216,947.24	\$224,354.42	\$224,354.42	\$234,763.42	\$243,081.42	\$243,081.42	\$768,327.40
GPP Developer Fee Total per phase		SD Fees			DD Fees			CD Fees			
		\$650,841.72			\$683,472.25			\$1,497,571.66			
Hard Costs		month 1	month 2	month 3	month 4	month 5	month 6	month 7	month 8	month 9	month 10
Construction											
McCOWNGORDON Pre-Construction	\$177,333.33	\$0.00	\$0.00	\$0.00	\$25,333.33	\$25,333.33	\$25,333.33	\$50,666.67	\$50,666.67	\$0.00	\$0.00
McCOWNGORDON Existing Garage Demolition	\$920,637.65	\$0.00	\$0.00	\$0.00	\$131,519.66	\$131,519.66	\$131,519.66	\$131,519.66	\$131,519.66	\$131,519.66	\$131,519.66
McCOWNGORDON Hotel Design Assist Partners	\$125,000.00	\$0.00	\$0.00	\$0.00	\$41,666.67	\$41,666.67	\$41,666.67	\$0.00	\$0.00	\$0.00	\$0.00
McCOWNGORDON Hotel Construction	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Owner Furniture Fixtures Supplies Equipment											
FF&E Costs (Procurement, Product, Install, etc)	\$264,480.00	\$0.00	\$0.00	\$10,133.33	\$10,133.33	\$40,702.22	\$40,702.22	\$40,702.22	\$40,702.22	\$40,702.22	\$40,702.22
OS&E Costs (Procurement, Product, Install, etc)	\$66,880.00	\$0.00	\$0.00	\$7,093.33	\$17,226.67	\$7,093.33	\$7,093.33	\$7,093.33	\$7,093.33	\$7,093.33	\$7,093.33
IT Costs (Procurement, Product, Install, etc)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Soft Costs											
Due Dilligence											
City Fees (Permit, Tap, etc)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Survey, Geotech, Environmental Study, Market Study Updates	\$104,854.83	\$0.00	\$0.00	\$0.00	\$30,700.00	\$30,700.00	\$20,266.67	\$23,188.16	\$0.00	\$0.00	\$0.00
Design Consultants - McCownGordon											
Primary Consultants (Architects, Interiors, Struct, MEP, Civil)	\$2,752,447.40	\$204,029.50	\$204,029.50	\$204,029.50	\$337,995.67	\$337,995.67	\$337,995.67	\$281,592.98	\$281,592.98	\$281,592.98	\$281,592.98
Secondary Consultants (Food Service, Low Volt, Acoust, etc)	\$1,106,428.07	\$93,055.81	\$93,055.81	\$93,055.81	\$123,320.84	\$123,320.84	\$123,320.84	\$114,324.53	\$114,324.53	\$114,324.53	\$114,324.53
3rd Party Consultants											
3rd Party Building Material Testing & Inspection	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
3rd Party Building Commissioning	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Brand Costs											
Brand Technical Services	\$184,242.42	\$0.00	\$0.00	\$23,030.30	\$23,030.30	\$23,030.30	\$23,030.30	\$23,030.30	\$23,030.30	\$23,030.30	\$23,030.30
Brand Pre-Opening	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Owner Project Contingency Total											
Owner General Contingency	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Owner DAS - ER Contingency	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Owner Model Room Contingency	\$304,000.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$76,000.00	\$76,000.00	\$76,000.00	\$76,000.00	\$0.00
Hard + Soft Costs Total per month		\$6,006,303.71	\$297,085.31	\$297,085.31	\$337,342.28	\$740,926.48	\$761,362.03	\$826,928.70	\$748,117.86	\$724,929.70	\$598,263.03
Hard + Soft Costs Total per phase		SD Costs			DD Costs			CD Costs			
		\$931,512.89			\$2,329,217.21			\$2,745,573.61			
PROJECT BUDGET COSTS TOTAL per month		\$8,838,189.34	\$514,032.55	\$514,032.55	\$554,289.52	\$965,280.89	\$985,716.45	\$1,061,692.12	\$991,199.27	\$968,011.11	\$1,366,590.43
PROJECT BUDGET COSTS TOTAL per phase		SD Costs			DD Costs			CD Costs			
		\$1,582,354.61			\$3,012,689.46			\$4,243,145.27			

1) Development Fee - Deferred Completion Portion of \$1.5M are outside of the Development Budget, to be payable from the Hotel NOI as soon as they are surplus revenue, as described in the MDA & Indenture of Trust.
2) Billed based on actual cost.
3) Project Budget Schematic Design costs have been approved, and made part of, the Professional Services Pre-Development Agreement Amendment #2 executed June 17, 2025.
4) Development Fee - Base Portion sum of \$525,245.98 shall be paid upon issuance and delivery of the Project Bonds (shown in month 10 above), as described in the MDA.

MCG Base
Contract

177,333.33
125,000.00

2,140,358.93
827,260.64

54,565.73 Forwarded
from SD

\$3,324,518.63
Total MCG
Base Contract

\$54,565.73 in Design
Consultants unused.
Forward to DD

EXHIBIT F INSURANCE REQUIRED OF DESIGN/BUILDER

The Design/Builder shall purchase and maintain in effect at all times during the during the full term of the Agreement, insurance policies providing the coverages specified below, subject to the terms, conditions and exclusions stated in such policies. These insurance requirements are in addition to all insurance requirements set forth in the Agreement for the Project. "Owner," "Indemnitees," and "Design/Builder" shall each have the meanings set forth in the Agreement.

INSURANCE COVERAGES REQUIRED:

1. **Workers Compensation/Employers ' Liability**

Workers' Compensation Insurance with statutory limits as required by the Labor Code of the State of Missouri and Employer's Liability Insurance with limits of \$1,000,000 per each accident, \$1,000,000 disease policy limit, and \$1,000,000 occupation disease per employee. Worker's Compensation coverage shall be based on proper reporting of classification codes and payroll amounts and filing of any coverage agreement which meets the statutory requirement of the Missouri Labor Code and shall apply to all employees of the Design/Builder and any Subcontractor(s) and Sub-Subcontractors. Design/Builder shall cause all insurers providing workers compensation insurance to waive all rights of subrogation against Owner and Indemnitees, provided such waiver shall be limited to claims arising under the workers compensation policy only.

2. **Commercial General Liability**

Commercial General Liability with limits of \$1,000,000 per occurrence for bodily injury, personal injury and property damage. Aggregate policy minimum of \$2,000,000 will include coverage for, but is not limited to, Premises-Operations, Broad Form Contractual Liability, Broad Form Property Damage, Products and Completed Operations, Personal Injury, Use of Contractors and Subcontractors, and Explosion Collapse and Underground (XCU) coverage. A general aggregate loss limit per project endorsement will also be required. Coverage under this policy shall be on an "occurrence" basis. Products and Completed Operations coverage shall be maintained for ten years after the date of Substantial Completion.

3. **Commercial Auto Liability**

Automobile Liability Insurance with coverage limits of \$1,000,000 Combined Single Limit. Coverage shall include all owned, hired, and non-owned vehicles used in performance of the proposed contract. The combined coverage limits of this insurance shall include bodily injury (including death) and property damage.

4. **Excess Liability**

Excess Liability coverage with a limit of \$50,000,000 per occurrence/\$50,000,000 aggregate, to follow form of the Design/Builder's Commercial General Liability, Employer's Liability and Automobile Liability policies.

5. **Pollution Liability**

Design/Builder shall maintain Pollution Liability covering the Design/Builders liability for bodily injury, property damage and environmental damage resulting from pollution and related cleanup costs incurred, arising out of the work or services to be performed under this contract. Coverage shall be provided for both work performed on site, as well as during the transport of any hazardous materials. Limits of \$2,000,000 shall be provided.

6. **Contractor's Professional Liability**

Design/Builder shall provide and maintain Professional Liability coverage with limits of \$3,000,000 each claim/\$3,000,000 annual aggregate, issued by an insurance carrier approved in advance by Owner and licensed, or otherwise authorized as a surplus lines insurer, to provide such coverage in Missouri to insure from and against all negligent acts, errors, and omissions in the professional services

performed by Design/Builder, its agents, representatives, employees, Subcontractors and/or Sub-Subcontractors provided, however, that Architect shall supply Professional Liability insurance separately and independently of Design/Builder. This coverage shall provide full prior acts coverage or a retroactive date not later than the date the services are first performed by or for Design/Builder in connection with the Project. This insurance shall be maintained until all claims arising out of the Work are barred by applicable statutes of limitation or repose.

The Owner and all Indemnitees shall be provided additional insured status on the General Liability and Excess Liability policies. Additional insured status will also apply to the Contractor's Pollution Liability and Auto Liability policies provided by the Design-Builder.

BUILDER'S RISK:

1. **GENERAL:** As per Article 11.5 of this Agreement, Builder's Risk coverage shall be purchased by the Design/Builder.

2. Within the Builder's Risk Policy, Design/Builder shall provide insurance to cover machinery and equipment of all kinds during transit, installation and testing at the Project. Such insurance shall provide coverage on an "All Risk" basis from any external cause not otherwise excluded from the policy, door to door, irrespective of conveyance, with limits set to be the maximum any one shipment inclusive of freight. Critical items refers to cargo that, if damaged by a peril insured against, might cause a delayed start-up to the project because of the length of time required to replace or repair an entire item. Coverage shall start when the items to be installed are transported to Project and shall remain in place until Substantial Completion. This policy shall contain an endorsement that the policy is primary to any other insurance available to Owner with respect to claims arising under this Agreement.

The Builder's Risk and Installation Floater insurance shall include as additional named insureds the Owner, Owner's Representative, Development Manager, Bond Trustee, Design/Builder, Subcontractors and Sub-Subcontractors.

Insurance Requirements by Trade

Trade Category I Full Insurance & Mold Requirements

Infection Control	Lath & Plaster
Tilt-Up Concrete	Tile
Glass-Fiber-Reinforced Concrete	Louvers & Vents
Stone/Marble (Adhered)	Environmentally Controlled Rooms
Stone/Marble (Mechanically Fastened)	Clean Rooms
Expansion Control	Pre-Engineered Structures
Dampproofing and Waterproofing	Hydraulic Elevators and Lifts
Exterior Insulation and Finish Systems (EIFS)	Process Piping
Metal Roof and Wall Panels	Medical Gases
Roofing	Fire Protection
Flashing and Sheet Metal Joint	Pre-Action Fire Suppression
Sealants	Plumbing
Entrances and Storefronts	Heating Ventilating Air Conditioning
Automatic Entrance Doors	Electrical
Windows - Wood & Vinyl	Instrumentation & Controls
Skylights	Building Systems Controls
Glass & Glazing (Exterior)	Site Remediation & HazMat Abatement

Trade Category II Full Insurance & Conditional Mold Requirements

Groundwater Treatment Systems	Concrete Restoration and Cleaning
Demolition	Masonry
Dewatering	Wood Framing
Tunneling, Boring and Jacking	Glass & Glazing (Interior)
Fountains & Water Features	Specialty Glazing Framing
Landscaping & Irrigation	& Drywall Painting &
Cast-in-Place Concrete (Contractors)	Wallcovering
Pneumatically Placed Concrete (Shotcrete)	Commercial Laundry & Dry Cleaning Food
Sand & Water Blasting	Service Equipment
Precast Concrete	Residential Laundry/Kitchen Equipment
Cementitious Decks and Underlayment	Swimming Pools and Spas

Trade Category III Full Insurance & No Mold Requirements

Testing & Inspection Services	Traffic Signs & Signals
Const. Elevator/Hoist/Cranes	Asphalt Concrete Paving
Scaffolding	Paving Specialties Concrete
Construction Aids	Unit Pavers
Traffic Control	Athletic and Recreational Surfaces
Jobsite Security Guard Service Survey	Fences and Gates
& Layout	Retaining Walls
Machinery & Equipment Moving (Rigging)	Structural Excavation & Backfill
Shoring and Underpinning	Concrete Formwork (Non-Skin)
Earthwork	Concrete Accessories Concrete
Soil Stabilization & Erosion Control	Reinforcement
Soil Treatment	Post-Tensioning
Driven Piles	Concrete Pump
Site Utilities	Concrete Finishing
Site Utilities (Dry) - Electrical & Tel/Data	

Trade Category III Full Insurance & No Mold Requirements (continued)

Granite Countertops	Access Flooring
Welding	Fabric/Canvas Awnings Canopies
Structural Steel	Operable Partitions
Structural Steel Erection	Storage Shelving
Metal Joists/Trusses	Sun Control Devices
Metal Deck	Window Washing Equipment
Channel Frame Strut	Theater and Stage Equipment
Miscellaneous Metals	Retail Fixtures & Showcases
Metal Stairs & Ladders	Loading Dock Equipment
Handrails and Railings	Athletic, Recreation, & Therapy Equipment
Ornamental Metal	Laboratory Equipment
Finish Carpentry & Millwork	Lab Equipment Salvage
Plastic Fabrications	Medical Equipment
Traffic Coatings	Lab & Medical Casework Systems
Building Insulation	Manufactured Wood Casework
Fireproofing	Furniture
Fire stopping	Multiple Seating
Metal Doors, Frames & Hardware Doors,	Radiation Protection
Frames & Hardware - Installation Doors -	Tennis Court Construction
Packaged (Total Doors)	Escalators and Moving Walks
Wood and Plastic Doors	Non-Hydraulic Elevators and Lifts
Specialty Doors	Conveyors
Coiling Doors and Grilles	Chutes
Acoustical Ceilings	Pneumatic Tube Systems
Floor Treatment & Coatings	Hoists and Cranes
Specialty Flooring	High Purity QAQC
Wood Flooring	Testing, Adjusting and Balancing
Resilient Flooring	Communications
Carpet & Resilient Flooring	Fire Alarm Systems
Acoustical Wall Treatment	Security Systems
Special Coatings (Epoxy Coatings)	Audio Visual System
Intumescent Fireproofing	

Trade Category IV Minimum Insurance & No Mold Requirements

Temporary Facilities and Controls	Signage
Jobsite Trailer Rental & Lease	Fire Extinguishers/Cabinets
Temporary Barriers, Enclosures & Fencing	Lockers
Product Delivery Requirements	Postal Specialties
Equipment Suppliers	Audio-Visual Equipment
Cleaning	Parking Control Equipment
Site Furnishings	Rugs and Mats
Pavement Markings	Window Treatments
Concrete Ready Mix	Toilet Partitions & Compartments
Lumber Suppliers	Cubicle Track & Curtains
Prefabricated Structural Wood Roof	Flagpoles
Accessories	Wall & Corner Guards
Access Doors and Panels Specialties	Wire Mesh Partitions
Chalkboards & Markerboards	Telephone Specialties
	Toilet & Bath Accessories
	Shower & Tub Door

EXHIBIT G
FORM OF PAYMENT AND PERFORMANCE BOND

[See Attached by way of Example]

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Performance Bond

CONTRACTOR:

(Name, legal status and address)

SURETY:

(Name, legal status and principal place of business)

Mailing Address for Notices**OWNER:**

(Name, legal status and address)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description:

(Name and location)

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond:

☐

None

☐

See Section 16

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____

Name
and Title:

Signature: _____

Name
and Title:

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*

SURETY

Company: *(Corporate Seal)*

Signature: _____
Name and Title: _____
Address _____

Signature: _____
Name and Title: _____
Address _____

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Payment Bond

CONTRACTOR:
(Name, legal status and address)

SURETY:
(Name, legal status and principal place of business)

Mailing Address for Notices

OWNER:
(Name, legal status and address)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONSTRUCTION CONTRACT

Date:

Amount: \$

Description:
(Name and location)

BOND

Date:

(Not earlier than Construction Contract Date)

Amount: \$

Modifications to this Bond: ☐ None ☐ See Section 18

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

SURETY

Company: (Corporate Seal)

Signature: _____

Name
and Title:

Signature: _____

Name
and Title:

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*

SURETY

Company: *(Corporate Seal)*

Signature: _____
Name and Title: _____
Address _____

Signature: _____
Name and Title: _____
Address _____

EXHIBIT H
FORM OF AFFIDAVIT OF ENROLLMENT IN FEDERAL WORK AUTHORIZATION PROGRAM

AFFIDAVIT OF WORK AUTHORIZATION:

The bidder/contractor who meets the section 285.525, RSMo definition of a business entity must complete and return the following Affidavit of Work Authorization.

Comes now _____ (Name of Business Entity Authorized Representative) as _____ (Position/Title) first being duly sworn on my oath, affirm _____ (Business Entity Name) is enrolled and will continue to participate in the E-Verify federal work authorization program with respect to employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the State for the duration of the contract(s), if awarded in accordance with subsection 2 of section 285.530, RSMo. I also affirm that _____ (Business Entity Name) does not and will not knowingly employ a person who is an unauthorized alien in connection with the contracted services provided to the contract(s) for the duration of the contract(s), if awarded.

In Affirmation thereof, the facts stated above are true and correct. (The undersigned understands that false statements made in this filing are subject to the penalties provided under section 575.040, RSMo.)

Authorized Representative's Signature

Printed Name

Title

Date

E-Mail Address

Subscribed and sworn to before me this _____ of _____. I am
(DAY) (MONTH, YEAR)
commissioned as a notary public within the County of _____, State of
(NAME OF COUNTY)
_____, and my commission expires on _____.
(NAME OF STATE) (DATE)

Signature of Notary

Date

BOX C – AFFIDAVIT ON FILE - CURRENT BUSINESS ENTITY STATUS

I certify that _____ (Business Entity Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo and have enrolled and currently participates in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the State of Missouri. We have previously provided documentation to a Missouri state agency or public university that affirms enrollment and participation in the E-Verify federal work authorization program. The documentation that was previously provided included the following.

- ✓ A page from the E-Verify Memorandum of Understanding (MOU) listing the bidder's/contractor's name and the MOU signature page completed and signed, , by the bidder/contractor and the Department of Homeland Security – Verification Division.
- ✓ A completed, notarized Affidavit of Work Authorization signed and dated on or after **September 1, 2009**.

Authorized Business Entity
Representative's Name
(Please Print)

Authorized Business Entity
Representative's Signature

E-Verify MOU Company ID
Number

E-Mail Address

Business Entity Name

Date

Missouri State Agency or Public University* Name

Date of Submission

Bid/Contract Number

(If known)

* Public University includes the following five schools:

- Harris-Stowe State University - St. Louis
- Missouri Southern State University - Joplin
- Missouri Western State University - St. Joseph
- Northwest Missouri State University – Maryville
- Southeast Missouri State University - Cape Girardeau
- Division of Purchasing & Materials Management