









































### **11.7 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.

### **11.8 Indemnification.**

Developer shall indemnify, hold harmless and defend the City of Jacksonville, DIA and their respective members, officials, officers, employees and agents 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, DIA and their respective members, officials, officers, employees and agents 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 Developer, contained or provided in connection with this Agreement; (ii) any breach or violation of any covenant or other obligation or duty of Developer under this Agreement or under applicable law; (iii) any negligent act, error or omission, or intentionally wrongful conduct on the part of Developer 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 Developer's performance under this Agreement or relating to the Project, except to the extent cause by the negligence of the City or DIA. Nothing contained in this paragraph shall be construed as a waiver, expansion or alteration of the City'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 11.8 shall include all officers, board members, City Council members, employees, representatives, agents, successors and assigns of the City and the DIA, as applicable.

### **11.9 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.

### **11.10 Compliance with State and Other Laws.**

In the performance of this Agreement, the Developer 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.

### **11.11 Non-Discrimination Provisions.**

In conformity with the requirements of Section 126.404, *Ordinance Code*, the Developer 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 Developer 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 non-discrimination provisions of this Agreement; *provided however*, that the Developer 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 Developer agree that, if any of its obligations to be provided pursuant to this Agreement are to be performed by a subcontractor, the provisions of this Section 11.11 shall be incorporated into and become a part of the subcontract.

### **11.12 Contingent Fees Prohibited.**

In conformity with Section 126.306, *Ordinance Code*, Developer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Developer, 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 Developer, 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 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.

### **11.13 Ethics.**

The Developer 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*.

**11.14 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 City, to the extent the parties are aware of the same.

**11.15 Public Entity Crimes Notice.**

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 in excess of \$35,000.00 with any public entity for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List.

**11.16 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 City's right to conduct an audit shall survive the expiration or termination of this Agreement.

**11.17 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.

**11.18 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.

**11.19 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.

**11.20 Independent Contractor.**

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

## **11.21 Retention of Records/Audit**

The Developer agrees:

(a) To establish and maintain books, records and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by the City under this Agreement.

(b) To retain, with respect to each Project, all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertinent to this Agreement for a period of six (6) years after completion of the date of final payment by the City under this Agreement with respect to such Project. If an audit has been initiated and audit findings have not been resolved at the end of six (6) years, 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 City.

(c) Upon demand, at no additional cost to the City, to facilitate the duplication and transfer of any records or documents during the required retention period.

(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 and City, 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 and City, including but not limited to the City Council Auditors, full access to and the right to examine any of the Developer' contracts and related records and documents, regardless of the form in which kept.

- (f) To ensure that all related party transactions are disclosed to the City.
- (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 and City, including but not limited to the City Council Auditors, to inspect and copy any records, papers, documents, facilities, goods and services of the Developer which are relevant to this Agreement, and to interview any employees and subcontractor employees of the Developer to assure the City and DIA of the satisfactory performance of the terms and conditions of this Agreement. Following such review, the City will deliver to the Developer a written report of its findings and request for development by the Developer of a corrective action plan where appropriate. The Developer hereby agrees to timely correct all deficiencies identified in the corrective action plan.
- (i) Additional monies due as a result of any audit or annual reconciliation shall be paid within thirty (30) days of date of the City's invoice.
- (j) Should the annual reconciliation or any audit reveal that the Developer owe the City or DIA additional monies, and the Developer does not make restitution within thirty (30) days from the date of receipt of written notice from the City, then, in addition to any other remedies available to the City, the City may terminate this Agreement, solely at its option, by written notice to the Developer.

**11.22 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.

**11.23 Exemption of 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 loan or 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.

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

This is an agreement solely between the DIA, the City and Developer. The execution and delivery hereof shall not be deemed to confer any rights or privileges on any person not a party hereto. Subject to the limitations contained in Section 10.2, this Agreement shall be binding upon and benefit Developer, and Developer' successors and assigns, and shall be binding upon and benefit of the City and DIA, and their successors and assigns. However, Developer except as contemplated in Section 10.2, shall not assign, transfer or encumber its rights or obligations

hereunder or under any document executed in connection herewith without the prior written consent of the City and the DIA, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Developer may assign, transfer or encumber its rights or obligations hereunder or under any document executed in connection herewith to an entity in which the principals of Developer have a controlling interest without the prior written consent of City and the DIA; provided, however, that no such assignment, transfer or conveyance shall release Developer from any liability or obligation hereunder.

**11.25 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. The laws of the State of Florida shall govern the interpretation and enforcement of this Agreement.

**11.26 Civil Rights.**

The Developer agree 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.

**11.27 Further Assurances.**

Each party to this Agreement will, on request of any other party,

- (a) promptly correct any defect, error or omission herein;
- (b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts reasonably deemed necessary, desirable or proper by the such requesting party to carry out the purposes of this Agreement and to identify and subject to the liens of this Agreement any property intended to be covered thereby, including any renewals, additions, substitutions replacements, or appurtenances to the subject property;
- (c) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts reasonably deemed necessary, desirable or proper by the requesting party to carry out the purposes of this Agreement.

**11.28 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.



**11.29 Construction.**

All parties acknowledge that they have had meaningful input into the terms and conditions contained in this Agreement. Developer 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.

**11.30 Further Authorizations.**

The parties acknowledge and agree that the Mayor of the City, or his designee, and the City's Corporation Secretary and the Chief Executive Officer of DIA, or their respective designees, are hereby authorized to execute any and all other contracts and documents and otherwise take all necessary action in connection with this Agreement.

**11.31 Estoppel Certificate.**

Within ten (10) days after request therefor from either Developer, or from the City or DIA to the Developer, the Developer, City and DIA, as applicable, agree to execute and deliver to the applicable parties, or to such other addressee or addressees as a Developer or City or DIA may designate (and any such addressee may rely thereon), a statement in writing certifying (if true) that this Agreement as it relates to the Project is in full force and effect and unmodified or describing any modifications; that the Developer (or City or DIA, as applicable) has performed all of its obligations under this Agreement arising prior to the date of the certificate, and making such other true representations as may be reasonably requested by Developer or City or DIA, as applicable.

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

ATTEST:

**CITY OF JACKSONVILLE**

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

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

WITNESS:

**DOWNTOWN INVESTMENT AUTHORITY**

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

By \_\_\_\_\_  
Lori N. Boyer, CEO

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

**DEVELOPER**

WITNESS:

**AXIS HOTELS LLC**, a Florida limited liability company

By: \_\_\_\_\_, Its manager

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

By: \_\_\_\_\_

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

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

Its: \_\_\_\_\_

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

Form Approved:

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

## **LIST OF EXHIBITS**

- Exhibit A Description of Project Parcel
- Exhibit B Description of Building Improvements
- Exhibit C HPTF Scope of Work
- Exhibit D Disbursement Request Form
- Exhibit E JSEB Reporting Form
- Exhibit F Annual Survey

**EXHIBIT A**

Description of Project Parcel

That certain real property located generally at 420 N. Julia Street, Jacksonville, Florida.

*(Legal Description to be inserted after confirmation by survey.)*

## **EXHIBIT B**

### Description of Building Improvements

The subject site is currently improved with a 1923-built structure, known generally as the Ambassador Hotel, which is currently vacant and in the past has been used as a hotel and as a residential building. The Developer proposes to renovate the existing structure, maintaining its historic façade, to house what is expected to be a nationally flagged brand hotel. Upon completion, the hotel will feature approximately 100 rooms, a restaurant and lounge, meeting space, a fitness center, a lobby workstation, a sundries counter, a guest laundry area, and an outdoor courtyard. The hotel will also contract for the appropriate parking capacity and all necessary back-of-the-house space.

## **EXHIBIT C**

### HPTF Scope of Work

As described in the Historic Preservation Trust Fund Application and related permitting process and as reflected in the resulting order and Certificate of Appropriateness.

**EXHIBIT D**

**REQUEST FOR DISBURSEMENT FORM**

Developer Name: \_\_\_\_\_ Request/Draw Number: \_\_\_\_\_  
Address: \_\_\_\_\_ Document Number: \_\_\_\_\_  
\_\_\_\_\_ Date Submitted: \_\_\_\_\_  
Phone: \_\_\_\_\_ Tax ID #: \_\_\_\_\_  
Historic Building Name: \_\_\_\_\_  
Historic Building Address: \_\_\_\_\_

**DEVELOPER PAYMENT REQUEST**

<u>Type of Eligible Expenditure</u>	<u>Amount of Eligible Costs Submitted for this Draw Payment</u>	<u>Eligible Percentage</u>	<u>Allowable Amount for this Draw Payment</u>
Exterior Rehabilitation & Restoration	_____	x <b>50%</b>	_____
Building & Fire Code Improvements	_____	x <b>20%</b>	_____
Interior Rehabilitation & Restoration	_____	x <b>20%</b>	_____
Total Amount Requested in this Draw	_____		
1 Grant funds received to date	_____		
2 Grant funds previously requested but not yet received	_____		

**Disbursements will be provided based on 100% completion of the Building Improvements. Once the Building Improvements are 100% complete, a final inspection by the Historic Preservation Section must be performed.**

Developer:

I hereby request an inspection to receive Payment #\_\_\_\_\_ for 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 Developer'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.

Developer Signature: \_\_\_\_\_ Date: \_\_\_\_\_





## EXHIBIT E cont.

### GOOD FAITH EFFORTS

Proposers who fail to meet the stated JSEB participation goals set forth in Section 'r' are required to submit with their proposal all efforts that would demonstrate a "Good Faith Effort" in the solicitation of subcontractors to meet the JSEB participation goals on this project.

The following categories, without limitations, may be utilized in considering Good Faith Efforts as outlined in Chapter 126, Jacksonville Ordinance code:

- (1) A contact log showing the name, address, and contact number (phone or fax) used to contact the proposed certified subcontractors, nature of work requested for quote, date of contact, person making the effort;
- (2) The description of work for which a quote was requested;
- (3) The amount of the quote given, if one was obtained;
- (4) The list of divisions of work not subcontracted and an explanation why not; and
- (5) Subcontractor information as requested by forms developed by the Department.

NOTE: The City will investigate and verify information submitted in determining Good Faith Effort and will compare the same with the performance of other proposers' attempts to meet the participation goals defined herein.

SOLICITATION EFFORTS - Should include your efforts to solicit quotes, through all reasonable and available means, the interest of all certified firms who have the capability to perform the work of the contract. The bidder should ensure that the requests are made within sufficient time to allow JSEB firms to respond. The contractor should take the initiative to contact firms which have indicated an interest in participating as a subcontractor/supplier.

ADDITIONAL EFFORTS - Utilizing the services offered by the City of Jacksonville Small and Emerging Business Office for assistance with recruitment efforts. Contractors are encouraged to undertake and document any other efforts taken in their attempt to fulfill the project goal.

**EXHIBIT E cont.**

Work Type Number	Description of Work, Service or Materials		JSEB Firm Name	
Contact Name (First and Last)	Contact Date	Contact Method	Contact Results	Bid Amount
1.				
2.				
3.				
Comments:				
Work Type Number	Description of Work, Service or Materials		JSEB Firm Name	
Contact Name (First and Last)	Contact Date	Contact Method	Contact Results	Bid Amount
1.				
2.				
3.				
Comments:				
Work Type Number	Description of Work, Service of Materials		JSEB Firm Name	
Contact Name (First and Last)	Contact Date	Contact Method	Contact Results	Bid Amount
1.				
2.				
3.				
Comments:				



**EXHIBIT F**

**Year 1  
Annual Survey 2020**

Send completed form to:  
 Downtown Investment Authority  
 Attn: Contract and Regulatory Compliance  
 117 West Duval Street, Suite 310  
 Jacksonville, Florida 32202  
 Fax: (904) 255-5309  
 Email: [Jcrescimbeni@coj.net](mailto:Jcrescimbeni@coj.net)

Please complete the form below as it relates to the project for which you may be entitled to receive DIA or State assistance. Should you have any questions, please call John Crescimbeni, Contract and Regulatory Compliance Manger, at (904) 255-5306.

Company Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
 \_\_\_\_\_

Primary Contact Name: \_\_\_\_\_

Primary Contact Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Signature: \_\_\_\_\_ Date of Report: \_\_\_\_\_

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

**As of December 31, 2020:**

**I. CAPITAL INVESTMENT INFORMATION**

Project Land Costs	[3] \$
Project Structure Costs	[4] \$
Project Equipment Costs	[5] \$
Other Costs	[6] \$
Total Project Costs (sum [3] through [6])	\$

**II. ASSESSED PROPERTY VALUE**

Assessed Value of Property on 2020 Duval County Property Tax Bill:	
Real Property	[7] \$
Personal Property	[8] \$
Total Assessed Value (sum [7] & [8])	\$
Amount of Taxes Paid: \$	Date Taxes Paid:

