

**Economic Development Agreement**

**By and among**

**The City of Jacksonville,**

**The Downtown Investment Authority,**

**and**

**Regions Bank**

## Economic Development Agreement

Article 1. PRELIMINARY STATEMENTS .....	1
1.1 The Project.....	1
1.2 Authority.....	1
1.3 DIA Determination.....	1
1.4 Coordination by DIA.....	1
1.5 Maximum Indebtedness.....	2
1.6 Availability of Funds; Sale of Parking Parcel.....	2
Article 2. DEFINITIONS.....	2
2.1 Access Improvements.....	2
2.2 Capital Investment.....	2
2.3 City Council.....	2
2.4 DIA Board.....	2
2.5 DPRP Guidelines.....	2
2.6 DPRP Loan.....	3
2.7 DPRP Loan Request.....	3
2.8 Improvements.....	3
2.9 Parking Garage.....	3
2.10 Phase.....	3
2.11 Signage Improvements.....	3
2.12 Substantial Completion.....	3
2.13 Transition Expenses.....	3
Article 3. APPROVALS; PERFORMANCE SCHEDULES .....	4
3.1 Renovation Improvements Performance Schedule.....	4
3.2 Transition Improvements Performance Schedule.....	5
3.3 Approval of Agreement.....	5
Article 4. DOWNTOWN HISTORIC PRESERVATION AND REVITALIZATION PROGRA	6
4.1 Downtown Preservation and Revitalization Program (“DPRP”) Forgivable Loans; Loan Request.....	6
4.2 Construction of Improvements.....	6
4.3 Conditions to Disbursement of DPRP Loan.....	7
4.4 Loan Amount; Loan Program.....	9
4.5 DPRP Loan Terms; Loan Documents.....	10
Article 5. DOWNTOWN ECONOMIC DEVELOPMENT GRANT .....	10
5.1 Downtown Economic Development Grant; Amount.....	10
5.2 Conditions to the Disbursement of DED Grant.....	10
5.3 Disbursement of DED Grant.....	12
Article 6. LIMITATION OF LIABILITY .....	12
6.1 No Warranty by City or DIA .....	12
6.2 Further Disclaimer.....	12
Article 7. THE DEVELOPMENT .....	13
7.1 Scope of Development.....	13
7.2 Cost of Development.....	13
7.3 Approval by Other Governmental Agencies.....	13
7.4 Authority of DIA to Monitor Compliance.....	13

7.5	Timing of Completion.....	14
7.6	Construction and Operation Management. ....	14
Article 8.	JSEB PROGRAM.....	14
8.1	Jacksonville Small and Emerging Businesses (JSEB) Program. ....	14
Article 9.	REPORTING; SITE VISITS .....	15
9.1	Reporting.....	15
9.2	Site Visits.....	15
Article 10.	DEFAULTS AND REMEDIES .....	15
10.1	General.....	15
10.2	Specific Defaults.....	17
10.3	Performance Schedule Default. ....	18
Article 11.	GENERAL PROVISIONS .....	18
11.1	Non-liability of City and DIA Officials.....	18
11.2	Force Majeure. ....	18
11.3	Offset.....	18
11.4	Notices. ....	18
11.5	Time. ....	19
11.6	Entire Agreement. ....	19
11.7	Amendment.....	19
11.8	Waivers. ....	20
11.9	Indemnification. ....	20
11.10	Severability. ....	20
11.11	Compliance with State and Other Laws.....	20
11.12	Non-Discrimination Provisions. ....	21
11.13	Contingent Fees Prohibited.....	21
11.14	Ethics.....	21
11.15	Conflict of Interest. ....	21
11.16	Public Entity Crimes Notice. ....	21
11.17	Survival. ....	22
11.18	Incorporation by Reference.....	22
11.19	Order of Precedence.....	22
11.20	Counterparts.....	22
11.21	Independent Contractor.....	22
11.22	Retention of Records/Audit .....	22
11.23	Non-merger. ....	24
11.24	Exemption of the City and DIA.....	24
11.25	Parties to Agreement; Successors and Assigns.....	24
11.26	Venue; Applicable Law. ....	24
11.27	Civil Rights. ....	24
11.28	Further Assurances.....	25
11.29	Exhibits. ....	25
11.30	Construction.....	25
11.31	Further Authorizations. ....	25
11.32	Estoppel Certificate.....	25
11.33	Attorney’s Fees. ....	26
11.34	Termination.....	26

Exhibits:

Exhibit A - Description of the Project Parcel

Exhibit A-1 – Description of Surface Lot

Exhibit B – Transition Improvements

Exhibit C –JSEB Reporting Form

Exhibit D – Disbursement Request Form

Exhibit E - DPRP Guidelines

## ECONOMIC DEVELOPMENT AGREEMENT

This **ECONOMIC DEVELOPMENT AGREEMENT** (this “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”), by and among the **CITY OF JACKSONVILLE**, a municipal corporation and a political subdivision of the State of Florida (the “City”), the **DOWNTOWN INVESTMENT AUTHORITY**, a community redevelopment agency on behalf of the City (the “DIA”) and **REGIONS BANK**, an Alabama state banking corporation (the “Bank”).

### Article 1. PRELIMINARY STATEMENTS

#### 1.1 The Project.

The Bank currently owns certain real property located at 51 W. Bay Street, Jacksonville, Florida 32202 as more particularly described on **Exhibit A** attached hereto (the “Project Parcel”) and certain real property located at 54 W Forsyth Street, Jacksonville, Florida 32202 as more particularly described on **Exhibit A-1** attached hereto (the “Surface Lot”). The Bank has proposed to make certain improvements to renovate and rehabilitate the historic building commonly known as the Old Bisbee Building (the “Building”) located on the Project Parcel (the “Renovation Improvements”). The Bank has also proposed to sell the Surface Lot to VyStar Credit Union (“VyStar”) for the development of a parking garage and in connection therewith will incur costs and make certain necessary improvements to the Building as set forth on **Exhibit B** attached hereto (the “Transition Improvements” and, together with the Renovation Improvements, the “Project”). The Project (inclusive of the DPRP Loan and DED Grants) is expected to represent an estimated total Capital Investment between \$1,600,000 and \$3,100,000 by or on behalf of the Bank. Notwithstanding anything contained herein and for avoidance of doubt, (i) the minimum Capital Investment in Renovation Improvements is \$1,200,000 in order to obtain the benefits of the DPRP Loan, and (ii) there is no minimum Capital Investment in Transition Improvements to be eligible for the DED Grant (other than the completion of the Signage Improvements). Notwithstanding anything contained herein, in the event that the Bank fails to reach \$1,200,000 minimum Capital Investment in Renovation Improvements, the Bank will still continue to be eligible for the DED Grant, provided that the Bank continues to qualify comply with the terms and conditions relating to the DED Grant. Notwithstanding anything contained herein, the Bank may elect to not perform any improvements, it being understood and agreed that in the event of such election, the DIA shall have no obligation to fund under the DPRP Loan or the DED Grant as provided herein.

#### 1.2 Authority.

The DIA was created by the City Council of the City of Jacksonville pursuant to Ordinance 2012-364-E. Pursuant to Chapter 163, Florida Statutes, and Section 55.104, Ordinance Code, the DIA is the sole development and community redevelopment agency for Downtown, as defined by Section 55.105, Ordinance Code and has also been designated as the public economic development agency as defined in Section 288.075, Florida Statutes, to promote the general business interests in Downtown. The DIA has approved this Agreement pursuant to

DIA Resolution 2021-01-05 (the “Resolution”) and the City Council has authorized execution of this Agreement pursuant to City Ordinance 2021-\_\_\_-E (the “Ordinance”).

**1.3 Coordination by DIA.**

The City and the DIA hereby designate the Chief Executive Officer of the DIA (the “CEO”) to be the Project Coordinator who will, on behalf of the DIA, coordinate with the Bank and administer this Agreement according to the terms and conditions contained herein and in the Exhibit(s) attached hereto and made a part hereof. It shall be the responsibility of the Bank to coordinate all Project related activities and all matters under this Agreement with the designated Project Coordinator, unless otherwise stated herein.

**1.4 Maximum Indebtedness.**

The maximum indebtedness of the City and the DIA for all fees, reimbursable items or other costs pursuant to this Agreement shall not exceed the sum of ONE MILLION ONE HUNDRED THOUSAND AND NO/100 (\$1,100,000.00).

**1.5 Availability of Funds; Sale of Parking Parcel.**

The City’s and the DIA’s obligations under this Agreement are contingent and expressly conditioned upon each of the following conditions precedent: (1) the funds for the DPRP Loans (as hereinafter defined) and the DED Grant (as hereinafter defined) related to the Project and this Agreement shall be available and lawfully appropriated, and (2) the Bank shall have transferred ownership of the Surface Lot to VyStar on or before May 31, 2021, or such later date as may be approved by the DIA Board.

**Article 2.  
DEFINITIONS**

As used in this Agreement, the following terms shall have the meaning set opposite each:

**2.1 Access Improvements.**

The door and related improvements to be installed on the northern side of the Building to allow for access, ingress and egress from the Building to the Parking Garage.

**2.2 Capital Investment.**

Money invested by a company to purchase items that may normally be capitalized by a company in the normal conduct of its business.

### **2.3 City Council.**

The body politic, as the same shall be from time to time constituted, charged with the duty of governing the City.

### **2.4 DIA Board.**

The community redevelopment area board, and the governing body of the Authority created by ordinance to manage Downtown economic development, as the same shall be from time to time constituted, charged with the duty of governing the DIA CRA and such other duties as set forth in Chapter 55, City of Jacksonville *Ordinance Code*.

### **2.5 DPRP Guidelines.**

The Downtown Preservation and Revitalization Program Guidelines set forth in Revised Exhibit 1 to City of Jacksonville Ordinance 2020-0527 and incorporated herein by reference as if fully set forth herein (the “DPRP Guidelines”).

### **2.6 DPRP Loan.**

A loan, including any HPRR Loan and any CCR Loan, from the DIA to the Bank with respect to a Phase of the Renovation Improvements in accordance with the terms and conditions set forth in this Agreement and the DPRP Guidelines.

### **2.7 DPRP Loan Request.**

An application by the Bank to the DIA requesting a DPRP Loan pursuant to the terms of this Agreement for a Phase, specifying with particularity the scope of Renovation Improvements proposed for such Phase, the estimated Total Development Costs for such Phase, and the requested DPRP Loan amount, and otherwise in form and substance required by this Agreement, including the DPRP Guidelines, and the DIA, subject to the limitations set forth in Section 4.1 below.

### **2.8 Improvements.**

All of the improvements that are incorporated into the Project on the Project Parcel, including the Renovation Improvements and the Transition Improvements.

### **2.9 Parking Garage.**

The parking garage to be constructed by VyStar on the Surface Lot.

### **2.10 Phase.**

A specifically identified sub-project proposed by the Bank in a DPRP Loan Request with respect to the Renovation Improvements. No more than five (5) Phases shall be permitted under this Agreement.

### **2.11 Signage Improvements.**

The signage improvements to be installed on the Building, as a part of the Transition Improvements substantially similar to that certain signage approved by the Downtown Development Review Board on October 12, 2020, including the blade signage, the signage to be installed on top of the Building and the uplighting on the façade of the Building. Notwithstanding the foregoing, nothing in this Agreement shall be construed as constituting any approval required by any other City department or agency including, without limitation, the Downtown Development Review Board, or pursuant to any City ordinance, code, regulation or permit which would normally be required with respect to the Project.

### **2.12 Substantial Completion.**

“Substantially Completed”, “Substantial Completion” or “Completion” means that all permits have been finalized, a certificate of substantial completion has been issued by the contractor and verified by the architect of record, if any, and the applicable Improvements are available for use in accordance with their intended purpose; subject to commercially reasonable punch list items, completion of tenant improvements and similar items.

### **2.13 Transition Expenses.**

The following expenses, to the extent incurred after the Purchase and Sale Agreement between VyStar and the Bank with respect to the Surface Lot dated July 15, 2020 (the “Purchase Agreement”): (a) professional services fees, including but not limited to legal fees, incurred directly by the Bank (or reimbursed by the Bank under the Purchase Agreement to the extent the Bank will not be reimbursed for such expenditures by other sources) in connection with the sale of the Surface Lot and renovation of the Building; (b) soft and hard costs associated with installation of the Signage Improvements (including, without limitation, costs associated with (i) engineering and architectural services related to the Signage Improvements, (ii) production of the Signage Improvements, (iii) installation of the Signage Improvements, (iv) structural enhancements to support the Signage Improvements, (v) permitting fees associated with the Signage Improvements, and (vi) third-party project management services related to the Signage Improvements); (c) soft and hard costs associated with installation of the Access Improvements (including without limitation, costs associated with (i) engineering and architectural services related to the installation of the Access Improvements, (ii) production of the Access Improvements, (iii) installation of the Access Improvements, (iv) structural enhancements to support the Access Improvements, (v) permitting fees associated with the Access Improvements, and (vi) third-party project management services associated with the Access Improvements); (d) temporary parking for the Bank’s customers and employees during construction of the Parking Garage, and (e) soft costs and hard costs incurred after the Effective Date associated with installing a new HVAC system to support the Building (collectively, “HVAC Expenses”). “Non-HVAC Transition Expenses” shall mean all Transition Expenses excluding HVAC Expenses.

Other capitalized terms not defined in this Article shall have the meanings assigned to them elsewhere in this Agreement.



**Article 3.**  
**APPROVALS; PERFORMANCE SCHEDULES**

**3.1 Renovation Improvements Performance Schedule.**

The Bank, the City and the DIA have jointly established the following dates for the performance of each party's respective obligations with respect to each Phase of the Renovation Improvements (herein called the "Renovation Improvements Performance Schedule"):

- (a) The Bank shall submit its first DPRP Loan Request and all Phase Plans (as hereinafter defined) for the first Phase ("Phase 1") to the DIA, Jacksonville Historic Preservation Commission ("JHPC"), the Downtown Development Review Board ("DDRB") and/or other City departments, as applicable, within one hundred eighty (180) days after the Effective Date.
- (b) With respect to each Phase, the Bank shall apply for all required permits from the City of Jacksonville with respect to the Renovation Improvements to be constructed in such Phase (the "Phase Permits") within ninety (90) days after the approval by the DIA Board of the applicable Phase Plans (as hereinafter defined). The Bank shall use all commercially reasonable efforts to diligently and continuously pursue all Phase Permits.
- (c) The Bank shall commence construction of the Renovation Improvements for each Phase within ninety (90) days after the issuance of the applicable Phase Permits.
- (d) The Renovation Improvements for each Phase shall be Substantially Completed within three hundred sixty-five (365) days after the date that the applicable Phase Permits are issued, provided that for any Phase after Phase 1 the DIA Board may agree to a later date in the Approved Phase Plans in its sole discretion.

The Bank hereby agrees to undertake and complete each Phase of the Project in accordance with this Agreement and the Renovation Improvements Performance Schedule, and to comply with all of its obligations set forth herein. The CEO shall have the authority to extend the Renovation Improvements Performance Schedule for up to three (3) months for good cause shown by the Bank, in the CEO's sole discretion.

**3.2 Transition Improvements Performance Schedule.**

The Bank, the City and the DIA have jointly established the following dates for the performance of each party's respective obligations with respect to the Transition Improvements (herein called the "Transition Improvements Performance Schedule"):

- (a) The Bank shall apply for all permits for the Signage Improvements (the "Signage Permits") no later than (i) the date that is ninety (90) days after the Effective Date of this Agreement, or (ii) August 31, 2021, whichever is earlier.

- (b) The Bank shall commence construction of the Signage Improvements no later than (i) the date that is ninety (90) days after the Signage Permits are issued, or (ii) November 30, 2021, whichever is earlier.
- (c) The Bank shall Substantially Complete the Signage Improvements no later than (i) the date that is one hundred eighty (180) days after the commencement of the construction of the Signage Improvements, or (ii) May 30, 2022, whichever is earlier.

The Bank hereby agrees to undertake and complete the Signage Improvements in accordance with this Agreement and the Transition Improvements Performance Schedule, and to comply with all of its obligations set forth herein. The CEO shall have the authority to extend the Transition Improvements Performance Schedule for up to three (3) months for good cause shown by the Bank, in the CEO's sole discretion. The Bank shall have the right, but not the obligation, to undertake the Access Improvements, it being understood and agreed that in order for the Access Improvements to be eligible for the DED Grant, such Access Improvements must be completed in accordance with the terms of this Agreement prior to the second (2<sup>nd</sup>) anniversary of the Effective Date.

### **3.3 Approval of Agreement.**

By the execution hereof, the parties certify as follows:

- (a) The Bank certifies that:
  - (i) the execution and delivery hereof has been approved by all parties whose approval is required under the terms of the governing documents creating the particular Bank entity;
  - (ii) this Agreement does not violate any of the terms or conditions of such governing documents and the Agreement is binding upon the Bank and enforceable against it in accordance with its terms;
  - (iii) the person or persons executing this Agreement on behalf of the Bank are duly authorized and fully empowered to execute the same for and on behalf of the Bank;
  - (iv) the Bank and each entity composing the Bank is duly authorized to transact business in the State of Florida and has received all necessary permits and authorizations required by appropriate governmental agencies as a condition to doing business in the State of Florida; and
  - (v) the Bank, its business operations, and each person or entity composing the Bank are in compliance with all federal, state and local laws.
- (b) The DIA certifies that the execution and delivery hereof is binding upon the DIA to the extent provided herein and enforceable against it in accordance with its terms.

- (c) The City certifies to the Bank that the execution and delivery hereof is binding upon the City to the extent provided herein and enforceable against the City in accordance with the terms hereof.

#### **Article 4.**

### **DOWNTOWN HISTORIC PRESERVATION AND REVITALIZATION PROGRAM**

#### **4.1 Downtown Preservation and Revitalization Program (“DPRP”) Forgivable Loans; Loan Request.**

Pursuant to Section 55.303, *Ordinance Code*, the DIA is authorized to award applicants DPRP forgivable loans, subject to City Council approval. Pursuant to the terms and conditions of this Agreement, from time to time, the Bank may submit DPRP Loan Requests to the DIA for DPRP Loans, provided that (i) the Bank may not submit more than five (5) DPRP Loan Requests pursuant to this Agreement, (ii) no more than one DPRP Loan Request may be made in connection with any Phase, (iii) no more than two (2) DPRP Loan Requests may be submitted during any fiscal year (October 1<sup>st</sup> – September 30<sup>th</sup>), and (iv) each DPRP Loan Request must be submitted prior to the fifth (5<sup>th</sup>) anniversary of the Effective Date. Notwithstanding anything to the contrary set forth in this Agreement, any and all DPRP Loan Requests that are not approved by the DIA Board on or before the fifth (5<sup>th</sup>) anniversary of the Effective Date shall be deemed to be denied and each such DPRP Loan Request shall be null and void and of no further effect. The DPRP Loan Request shall include all documentation related to the Renovation Improvements to be constructed in such Phase, including, without limitation, all required plans, specifications, budgets, exhibits, and all other information as may be required by the DIA, the JHPC, the DDRB and/or other City departments, as applicable (respectively, the “Phase Plans”). The JHPC will review the DPRP Loan Request, and if approved, it will be subject to the conditions contained in Certificate of Appropriateness issued in connection therewith (the “COA Conditions” and together with any other conditions imposed by the DIA, DDRB and/or other City departments, the “Conditions”). The approval of the Phase Plans may be withheld or conditioned by the DIA Board in order for such Phase Plans to comply with this Agreement, any and all applicable federal, state and local laws, ordinances and regulations, and/or the DPRP Guidelines in effect at the time of this Agreement as set forth on **Exhibit E** attached hereto, in the reasonable discretion of the DIA Board. The term “Approved Phase Plans” shall mean any Phase Plans finally approved in writing by the DIA Board, subject in all respects to the Conditions.

#### **4.2 Construction of Improvements.**

After the Bank obtains all applicable approvals with respect to a Phase, the Bank shall construct the Renovation Improvements for such Phase in accordance with the applicable Certificate(s) of Appropriateness (the “COA”), the Conditions, the Approved Phase Plans and the scope of work approved by the DIA Board (collectively, the “DPRP Scope of Work”). The Bank will pay all costs of the Project and Renovation Improvements. The Bank shall comply with all applicable requirements and guidelines of Section 111.910, Ordinance Code.

#### **4.3 Conditions to Disbursement of DPRP Loan.**

In addition to the conditions precedent set forth in Section 1.6 above, the DIA's obligation to disburse or advance any portion of a DPRP Loan to the Bank with respect to any Phase is conditioned upon the prior occurrence of each the following conditions precedent with respect to such Phase:

(a) The Building must have designated as a local historic landmark by the City Council of Jacksonville.

(b) The Bank shall submit to the DIA a completed written disbursement request (the "Disbursement Request") on the Disbursement Request Form attached hereto as **Exhibit D**. In the Disbursement Request, the Bank shall certify and describe in detail reasonably acceptable to the DIA (a) the cost of the labor that has been performed and the materials that have been incorporated into the Building, and (b) the amount actually paid by the Bank for such labor and materials. The Bank shall attach to the Disbursement Request such invoices, receipts, cancelled checks (or evidence that payment has cleared the Bank's banking account), and other documents required by the DIA evidencing that the costs and expenses were actually incurred and paid for by the Bank and were expended on and pertain to the applicable Phase of the Project.

(c) All property taxes on the Project Parcel must be current and no municipal liens shall be outstanding;

(d) The Building shall be in compliance with all applicable state and local laws, ordinances and regulations and the Bank must be utilizing the Building in accordance with the DPRP Guidelines;

(e) No default with respect to the Bank's obligations under this Agreement or an event which, with the giving of notice or the passage of time, or both, would constitute a default, beyond any applicable cure period, with respect to Bank's obligations under this Agreement, has occurred or is continuing.

(f) The Bank shall furnish to the DIA a certificate of occupancy or its equivalent and such other permits and/or certificates (including a certificate of substantial completion issued by the contractor and certified by the architect of record) as shall be required to establish to the DIA's satisfaction that the Improvements with respect to the applicable Phase have been properly completed in accordance with the terms of this Agreement and are not subject to any material violations or uncorrected conditions noted or filed in any City department;

(g) The Bank shall submit to the DIA a proper contractor's final affidavit and full and complete releases of liens from each contractor, subcontractor and supplier, or other proof satisfactory to the DIA, confirming that final payment has been made for all materials supplied and labor furnished in connection with the applicable Phase or that, in the event of a dispute in any amount owed, such amount is properly bonded off pursuant to Florida law so that it will not become a lien on the Project Parcel;

(h) The Bank shall provide evidence and documentation sufficient to demonstrate a minimum Capital Investment in the applicable Phase as determined by the DIA in its reasonable discretion based upon the DPRP Loans applicable to such Phase and the related advance rates as set forth in the DPRP Guidelines;

(i) The Improvements with respect to the applicable Phase shall have been Substantially Completed in all respects in accordance with the terms and conditions of this Agreement, as verified by a final inspection report satisfactory to the DIA, certifying that the Building renovations and Improvements for the applicable Phase have been constructed in a good and workmanlike manner and are in satisfactory condition.

(j) The Bank must submit to a “post-work” inspection by the Historic Preservation Section of the Planning and Development Department (the “Historic Preservation Section”) or consultant to examine the Bank’s compliance with previously approved Permits, the COA, the Conditions, and all Historic Preservation Section interpretations submitted by the Bank. And the Historic Preservation Section shall have completed this “post-work” inspection and be satisfied that the Bank has met the obligations of this Agreement in accordance with the following criteria: (a) United States Department of Interior Standards for Historic Preservation; (b) United States Department of Interior Standards for Rehabilitation; (c) the COA from the Jacksonville Historic Preservation Commission; and (d) the DPRP Scope of Work.

(k) The Bank shall take all action necessary to have any mechanic’s and materialmen’s liens, judgment liens or other liens or encumbrances filed against the Project Parcel (other than any consensual mortgage) released or transferred to bond within ten days of the date the Bank receives notice of the filing of such liens or encumbrances. If any such lien or encumbrance is filed, the DIA shall have received a copy of the recorded release. The DIA shall not be obligated to disburse any of the DPRP Loan funds to the Bank if, in the reasonable opinion of the DIA, any such disbursement or the Project or Project Parcel would be subject to a mechanic’s or materialmen’s lien or any other lien or encumbrance other than inchoate construction liens. The Bank shall be fully and solely responsible for compliance in all respects whatsoever with the applicable mechanic’s and materialmen’s lien laws.

(l) If applicable, the Bank shall deliver to the DIA an as-built survey within thirty (30) days of the final completion of the Project if the footprint of the Building changes.

(m) The Bank shall have provided to the DIA, in form and substance reasonably satisfactory to the DIA any such other document, instrument, information, agreement or certificate the DIA may reasonably require related to the construction or completion of the Building Improvements and all Loan Documents have been executed and delivered by the Bank, it being understood and agreed that the Bank shall not be required to enter into any additional document that materially expands the scope of the obligation or responsibility of the Bank beyond the obligations and responsibilities already required of the Bank in this Agreement or the Loan Documents.

(n) The Bank shall have provided to the DIA, in form and substance reasonably satisfactory to the DIA an update to the Bank’s ROI spreadsheet that demonstrates

continuing adherence to the minimum ROI threshold of 0.50X at the aggregate Project level as required by the DPRP Guidelines.

(o) All other conditions and requirements under the DPRP Guidelines have been satisfied as determined by the DIA in its sole but reasonable discretion.

**4.4 Loan Amount; Loan Program.**

The total of all DPRP Loans to be advanced under this Agreement shall not exceed a maximum aggregate amount of Nine Hundred Thousand and No/100 Dollard (\$900,000.00). Further, no DPRP Loan may exceed the limits set forth in the DPRP Guidelines, including with respect to Total Development Costs. To be eligible for maximum amount of DPRP Loans authorized under this Agreement, the Bank shall incur not less than \$2,633,000 in Total Development Costs (as defined in the DPRP Guidelines) with respect to the Renovation Improvements, provided that the tax assessed value of the Project Parcel in the amount of \$1,433,000.00 shall be included towards the required Total Development Costs. The amount of the DPRP Loan, if any, with respect to any Phase shall be calculated as a percentage of the amount of Eligible Expenses (as hereinafter defined) with respect to such Phase. The term “Eligible Expenses” shall mean those expenses that are (i) actually incurred by the Bank to construct Improvements meeting the standard criteria used by the DIA and the Historic Preservation Section in determining eligible improvements or otherwise eligible hereunder, and (ii) eligible for the DPRP Loan pursuant to the terms and conditions of this Agreement, the DPRP Guidelines, the COA and the Conditions. All Eligible Expenses shall be determined by the Historic Preservation Section and the DIA in its sole but reasonable discretion. Upon such a determination of Eligible Expenses for a Phase, subject to the compliance with all of the conditions precedent in Section 1.6 and Section 4.3 above, including, without limitation, paid invoices matching the DPRP Scope of Work, a contractor’s affidavit, mechanics’ lien releases and other evidence (including without limitation site inspections and inspection reports) that may be required in the discretion of the City or DIA, the applicable DPRP Loans with respect the Eligible Expenses incurred in such Phase will be advanced. The applicable DPRP Loan amounts and advance rates with respect to any Phase shall be determined by the DIA, provided that the DPRP Loan will be comprised of one or more of the DPRP Loans set forth in the DPRP Guidelines, including Historic Preservation and Rehabilitation Forgivable Loans (each, a “HPRR Loan”) and Code Compliance Renovations Forgivable Loans (each, a “CCR Loan”). Notwithstanding the foregoing, the DIA anticipates that the following composition of DPRP Loans and advance rates will be used, as applicable, during any Phase:

HPRR Loan:	Historic Rehabilitation - Building Exterior – 75% of Eligible Expenses Historic Rehabilitation - Building Interior - 30% of Eligible Expenses Historic Restoration – Building Interior – 75% of Eligible Expenses Historic Rehabilitation - General Requirements - 20% of Eligible Expenses
CCR Loan	Code Compliance - 75% of Eligible Expenses

#### **4.5 DPRP Loan Terms; Loan Documents.**

The maturity date of each DPRP Loan advanced hereunder shall be five (5) years from the date of such DPRP Loan, in accordance with the DPRP Guidelines. For so long as there is no default under this Agreement or any Loan Document which continues beyond all applicable notice and cure periods, each DPRP Loan shall be forgiven at the rate of twenty percent (20%) per annum, in accordance with the DPRP Guidelines. These terms shall be more fully set forth in the promissory notes to be executed and delivered by the Bank in connection with each DPRP Loan (the “Notes”). In addition to the Notes, the Bank shall also execute and deliver all other agreements, documents, instruments, and certificates reasonably required by the DIA in connection with any DPRP Loan under this Agreement, including, without limitation, all agreements, documents, instruments, and certificates delivered in connection with the DPRP Loan (collectively with the Notes, the “Loan Documents” and each, a “Loan Document”), it being understood and agreed that the form of such Loan Documents shall be in a form that is mutually agreed upon by the DIA and the Bank.

### **Article 5. DOWNTOWN ECONOMIC DEVELOPMENT GRANT**

#### **5.1 Downtown Economic Development Grant; Amount.**

Pursuant to the Resolution and the Ordinance, the DIA is authorized to award the Bank a Downtown Economic Development Grant (the “DED Grant”) of up to a maximum aggregate amount of Two Hundred Thousand and NO/100 Dollars (\$200,000.00) to reimburse the Bank for fifty percent (50%) of approved Transition Expenses incurred in connection with the Transition Improvements, provided that, the amount of HVAC Expenses that are eligible for the DED Grant shall be capped by, and shall not exceed, the amount of approved Non-HVAC Transition Expenses. Subject to the limitations in the foregoing sentence and Section 5.2 below, upon Substantial Completion of any Transition Improvements, the Bank may apply for a disbursement of a portion of the DED Grant in an amount equal to fifty percent (50%) of approved and verified Transition Expenses incurred in connection with such Transition Improvements (each a “Grant Application”); provided that in no event shall the total sum of all disbursed amounts exceed, in the aggregate, the maximum DED Grant amount of \$200,000.00. Notwithstanding the foregoing, any portion of the DED Grant that is not disbursed on or before the second (2<sup>nd</sup>) anniversary of the Effective Date shall expire and any right that the Bank may have to the DED Grant shall immediately null and void. The DIA’s obligation to make the DED Grant is subject in all respects to become the terms and conditions of this Agreement.

#### **5.2 Conditions to the Disbursement of DED Grant.**

In addition to the conditions precedent set forth in Section 1.6 above, the DIA’s obligation to disburse any portion of the DED Grant to the Bank is conditioned upon the prior occurrence of each the following conditions precedent:

(a) The Bank shall provide evidence and documentation sufficient to demonstrate that the Bank has incurred actual out of pocket Transition Expenses that have been

approved by the DIA in an amount not less than 200% of the requested DED Grant, as determined by the DIA in its reasonable discretion. Subject to the foregoing requirement, it is understood and agreed that the Bank shall not be obligated to spend a minimum on Transition Expenses to be eligible for reimbursement of Transition Expenses under the DED Grant.

(b) The Bank shall submit to the DIA a completed written Disbursement Request. In the Disbursement Request, the Bank shall certify and describe in detail reasonably acceptable to the DIA (a) the cost of the labor that has been performed and/or other qualifying expenses and the materials (if applicable) that have been incorporated into the Building, and (b) the amount actually paid by the Bank for such labor, materials or other qualifying expenses. The Bank shall attach to the Disbursement Request such invoices, receipts, cancelled checks (or evidence that payment has cleared the Bank's banking account), and other documents required by the DIA evidencing that the costs and expenses were actually incurred and paid for by the Bank and were expended on and pertain to the Transition Improvements. The Disbursement Request shall have been approved by the DIA.

(c) All property taxes on the Project Parcel must be current and no municipal liens shall be outstanding;

(d) The Building shall be in compliance with all applicable state and local laws, ordinances and regulations (subject to any legal variances, exceptions and non-conforming, vested or "grandfathered" rights) and the Bank must be utilizing the Building in accordance with the DPRP Guidelines; provided that, all work performed in connection with this Agreement shall be performed in accordance with all applicable building code ordinances and regulations;

(e) No default with respect to Bank's obligations under this Agreement or an event which, with the giving of notice or the passage of time, or both, would constitute a default with respect to Bank's obligations under this Agreement, has occurred or is continuing.

(f) The Bank shall furnish to the DIA a certificate of occupancy or its equivalent and such other permits and/or certificates (including a certificate of substantial completion from the architect or engineer of record) as shall be required to establish to the DIA's satisfaction that the Transition Improvements have been properly completed and are not subject to any material violations or uncorrected conditions noted or filed in any City department.

(g) The Bank shall submit to the DIA a proper contractor's final affidavit and full and complete releases of liens from each contractor, subcontractor and supplier, or other proof satisfactory to the DIA, confirming that final payment has been made for all materials supplied and labor furnished in connection with the Transition Improvements, as applicable, or that, in the event of a dispute in any amount owed, such amount is properly bonded off pursuant to Florida law so that it will not become a lien on the Project Parcel;

(h) The Signage Improvements and the Access Improvements, as applicable, have been Substantially Completed in all respects and in accordance with this Agreement and the Transition Improvements Performance Schedule, as verified by a final inspection report satisfactory to the DIA, certifying that all applicable Transition Improvements have been constructed in a good and workmanlike manner and are in satisfactory condition. In the event the



DIA determines that there is a deficiency with the Building and related Improvements the DIA reserves the right to require that an escrow be established in an amount satisfactory to the DIA to remedy such deficiency.

(i) The Bank shall take all action necessary to have any mechanic's and materialmen's liens, judgment liens or other liens or encumbrances filed against the Project Parcel (other than any consensual mortgage) released or transferred to bond within ten days of the date the Bank receives notice of the filing of such liens or encumbrances. If any such lien or encumbrance is filed, the DIA shall have received a copy of the recorded release. The DIA shall not be obligated to disburse any of the DED Grant funds to the Bank if, in the reasonable opinion of the DIA, any such disbursement or the Project or Project Parcel would be subject to a mechanic's or materialmen's lien or any other lien or encumbrance other than inchoate construction liens. The Bank shall be fully and solely responsible for compliance in all respects whatsoever with the applicable mechanic's and materialmen's lien laws.

(j) The Bank shall have provided to the DIA, in form and substance reasonably satisfactory to the DIA, any such other document, instrument, information, agreement or certificate the DIA may reasonably require that is related to the construction or completion of the Transition Improvements.

(k) All other conditions and requirements under the DPRP Guidelines have been satisfied as determined by the DIA in its sole but reasonable discretion.

### **5.3 Disbursement of DED Grant.**

Subject to the terms and conditions set forth in this Agreement, the DED Grant shall be funded to reimburse the Bank for fifty percent (50%) of eligible and approved Transition Expenses incurred in connection with the Transition Improvements as set forth in its Grant Application; provided that, the amount of HVAC Expenses that are eligible for the DED Grant shall be capped by, and shall not exceed, the amount of approved Non-HVAC Transition Expenses; and further provided that, no more than two (2) Grant Applications may be submitted by the Bank and each Grant Application must be submitted prior to the second (2<sup>nd</sup>) anniversary of the Effective Date. The Bank may submit a DPRP Loan Request for any Transition Expenses that would have been eligible for the DED Grant but which were not submitted for the DED Grant, provided such costs are otherwise eligible under DPRP Guidelines. Without limiting the foregoing, and for the avoidance of doubt, any Transition Expenses that are submitted for a DED Grant shall not be eligible for a DPRP Loan.

## **Article 6. LIMITATION OF LIABILITY**

### **6.1 No Warranty by City or DIA**

Nothing contained in this Agreement or any other document attached hereto or contemplated hereby shall constitute or create any duty on or warranty by City or the DIA regarding: (a) the accuracy or reasonableness of the project budgets; (b) the feasibility or quality of the construction documents for the Project; (c) the proper application by the Bank of the

DPRP Loans or the DED Grant; (d) the quality or condition of the work; or (e) the competence or qualifications of any third party furnishing services, labor or materials in connection with the construction of the Project. The Bank acknowledges that it has not relied and will not rely upon any experience, awareness or expertise of the City or DIA, or any City or DIA inspector, regarding the aforesaid matters.

## **6.2 Further Disclaimer.**

Neither the DPRP Loans nor the DED Grant shall be deemed to constitute a debt, liability, or obligation of the City, DIA or of the State of Florida or any political subdivision thereof within the meaning of any constitutional or statutory limitation, or a pledge of the faith and credit or taxing power of the City, DIA or of the State of Florida or any political subdivision thereof, but shall be payable solely from the funds provided therefor, respectively, in Article 4 and Article 5 of this Agreement. Neither the City nor the DIA shall be obligated to pay any DPRP Loan or the DED Grant or any installment of the foregoing except from the non-ad valorem revenues or other legally available funds provided for that purpose, and neither the faith and credit nor the taxing power of the City, DIA or of the State of Florida or any political subdivision thereof is pledged to the payment of the DPRP Loans or the DED Grant or any installment of the foregoing. The Bank, and any person, firm or entity claiming by, through or under the Bank, or any other person whomsoever, shall never have any right, directly or indirectly, to compel the exercise of the ad valorem taxing power of the City, DIA or of the State of Florida or any political subdivision thereof for the payment of the DPRP Loans or the DED Grant or any installment of the foregoing.

## **Article 7. THE DEVELOPMENT**

### **7.1 Scope of Development.**

The Bank shall construct and develop or cause to be constructed and developed, in substantial compliance with the times set forth in the Renovation Improvements Performance Schedule or the Transition Improvements Performance Schedule, as applicable, all Improvements which the Bank is obligated to construct and develop with respect to the Project under this Agreement. The Bank shall construct all Improvements in accordance with all applicable laws and building and permitting codes.

### **7.2 Cost of Development.**

Except as otherwise set forth in this Agreement, the Bank shall pay the cost of constructing and developing the Improvements at no cost to the DIA.

### **7.3 Approval by Other Governmental Agencies.**

All of the parties' respective rights and obligations under this Agreement are subject to and conditioned upon approval of the Project and all Project Documents by such other governmental agencies, whether state, local or federal, as have jurisdiction and may be required or entitled to approve them. Notwithstanding any provision of this Agreement to the contrary,

the City and the DIA do not guarantee approval of this Agreement or any aspect of the Project by any government authorities and agencies that are independent of the DIA.

#### **7.4 Authority of DIA to Monitor Compliance.**

During all periods of design and construction, the CEO of the DIA or the CEO's designee shall have the authority to monitor compliance by the Bank with the provisions of this Agreement and the Project Documents. Insofar as practicable, the DIA shall coordinate such monitoring and supervising activity with those undertaken by the City so as to minimize duplicate activity. To that end, during the period of construction and with prior notice to the Bank, representatives of the City and DIA shall have the right of access to the Project Parcel and to every structure on the Project Parcel during normal construction hours.

#### **7.5 Timing of Completion.**

The Improvements shall be completed substantially in accordance with the terms of this Agreement and the Renovation Improvements Performance Schedule or Transition Improvements Performance Schedule, as applicable.

#### **7.6 Construction and Operation Management.**

Except as otherwise expressly provided herein, the Bank shall have discretion and control, free from interference, interruption or disturbance, in all matters relating to the management, development, redevelopment, construction and operation of the Project, provided that the same shall, in any event, conform to and comply with the terms and conditions of this Agreement, and all applicable state and local laws, ordinances and regulations (including without limitation, applicable zoning, subdivision, building and fire codes). The Bank's discretion, control and authority with respect thereto shall include, without limitation, the following matters:

- (a) the construction and design of the Project, subject to the express terms and conditions of this Agreement;
- (b) the selection, approval, hiring and discharge of engineers, architects, contractors, subcontractors, professionals and other third parties (collectively the "Vendors") on such terms and conditions as the Bank deems appropriate; provided however, that to the extent that the DIA furnishes to the Bank the names and identities of Jacksonville-based Vendors, and to the extent that Bank has the need to enter into contracts with Vendors outside of persons employed by Bank or companies affiliated with or controlled by Bank or its principals, then Bank agrees to include all such Jacksonville-based Vendors in the process established by Bank for obtaining bids for any of the Improvements;
- (c) the negotiation and execution of contracts, agreements, easements and other documents with third parties, in form and substance satisfactory to Bank; and
- (d) the preparation of such budgets, cost estimates, financial projections, statements, information, and reports as the Bank deems appropriate.

**Article 8.  
JSEB PROGRAM**

**8.1 Jacksonville Small and Emerging Businesses (JSEB) Program.**

The Bank, in further recognition of and consideration for the public funds provided to assist the Bank pursuant to this Agreement, hereby acknowledges the importance of affording to small and emerging vendors and contractors the full and reasonable opportunity to provide materials and services. Therefore, the Bank hereby agrees as follows:

- (a) The Bank shall obtain from the City’s Procurement Division the list of certified Jacksonville Small and Emerging Businesses (“JSEB”), and shall exercise good faith, in accordance with Municipal Ordinance Code Sections 126.608 et seq., to enter into contracts with City certified JSEBs to provide materials or services in an aggregate amount of not less than 20% of the DIA’s maximum potential contribution to the Project (but excluding Transition Expenses related to professional fees and temporary parking) as requested from time to time with respect to the development activities or operations of the Project over the term of this Agreement.
- (b) The Bank shall submit JSEB report(s) regarding the Bank’s actual use of City certified JSEBs on the Project, (i) on the date of any request for DIA funds which are payable prior to the Completion of Construction, (ii) upon Completion of Construction. The form of the report to be used for the purposes of this section is attached hereto as **Exhibit C** (the “JSEB REPORTING FORM”).

**Article 9.  
REPORTING; SITE VISITS**

**9.1 Reporting.**

On an annual basis, and prior to March 1 each year this Agreement is in effect, the Bank shall submit reports to the DIA regarding all activities affecting the implementation of this Agreement, including a narrative summary of progress on the Project. Bank shall also submit to the DIA its notice of ad valorem taxes paid with respect to the Project Parcel contemporaneously with such payment.

The Bank’s obligation to submit such reports shall continue until the Bank has complied with all of the terms of this Agreement concerning the construction and Substantial Completion of the Project and during the term of each outstanding DPRP Loan and DED Grant. Within thirty (30) days following the request of the DIA, the Bank shall provide the DIA with additional information requested by the DIA.

**9.2 Site Visits.**

For so long any payment obligations are owed to Bank pursuant to this Agreement, Bank shall permit representatives from the DIA and other designated personnel, to monitor compliance by Bank with the provisions of this Agreement. Recognizing that Bank’s principal

representatives are located out of state, after the DIA provides Bank with prior written notice of at least two (2) business days, representatives of DIA shall have the right to tour the Project and access Bank's records and speak with employees and contractors (by phone or video call) related to the Project and this Agreement, during normal business hours, provided, however, that Bank shall have the right to have a representative of Bank present during any such inspection and DIA's right of entry pursuant to this Article 9 may not unreasonably interrupt the conducting of Bank's business at the Project. To the extent that DIA or the City requires certain employees or contractors to meet in person at the Building, the DIA or the City shall provide the Bank with at least five (5) business days' notice so the relevant employees and/or contractors can make travel arrangements from out of state. DIA and the City will not contact Bank branch employees who work out of the Building regarding the Project except in the case of an emergency (as the Bank employees and representatives that will oversee the Project are based out of state and are not located within the Building). With prior written notice to Bank of at least fifteen (15) business days, the Bank shall provide copies of documents requested by the DIA, provided that such request is reasonably limited to the current Phase of work being performed and that this request will not be used to request documents that have already been provided by the Bank to the DIA. DIA shall not request or inspect any of the Bank's customers' confidential information and in all cases, (i) such access to the Project shall be limited to those portions of the Project which are reasonably necessary under the circumstances; (ii) DIA shall be obligated to use reasonable care (under the circumstances) with respect such access to the Project; and (iii) in no event shall the DIA have the right to access, enter and/or inspect any cash drawer, safety deposit box, vault, and/or other storage device containing confidential information, or materials of, third parties, or be permitted behind the teller counters without being accompanied by an authorized representative of Bank, nor shall DIA have access to areas of the Project deemed in Bank's sole discretion to contain Bank's and/or Bank's customers' confidential information without an authorized representative of Bank. If the DIA (or its employees, agents, representatives or contractors) has actual knowledge that it has discovered any confidential information in violation of this Agreement, the DIA shall immediately notify the Bank.

**Article 10.**  
**DEFAULTS AND REMEDIES**

**10.1           General.**

A default shall consist of the breach of any covenant, agreement, representation, provision, or warranty contained in (i) this Agreement (including, but not limited to, any failure to meet the reporting requirements described herein), (ii) any documents executed in connection with this Agreement and/or any other agreement between the City or the DIA and the Bank whether or not related to the Project, (iii) any document provided to the City or the DIA relating to the Project, or (iv) any of the Loan Documents (collectively, the "Project Documents"). A default shall also exist if any event occurs or information becomes known which, in the reasonable judgment of the DIA, makes untrue, incorrect or misleading in any material respect any statement or information contained in any of the documents described in clauses (i) – (iv) above or causes such document to contain an untrue, incorrect or misleading statement of material fact or to omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading and the Bank failed to provide corrected information to the City and the DIA within ten (10) days of the Bank having

knowledge of such statement or omission, provided that it shall be an immediate default hereunder not subject to any cure if the DIA determines that it does not approve of such corrected information in its sole discretion.

If any such default or breach occurs under this Agreement, the City and the DIA may refuse to advance any further funds under this Agreement, including pursuant to any DPRP Loan and/or the DED Grant and additionally, may at any time or from time to time proceed to protect and enforce all rights available to the City and the DIA under this Agreement by suit in equity, action at law or by any other appropriate proceeding whether for specific performance of any covenant or agreement contained in this Agreement, or damages, or other relief, or proceed to take any action authorized or permitted under applicable laws or regulations, including, but not limited to, terminating this Agreement. The City and the DIA shall not act upon a default until it has given the Bank written notice of the default and fifteen (15) business days within which to cure the default; provided, however, that the City and the DIA may withhold any and all funds, including pursuant to any DPRP Loan and/or the DED Grant, immediately upon the occurrence of a default and throughout any notice or cure period. However, if any default cannot reasonably be cured within the initial fifteen (15) days despite commencing and diligently pursuing such cure, Bank shall have such additional period of time reasonably necessary, but not to exceed an additional forty-five (45) days, in which to cure such default so long as Bank is diligently proceeding to cure such default. Notwithstanding the foregoing, Bank shall immediately and automatically be in default, and the City and the DIA shall not be required to give Bank any notice or opportunity to cure such default (and thus the City and the DIA shall immediately be entitled to act upon such default), upon the occurrence of any of the following:

- (a) The entry of a decree or order by a court having jurisdiction in the premises adjudging the Bank a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Bank under the United States Bankruptcy Code or any other applicable federal or state law, or appointing a receiver, liquidator, custodian, assignee, or sequestrator (or other similar official) of the Bank or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 90 consecutive days; and
- (b) The institution by Bank of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the United States Bankruptcy Code or any other similar applicable federal or state law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, custodian, assignee, trustee or sequestrator (or other similar official) of the Bank or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due.

## **10.2            Specific Defaults.**

Additionally, for any of the specific events of default described in this Section 10.2 below, the parties agree that the DIA's damages recoverable from the Bank shall include, but not be limited to, the following:

- (a) in the event reporting requirements are not met in the time period specified in this Agreement, the City and the DIA will be entitled to withhold all further advances for the DPRP Loan and the DED Grant until such reporting requirement are met;
- (b) in the event the Bank sells, leases or otherwise transfers any portion of the Building or Project Parcel (collectively, the "Sale") during the five (5) year period immediately following the date of disbursement of any DPRP Loan, the Bank shall pay to the DIA at closing of the Sale all or a portion of the total amount of funds disbursed under all of the DPRP Loans (collectively, the "Disbursed Funds") as follows:
  - (i) 100% of the funds actually disbursed to the Bank as part of the DPRP Loans in the one (1) year prior to the Sale;
  - (ii) 80% of the funds actually disbursed to the Bank as part of the DPRP Loans between the date that is one (1) year prior to the Sale and the date that is two (2) years prior to the Sale;
  - (iii) 60% of the funds actually disbursed to the Bank as part of the DPRP Loans between the date that is two (2) years prior to the Sale and the date that is three (3) years prior to the Sale;
  - (iv) 40% of the funds actually disbursed to the Bank as part of the DPRP Loans between the date that is three (3) years prior to the Sale and the date that is four (4) years prior to the Sale; and
  - (v) 20% of the funds actually disbursed to the Bank as part of the DPRP Loans between the date that is four (4) years prior to the Sale and the date that is five (5) years prior to the Sale.

In the event the Bank or any lessee, transferee or assignee of the Bank uses the Project or the Building for any use not contemplated by this Agreement or the DPRP Guidelines at any time on or before the fifth (5<sup>th</sup>) anniversary of the last date of any disbursement of funds to the Bank as part of a DPRP Loans and such use has not been approved by the DIA Board, the full amount of the funds actually disbursed to the Bank as part of a DPRP Loans, together with all accrued but unpaid interest thereon, shall immediately become due and payable to the DIA by the Bank. The maximum combined repayment due under this Section 10.2 shall not exceed the total amount of the Disbursed Funds actually paid to the Bank under this Agreement.

**10.3            Performance Schedule Default.**

Notwithstanding anything in this Agreement to the contrary, in the event that the Bank fails to commence construction of the Improvements for any Phase of the Project in accordance with the Renovation Improvements Performance Schedule or fails to perform the Signage Improvements in accordance with the Transition Improvements Performance Schedule, the Bank shall be deemed to have forfeited and waived its right to, and the City and the DIA shall not be obligated to pay, any further amounts under this Agreement, any DPRP Loan or the DED Grant.

**Article 11.  
GENERAL PROVISIONS**

**11.1            Non-liability of City and DIA Officials.**

No member, official or employee of the City or the DIA shall be personally liable to the Bank or to any Person with whom the Bank shall have entered into any contract, or to any other Person, in the event of any default or breach by the DIA, or for any amount which may become due to the Bank or any other Person under the terms of this Agreement.

**11.2            Force Majeure.**

No party to this Agreement shall be deemed in default hereunder where such a default is based on a delay in performance as a result of war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualty, acts of God, acts of public enemy, epidemic, quarantine restrictions, freight embargo, shortage of labor or materials, interruption of utilities service, lack of transportation, severe weather and other acts or failures beyond the control or without the control of any party; provided, however, that the extension of time granted for any delay caused by any of the foregoing shall not exceed the actual period of such delay, and in no event shall any of the foregoing excuse any financial liability of a party.

**11.3            Offset.**

The City and the DIA shall have the right to offset any amount owed by Bank under or in connection with this Agreement against any payments owed by the City or the DIA under this Agreement. Such offsets shall be in addition to any other rights or remedies available under this Agreement and applicable law.

**11.4            Notices.**

All notices to be given hereunder shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, or delivered by an air courier service utilizing return receipts to the parties at the following addresses (or to such other or further addresses as the parties may designate by like notice similarly sent) and such notices shall be deemed given and received for all purposes under this Agreement three (3) business days after the date same are deposited in the United States mail if sent by registered or certified mail, or the date actually received if sent by personal delivery or air courier service, except that notice of a change in address shall be effective only upon receipt.



(a) the City and the DIA:

Downtown Investment Authority  
117 West Duval Street, Suite 310  
Jacksonville, Florida 32202  
Attn: Chief Executive Officer

With a copy to:

City of Jacksonville  
Office of the General Counsel  
City Hall-St. James Building  
117 West Duval Street, Suite 480  
Jacksonville, Florida 32202

(b) The Bank:

Regions Bank  
250 Riverchase Parkway East, Suite 300  
Birmingham, Alabama 35241  
Attn: Keith Pressley  
Email: Keith.Pressley@Regions.com

With a required copy (which shall not constitute notice) to:

Balch & Bingham LLP  
1901 6<sup>th</sup> Avenue North, Suite 1500  
Birmingham, Alabama 35203  
Attn: Craig Lawrence, Jr.  
Email: clawrence@balch.com

**11.5 Time.**

Time is of the essence in the performance by any party of its obligations hereunder.

**11.6 Entire Agreement.**

This Agreement constitutes the entire understanding and agreement between the parties and supersedes all prior negotiations and agreements between them with respect to all or any of the matters contained herein.

**11.7 Amendment.**

This Agreement may be amended by the parties hereto only upon the execution of a written amendment or modification signed by the parties. Notwithstanding the foregoing, the Chief Executive Officer of the DIA is authorized on behalf of the DIA and the City to approve, in his or her sole discretion, any “technical” changes to this Agreement. Such “technical”

changes include without limitation non-material modifications to legal descriptions and surveys, ingress and egress, easements and rights of way, design standards, and extensions of any performance schedules (up to six months). as long as such modifications do not involve any increased financial obligation or liability to the City or the DIA. Without limiting the foregoing, the Chief Executive Officer of the DIA is authorized on behalf of the DIA and the City to approve, in his or her sole discretion, and execute any additional contracts and documents related to the Agreement and related documents as may be required and otherwise to act as the authorized official of the City in connection with the Agreement, and take or cause to be taken such action as may be necessary to enable the City to implement the Agreement according to its terms.

### **11.8 Waivers.**

Except as otherwise provided herein, all waivers, amendments or modifications of this Agreement must be in writing and signed by all parties. Any failures or delays by any party in insisting upon strict performance of the provisions hereof or asserting any of its rights and remedies as to any default shall not constitute a waiver of any other default or of any such rights or remedies. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties hereto are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by any other party.

### **11.9 Indemnification.**

The Bank shall indemnify, hold harmless and defend the City and the DIA from and against, without limitation, any loss, claim, suit, action, damage, injury, liability, fine, penalty, cost, and expense of whatsoever kind or nature (including without limitation court, investigation and defense costs and reasonable expert and attorneys' fees and costs) related to any suits and actions of any kind brought against the City of Jacksonville and/or the DIA or other damages or losses incurred or sustained, or claimed to have been incurred or sustained, by any person or persons arising out of or in connection with: (i) any breach of any representation or warranty of the Bank contained or provided in connection with this Agreement; (ii) any breach or violation of any covenant or other obligation or duty of the Bank under this Agreement or under applicable law; (iii) any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Bank or those under its control that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Bank's performance under this Agreement or relating to the Project, except to the extent caused by the sole negligence of the DIA, its contractors, agents, and/or its employees. Nothing contained in this paragraph shall be construed as a waiver, expansion or alteration of the City's or the DIA's sovereign immunity beyond the limitations stated in Section 768.28, Florida Statutes.

This indemnification shall survive the expiration or termination (for any reason) of this Agreement and remain in full force and effect. The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by any insurance provided pursuant to this Agreement or otherwise. The terms "City" and "DIA" as used in this Section

11.9 shall include all City Council members and all board members, officers, officials, employees, representatives, agents, successors and assigns of the City and the DIA, as applicable.

**11.10 Severability.**

The invalidity, illegality or unenforceability of any one or more of the provisions of this Agreement shall not affect any other provisions of this Agreement, but this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**11.11 Compliance with State and Other Laws.**

In the performance of this Agreement, the Bank must comply with any and all applicable federal, state and local laws, rules and regulations, as the same exist and may be amended from time to time. Such laws, rules and regulations include, but are not limited to, Chapter 119, Florida Statutes (the Public Records Act) and Section 286.011, Florida Statutes, (the Florida Sunshine Law). If any of the obligations of this Agreement are to be performed by a subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

**11.12 Non-Discrimination Provisions.**

In conformity with the requirements of Section 126.404, Ordinance Code, the Bank represents that it has adopted and will maintain a policy of non-discrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age or handicap, in all areas of employment relations, throughout the term of this Agreement. The Bank agrees that, on written request, it will permit reasonable access to its records of employment, employment advertisement, application forms and other pertinent data and records, by the Executive Director of the Human Rights Commission, or successor agency or commission, for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of Chapter 126, Part 4 of the Ordinance Code with respect to the Project and this Agreement, provided however, that the Bank shall not be required to produce for inspection records covering periods of time more than one (1) year prior to the day and year first above written. The Bank agrees that, if any of its obligations to be provided pursuant to this Agreement are to be performed by a subcontractor, the first two sentences of this Section 11.12 shall be incorporated into and become a part of the subcontract. For clarification, the Bank shall not be required to produce for inspection, or any access to, any records that are unrelated to the Project and this Agreement. Only records of employment, employment advertisement, application forms and other pertinent data and records directly related to funds spent in furtherance of the Project and/or the funds spent or disbursed pursuant to the terms of this Agreement are subject to review.

**11.13 Contingent Fees Prohibited.**

In conformity with Section 126.306, *Ordinance Code*, the Bank warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Bank, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Bank, any fee, commission, percentage, gift, or any other consideration, contingent

upon or resulting from the award or making of this Agreement. For the breach or violation of these provisions, the City and the DIA shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**11.14 Ethics.**

The Bank represents that it has reviewed the provisions of the Jacksonville Ethics Code, as codified in Chapter 602, *Ordinance Code*, and the provisions of the Jacksonville Purchasing Code, as codified in Chapter 126, *Ordinance Code*.

**11.15 Conflict of Interest.**

The parties will follow the provisions of Section 126.110, *Ordinance Code* with respect to required disclosures by public officials who have or acquire a financial interest in a bid or contract with the DIA, to the extent the parties are aware of the same.

**11.16 Public Entity Crimes Notice.**

In conformity with the requirements of Section 126.104, *Ordinance Code* and Section 287.133, Florida Statutes, the Parties agree as follows:

The parties are aware and understand that a person or affiliate who has been placed on the State of Florida Convicted Vendor List, following a conviction for a public entity crime, may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity, in excess of \$35,000.00, for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List.

**11.17 Survival.**

Any obligations and duties that by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement and remain in effect. Without limiting the foregoing, all obligations for the payment of fees or other sums accruing up to the expiration or termination of this Agreement and all provisions relating to the DIA's right to conduct an audit shall survive the expiration or termination of this Agreement.

**11.18 Incorporation by Reference.**

All exhibits and other attachments to this Agreement that are referenced in this Agreement are by this reference made a part hereof and are incorporated herein.

**11.19 Order of Precedence.**

In the event of any conflict between or among the provisions of this Agreement and those of any exhibit attached hereto or of any amendment, the priority, in decreasing order of

precedence shall be: 1) any fully executed amendment; 2) provisions in this Agreement; and 3) exhibits to this Agreement.

**11.20 Counterparts.**

This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

**11.21 Independent Contractor.**

In the performance of this Agreement, the Bank will be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venturer or association of the DIA. The Bank and its employees or agents shall be solely responsible for the means, method, technique, sequences and procedures utilized by the Bank in the performance of this Agreement.

**11.22 Retention of Records/Audit**

The Bank agrees:

- (a) To establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of all funds provided by the City or the DIA under this Agreement.
- (b) To retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) in the possession or control of the Bank, pertinent to this Agreement for a period of six (6) years after completion of the date of final payment by the City or the DIA under this Agreement, including auditable records pertaining to jobs filled by third-party employers. If an audit has been initiated and audit findings have not been resolved at the end of such six (6) year period, the records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement, at no additional cost to the DIA. Any audit of the Bank pursuant to the terms of this Section 11.22 shall not be performed by an auditing firm that is paid on a contingency basis.
- (c) Upon demand, at no additional cost, to facilitate the duplication and transfer of any records or documents during the required retention period, it being understood and agreed that the Bank shall not have the obligation to provide the same document to the DIA more than one time (whether as part documents submitted by the Bank to DIA for initial plan review, any reimbursement request submitted by the Bank to DIA, or as part of any audit response by the Bank)
- (d) To assure that these records shall be subject at all reasonable times to inspection, review, copying, or audit by personnel duly authorized by the DIA, including but not limited to the City Council auditors.

- (e) At all reasonable times for as long as records are maintained, to allow persons duly authorized by the DIA, including but not limited to the City Council auditors, full access to and the right to examine any of the Bank's contracts and related records and documents that relate to the Project, regardless of the form in which kept.
- (f) To ensure that all related party transactions are disclosed to the DIA.
- (g) To include the aforementioned audit, inspections, investigations and record keeping requirements in all subcontracts and assignments of this Agreement.
- (h) To permit persons duly authorized by the DIA, including but not limited to the City Council auditors, to inspect and copy any records, papers, documents, facilities, goods and services of the Bank which are relevant to this Agreement, and to interview any employees and subcontractor employees of the Bank to assure the DIA of the satisfactory performance of the terms and conditions of this Agreement, provided that the DIA shall be required to make requests in accordance the following requirements: (i) that the request for contractors and/or employees shall allow for at least two (2) business days after the delivery of written notice to the Bank and which notice shall identify the general nature of questions anticipated, and (ii) that the request for any documents should allow for at least five (5) business days after the delivery of such written notice to the Bank before such inspection, and such request will not be used to request documents that have already been provided by the Bank to the DIA.
- (i) Following such review, the DIA will deliver to the Bank a written report of its findings and request for development by the Bank of a corrective action plan where appropriate. The Bank hereby agrees to timely correct all deficiencies identified in the corrective action plan.
- (j) If the result of any audit by the City or DIA establishes that the amount of its Capital Investment has been overstated by five percent (5%) or more, the entire expense of the audit shall be borne by the Bank.
- (k) Additional monies due as a result of any audit or annual reconciliation shall be paid within thirty (30) days of date of the DIA's invoice.
- (l) Should any audit reveal that the Bank has overstated the amount of its Capital Investment, and the Bank does not make restitution within forty-five (45) days from the date of receipt of written notice from the DIA, then, in addition to any other remedies available to the DIA, the DIA may terminate this Agreement, solely at its option, by written notice to the Bank.

### **11.23 Non-merger.**

None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with any deed conveying title to the Project Parcel.

**11.24 Exemption of the City and DIA.**

Neither this Agreement nor the obligations imposed upon the City or DIA hereunder shall be or constitute an indebtedness of the City or DIA within the meaning of any constitutional, statutory or charter provisions requiring the City to levy ad valorem taxes, or a lien upon any properties of the City or DIA. Payment or disbursement by the City or DIA of any grant amount hereunder is subject to the availability of lawfully appropriated funds. If funds are not available pursuant to a lawful appropriation thereof by the City Council or DIA Board, this Agreement shall be void and the parties shall have no further obligations hereunder.

**11.25 Parties to Agreement; Successors and Assigns.**

This is an agreement solely between the City, the DIA and the Bank. The execution and delivery hereof shall not be deemed to confer any rights or privileges on any person not a party hereto. This Agreement shall be binding upon the Bank and the Bank's permitted successors and assigns, and shall inure to the benefit of the City the DIA and their respective successors and assigns. However, Bank shall not assign, transfer or encumber its rights or obligations hereunder or under any document executed in connection herewith including, without limitation, any and all Project Documents, without the prior written consent of the DIA, which consent may be withheld in the sole discretion of the DIA.

**11.26 Venue; Applicable Law.**

The rights, obligations and remedies of the parties specified under this Agreement shall be interpreted and governed in all respects by the laws of the State of Florida. All legal actions arising out of or connected with this Agreement must be instituted in the Circuit Court of Duval County, Florida, or in the Federal District Court for the Middle District of Florida, Jacksonville Division. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement. Each party shall be responsible for the payment of its own attorneys' fees and costs incurred in connection with the enforcement of the terms of this Agreement.

**11.27 Civil Rights.**

The Bank agrees to comply with all of the terms and requirements of the Civil Rights Act of 1964, as amended, and the Civil Rights Act of 1968, as amended, and the antidiscrimination provisions of Chapter 126, Part 4, of the City Ordinance Code, and further agrees that in its operation under this Agreement it will not discriminate against anyone on the basis of race, color, age, disability, sex or national origin.

**11.28 Further Assurances.**

Bank will, on request of the DIA,

- (a) promptly correct any defect, error or omission herein or in any document executed in connection herewith or any other Project Document;

- (b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts deemed necessary by the DIA to carry out the purposes of the Project Documents; and
- (c) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts deemed necessary, desirable or proper by the DIA to carry out the purposes of the Project Documents and this Agreement.

**11.29 Exhibits.**

In the event of a conflict between any provisions of this Agreement and any exhibit attached to or referenced in this Agreement, the provisions of this Agreement shall govern.

**11.30 Construction.**

All parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Bank further acknowledges that it has had ample time to review this Agreement and related documents with counsel of its choice. Any doubtful or ambiguous provisions contained herein shall not be construed against the party who drafted the Agreement. Captions and headings in this Agreement are for convenience of reference only and shall not affect the construction of this Agreement.

**11.31 Further Authorizations.**

The parties acknowledge and agree that the Chief Executive Officer of the DIA is hereby authorized to execute any and all other contracts and documents and otherwise take all necessary action in connection with this Agreement and the Resolution.

**11.32 Estoppel Certificate.**

On twenty (20) days written request from the other party, either party shall execute and deliver to the other party an estoppel letter stating that this Agreement is: (i) unmodified and in full force and effect, or in full force and effect as modified, and stating the modification; (ii) the amount of DPRP Loans and/or DED Grant actually paid to Bank and the remaining portion of DPRP Loans and/or DED Grant for which Bank remains eligible; and (iii) that there are not, to that party's actual knowledge, any uncured defaults, or events which with the passage of time would become a default, on the part of the other party, or specifying existing defaults.

**11.33 Attorney's Fees.**

Each party shall be responsible for its own attorneys' fees and costs in connection with any legal action related to this Agreement.

**11.34 Termination.**

Notwithstanding anything contained to the contrary in this Agreement, following any termination of this Agreement by either party hereto pursuant to any right to terminate this



Agreement contemplated hereunder, neither party shall owe any further obligation to the other party under this Agreement.

**11.35 No Insiders.**

DIA and the City represent that, to their actual knowledge as of the Effective Date, there has been no insider (as defined below) involvement in, or benefit received or to be received from, entering into this Agreement with the Bank. For purposes of this Paragraph, “insiders” include: anyone employed by Regions Bank or an affiliate of Regions Bank; any director of Regions Bank or an affiliate of Regions Bank; any individual, firm, or company providing professional services including audit, legal, loan review, or appraisal services to Regions Bank or any affiliate of Regions Bank; and any relative or related interest of Regions Bank’s or its affiliate’s director, employee or professional provider.

IN WITNESS WHEREOF, this Agreement is executed the day and year above written.

**DOWNTOWN INVESTMENT AUTHORITY**

By: \_\_\_\_\_  
Name Printed: Lori N. Boyer  
Its: Chief Executive Officer

ATTEST:

**CITY OF JACKSONVILLE**

By: \_\_\_\_\_  
James R. McCain, Jr.  
Corporation Secretary

By: \_\_\_\_\_  
Lenny Curry, Mayor

WITNESS:

**REGIONS BANK**, an Alabama state banking  
corporation

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

GC-#1417630-v6-Regions\_Bank\_EDA.doc

**Encumbrance and funding information for internal DIA use:**

**Account.....** \_\_\_\_\_

**Amount.....\$** \_\_\_\_\_

In accordance with Section 24.103(e), of the *Ordinance Code* of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing agreement; *provided however*, this certification is not nor shall it be interpreted as an encumbrance of funding under this Contract. Actual encumbrance[s] shall be made by subsequent check request[s], as specified in said Contract.

\_\_\_\_\_  
Director of Finance  
City Contract # \_\_\_\_\_

Contract Encumbrance Data Sheet follows immediately.

FORM APPROVED:

\_\_\_\_\_  
Office of the General Counsel

## LIST OF EXHIBITS

Exhibit A - Description of the Project Parcel  
Exhibit A-1 – Description of Surface Lot  
Exhibit B – Transition Improvements  
Exhibit C - JSEB Reporting Form  
Exhibit D – Disbursement Request Form  
Exhibit E - DPRP Guidelines

**Exhibit A**  
**Description of Project Parcel**

That certain real property located generally at 51 West Bay Street, Jacksonville, Florida 32202, having a Duval County Tax RE Parcel number of 073663-0000.

**Exhibit A-1**  
**Description of Surface Lot**

That certain real property located generally at 54 W Forsyth Street, Jacksonville, Florida 32202, having a Duval County Tax RE Parcel number of 073669-0000.

**Exhibit B**  
**Transition Improvements**

- 1) The Signage Improvements, including, without limitation, the signage and up lighting as approved by the JHPC on September 23, 2020 and the DDRB on October 12, 2020.
- 2) The Access Improvements.
- 3) All other Improvements made necessary due to the Bank's sale of the Surface Lot to VyStar and approved by the DIA.

**Exhibit C  
JSEB Reporting Form**

Business:  
 Goal: \$  
 Contact: \_\_\_\_\_  
 Date: \_\_\_\_\_

Date Contract Awarded	Contractor Name	Ethnicity (1)	Scope of Work (2)	Contract Amount	Amount Paid to Date	% of Work Completed to Date
		(1) AA – African American		(2) Examples: Masonry		
		HANA – Hispanic, Asian, Native American		Painting		
		WBE – Women		Site Clearing		
		C - Caucasian		Electrical		



**EXHIBIT D**

**REQUEST FOR LOAN DISBURSEMENT FORM**

Developer Name: \_\_\_\_\_ Phase Number: \_\_\_\_\_

Address: \_\_\_\_\_ Document Number: \_\_\_\_\_

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

Phone: \_\_\_\_\_ Tax ID #: \_\_\_\_\_

Historic Building Name: \_\_\_\_\_

Historic Building Address: \_\_\_\_\_

**DEVELOPER PAYMENT REQUEST** Total documented Project Cost (for this Phase): \_\_\_\_\_

<u>Type of Eligible Expenditure</u>	<u>Amount of Eligible Expenses Submitted for this Phase</u>	<u>Eligible Percentage</u>	<u>Allowable Amount for this Phase</u>
Exterior Historic Rehabilitation & Restoration	_____	x <b>75%</b>	_____
General Historic Rehabilitation Requirements	_____	x <b>20%</b>	_____
Interior Historic Rehabilitation & Restoration	_____	x <b>30%</b>	_____

Total Amount Requested in this Phase: \_\_\_\_\_

- 1 Loan funds received to date (all Phases): \_\_\_\_\_
- 2 Loan funds previously requested but not yet received: \_\_\_\_\_

**Loan disbursements will be provided only after 100% completion of the Improvements for the applicable Project Phase. Once such Improvements are 100% complete, a final inspection by the Historic Preservation Section must be performed.**

Developer:

I hereby request an inspection to receive a final loan disbursement for Phase \_\_\_\_ in the amount of \$\_\_\_\_\_. I certify that I have satisfactorily completed the necessary work to justify this request and that all bills incurred for labor used and materials furnished in making said repairs and improvements have been paid in full to this date.

Attached is a description of the work completed, the amount of payment requested by work item and such invoices, receipts, cancelled checks (or evidence that payment has cleared the Bank's banking account), and other documents required by the DIA evidencing that the costs and expenses were actually incurred and paid for by the Developer and were expended on and pertain to the Work.

The intent of the Downtown Preservation and Revitalization Program (the “DPRP”) is to foster the preservation and revitalization of unoccupied, underutilized, and/or deteriorating historic, and qualified non-historic, buildings located in downtown Jacksonville. This program is designed to serve historic projects applying for in excess of \$100,000, and non-historic code compliance projects.

Development projects eligible for this program will be those deemed to promote the following downtown Community Redevelopment Area Goals:

Redevelopment Goal No. 1: Reinforce Downtown as the City’s unique epicenter for business, history, culture, education, and entertainment. Program specific emphasis will be placed on retail activity, food and beverage establishments, culture, and entertainment including the activation of open spaces.

Redevelopment Goal No. 2: Increase rental and owner-occupied housing downtown, targeting key demographic groups seeking a more urban lifestyle. Building on the success of growth in multi-family housing across the downtown corridor, providing additional housing units in historic buildings contributes to the unique residential atmosphere of our City and the opportunity to maximize Jacksonville’s historic attributes.

Performance Measures of the City of Jacksonville’s Downtown Investment Authority (DIA).

Such developments are considered particularly impactful meaning that their completion is expected to provide the highest level of interest and benefits for residents and visitors to the City, and the greatest impact on creating further demand for surrounding properties thereby stimulating additional investment in development and redevelopment activity.

Single-user, multi-tenant office space, or buildings without retail or public spaces will be considered eligible under this program in limited circumstances based on unique contributions made to the City and its residents such as healthcare providers, financial services, regional or nationally known owners or principal tenants that provide employment in Downtown Jacksonville.

**The DPRP has three general components for which funding will be considered:**

- 1. Historic Preservation Restoration and Rehabilitation Forgivable Loan (“HPRR Forgivable Loan”)**
- 2. Code Compliance Renovations Forgivable Loan (“CCR Forgivable Loan”)**
- 3. Downtown Preservation and Revitalization Program Deferred Principal Loan (“DPRP Deferred Principal Loan”)**

**The DPRP program will be administered in the form of a forgivable loan or loan and each project will require City Council approval. All funds will be disbursed upon completion of improvements subject to cost verification and other approvals as specified below.**

**A. General Program Requirements applicable to all proposed projects:**

1. Project must be located within the DIA boundary. For this program, a project will be considered within the DIA boundary if, as of the effective date of this program, any portion of the tax parcel on which the building or buildings to be restored or renovated are located, is within the boundary of DIA.
2. Must conform to the goals and objectives of the BID and CRA Plan.
3. Applicant and/or its General Contractor, working in conjunction with the project Architect as applicable, must demonstrate significant, relevant experience and performance on projects of similar type and scale.
4. Total Development Costs (“TDC”) is defined as:
  - a. costs for the acquisition of eligible buildings and associated land, and;
  - b. the negotiated construction costs with a qualified General Contractor; and
  - c. additional soft costs typically eligible for capitalization in development activity of this type.
  - d. Developer Fee is to be excluded from both Sources and Uses.
  - e. The market value of property owned, and any related debt, may be included in TDC for purposes of these calculations.
5. The following limits apply to Total Development Costs unless otherwise stated (Existing property owners are also considered the Developer for these purposes):
  - a. Developer equity *plus* third-party debt *plus* outside tax credit or other subsidies of not less than:
    - i. 50% if Developer Equity (less Developer Fee) is > 15% of TDC; or
    - ii. 60% if Developer Equity (less Developer Fee) is ≤ 15% of TDC.
  - b. Developer Equity (less Developer Fee) shall be not less than 10% of TDC.
  - c. COJ total capitalization from all sources not to exceed:
    - i. 50% if Developer Equity (less Developer Fee) is > 15% of TDC; or
    - ii. 40% if Developer Equity (less Developer Fee) is ≤ 15% of TDC; or
    - iii. 25% if the property being improved does not have, nor is applying for, local landmark status (i.e. No HPRR Forgivable Loan component in the request).
  - d. HPRR Forgivable Loan not to exceed 30% of TDC, as applicable.
  - e. CCR Forgivable Loan not to exceed:
    - i. 25% of TDC if the property does not have historic landmark status; or
    - ii. 30% of TDC if the property has historical landmark status
  - f. DPRP Deferred Principal Loan not to exceed 20% of TDC, as applicable.
  - g. DPRP Deferred Principal Loan shall be *not less than* 20% of the aggregate gap funding requirement for any project where Developer Equity is less than 25% of TDC.
  - h. Funding for the project from all other DIA programs may not exceed 10% TDC, subject to further limitations found in the guidelines for each such program.

- i. If the property is designated, or applying to become, a historic landmark, the request must exceed \$100,000. (requests for \$100,000 or less should proceed under the HPTRF)
6. Total Development Costs must be determined reasonable for the scope of the project utilizing third party verification where available.
7. Gap funding need must be demonstrated on all projects where the total funding request is greater than \$1 million.
8. ROI must reach 0.50X minimum incorporating the following assumptions:
  - i. Ad valorem real property taxes calculated on the cost basis using twenty-year time horizon from date property is projected to be placed into service.
  - ii. Ad valorem property taxes on historic properties are abated for ten years from placed into service date. (*Note: Projects receiving a CCR Forgivable Loan without historic landmark status are not eligible for the property tax abatement, and the ROI will be calculated using the incremental ad valorem for the full twenty-year period*).
  - iii. Tangible Personal Property tax included based on FF & E information provided by the applicant.
  - iv. Local Opportunity Sales Tax and Employment based on 50% of any speculative commercial lease space and employment information provided by the applicant.
  - v. Estimated interest revenue on the DPRP Deferred Principal Loan to be included as additional benefit to the City.
  - vi. Where preservation and revitalization activities are being performed on a property where business operations are established, ROI will be calculated on existing ad valorem, local opportunity sales tax, and employee metrics.
9. All loan components pursuant to the Redevelopment Agreement will be secured by a subordinate-lien position on the real property behind any senior secured, third-party lender providing construction, mini-perm, or permanent financing.
10. All COJ and DIA program funding will be subject to cross-default, meaning a default under one COJ or DIA funded program or DPRP component triggers a default under outstanding funding of all COJ or DIA programs and DPRP components at such time.
11. All property, business, and income taxes must be current at the time of application and maintained in a current status during the approval process, the term of the Redevelopment Agreement and through the DPRP loan period.
12. Payment defaults, bankruptcy filings, or other material defaults during the DPRP loan period will trigger the right for the City of Jacksonville to accelerate all amounts funded and outstanding under any or all programs at such time plus 20% of any amounts amortized or prepaid prior to that date.
13. DPRP Loan funding under any component is subject to standard claw back language related to disposition of the property prior to each component's respective maturity, or similar circumstances of conversion.
14. DIA reserves the right to approve any sale, disposition of collateral property, or refinance of senior debt during the DPRP loan period.

**B. Historic Preservation Restoration and Rehabilitation Forgivable Loan Component (“HPRR Forgivable Loan”)**

1. The building must be designated as a local historic landmark at the time of application or an application for local landmark status must be filed and pending. Application may be made for an award under the DPRP prior to final designation; however, request for funding under this component will not be approved prior to the building receiving designation as a local historic landmark.
2. All work must be reviewed and approved by the Planning and Development Department for consistency with the United States Secretary of Interior Standards and applicable design guidelines during application processing and for verification upon completion and request for funding.
3. This HPRR Forgivable Loan component may include up to:
  - a. 75% of eligible costs for the Restoration or Rehabilitation of the building Exterior
  - b. 75% of eligible costs for the Restoration of Historic features on the building Interior
  - c. 30% of eligible costs for the Rehabilitation of the building Interior; and
  - d. 20% of eligible costs for General Requirements and Overhead of the GC
4. Funding attributable to the HPRR Forgivable Loan may not exceed 30% of Total Development Cost.
5. Downtown Preservation and Revitalization Program funding in the amount of the HPRR Forgivable Loan component will be forgiven 20% per year over the first five years of the loan.
6. This funding component of the Downtown Preservation and Revitalization Program will be interest free.

**C. Code Compliance Renovations Forgivable Loan Component (“CCR Forgivable Loan”)**

1. The building need not be designated a local historic landmark but must be a contributing structure in the National Historic District or a structure at least 50 years old and meet the applicable general program requirements above.
2. This CCR Forgivable Loan component may include up to:
  - a. 75% of eligible costs for bringing the property up to levels as required for Code Compliance or related fire and safety requirements.
  - b. Cost of environmental remediation or abatement on the property or within the building, such as asbestos removal, as included in Total Development Cost, may be included as well as new code requirements.
3. If a building is historically designated with local landmark status and therefore exempt from certain code compliance requirements, the cost of any elective renovations may not be included in this section.

4. If a building is historically designated with local landmark status, all work must be reviewed and approved by the Planning and Development Department for consistency with the United States Secretary of Interior Standards and applicable design guidelines.
5. If a building is historically designated with local landmark status, the scope of Building and Fire Code Improvement work must use the Downtown Historic Building Code Matrix and be approved by the Building Inspection Division of the Public Works Department and the Fire Marshall.
6. If a building is not historically designated but is a contributing structure in the National Historic District, plans must be reviewed and approved by COJ PDD to ensure that no work included in the application would render the building ineligible for local landmark designation. Further, the property must remain in good standing as eligible for local landmark designation during the compliance period of the DPRP.
7. If a building is neither a local landmark nor a contributing structure, but is at least 50 years old, the eligibility of code compliance expenditures will be determined by DIA with the assistance of COJ Planning.
8. Funding derived from the CCR Forgivable Loan component may not exceed 30% of the Total Development Cost when the building is a locally designated landmark.
9. Redevelopment projects where the property being improved neither has, nor is applying for, local landmark status, are only eligible for a CCR Forgivable Loan if the total scope of work of the redevelopment project is CCR eligible and no other work is contemplated. In this event, eligibility is limited to 25% of Total Development Costs. Other program requirements remain applicable, including that 20% of COJ funding must come in the form of a DPRP Deferred Principal Loan, unless waived under any other provision found in the program guidelines.
10. Downtown Preservation and Revitalization Program funding in the amount of the CCR Forgivable Loan component will be forgiven 10% per year over the ten-year life of the loan when not used in combination with an HPRR Forgivable Loan. When combined with a HPRR Forgivable Loan, both loans will be forgiven over a five-year period at 20% per year, and therefore shall be coterminous.
11. This funding component of the Downtown Preservation and Revitalization Program will be interest free.

**D. Downtown Preservation and Revitalization Program Deferred Principal Loan Component (“DPRP Deferred Principal Loan”)**

1. The DPRP Deferred Principal Loan amount shall be determined by the gross funding gap found in the Total Development Costs with a requirement that the amount will be not less than 20% of gap funding requirement in any development plan where developer equity (net of developer fee) is less than 25% of TDC.
2. Downtown Preservation and Revitalization Program funding in the amount of the DPRP Deferred Principal Loan component will be structured as non-amortizing with a maturity of ten years from closing.

4. Although principal payments on the DPRP Deferred Principal Loan are not required on the loan prior to maturity, interest payments will be due and payable annually based on a rate of the Ten-Year Treasury Note Rate at the time of closing.
5. Partial principal reductions may be made after the fifth anniversary with no prepayment penalty; however, 50% of the loan balance must remain outstanding through the loan maturity date unless the property is sold or refinanced during that period, subject to DIA approval.
6. The loan balance is due in full upon maturity, sale, or refinancing of the property prior to maturity subject to terms of the disposition and value of the property at the time of such event.
7. Funding derived from DPRP Deferred Principal Loan may not exceed 20% of the Total Development Costs and may not be used on a stand-alone basis.

#### **E. Other DIA programs**

Applicants for funding pursuant to this Downtown Preservation and Revitalization Program may also seek funding from DIA pursuant to the other programs for which they may qualify and choose to fund the applicable portion of redevelopment costs under the program of their choice. However, the Construction Budget provided with the each application must clearly delineate costs by the program for which application is made and no portion of a single line item cost can be considered for or qualify for partial funding under more than one program. For example, the operator of a restaurant could seek funding for build out of a restaurant while the building owner seeks funding under this DPRP program for the building exterior, interior of other spaces, and code compliance. See the separate guidelines for each program for more information.

#### **F. Project Approval Process**

For applications under the Downtown Preservation and Revitalization Program, the following apply:

1. If the total amount requested is \$100,000 or less, and the property has or is seeking local historic landmark status, the Historic Preservation and Revitalization Trust Fund (“HPRTF”) Guidelines shall apply.
2. If total amount requested is more than \$100,000, and the applicant is seeking funding under the HPRR Forgivable Loan component, the redevelopment agreement requires Historic Preservation Commission Landmark (Local) Recommendation, City Council Landmark Designation, Planning and Development Department Approval of Scope of Work, DIA Board Approval, and City Council approval.
3. If applicant requests funding under the CCR Forgivable Loan:
  - a. In any amount, and the property does not have and is not seeking local historic landmark status, the redevelopment agreement requires Planning and Development

Department Approval of the Scope of Work, DIA Board Approval, and City Council approval; or

- b. In excess of \$100,000, and the property has or is seeking local historic landmark status, the redevelopment agreement requires Historic Preservation Commission Landmark (Local) Recommendation, City Council Landmark Designation, Planning and Development Department Approval of Scope of Work, DIA Board Approval, and City Council approval.
4. For any one project, the dollar amounts in all applications for loans or Forgivable Loans submitted within five years of the first HPTRF grant, or loan or Forgivable Loan approved under this program shall be aggregated to determine if the project requires City Council approval.

#### **PRE-APPLICATION**

1. A pre-application meeting will be held for all proposed developments planning to utilize the DPRP loan program. Attendees shall include the Applicant and related members of the proposed development team, members of the COJ Planning and Development Department (PDD) Historical Preservation Section staff, Downtown Development Review Board (DDRB) staff, and Downtown Investment Authority (DIA) staff, as appropriate. From this meeting, a strategy that incorporates the following steps and requirements will be formulated to include task assignments and a timeline for target dates to accomplish the application processing goals.

#### **APPLICATION and PROCESSING**

1. General

Application and processing of historic designation, Certificate of Appropriateness approval and DPRP funding approval through the Planning and Development Department and DIA may occur simultaneously, except as provided below.

2. Landmark Designation

Application shall be made to the Planning and Development Department (PDD) for Local Landmark designation unless the building is already a local landmark, or the program request is for a CCR loan only.

- a. The Planning and Development Department shall verify whether the building is already a local Landmark or is eligible for designation. PDD shall assist the applicant in Local Landmark Designation Procedures as needed and process any landmark designation application through the Historic Preservation Commission and City Council approval process.
- b. A staff report recommending designation and legislation regarding the same must be filed prior to any DIA action.

3. Scope of Work



- a. Application shall also be made to PDD for a Certificate of Appropriateness or other approval for the scope of work to be performed on any local landmark, or for approval of any CCR work on a contributing structure in the National Historic District.
  - i. Such application shall break down the work to be performed between exterior restoration and renovation work, interior restoration, interior renovation, and code compliance work.
- b. The Planning and Development Department shall review applications for work to be performed on any local landmark for compliance with the United States Secretary of the Interior Standards for Restoration or Rehabilitation, and any applicable historic preservation design guidelines, and shall issue an approval, denial, or approval with conditions and comments to the DIA. PDD may rely on National Park Service determination, or process locally. In the absence of final NPS approval, a conditional approval letter may be provided to DIA identifying by category any improvements that are considered ineligible. PDD Staff conditional approval shall serve as the basis for determination of qualified eligible expenses in reviewing incentive requests and calculating the “up to” award amount, however actual disbursement of loans will be based on final COA or NPS approved eligible expenses.
- c. All work on local landmarks must be consistent with United States Secretary of Interior’s Standards, approved by Certificate of Appropriateness (COA) by the Historic Preservation Commission, and approved by DDRB.
- d. PDD shall review applications for CCR work to be performed on contributing structures in the National Historic District to determine whether any of the proposed improvements would render the building ineligible for local landmark designation and identify the same. HPS shall issue a staff report to DIA with the results of their review and indicating whether the elimination of any particular improvements would allow the building to remain eligible for local landmark status.
- e. The application for a COA or approval of the scope of work can be submitted and reviewed simultaneously with landmark designation; however, no staff report regarding scope of work will be issued to DIA prior to the filing of legislation for landmark status.
- f. Any work not approved through the COA review process by the Jacksonville Historic Preservation Commission, Planning and Development Department Staff or NPS, or determined to not meet the Secretary of the Interior Standards or other design guidelines will be removed from the list of qualified eligible expenses for consideration, even if previously approved by PDD Staff Conditional Approval as described in letter b. of this section.

4. DPRP Loan Approval

Simultaneously, application shall be made to DIA for funding pursuant to one or more components of this DPRP. For all applications under the DPRP loan program, DIA Staff shall receive and analyze project information as outlined below:

- a. Business plan to include:

- i. Proposed usage of the property following completion and contribution towards the relevant DIA Redevelopment Goals and Performance Measures.
  - ii. Names and descriptive summary of relevant experience for all members of the development team including principals, General Contractor, architect, consultants, and others as applicable.
  - iii. Market analysis summary and strategy relied upon in support of the development decision.
  - iv. Names of tenants where lease negotiations are near completion or have been finalized. Executed leases, or those ready for execution, should be provided for consideration in ROI calculations.
  - v. Anticipated job creation, both direct and from commercial spaces whether existing or to be created.
- b. Applications to include detailed Total Development Cost estimate for proposed acquisition and/or improvements along with sources and uses of funds, a thorough and detailed three-year pro forma financial statements (including time to stabilization), evidence of ownership or control of the subject property.
  - c. A detailed construction budget must be provided that reconciles to the contract with the General Contractor, and that clearly allocates costs between Restoration or Rehabilitation of the building Exterior, Restoration of Historic features on the building Interior, Rehabilitation of the building Interior, General Requirements and Overhead of the GC, and Code Compliance Renovations, as may be appropriate per the DPRP loan request being made.
  - d. Operating pro forma must be provided and DIA must generally agree with projected operating or rental income, operating expenses, and debt service. Market study or third-party data (CoStar or similar) will be relied upon where available.
  - e. Corporate applicants shall submit two most recent years' tax returns (if available).
  - f. Applications must be accompanied with a personal financial statement and the two most recent years' tax returns of principals with ownership of more than 20% of the project, the project's general partner, and/or the project's controlling member.
  - g. Provide evidence that all property, business, and income taxes are current.
  - h. Evidence of Landmark status for the subject property as outlined above or application for the same, to be submitted as appropriate for the request made.
  - i. All code compliance work on buildings not designated local landmarks shall require review by Planning and Development Department to ensure that no contributing structure is rendered ineligible for local landmark designation by the proposed work, and shall require DDRB and DIA Board approval, and City Council approval.
  - j. PDD staff recommendation as to eligibility of the approved scope of work on any local landmark shall be required prior to DIA board approval of any program funding, however a contingent staff report will be accepted. The level of certainty required before presentation to the DIA Board and City Council will depend on the extent to which eligible costs exceed the request.

- k. Upon approval by the DIA Board of DPRP funding, DIA staff will negotiate a proposed Redevelopment Agreement and associated loan documents, possibly combining other sources of revenue, and file the same for approval through MBRC and City Council.
5. Following Final City Council Approval
- a. The Redevelopment Agreement will be routed for execution.
  - b. During the development process, JSEB goals and implementation will be consistent with the City JSEB Policy.
  - c. DIA to be provided copies of periodic inspections and/or progress reports as applicable.
6. Loan Closing/Funding Requirements
- a. The DPRP loan will be funded following review and approval of the Request for Disbursement by the Applicant following issuance of the last needed Certificate of Occupancy for the project.
  - b. All work on locally designated historic landmarks must be inspected by the Planning and Development Department or designee for compliance with the approved application prior to funding.
  - c. COJ PDD, and DIA jointly, or other appropriate COJ Department, will verify that paid invoices submitted for reimbursement align with the construction budget as approved, and confirm Developer's compliance with previously approved building permits, Certificate of Appropriateness ("COA"), and all Planning and Development Department and NPS approvals, as applicable.
  - d. All existing liens and code violations must be cleared prior to disbursement of funds and recordation of Loan security documents.
  - e. Funds will be authorized for distribution in accordance with the approved Redevelopment Agreement including evidence of all permanent funding commitments, satisfaction of all liens and waiver of claims from general contractor and subcontractors, verification that there are no delinquent property taxes or other tax obligations outstanding beyond their respective due dates, and other requirements as may be found in that agreement.