

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE CITY OF CHICAGO AND THE  
METROPOLITAN PIER AND  
EXPOSITION AUTHORITY**

(The Above Space for Recorder's Use Only)

This **INTERGOVERNMENTAL AGREEMENT** ("Agreement") is made and entered into this 19<sup>th</sup> day of May, 2014, by and between the City of Chicago (the "City"), an Illinois municipal corporation, by and through its Department of Planning and Development ("Department"), and the Metropolitan Pier and Exposition Authority (the "MPEA"), a political subdivision, unit of local government, body politic and municipal corporation existing under the laws of the State of Illinois pursuant to the Metropolitan Pier and Exposition Authority Act, as amended, 70 ILCS 210/1 *et seq.* (the "MPEA Act").

**RECITALS**

**WHEREAS**, the City is a home rule unit of government under Section 6(a), Article VII of the Constitution of the State of Illinois of 1970, and as such, may exercise any power and perform any function pertaining to its government and affairs; and

**WHEREAS**, the MPEA was established as a unit of local government pursuant to Section 210/4(a) of the MPEA Act to "promote, operate and maintain fairs, expositions, meetings, and conventions from time to time" in the metropolitan Chicago area, and to "construct, equip, and maintain grounds, buildings, and facilities for those purposes"; and

**WHEREAS**, the MPEA owns McCormick Place, an exhibition and convention center located at 23<sup>rd</sup> Street and Martin Luther King Drive along the City's lakefront; and

**WHEREAS**, the McCormick Place convention center is comprised of four buildings having in aggregate over 2.6 million square feet of exhibit space and over 600,000 square feet of meeting rooms, along with four parking facilities containing approximately 6,700 parking spaces; and

**WHEREAS**, the MPEA also owns the Hyatt Regency McCormick Place, a recently renovated 1,262-room hotel operated by Hyatt Corporation and located adjacent to McCormick Place; and

**WHEREAS**, McCormick Place is the nation's largest convention center, annually hosting 125 to 150 events and attracting more than four million trade and public show visitors; and

**WHEREAS**, the MPEA desires to construct a second convention center headquarters hotel (the "Hotel") on the property legally described on Exhibit B attached hereto and depicted on Exhibit A (the "Hotel Property"); and

**WHEREAS**, the Hotel will be connected to other MPEA facilities by one or more sky bridges; and

**WHEREAS**, the MPEA desires to construct the sky bridge(s) and make certain streetscaping improvements (collectively, the "Adjacent Improvements") within the adjacent public right-of-way depicted on Exhibit A (the "Adjacent Right-of-Way," and together with the Hotel Property, the "Project Site"); and

**WHEREAS**, the Adjacent Improvements will supplement and enhance certain TIF-funded streetscaping improvements to be made by the MPEA on the north side of Cermak Road between Prairie Street and Calumet Avenue, authorized by ordinance adopted on June 26, 2013, and published in the Journal of Proceedings of such date at pages 56064 through 56098; and

**WHEREAS**, the Project Site includes a five-story brick factory building that was commissioned and built in 1912 as the Midwest offices, warehouse and distribution center of the American Book Company, a nationally-prominent New York textbook publisher (the "ABC Building"); and

**WHEREAS**, the ABC Building was designated a Chicago Landmark by ordinance adopted on September 25, 2009, and recorded in the Office of the Recorder of Deeds of Cook County on January 14, 2010, as document number 1001410030; and

**WHEREAS**, the significant historical and architectural features of the ABC Building were defined by the landmark ordinance to include all exterior elevations, including rooflines and all elevations of the tower, of the original 1912 building, and the main entrance foyer and lobby, including but not limited to the vaulted lobby ceiling, marble staircase and balustrade (collectively, the "Significant Historical and Architectural Features"); and

**WHEREAS**, the MPEA intends to rehabilitate, preserve and incorporate the ABC Building into the Hotel complex following preservation standards; and

**WHEREAS**, following construction, the Hotel will be a public facility owned by the MPEA; and

**WHEREAS**, the Hotel, the Adjacent Improvements and related improvements, including but not limited to those TIF-Eligible Improvements defined below and set forth on Exhibit E, are collectively referred to herein as the "Project"; and

**WHEREAS**, the MPEA estimates that a second hotel will allow McCormick Place to add about 15 mid-size events per year, potentially bringing in 80,000 more attendees annually; and

**WHEREAS**, the Hotel will provide the facilities and amenities required to serve as a headquarters hotel for groups holding shows at McCormick Place; and

**WHEREAS**, a description of the currently contemplated scope of the Project is set forth in Exhibit C attached hereto (the "Preliminary Scope of Development"); and

**WHEREAS**, the current estimate of the cost of the Project, including the cost of acquiring the Hotel Property, is Four Hundred Twenty-One Million Five Hundred Thousand Dollars (\$421,500,000), as outlined in the preliminary project budget attached hereto as Exhibit D (the "Preliminary Project Budget"); and

**WHEREAS**, the MPEA anticipates that it will acquire the Hotel Property in 2014 and complete construction of the Project in 2017; and

**WHEREAS**, the City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., as amended from time to time (the "TIF Act"), to finance projects that eradicate blighted conditions and conservation area factors that could lead to blight through the use of tax increment allocation financing for redevelopment projects; and

**WHEREAS**, to induce certain redevelopment pursuant to the TIF Act, the City Council adopted the Calumet/Cermak TIF Ordinances, the Michigan/Cermak TIF Ordinances, and the Near South TIF Ordinances; and

**WHEREAS**, the Hotel Property lies wholly within the boundaries of the Calumet/Cermak Redevelopment Area; and

**WHEREAS**, the Adjacent Right-of-Way lies within the Calumet/Cermak Redevelopment Area, the Michigan/Cermak Redevelopment Area and the Near South Redevelopment Area; and

**WHEREAS**, pursuant to Section 5/11-74.4-8(b) of the TIF Act, such incremental ad valorem taxes which, pursuant to the TIF Act, have been collected and are allocated to pay redevelopment project costs and obligations incurred in the payment thereof ("Increment") may be used to pay all or a portion of the costs of the TIF-Eligible Improvements; and

**WHEREAS**, pursuant to Section 5/11-74.4-4(q) of the TIF Act, the City can use Increment from one redevelopment project area for eligible redevelopment project costs in another redevelopment project area that is either contiguous to, or is separated only by a public right-of-way from, the redevelopment project area from which the Increment is received ("Transfer Rights"); and

**WHEREAS**, the Calumet/Cermak Redevelopment Area is either contiguous to, or is separated only by a public right-of-way from, the Near South Redevelopment Area; and

**WHEREAS**, the City may, at its option, exercise its Transfer Rights pursuant to the TIF Act and transfer a portion of the Near South Increment from the Near South Redevelopment Area in the amount of approximately \$25,000,000 (but in no event to exceed \$35,000,000), into the Calumet/Cermak TIF Fund in order to fund certain TIF-Eligible Improvements in the Calumet/Cermak Redevelopment Area, in the manner hereafter provided; and

**WHEREAS**, the Michigan/Cermak Redevelopment Area is either contiguous to, or is separated only by a public right-of-way from, the Calumet/Cermak Redevelopment Area; and

**WHEREAS**, the City may, at its option, exercise its Transfer Rights pursuant to the TIF Act and transfer a portion of the Calumet/Cermak Increment from the Calumet/Cermak Redevelopment Area, into the Michigan/Cermak TIF Fund in order to fund certain TIF-Eligible Improvements in the Michigan/Cermak Redevelopment Area, to the extent and in the manner hereafter provided; and

**WHEREAS**, the City and the MPEA agree that the City will pay not more than \$55,000,000 towards the Project (the "City Funds") from Calumet/Cermak Available Increment (in the case of the Hotel and other TIF-Eligible Improvements within the Calumet/Cermak Redevelopment Area), Michigan/Cermak Available Increment (in the case of the Adjacent Improvements and other TIF-Eligible Improvements within the Michigan/Cermak Redevelopment Area) and Near South Available Increment (in the case of the Adjacent Improvements or other TIF-Eligible Improvements within the Near South Redevelopment Area), or a combination of all three, or from any other source of funds available to and selected by the City; and

**WHEREAS**, the Project will be carried out in accordance with this Agreement and the Calumet/Cermak Redevelopment Plan (in the case of the Hotel and other TIF-Eligible Improvements within the Calumet/Cermak Redevelopment Area), the Michigan/Cermak Redevelopment Plan (in the case of the Adjacent Improvements and other TIF-Eligible Improvements within the Michigan/Cermak Redevelopment Area), and the Near South Redevelopment Plan (in the case of the Adjacent Improvements and other TIF-Eligible Improvements within the Near South Redevelopment Area); and

**WHEREAS**, the MPEA has authority to issue certain revenue bonds (the "Hotel Revenue Bonds") pursuant to the MPEA Act in a maximum principal amount to generate approximately \$250,000,000 in proceeds (the "Hotel Bond Proceeds"), secured by revenues from the Hotel, as a means of permanently financing the costs of the Project, including the TIF-Eligible Improvements; and

**WHEREAS**, the MPEA has authority to permanently finance the Project by issuing certain bonds (the "Expansion Project Bonds") pursuant to the MPEA Act in a maximum principal amount to generate approximately \$153,000,000 in proceeds (the "Expansion Bond Proceeds"); and



**WHEREAS**, the portion of the Project to be constructed on the Hotel Property and within the Adjacent Right-of-Way located within the Calumet/Cermak Redevelopment Area will be carried out in accordance with this Agreement and the Calumet/Cermak Redevelopment Plan; and

**WHEREAS**, the portion of the Project to be constructed within the Adjacent Right-of-Way located within the Michigan/Cermak Redevelopment Area will be carried out in accordance with this Agreement and the Michigan/Cermak Redevelopment Plan, and the portion of the Project to be constructed within the Adjacent Right-of-Way located within the Near South Redevelopment Area will be carried out in accordance with this Agreement and the Near South Redevelopment Plan; and

**WHEREAS**, the Calumet/Cermak Redevelopment Plan designates the Calumet/Cermak Redevelopment Area as a mixed-use district, and anticipates that it will include a wide range of land uses, including hotel and related uses to support the adjacent McCormick Place; and

**WHEREAS**, among the redevelopment objectives of the Calumet/Cermak Plan is to rehabilitate and enhance historically significant buildings within the Calumet/Cermak Redevelopment Area, such as the ABC Building, and to provide needed improvements and facilities to serve projected demand for such facilities; and

**WHEREAS**, among the redevelopment goals and objectives of the Michigan/Cermak Plan is to develop anchor projects that encourage commercial and related mixed use development along East Cermak Road and to link East Cermak Road redevelopment with McCormick Place; and

**WHEREAS**, among the redevelopment objectives of the Near South Plan is to encourage a complementary mix of uses, a broad range of improvements in both rehabilitation and new development efforts, and a high-quality appearance of buildings, rights-of-way, and open spaces; and

**WHEREAS**, the City and the MPEA wish to enter into this Agreement and partner in this public redevelopment project in order to elevate and promote the City and State of Illinois; and

**WHEREAS**, the Project will expand the City's and the State's convention and trade show business, create jobs, increase tourism, spur broader development of Chicago's Near South Community Area, and provide significant economic benefits to the City and its residents and businesses; and

**WHEREAS**, the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., authorizes and encourages cooperative agreements between units of Illinois' state and local government; and

**WHEREAS**, by Resolution No. 14-03 adopted on February 25, 2014, the Board of Directors of the MPEA authorized the execution of this Agreement; and

**WHEREAS**, by ordinance adopted on March 5, 2014, and published in the Journal of Proceedings of such date at pages 75299 through 75350, the City Council authorized the execution of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

## **SECTION 1. INCORPORATION OF RECITALS.**

The foregoing recitals constitute an integral part of this Agreement and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the Parties.

## **SECTION 2. DEFINITIONS.**

For purposes of this Agreement, in addition to the terms defined in the foregoing Recitals and elsewhere in this Agreement, the following terms shall have the meanings set forth below:

“300 E. Cermak Parcel” means a parcel of land consisting of approximately 79,980 square feet, as legally described on Exhibit B. The 300 E. Cermak Parcel is one of two parcels, along with the ABC Building Parcel, comprising the Hotel Property.

“ABC Building” is defined in the Recitals.

“ABC Building Parcel” means a parcel of land consisting of approximately 19,000 square feet, as legally described on Exhibit B. The ABC Building Parcel is improved with the ABC Building and is one of two parcels, along with the 300 E. Cermak Parcel, comprising the Hotel Property.

“Action or Proceeding” means any proceeding, arbitration or other alternative resolution process, investigation by any Governmental Authority, hearing, audit, appeal, administrative proceeding or judicial proceeding, including:

- (a) litigation (including trial and appellate litigation, bankruptcy litigation, administrative proceedings, and hearings at all levels);
- (b) action by any Party to enforce any rights and remedies under, or to terminate, this Agreement; or
- (c) appraisal, arbitration, or mediation process or proceeding, whether or not identified as adversarial.

“Adjacent Improvements” is defined in the Recitals.

“Affiliate” means any person or entity directly or indirectly controlling, controlled by or under common control with the MPEA.

"Agent" means any contractor, subcontractor or other agent, entity or individual acting under the control or at the request of the MPEA or the MPEA's contractors.

"Agreement" means this Intergovernmental Agreement and all exhibits attached hereto.

"Architectural/Engineering Contract" means a guaranteed delivery contract for the preparation of the Bridging Documents dated June 25, 2013, by and between the MPEA and the Architectural/Engineering Consultant.

"Architectural/Engineering Consultant" means M. Arthur Gensler Jr. & Associates, Inc., the design team selected and approved by the MPEA pursuant to a Request for Proposals (#2013-03-M) dated February 21, 2013.

"Attorneys' Fees and Costs" means any and all reasonable attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long distance and communications expenses, court costs and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.

"Available Increment" means, collectively, the Calumet/Cermak Available Increment, the Michigan/Cermak Available Increment and the Near South Available Increment.

"Available Proceeds" is defined in Section 8.12(c).

"Available Project Funds" is defined in Section 4.7(b)(viii).

"Bridging Documents" means, collectively, the (i) building program, (ii) schematic design documents, (iii) critical design details, and (iv) performance criteria for the mechanical and structural components of the Project that will be used by the MPEA to solicit bids from and form the basis of a contract with design-build-finance teams for the completion of design and construction documents for the Project. The Bridging Documents shall include architectural plans, sections, elevations, design details, other required drawings, performance criteria, and other specifications with sufficient detail to clearly establish the scope of work for the D/B/F Team and to set the architectural and interior design and FF&E requirements. The Bridging Documents shall also include structural, mechanical, electrical, plumbing, and fire protection drawings, performance criteria, and descriptions of building systems in sufficient detail to clearly establish the scope of work for the D/B/F Team and other requirements of the MPEA.

"Building Permit" means a demolition, grading, excavation, foundation or other building permit issued by the City for the construction of the Hotel.

"Business Relationship" has the meaning set forth for such term in Section 2-156-080 of the Municipal Code.

"Calumet/Cermak Available Increment" means an amount equal to all the Calumet/Cermak Increment on deposit in the Calumet/Cermak TIF Fund, plus any amounts of

Near South Increment which may have been transferred from time to time into the Calumet/Cermak TIF Fund pursuant to the Transfer Rights and this Agreement, less any amounts of such Increment which have been encumbered or pledged for the payment of Prior Obligations, all as of the date any payment is made under this Agreement to the MPEA.

"Calumet/Cermak Increment" means Increment collected from the Calumet/Cermak Redevelopment Area.

"Calumet/Cermak Redevelopment Area" means the redevelopment project area created by the Calumet/Cermak TIF Ordinances.

"Calumet/Cermak Redevelopment Plan" means that certain redevelopment plan and project for the Calumet/Cermak Redevelopment Area approved by the Calumet/Cermak TIF Ordinances.

"Calumet/Cermak TIF Fund" means the special tax allocation fund created by the City in connection with the Calumet/Cermak Redevelopment Area into which the Calumet/Cermak Increment will be deposited, and into which certain Near South Increment may be deposited by the City in the amount of approximately \$25,000,000 (but in no event to exceed \$35,000,000) pursuant to its exercise of its Transfer Rights.

"Calumet/Cermak TIF Ordinances" means the following ordinances adopted by the City Council on July 29, 1998, and published in the Journal of Proceedings of such date at pages 74598 through 74700, as now or hereafter amended: "An Ordinance of the City of Chicago, Illinois Approving a Redevelopment Plan and Project for the Calumet Avenue/Cermak Road Redevelopment Project Area," "An Ordinance of the City of Chicago, Illinois Designating the Calumet Avenue/Cermak Road Redevelopment Project Area a Redevelopment Project Area Pursuant to the Tax Increment Allocation Redevelopment Act," and "An Ordinance of the City of Chicago, Illinois Adopting Tax Increment Allocation Financing for the Calumet Avenue/Cermak Road Redevelopment Project Area."

"Certificate" is defined in Section 7.

"Change Order" means any amendment or modification to the Bridging Documents, Plans and Specifications, Project Budget or Redevelopment Schedule.

"City" is defined in the Preamble.

"City Council" means the City Council of the City of Chicago.

"City Funds" is defined in the Recitals and further described in Section 4.2 hereof.

"City Parties" means the City, and its officers, employees and agents.

"Commissioner" means the Commissioner of the Department of Planning and Development, or any successor department.

"Construction Agency Agreement" means the agreement dated September 18, 2013, by and between the MPEA and the Construction Agent, pursuant to which the Construction Agent will direct and manage the design and construction of the Hotel.

"Construction Agent" means Jones Lang LaSalle, the construction agent selected and approved by the MPEA pursuant to a Request for Proposals (#2013-08-M) dated May 17, 2013.

"Construction Commencement Date" means the commencement of physical work by the D/B/F Team under a Building Permit.

"Construction Financing" is defined in Section 4.2.

"Construction Lender" is defined in Section 4.2.

"Construction Mortgage" is defined in Section 4.2.

"Corporation Counsel" means the City's Office of Corporation Counsel.

"D/B/F Contract" means a guaranteed delivery contract or contracts for the design, construction and financing of the Project to be entered into by the MPEA and the D/B/F Team consistent with the Project Budget and the Redevelopment Schedule.

"D/B/F Team" means the design-build-finance team for the Project to be selected by the MPEA in accordance with the MPEA Requirements, the Phase I RFQ and the Phase II RFP, and to be hired by the MPEA to construct the Project.

"Definitive Agreements" means the D/B/F Contract, the Hotel Operating Agreement, the Ground Lease, the Construction Mortgage, the Payment Applications and all other agreements relating to the development, construction, financing, use and occupancy of the Hotel.

"Department" means the Department of Planning and Development and any successor department thereto.

"Effective Date" means the date upon which this Agreement has been both (a) fully executed, and (b) delivered to the MPEA.

"Environmental Laws" means any and all Laws relating to the regulation and protection of human health, safety, the environment and natural resources now or hereafter in effect, as amended or supplemented from time to time, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., any and all regulations promulgated thereunder, and all analogous state and local counterparts or equivalents, including, without limitation, the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq., and the common law including trespass and nuisance.



“Environmental Reports” means a Phase I environmental site assessment of the Hotel Property prepared in accordance with current ASTM/ACSM standards and appropriate Phase II assessments of the Hotel Property to complete the Project in compliance with Illinois law and other applicable regulations.

“Event of Default” is defined in Section 10.2.

“Expansion Bond Proceeds” is defined in the Recitals.

“Expansion Project Bonds” is defined in the Recitals.

“FF&E” means furniture, fixtures and equipment.

“Financing Plan” means a detailed plan identifying the amounts and sources of funds sufficient to pay all Project Costs, including construction financing and permanent financing, as such plan is approved pursuant to Section 5.2, and may be updated pursuant to Section 3.4.

“Final Title Policy” means one or more title insurance policies issued by the Title Company in the most recently revised ALTA or equivalent form, showing the MPEA as the named insured with respect to the Hotel Property, noting the recording of this Agreement as a Schedule B exception. The Final Title Policy shall contain only those title exceptions reasonably acceptable to the Department. The Final Title Policy shall also contain such endorsements as may be required by the Corporation Counsel, including but not limited to, an owner's comprehensive endorsement and satisfactory endorsements regarding zoning (3.1 with parking), contiguity, location, access and survey.

“Financial Statements” means complete audited financial statements for the Project prepared by a certified public accountant in accordance with generally accepted accounting principles and practices consistently applied throughout the appropriate periods.

“Force Majeure Event” means any cause beyond the reasonable control and not due to the negligent or willful misconduct of the Party affected, and which could not have been avoided by due diligence and use of commercially reasonable efforts, including drought, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, terrorism, threats of sabotage or terrorism, explosions, national emergency, strikes, lockouts, labor disputes and embargoes, and which actually cause delay, provided that in all events financial inability is excepted.

“GMP” means the guaranteed maximum price determined pursuant to the D/B/F Contract.

“GMP Set” means the drawings, specifications and other documents that form the basis for the GMP established pursuant to the D/B/F Contract, which documents shall fix and describe all design features, including sustainable design features, as well as the size, character, and quality of the Hotel as to architectural, civil and structural components and mechanical, electrical, plumbing and fire protection systems, structural dimensions, elevations, materials and colors, landscaping, and other features reasonably required by the MPEA, all of the foregoing

as reasonably required to define the scope of the D/B/F Team's obligations under the D/B/F Contract.

"Governmental Authority" means any federal, state, county, municipal or local governmental agency or political subdivision, or any court or other entity, body, organization or group exercising any executive, legislative, judicial, quasi-judicial, regulatory or administrative function of government, having jurisdiction over the Parties, the Project Site or the Project.

"Governmental Approvals" means, collectively, all licenses, permits and approvals required by any Governmental Authority to commence construction of the Hotel, including but not limited to, approval of the Planned Development Amendments and approval from the Commission on Chicago Landmarks with respect to any Preservation Work.

"Ground Lease" is defined in Section 4.2.

"Hotel" is defined in the Recitals.

"Hotel Bond Proceeds" is defined in the Recitals.

"Hotel Operating Agreement" means the operating agreement to be entered into between the MPEA and the Hotel Operator for the operation of the Hotel.

"Hotel Operator" means the company selected and approved by the MPEA Board on September 13, 2013, pursuant to a Request for Proposals (#2013-03-M) dated February 21, 2013, as updated and amended.

"Hotel Property" is defined in the Recitals.

"Hotel Refinancing" is defined in Section 8.12(c).

"Hotel Revenue Bonds" is defined in the Recitals.

"Hotel Sale" is defined in Section 8.12(c).

"In Balance" is defined in Section 4.7(b)(vii).

"Increment" is defined in the Recitals.

"Journal of Proceedings" means the Journal of the Proceedings of the City Council of the City of Chicago.

"Law" or "Laws" means all applicable federal, state, local or other laws (including common law), statutes, codes, ordinances, rules, regulations, requirements, executive orders and mandatory guidelines or directives of any applicable Governmental Authority, now or hereafter in effect, as amended or supplemented from time to time, and any applicable judicial or administrative interpretation thereof, including any applicable judicial or administrative orders, consent decrees or judgments, including, without limitation, Sections 7-28 and 11-4 of the Municipal Code of Chicago relating to waste disposal and all Environmental Laws.

“Losses” means any and all debts, liens, claims, suits, actions, causes of action, demands, complaints, legal or administrative proceedings, losses, damages, obligations, liabilities, judgments, amounts paid in settlement, arbitration or mediation awards, interest, fines, penalties, costs and expenses (including, without limitation, environmental remediation costs, Attorneys’ Fees and Costs, consultants’ fees and expenses and court costs).

“Michigan/Cermak Available Increment” means an amount equal to all the Michigan/Cermak Increment on deposit in the Michigan/Cermak TIF Fund, plus any amounts of Calumet/Cermak Increment which may have been transferred from time to time into said TIF Fund pursuant to the Transfer Rights and this Agreement, less any amounts of such Increment which have been encumbered or pledged for the payment of Prior Obligations, all as of the date any payment is made under this Agreement to the MPEA.

“Michigan/Cermak Increment” means Increment collected from the Michigan/Cermak Redevelopment Area.

“Michigan/Cermak Redevelopment Area” means the redevelopment project area created by the Michigan/Cermak TIF Ordinances.

“Michigan/Cermak Redevelopment Plan” means that certain redevelopment plan and project for the Michigan/Cermak Redevelopment Area approved by the Michigan/Cermak TIF Ordinances.

“Michigan/Cermak TIF Ordinances” means the following ordinances adopted by the City Council on September 13, 1989, and published in the Journal of Proceedings of such date at pages 4137 through 4198, as now or hereafter amended: “An Ordinance of the City of Chicago, Illinois Approving and Adopting a Tax Increment Redevelopment Project and Plan for the Michigan/Cermak Redevelopment Project Area,” “An Ordinance of the City of Chicago, Illinois Designating the Michigan/Cermak Redevelopment Project Area as a Tax Increment Financing District,” and “An Ordinance of the City of Chicago, Illinois Adopting Tax Increment Financing for the Michigan/Cermak Redevelopment Project Area.”

“Michigan/Cermak TIF Fund” means the special tax allocation fund created by the City in connection with the Michigan/Cermak Redevelopment Area into which the Michigan/Cermak Increment will be deposited, and into which certain Calumet/Cermak Increment may be deposited by the City pursuant to its exercise of its Transfer Rights.

“MPEA” is defined in the Preamble.

“MPEA Act” is defined in the Preamble.

“MPEA Funds” is defined in Section 4.1.

“MPEA Parties” means the MPEA and its current and former officers, directors, employees, Agents, attorneys, predecessors, successors, assigns and anyone claiming by, through or under any of them.

"MPEA Requirements" means those requirements which are more particularly set forth on Exhibit F attached hereto and incorporated herein.

"Municipal Code" means the Municipal Code of the City of Chicago.

"Near South Available Increment" means an amount equal to all the Near South Increment on deposit in the Near South TIF Fund, less any amounts of such Increment which have been encumbered or pledged for the payment of Prior Obligations, all as of the date any payment is made under this Agreement to the MPEA.

"Near South Increment" means Increment collected from the Near South Redevelopment Area.

"Near South Redevelopment Area" means the redevelopment project area created by the Near South TIF Ordinances.

"Near South Redevelopment Plan" means that certain redevelopment plan and project for the Near South Redevelopment Area approved by the Near South TIF Ordinances.

"Near South TIF Ordinances" means the following ordinances adopted by the City Council on August 3, 1994, and published in the Journal of Proceedings of such date at pages 54876 to 54950, as now or hereafter amended: "An Ordinance of the City of Chicago, Illinois Approving and Adopting a Tax Increment Redevelopment Project and Plan for the Near South Redevelopment Project Area," "An Ordinance of the City of Chicago, Illinois Designating the Near South Redevelopment Project Area as a Tax Increment Financing District," and "An Ordinance of the City of Chicago, Illinois Adopting Tax Increment Financing for the Near South Redevelopment Project Area." The Near South TIF Ordinances expanded a redevelopment project area known as the Central Station Redevelopment Area created by ordinances adopted on November 28, 1990, and renamed the area the Near South Redevelopment Area. The Near South Redevelopment Plan incorporates and replaces the redevelopment plan and project for the Central Station Redevelopment Area.

"Near South TIF Fund" means the special tax allocation fund created by the City in connection with the Near South Redevelopment Area into which the Near South Increment will be deposited.

"Net Sale Proceeds" is defined in Section 8.12(c).

"Party(ies)" means the MPEA or the City, as applicable, or both.

"Payment Application" is defined in Section 4.2.

"Person(s)" means any individual, partnership, joint venture, corporation, limited liability company, limited liability partnership, trust or other entity, private or public, with the power and authority to act and conduct business on its own behalf.

"Phase I RFQ" means a Request for Qualifications issued by the MPEA to identify firms qualified to complete the Project and will require the firms to submit information evidencing their

understanding and ability to provide construction financing. The RFQ will result in a short list of proposers who will be invited to submit a Phase II RFP.

“Phase II RFP” means a Request for Proposals issued by the MPEA to identify the D/B/F Team. These proposals must identify all team members, MBE/WBE participation, financing proposals, and construction schedule, among other requirements. The D/B/F Contract will result from the Phase II RFP, along with other documents related to the Project, such as the Ground Lease and the financing documents.

“Planned Development Amendments” means (i) an amendment to Planned Development No. 675 approved by the City Council removing the Hotel Property from PD 675; and (ii) an amendment to Planned Development No. 331 approved by the City Council adding the Hotel Property to PD 331 and allowing the MPEA to construct the Project on the Project Site.

“Plans and Specifications” means the final construction documents based on the GMP Set, containing a site plan and working drawings and specifications for the Hotel, as approved by the City in connection with the issuance of the Building Permits.

“Preliminary Project Budget” is defined in the Recitals and attached hereto as Exhibit D. The Preliminary Project Budget is intended to represent a summary of Project Costs using preliminary cost estimates for the development of the Hotel based on the Preliminary Scope of Development.

“Preliminary Scope of Development” is defined in the Recitals and attached hereto as Exhibit C.

“Preservation Work” is defined in Section 3.13.

“Prior Obligations” means those certain TIF-funded City programs and redevelopment agreements that have been established by the City Council as of the Effective Date, which programs and agreements pledge or otherwise commit portions of the Increment collected from the Calumet/Cermak Redevelopment Area, the Michigan/Cermak Redevelopment Area, and the Near South Redevelopment Area, as applicable.

“Project” is defined in the Recitals.

“Project Budget” means the budget approved by the City pursuant to Sections 5.1 and 5.2, as such budget may be updated pursuant to Section 3.4. The Project Budget shall include the estimated Project Costs by line item based on the Bridging Documents (for approval under Section 5.1) or Plans and Specifications (for approval under Section 5.2) and shall include reasonable contingencies for unforeseen design and construction costs or overruns.

“Project Completion Conditions” is defined in Section 7.1.

“Project Costs” means all costs incurred by the MPEA in connection with the acquisition of the Hotel Property, site preparation, design, entitlement, construction, marketing, financing, and development of the Project.



“Project Site” is defined in the Recitals.

“Proposed Payment Dates” is defined in Section 4.7(a).

“Purchase Obligation” is defined in Section 4.2.

“Redevelopment Area(s)” means the Calumet/Cermak Redevelopment Area, the Michigan/Cermak Redevelopment Area or the Near South Redevelopment Area, as applicable.

“Redevelopment Plan(s)” means the Calumet/Cermak Redevelopment Plan, the Michigan/Cermak Redevelopment Plan or the Near South Redevelopment Plan, as applicable.

“Redevelopment Project Costs” means redevelopment project costs as defined in Section 5/11-74.4-3(q) of the TIF Act, including, *inter alia*, acquisition, consultant and construction costs for the public facility, as provided on Exhibit E, that are included in the budget set forth in the applicable Redevelopment Plan or otherwise referenced in the applicable Redevelopment Plan.

“Redevelopment Schedule” means the redevelopment schedule approved by the City pursuant to Section 3.3. At a minimum, the Redevelopment Schedule shall include the construction commencement date and the construction completion date for the Project. The construction completion date shall be no later than December 31, 2017, subject to the Department’s option to extend such date pursuant to Section 3.1.

“Repayment Obligation” is defined in Section 4.2.

“Requisition Form” means a requisition form in the form of Exhibit G hereto.

“Significant Historical and Architectural Features” is defined in the Recitals.

“Survey” means a Class A plat of survey in the most recently revised form of ALTA/ACSM land title survey of the Project Site, acceptable in form and content to the City and the Title Company, prepared by a surveyor registered in the State of Illinois.

“Term of the Agreement” means the period commencing on the Effective Date and expiring on the later of the date on which (a) the Calumet/Cermak Redevelopment Area is no longer in effect; (b) the Michigan/Cermak Redevelopment Area is no longer in effect; or (c) the Near South Redevelopment Area is no longer in effect.

“TIF Act” is defined in the Recitals.

“TIF-Eligible Improvements” means those improvements of the Project which (i) qualify as Redevelopment Project Costs as defined in the TIF Act, (ii) are eligible costs under the Calumet/Cermak Redevelopment Plan (with respect to improvements within the Calumet/Cermak Redevelopment Area), the Michigan/Cermak Redevelopment Plan (with respect to improvements within the Michigan/Cermak Redevelopment Area) and the Near South Redevelopment Plan (with respect to improvements within the Near South Redevelopment

Area), and (iii) the City has agreed to pay for out of the City Funds, subject to the terms of this Agreement. Exhibit E lists the TIF-Eligible Improvements for the Project.

“Title Company” means Chicago Title Insurance Company, or any other Title Company selected by the Parties to issue the Final Title Policy.

### **SECTION 3. THE PROJECT.**

3.1. Commencement and Completion of Project. Subject to Section 3.4 hereof, the MPEA shall commence and complete construction of the Project in accordance with the time periods set forth in the Redevelopment Schedule; provided, however, the Department may, in its sole discretion, extend such time periods (to the extent the Department’s approval is required under Section 3.4).

3.2. Bridging Documents and Plans and Specifications. The MPEA and the City acknowledge that design of the Hotel has not been completed. The Bridging Documents for the Project must be submitted by the MPEA to the Department for the Department’s written approval prior to the initial disbursement of City Funds under Section 5.1 hereof. The Plans and Specifications for the Project must be submitted by the MPEA to the Department for the Department’s written approval prior to the Construction Commencement Date under Section 5.2 hereof. The Bridging Documents and the Plans and Specifications shall at all times conform to the Calumet/Cermak Redevelopment Plan (with respect to improvements within the Calumet/Cermak Redevelopment Area), the Michigan/Cermak Redevelopment Plan (with respect to improvements within the Michigan/Cermak Redevelopment Area) and the Near South Redevelopment Plan (with respect to improvements within the Near South Redevelopment Area), the terms and conditions of this Agreement, and all applicable Laws. The MPEA shall submit all necessary documents to the City’s Department of Buildings, Department of Transportation and such other City departments or Governmental Authorities as may be necessary to acquire Building Permits and other required approvals for the Project. The MPEA shall construct the Project substantially in accordance with the Bridging Documents, the Plans and Specifications and all Laws and covenants and restrictions of record.

3.3. Project Budget, Redevelopment Schedule and Financing Plan. The MPEA has furnished to the Department, and the Department has approved, a Preliminary Project Budget showing total costs for the Project in an amount not less than \$421,500,000. The MPEA hereby certifies to the City that the City Funds and the MPEA Funds shall be sufficient to complete the Project. The MPEA shall refine the cost estimates set forth in the Preliminary Project Budget in conjunction with the preparation of the Bridging Documents and the Plans and Specifications, as described in Section 3.2 above. The Project Budget and the Redevelopment Schedule must be submitted by the MPEA to the Department for the Department’s approval prior to the initial disbursement of City Funds under Section 5.1 hereof. The Financing Plan and any changes to the Project Budget and the Redevelopment Schedule must be submitted by the MPEA to the Department for the Department’s approval prior to the Construction Commencement Date under Section 5.2 hereof.

3.4. Change Orders. Following the Department’s approval of the Plans and Specifications, the Project Budget, the Financing Plan and the Redevelopment Schedule under Section 5.2 hereof, any Change Orders that individually or in the aggregate (a) reduce the

square footage of the Hotel by more than five percent (5%) from the minimum square footage approved by the Department in the Plans and Specifications, (b) change the use of the Project Site, (c) extend the construction commencement and completion dates set forth in the Redevelopment Schedule by more than six (6) months each or twelve (12) months in the aggregate (other than for Force Majeure causes), or (d) increase the Project Budget by more than 3% must be submitted (together with documentation substantiating the need for the Change Order and identifying the source of funding therefor) by the MPEA to the Department for the Department's prior written approval. The MPEA shall submit such Change Orders and documentation to the City prior to or simultaneously with its delivery of such materials to the MPEA Board. The MPEA shall not authorize or permit the performance of any work relating to any such Change Order or the furnishing of materials in connection therewith prior to the receipt by the MPEA of the Department's written approval (to the extent required in this section). The D/B/F Contract and each construction contract or subcontract applicable to the Project shall contain a provision to this effect. The City's receipt of any Change Order shall not be deemed to imply any obligation on the part of the City to increase the amount of City Funds which the City has committed pursuant to this Agreement or to provide any other additional assistance to the MPEA.

3.5. Limited Applicability of City Review and Approval. Any approval granted by the Department of the Bridging Documents, the Plans and Specifications, the Change Orders or any other document pursuant to this Agreement is for the purposes of this Agreement only and shall not constitute approval of the quality, structural soundness or safety of the Project Site or the Project, or the compliance of the Project Site or the Project with any Laws, private covenants or restrictions of record. The MPEA shall not commence construction of the Project until the MPEA has obtained all necessary Governmental Approvals. The MPEA understands and agrees that the City's approval of this Agreement does not constitute approval of any applications for such approvals, nor does it constitute a commitment by the City to take any particular action in relation to such applications.

3.6. Books and Records; Progress Reports; Inspection. The MPEA shall keep and maintain separate, complete, accurate and detailed books and records necessary to reflect and fully disclose the total actual cost of the Project and the disposition of all funds from whatever source allocated thereto, and to monitor the Project. All such books, records and other documents, including but not limited to, the D/B/F Team's and each subcontractor's sworn statements, the D/B/F Contract, all subcontracts, purchase orders, waivers of lien, paid receipts and invoices, shall be available at the MPEA's offices for inspection, copying, audit and examination by an authorized representative of the City, at the MPEA's expense. The MPEA shall incorporate this right to inspect, copy, audit and examine all books and records into all contracts entered into by the MPEA with respect to the Project. If requested by the City, the MPEA shall provide to the City written quarterly reports on the progress of the Project. The City reserves the right to inspect the Project from time to time as it is being undertaken or after its completion.

3.7. Barricades. Prior to commencing any construction in the public way or otherwise requiring barricades, the MPEA shall install or cause to be installed a construction barricade of a type and appearance satisfactory to the City and constructed in compliance with all applicable Laws. The Department retains the right to approve the maintenance, appearance, color scheme, painting, nature, type, content and design of all barricades.

3.8. Signs and Public Relations. The MPEA shall erect a sign of size and style approved by the City in a conspicuous location on the Project Site during the Project, indicating that financing has been provided by the City. The City reserves the right to include the name, photograph, artistic rendering of the Project and other pertinent information regarding the MPEA, the Project Site and the Project in the City's promotional literature and communications.

3.9. Utility Connections. The MPEA may connect all on-site water, sanitary, storm and sewer lines constructed on the Hotel Property to City utility lines existing on or near the perimeter of the Hotel Property, provided the MPEA first complies with all City requirements governing such connections, including the payment of customary fees and costs related thereto

3.10. Permit Fees. In connection with the Project, the MPEA shall be obligated to pay only those building, permit, engineering, tap on and inspection fees that are assessed on a uniform basis throughout the City and are of general applicability to other property within the City.

3.11. Insurance. The MPEA shall provide and maintain, at the MPEA's own expense, or cause to be provided and maintained during the Term of this Agreement, the insurance coverage and requirements specified in Exhibit H, insuring all operations related to this Agreement.

3.12. Certificate of Compliance. The MPEA shall comply with all applicable Laws pertaining to or affecting the Project or the MPEA, including but not limited to those set forth on Exhibit F (the "MPEA Requirements"). The MPEA shall include a certification of such compliance with each request for City Funds hereunder and at the time the Project is completed. The City shall be entitled to rely on this certification without further inquiry; provided, however, upon the City's request, the MPEA shall provide evidence satisfactory to the City of such compliance.

3.13. ABC Building. The MPEA acknowledges that the Project Site includes a designated Chicago Landmark, referred to herein as the ABC Building, and that any work affecting the Significant Historical and Architectural Features of the ABC Building ("Preservation Work") is subject to the review and approval of the Commission on Chicago Landmarks. The MPEA shall submit such information as is necessary and satisfactory to the Department's Historic Preservation Division for review and approval and, if necessary (as determined by the Historic Preservation Division), for review and approval by the Commission on Chicago Landmarks, prior to application for a Building Permit. Prior to the issuance of the Certificate, the MPEA shall verify that the Project has been constructed in accordance with such approvals or any changes permitted under Section 3.4.

#### **SECTION 4. FUNDING.**

4.1 Total Project Cost and Sources of Funds. The cost of the Project is estimated to be \$421,500,000, to be applied in the manner set forth in the Project Budget. The estimated Project Costs shall be funded from Expansion Bond Proceeds and Hotel Bond Proceeds (collectively, "MPEA Funds") and City Funds.



4.2 MPEA Funds. MPEA Funds shall be used to pay all Project Costs, including but not limited to Redevelopment Project Costs and costs of TIF-Eligible Improvements. The MPEA represents that the MPEA Act prohibits the MPEA from granting a lien or security interest in the MPEA's real property. To facilitate Project financing, the MPEA will enter into a ground lease or similar instrument (the "Ground Lease") with the D/B/F Team who will thereby own the Hotel during the construction thereof. The D/B/F Team will obtain construction financing (the "Construction Financing") from a lender (the "Construction Lender") and correspondingly give the Construction Lender a security interest in the Ground Lease and/or the Hotel (the "Construction Mortgage"). Pursuant to the D/B/F Contract, the MPEA shall be obligated to: (a) purchase the Hotel from the D/B/F Team upon completion of construction (the "Purchase Obligation"); and (b) repay the D/B/F Team in the amount of the Project Costs incurred and paid (including from the proceeds of the Construction Financing) by the D/B/F Team during construction (the "Repayment Obligation"). Pursuant to the D/B/F Contract, the D/B/F Team shall submit applications for payment (each a "Payment Application") to the MPEA for review and approval as the D/B/F Team incurs and pays Project Costs. The amount of the Repayment Obligation shall increase as the MPEA approves each Payment Application. As Project Costs are thereby added to the amount of the Repayment Obligation they shall qualify as TIF-Eligible Improvements hereunder (subject to the terms and conditions hereof). Upon completion of the Project the MPEA shall use the Hotel Bond Proceeds and the Expansion Bond Proceeds (or a portion thereof) to satisfy the Purchase Obligation and the Repayment Obligation, whereupon the Construction Lender shall be obligated to release the Construction Mortgage and the MPEA and the D/B/F Team shall terminate the Ground Lease. The Ground Lease, the Construction Mortgage and each Payment Application shall be Definitive Agreements hereunder.

#### 4.3 City Funds.

(a) Uses of City Funds. City Funds may only be used to pay or reimburse the MPEA for the costs of TIF-Eligible Improvements that constitute Redevelopment Project Costs. Exhibit E sets forth, by line item, the TIF-Eligible Improvements for the Project, and the estimated costs that will be paid by or reimbursed from City Funds for each line item therein, not to exceed \$55,000,000, contingent upon receipt by the City of documentation satisfactory in form and substance to the Department evidencing such cost and its eligibility as a Redevelopment Project Cost.

(b) Sources of City Funds. Subject to the terms and conditions of this Agreement, the City shall pay to the MPEA an amount not to exceed \$55,000,000 in City Funds from Available Increment, for the costs of the TIF-Eligible Improvements; provided, however, the City's obligation to provide City Funds hereunder is subject to the availability of Available Increment in the Calumet/Cermak TIF Fund (for TIF-Eligible Improvements within the Calumet/Cermak Redevelopment Area), the Michigan/Cermak TIF Fund (for TIF-Eligible Improvements within the Michigan/Cermak Redevelopment Area) and the Near South TIF Fund (for TIF-Eligible Improvements within the Near South Redevelopment Area). The projected Available Increment is sufficient to make the payments as scheduled under Section 4.7 of this Agreement, but the MPEA acknowledges and agrees that the projections could change and that the City does not guarantee the availability of such funds.

(c) Transferred Increment. Subject to the availability of funds, the City may, at its option, exercise its Transfer Rights to transfer (i) Near South Increment into the



Calumet/Cermak TIF Fund, as necessary to pay for TIF-Eligible Improvements within the Calumet/Cermak Redevelopment Area, and (ii) Calumet/Cermak Increment into the Michigan/Cermak TIF Fund, as necessary to pay for TIF-Eligible Improvements on the Adjacent Right-of-Way within the Michigan/Cermak Redevelopment Area.

(d) Increment Availability. Upon the MPEA's request, the City will advise the MPEA of significant unrelated expenditures that are being considered or may impact the Available Increment and the City's ability to utilize the City Funds as provided in Section 4.7 of this Agreement.

4.4 Prior Expenditures. Only those expenditures made by the MPEA with respect to the Project prior to the Effective Date, evidenced by documentation satisfactory to the Department and approved by the Department as satisfying costs covered in the Project Budget, shall be considered previously contributed MPEA Funds hereunder (the "Prior Expenditures"). Exhibit I hereto sets forth the expenditures made by the MPEA as of the date hereof as Prior Expenditures. Prior Expenditures made for items other than TIF-Eligible Improvements shall not be reimbursed to the MPEA, but shall reduce the amount of MPEA Funds required to be contributed by the MPEA pursuant to Section 4.1 hereof.

4.5 Allocation Among Line Items. Disbursements for expenditures related to TIF-Eligible Improvements may be allocated to and charged against the appropriate line as determined by the Department.

4.6 Cost Overruns. If the aggregate cost of the TIF-Eligible Improvements exceeds City Funds available pursuant to Section 4.3 hereof, or if the cost of completing the Project exceeds the Project Budget, the MPEA shall be solely responsible for such excess cost, and shall hold the City harmless from any and all costs and expenses of completing the TIF-Eligible Improvements in excess of City Funds and of completing the Project.

4.7 Payment.

(a) It is anticipated that City Funds will be available for disbursement to the MPEA in the following amounts on the following dates (the "Proposed Payment Dates"): (i) \$15 million on or about July 1, 2014, (ii) \$5 million on or about September 30, 2014, (iii) \$20 million on or about December 31, 2014, and (iv) the balance of City Funds, or \$15 million, on or about March 31, 2016. The MPEA may submit one or more Requisition Forms to the Department, along with the documentation described therein, requesting disbursement of City Funds on or any time after the Proposed Payment Dates (or such other dates as may be acceptable to the Parties) in the foregoing amounts. Each Requisition Form shall be payable by the City within three (3) months of receipt, subject to the availability of Available Increment. At the MPEA's request, the City shall provide the MPEA with an accounting of the Available Increment prior to the Proposed Payment Dates. If the Available Increment on the Proposed Payment Dates is insufficient to cover the MPEA's request for City Funds, then the City and the MPEA shall agree on a subsequent date or dates on or prior to December 15, 2016, for the City to provide the balance of such amount in accordance with the terms and subject to the conditions set forth in this Agreement.

(b) Delivery by the MPEA to the Department of any request for disbursement of City Funds hereunder shall, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such request for disbursement, that:

(i) The total amount of the disbursement request represents actual acquisition costs paid by the MPEA for the Hotel Property, or the actual amount paid or due to the D/B/F Team, subcontractors or other parties who have performed work on or otherwise provided goods or services in connection with the Project, and/or their payees;

(ii) all amounts shown as previous payments on the current disbursement request have been paid to the parties entitled to such payment, or the MPEA is obligated to pay the D/B/F Team such amounts pursuant to approved Payment Application(s);

(iii) the MPEA has approved all work and materials for the current disbursement request, and such work and materials conform to the Plans and Specifications for the Project;

(iv) the MPEA has approved Payment Application(s) covering the full amount of the disbursement request;

(v) the MPEA is in compliance with all applicable Laws pertaining to or affecting the Project or the MPEA as related thereto, including but not limited to the MPEA Requirements;

(vi) the representations and warranties contained in this Agreement are true and correct and the MPEA is in compliance with all covenants contained herein;

(vii) no Event of Default or condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default exists or has occurred; and

(viii) the Project is In Balance. Following the Construction Commencement Date, the Project shall be deemed to be in balance ("In Balance") only if the total of the Available Project Funds equals or exceeds the aggregate of the amount necessary to pay all unpaid Project Costs incurred or to be incurred in the completion of the Project. "Available Project Funds" as used herein shall mean the undisbursed City Funds and the undisbursed MPEA Funds. The MPEA hereby agrees that, if the Project is not In Balance, the MPEA shall, within ten (10) days after a written request by the City, deposit with the escrow agent or will make available (in a manner acceptable to the City), cash in an amount that will place the Project In Balance, which deposit shall first be exhausted before any further disbursement of the City Funds shall be made.

The City shall have the right, in its discretion, to require the MPEA to submit further documentation as the City may require in order to verify that the matters certified to above are true and correct, and any disbursement by the City shall be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct; provided, however, that nothing in this sentence shall be deemed to prevent the City from relying on such certifications by the MPEA.

(c) Upon presentation of a disbursement request from the MPEA, the City shall review it and its supplemental documentation for, among other things, evidence that the MPEA incurred and paid (or is obligated to pay under an approved Payment Application) costs of TIF-Eligible Improvements in an amount that equals or exceeds the amount of City Funds agreed to herein, and shall inform the MPEA of any questions or comments about the request as soon as practicable.

(d) Once a disbursement request is approved by the City, the City, by check or wire transfer, shall pay the approved City Funds amount not later than thirty (30) days following such approval.

4.8 Conditional Grant. The City Funds being provided hereunder are being granted on a conditional basis, subject to the MPEA's compliance with the provisions of this Agreement.

## **SECTION 5. CONDITIONS PRECEDENT TO DISBURSEMENT OF CITY FUNDS.**

5.1 Disbursement of City Funds Prior to Construction Commencement Date. The conditions in this Section 5.1 must be satisfied to the City's reasonable satisfaction at least five (5) business days prior to the initial disbursement of City Funds, unless waived by the Department in its sole discretion.

(a) Bridging Documents. The MPEA shall have submitted to the Department, and the Department shall have approved, the Bridging Documents in accordance with the provisions of Section 3.2 hereof.

(b) Definitive Agreements. The MPEA shall have entered into, and submitted copies to the Department of, the Architectural/Engineering Contract, the Construction Agency Agreement, and the Hotel Operating Agreement.

(c) Phase I RFQ and Phase II RFP. The MPEA shall have selected a short list of prospective design-build-finance teams pursuant to the Phase I RFQ, and shall have issued the Phase II RFP for the Project.

(d) Project Budget. The MPEA shall have submitted to the Department, and the Department shall have approved, the Project Budget in accordance with the provisions of Section 3.3 hereof.

(e) Redevelopment Schedule. The MPEA shall have submitted to the Department, and the Department shall have approved, the Redevelopment Schedule.

(f) Acquisition of Hotel Property; Final Title Policy; Environmental Due Diligence. The MPEA shall have delivered to the Department: (i) a copy of the Final Title Policy; (ii) a copy of the Survey; (iii) copies of all easements and encumbrances of record affecting the Hotel Property; (iv) evidence of searches of current financing statements, judgments, pending litigation, bankruptcy proceedings and federal and state tax liens showing no security interests, judgments, pending litigation, bankruptcies or federal or state tax liens on the Hotel Property or affecting the MPEA; (v) a copy of the

most recent real estate tax bill with respect to the Hotel Property; (vi) a copy of the most recent water bill with respect to the Hotel Property; (vii) copies of the Environmental Reports; (viii) an appraisal of the Hotel Property acceptable to the City; and (viii) evidence of the purchase price of the Hotel Property in the form of a real estate sales contract or a deed and closing statement, certified by the MPEA.

(g) Evidence of Prior Expenditures. The MPEA shall have provided evidence satisfactory to the Department in its sole discretion of the Prior Expenditures in accordance with the provisions of Section 4.4 hereof.

(h) Insurance. The MPEA shall have insured the Hotel Property in accordance with Section 3.11, and shall have delivered certificates required pursuant to Exhibit H evidencing the required coverage to the Department.

(i) Resolutions. The MPEA shall have submitted to the Corporation Counsel a copy of all resolutions authorizing the MPEA to execute and deliver any documents required to complete the transactions contemplated by this Agreement and to perform its obligations under this Agreement.

(j) No Default. No condition, event or act exists which would constitute an Event of Default or which, upon the giving of notice or the passage of time, or both, would constitute an Event of Default.

(k) No Litigation. No existing, pending or threatened Action or Proceeding before any court or administrative agency exists affecting the MPEA, the Project or the Project Site that would, if adversely determined, adversely affect, in the reasonable judgment of the City, the Project, the Project Site or the ability of the MPEA to perform its obligations under this Agreement or the Definitive Agreements.

(l) Representations and Warranties. The representations and warranties of the MPEA as set forth in Section 8 of this Agreement remain true and correct.

(m) Other Obligations. The MPEA shall have performed all of the other obligations required to be performed by the MPEA under this Agreement as and when required under this Agreement.

5.2 Disbursement of City Funds After Construction Commencement Date. In addition to the conditions in Section 5.1, the conditions in this Section 5.2 must be satisfied to the City's reasonable satisfaction at least five (5) business days prior to the Construction Commencement Date, unless waived by the Department in its sole discretion; provided, however, the MPEA covenants and agrees to keep the City informed at all times of the status of the documents referenced in this Section 5.2, and shall submit such documents to the Department for the Department's review and approval as soon as possible:

(a) Plans and Specifications. The MPEA shall have submitted to the Department, and the Department shall have approved, the Plans and Specifications in accordance with the provisions of Section 3.2 hereof.



(b) Updated Project Budget and Financing Plan. The MPEA shall have submitted to the Department, and the Department shall have approved, the Financing Plan and any changes to the Project Budget in accordance with the provisions of Section 3.3 hereof.

(c) D/B/F Contract. The MPEA and the D/B/F Team shall have entered into the D/B/F Contract, the Guaranteed Maximum Price shall have been established pursuant to the D/B/F Contract, the amount of the Guaranteed Maximum Price shall be consistent with the Project Budget, and the D/B/F Contract shall be in full force and effect.

(d) Definitive Agreements. In addition to the D/B/F Contract, the MPEA shall have entered into, and submitted copies to the Department of, the Ground Lease and all other Definitive Agreements to which the MPEA is a party, and such Definitive Agreements shall be in full force and effect. In addition, the Construction Mortgage and any other Definitive Agreements relating to the financing of the Project shall be in full force and effect and available for review by the Department.

(e) Governmental Approvals. The MPEA shall have secured all necessary Governmental Approvals to commence construction of the Project and shall have submitted evidence thereof to the Department.

(f) Payment and Performance Bonds. The MPEA shall have received the payment and performance bonds required under the D/B/F Contract, and shall have submitted evidence thereof to the Department

(g) Payment Application. The City shall have approved the form of Payment Application and such form shall be an exhibit to the D/B/F Contract.

### 5.3 Satisfaction Period.

(a) Conditions in Section 5.1. If any of the conditions in Section 5.1 have not been satisfied to the Department's reasonable satisfaction on or before December 31, 2014, the Department shall demand that such conditions are met and negotiate one or more 30-day extensions in good faith. If the MPEA fails to meet the extension(s), the Department may, at its option, upon prior written notice to the MPEA of at least ten (10) days, terminate this Agreement at the expiration of the notice period herein described, or delay the disbursement of City Funds until such time as the MPEA complies with this Section 5. If the City so terminates this Agreement, due to the MPEA's failure to comply with the explicit requirements of Section 5.1 after extension period(s) negotiated in good faith, the MPEA shall return to and/or reimburse the City for the full amount of the City Funds disbursed to date. Any forbearance by the Department in exercising its right to terminate this Agreement upon a default hereunder shall not be construed as a waiver of such right.

(b) Conditions in Section 5.2. If any of the conditions in Section 5.2 have not been satisfied to the Department's reasonable satisfaction on or before December 31, 2015, the Department shall demand that such conditions are met and negotiate one or



more 30-day extensions in good faith. If the MPEA fails to meet the extension(s), the Department may, at its option, upon prior written notice to the MPEA of at least ten (10) days, terminate this Agreement after the expiration of the notice period herein described, or delay the disbursement of City Funds until such time as the MPEA complies with this Section 5. If the City so terminates this Agreement due to the MPEA's failure to comply with the explicit requirements of Section 5.2 after extension period(s) negotiated in good faith, the MPEA shall return to and/or reimburse the City for the full amount of the City Funds disbursed to date. Any forbearance by the Department in exercising its right to terminate this Agreement upon a default hereunder shall not be construed as a waiver of such right.

## **SECTION 6. AGREEMENTS WITH CONTRACTORS.**

6.1 Competitive Bidding. The MPEA shall competitively bid the D/B/F Contract and select the D/B/F Team in accordance with applicable Law, including, without limitation, the bidding, contracting and advertising requirements set forth in the MPEA Act. Within ten (10) business days after the D/B/F Contract has been fully executed, the MPEA shall deliver a complete copy of such contract to the Department, together with any modifications, amendments or supplements thereto.

6.2 Insurance. In all contracts relating to the Project, the MPEA agrees to require the contractor to name the City as an additional insured on insurance coverages and to require the contractor to indemnify the City from all Losses arising out of or resulting from work on the Project by the contractor or the contractor's suppliers, employees or agents.

6.3 Performance and Payment Bonds. Prior to commencement of construction of any portion of the Project involving work in the public way or work that constitutes a "public work" under applicable state law and is required to be bonded under such state law, the MPEA shall require that the D/B/F Team be bonded for its performance and payment by sureties having an AA rating or better using American Institute of Architect's Form No. A311 or its equivalent. The City shall be named as obligee or co-obligee on such bond. Prior to the commencement of construction of any portion of the Project, including work in the public way, the D/B/F Team and any subcontractors shall comply with the licensing, letter of credit, insurance and bonding, and other requirements applicable under the Municipal Code and the statutes of the State of Illinois.

6.4 Other Provisions. In addition to the requirements of this Section 6, the D/B/F Contract and each contract with any subcontractor shall contain provisions required pursuant to Section 3.4 (Change Orders), Section 3.6 (Books and Records), Section 3.11 (Insurance), Section 8.4 (Employment Opportunity; Progress Reports), Section 8.5 (Employment Profile), Section 9.1 (Employment Opportunity), and Section 9.2 (City Resident Construction Worker Employment Requirement) hereof.

## **SECTION 7. COMPLETION OF THE PROJECT.**

7.1 Certificate of Completion. The MPEA shall request a certificate of completion from the City ("Certificate") upon completion of the Project and purchase of the Hotel in accordance with this Agreement. The City will not issue the Certificate until (a) the MPEA has

satisfied the Purchase Obligation and the Repayment Obligation, (b) the Construction Lender has released the Construction Mortgage, and (c) the Ground Lease has been terminated ((a), (b) and (c) collectively, the "Project Completion Conditions"). The MPEA shall submit a written request for a Certificate within forty-five (45) days after the satisfaction of the Project Completion Obligations. Within forty-five (45) days after receipt of a written request by the MPEA for a Certificate, the City shall provide the MPEA with either the requested Certificate or a written statement indicating in adequate detail how the MPEA has failed to complete the Project in conformity with this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the sole opinion of the City, for the MPEA to take or perform in order to obtain the Certificate. If the City requires additional measures or acts to assure compliance, the MPEA shall resubmit a written request for the Certificate upon compliance with the City's response. The Certificate shall be in recordable form, and shall, upon recording, constitute a conclusive determination of satisfaction and termination of the covenants in this Agreement with respect to the MPEA's obligations to construct the Project and purchase the Hotel. The Certificate shall not, however, constitute evidence that the MPEA has complied with any Laws relating to the construction of the Project, and shall not serve as any "guaranty" as to the quality of the construction. Nor shall the Certificate release the MPEA from its obligation to comply with the other terms, covenants and conditions of this Agreement.

7.2 Timeline for Satisfaction of Project Completion Conditions. If any of the Project Completion Conditions have not been satisfied to the Department's reasonable satisfaction on or before December 31, 2017, the Department shall demand that such conditions are met and negotiate one or more 30-day extensions in good faith. If the MPEA fails to meet the extension(s), the Department may, at its option, upon prior written notice to the MPEA of at least ten (10) days, terminate this Agreement after the expiration of the notice period herein described. If the City so terminates this Agreement due to the MPEA's failure to comply with the explicit requirements of Section 7.1 after extension period(s) negotiated in good faith, the MPEA shall return to and/or reimburse the City for the full amount of the City Funds disbursed to date. Any forbearance by the Department in exercising its right to terminate this Agreement upon a default hereunder shall not be construed as a waiver of such right.

## **SECTION 8. COVENANTS/REPRESENTATIONS/WARRANTIES OF THE MPEA.**

8.1 General. The MPEA represents, warrants and covenants, as of the date of this Agreement, and throughout the Term of this Agreement, that:

- (a) it has the authority as a municipal corporation of the State of Illinois to execute and deliver this Agreement and to perform its obligations hereunder;
- (b) it has or shall obtain, and thereafter maintain, all Governmental Approvals necessary to conduct its business and to construct, complete and operate the Project;
- (c) the Financial Statements, when hereafter required to be submitted, will be complete, correct in all material respects and accurately present the assets, liabilities, results of operations and financial condition of the Project;
- (d) except as permitted under the Financing Plan, prior to the expiration of the Term of this Agreement, it shall not, without the prior written consent of the

Department, which consent shall be in the Department's sole discretion, directly or indirectly: (i) sell, transfer, convey, lease or otherwise dispose of all or any portion of the Project or the Hotel Property, or (ii) assign this Agreement; and

(e) prior to the issuance of the Certificate, it shall not, without the Department's prior written consent, which shall be in the Department's sole discretion, allow the existence of any liens against the Project Site (or improvements thereon); or incur any indebtedness, secured or to be secured by the Project Site (or improvements thereon) or any fixtures now or hereafter attached thereto, except financing disclosed in the Financing Plan.

8.2 Covenant to Redevelop. The MPEA shall redevelop the Project Site in accordance with this Agreement, the TIF Ordinances, the Plans and Specifications, the Project Budget, the Redevelopment Schedule, and all Laws applicable to the Project, the Project Site and/or the MPEA. The covenants set forth in this Section 8.2 shall run with the land and be binding upon any transferee, but shall be deemed satisfied upon issuance by the City of a Certificate with respect thereto.

8.3 Use of City Funds. The City Funds disbursed to the MPEA shall be used by the MPEA solely to pay for or reimburse the MPEA for costs of TIF-Eligible Improvements as provided in this Agreement.

8.4 Employment Opportunity; Progress Reports. The MPEA covenants and agrees to abide by, and to contractually obligate and use reasonable efforts to cause the D/B/F Team and each of its contractors and subcontractors to abide by the terms set forth in Section 9 and Exhibit F hereof. The MPEA shall deliver to the City written progress reports detailing compliance with the requirements of Section 9.2 (City Resident Construction Worker Employment Requirement) and the affirmative action requirements set forth in Exhibit F of this Agreement. Such reports shall be delivered to the City when the Project is 30%, 60%, 90% and 100% completed (based on the amount of expenditures incurred in relation to the Project Budget). If any such reports indicate a shortfall in compliance, the MPEA shall also deliver a plan to the Department which shall outline, to the Department's satisfaction, the manner in which the MPEA shall correct any shortfall.

8.5 Employment Profile. Upon the Department's request, the MPEA shall submit, and contractually obligate and cause the D/B/F Team and each of its contractors and subcontractors to submit, to the Department from time to time statements of their respective employment profiles.

8.6 Conflict of Interest. Pursuant to Section 5/11-74.4-4(n) of the TIF Act, the MPEA represents, warrants and covenants that, to the best of its knowledge, no member, official, or employee of the City, or of any commission or committee exercising authority over the Project, the applicable Redevelopment Areas or the applicable Redevelopment Plans, or any consultant hired by the City or the MPEA with respect thereto, owns or controls, has owned or controlled or will own or control any interest, and no such person shall represent any person, as agent or otherwise, who owns or controls, has owned or controlled, or will own or control any interest, direct or indirect, in the Project Site or any other property in the applicable Redevelopment Areas.

8.7 Financial Statements. For each fiscal year during the Term of the Agreement, the MPEA shall obtain and provide to the Department Financial Statements for the Project. In addition, the MPEA shall submit unaudited financial statements for the Project as soon as reasonably practical following the close of each fiscal year and for such other periods as the Department may request.

8.8 Insurance. The MPEA shall comply (or cause compliance) with all provisions of Section 3.11 hereof.

8.9 MPEA's Liabilities. The MPEA shall not enter into any transaction that would materially and adversely affect its ability to perform its obligations hereunder. The MPEA shall immediately notify the Department of any and all events or actions which may materially affect the MPEA's ability to carry on its business operations or perform its obligations under this Agreement.

8.10 Compliance with Laws. To the best of the MPEA's knowledge, after diligent inquiry, the Project is and shall be in compliance with all applicable Laws, including, without limitation, all Environmental Laws, pertaining to or affecting the Project and the Project Site. Upon the City's request, the MPEA shall provide evidence satisfactory to the City of such compliance.

8.11 Recording and Filing. The MPEA shall cause this Agreement, certain exhibits (as specified by the Corporation Counsel) and all amendments and supplements hereto, to be recorded and filed on the Effective Date in the records of the Cook County Recorder of Deeds. The MPEA shall pay all fees and charges incurred in connection with any such recording. Upon recording, the MPEA shall immediately transmit to the City an executed original of this Agreement showing the date and recording number of record.

8.12 Sale or Refinancing of Project.

(a) In the event of a Hotel Sale at any time prior to or after the expiration of the Term of the Agreement (subject to the City's consent as required under Section 8.1(d) above), on the closing date of such Hotel Sale, at the City's option, the MPEA shall pay and remit to the City the previously disbursed City Funds from the Net Sale Proceeds.

(b) In the event of a Hotel Refinancing at any time prior to the expiration of the Term of the Agreement, on the closing date of such Hotel Refinancing, at the City's option, the MPEA shall pay and remit to the City the City's pro rata share of the Available Proceeds. The City's pro rata share shall be determined by multiplying the Available Proceeds by a fraction, the numerator of which is the previously disbursed City Funds and the denominator of which is the total Project Costs.

(c) As used herein, the following terms shall have the following meanings:

"Available Proceeds" means the gross cash proceeds available from a Hotel Refinancing, less any reasonable and actual expenses incurred in connection with such



refinancing, and less the payment of any principal and accrued interest on the bond indebtedness being refinanced.

“Hotel Sale” means the sale, conveyance, transfer or other disposition of all or any part of the Project or Hotel Property.

“Hotel Refinancing” means a refinancing or defeasance of all or a portion of the Hotel Revenue Bonds with Expansion Project Bonds.

“Net Sale Proceeds” means any receipts, proceeds or revenues derived from or in connection with a Hotel Sale, less any reasonable and actual expenses incurred in connection with such sale, and less the balance of any principal and accrued interest on the Expansion Project Bonds and the Hotel Revenue Bonds.

8.13 Use of Hotel Revenue. The Parties acknowledge and agree that the Hotel Revenue Bonds will be secured by revenues from the Hotel and must be repaid pursuant to the terms of the bond purchase agreement in effect at the time of bond issuance. The Parties acknowledge and further agree that in order to ensure the successful and long-term operation of the Hotel, the MPEA must fund operating and maintenance expenses, debt service, including the repayment of the Hotel Revenue Bonds, and capital reserve amounts with revenues from Hotel operations prior to pledging the revenue from the Hotel to any other source.

8.14 Survival of Covenants. All warranties, representations, covenants and agreements of the MPEA contained in this Section 8 and elsewhere in this Agreement shall be true, accurate and complete at the time of the MPEA's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the Parties hereto and (except as provided in Section 7 hereof upon the issuance of the Certificate) shall be in effect throughout the Term of the Agreement (or such longer period as may be expressly provided for herein).

## **SECTION 9. DEVELOPER'S EMPLOYMENT OBLIGATIONS.**

9.1 Employment Opportunity. The MPEA, on behalf of itself and its successors and assigns, hereby agrees, and shall contractually obligate its general contractors, subcontractors or any Affiliate of the MPEA operating on the Project Site (collectively, with the MPEA, the “Employers” and individually an “Employer”) to agree, that for the Term of this Agreement with respect to the MPEA and during the period of any other party's provision of services to the MPEA in connection with the construction of the Project or occupation of the Project Site:

(a) No Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq., Municipal Code, except as otherwise provided by said ordinance and as amended from time to time (the “Human Rights Ordinance”). Each Employer shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income and are treated in a non-discriminatory manner with regard to all job-related matters, including without

limitation: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Each Employer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause. In addition, the Employers, in all solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income.

(b) To the greatest extent feasible, each Employer is required to present opportunities for training and employment of low- and moderate-income residents of the City and preferably of the applicable Redevelopment Area; and to provide that contracts for work in connection with the construction of the Project be awarded to business concerns that are located in, or owned in substantial part by persons residing in, the City and preferably in the applicable Redevelopment Area.

(c) Each Employer shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the City's Human Rights Ordinance and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1993), and any subsequent amendments and regulations promulgated thereto.

(d) Each Employer, in order to demonstrate compliance with the terms of this Section, shall cooperate with and promptly and accurately respond to inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.

(e) Each Employer shall include the foregoing provisions of subparagraphs (a) through (d) in every contract entered into in connection with the Project, and shall require inclusion of these provisions in every subcontract entered into by any subcontractors, and every agreement with any Affiliate operating on the Project Site, so that each such provision shall be binding upon each contractor, subcontractor or Affiliate, as the case may be.

(f) Failure to comply with the employment obligations described in this Section 9.1 shall be a basis for the City to pursue remedies under the provisions of Section 10 hereof.

9.2 City Resident Construction Worker Employment Requirement. The MPEA agrees for itself and its successors and assigns, and shall contractually obligate the D/B/F Team and shall cause the D/B/F Team to contractually obligate its subcontractors, as applicable, to agree, that during the construction of the Project they shall comply with the minimum percentage of total worker hours performed by actual residents of the City as specified in Section 2-92-330 of the Municipal Code of Chicago (at least 50 percent of the total worker hours worked by persons on the site of the Project shall be performed by actual residents of the City); provided, however, that in addition to complying with this percentage, the MPEA, the D/B/F Team and each subcontractor shall be required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions.

## SECTION 10. INDEMNITY; DEFAULT.

10.1 Indemnification. The MPEA agrees to indemnify, defend and hold the City, its officers, officials, members, employees and agents, harmless from and against any Losses suffered or incurred by the City arising from or in connection with: (a) the failure of the MPEA to comply with any of the terms, covenants and conditions contained within this Agreement; (b) the failure of the MPEA or any of the MPEA Parties to pay contractors, subcontractors or material suppliers in connection with the Project; (c) any material misrepresentation or omission made by the MPEA or any of the MPEA Parties; and (d) any activity undertaken by the MPEA or any of the MPEA Parties on the Project Site. This indemnification shall survive any termination of this Agreement (regardless of the reason for such termination).

10.2 Event of Default. The failure of the MPEA to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the MPEA under this Agreement or any related agreement (including, without limitation, the Definitive Agreements) shall constitute an "Event of Default" by the MPEA hereunder.

10.3 Cure. If the MPEA defaults in the performance of its obligations under this Agreement, the MPEA shall have thirty (30) days after written notice of default from the City to cure the default, or such longer period as shall be reasonably necessary to cure such default provided the MPEA commences to cure the default within such thirty (30) day period and thereafter diligently and continuously pursues such cure to completion.

10.4 Remedies. If an Event of Default occurs, and the default is not cured in the time period provided for in Section 10.3 above, then the City shall have any of the following rights and remedies:

- (a) the right to terminate this Agreement and cease all disbursement of City Funds not yet disbursed pursuant hereto;
- (b) the right to place a lien on the Project and the Hotel Property in the amount of City Funds paid;
- (c) the right to seek reimbursement of the City Funds from the MPEA; and
- (d) the right, in any court of competent jurisdiction by any action or proceeding at law or in equity, to pursue and secure any available remedy, including but not limited to damages, injunctive relief or the specific performance of the agreements contained herein.

10.5 Waiver and Estoppel. Any delay by the City in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or operate to deprive the City of or limit such rights in any way. No waiver made by the City with respect to any specific default by the MPEA shall be construed, considered or treated as a waiver of the rights of the City with respect to any other defaults of the MPEA.





## **SECTION 12. MISCELLANEOUS.**

The following general provisions govern this Agreement:

12.1 Approval. Wherever this Agreement provides for the approval or consent of the City, the Department or the Commissioner, or any matter is to be to the City's, the Department's or the Commissioner's satisfaction, unless specifically stated to the contrary, such approval, consent or satisfaction shall be made, given or determined by the City, the Department or the Commissioner in writing and in the reasonable discretion thereof. The Commissioner or other person designated by the Mayor of the City shall act for the City or the Department in making all approvals, consents and determinations of satisfaction, granting the Certificate of Completion or otherwise administering this Agreement for the City.

12.2 Assignment. The MPEA may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the written consent of the City. Any successor in interest to the MPEA under this Agreement shall certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement for the Term of the Agreement. The MPEA consents to the City's sale, transfer, assignment or other disposal of this Agreement at any time in whole or in part.

12.3 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the City, the MPEA and their respective successors and permitted assigns. This Agreement is intended to be and is for the sole and exclusive benefit of the Parties hereto and such successors and permitted assigns.

12.4 Conflict. In the event of a conflict between any provisions of this Agreement and the provisions of the TIF Ordinances, such ordinances shall prevail and control.

12.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute a single, integrated instrument.

12.6 Cumulative Remedies. The remedies of any Party hereunder are cumulative and the exercise of any one or more of such remedies shall not be construed as a waiver of any other remedy herein conferred upon such Party or hereafter existing at law or in equity, unless specifically so provided herein.

12.7 Date for Performance. If the final date of any time period set forth herein falls on a Saturday, Sunday or legal holiday under the laws of Illinois or the United States of America, then such time period shall be automatically extended to the next business day.

12.8 Disclaimer. Nothing contained in this Agreement nor any act of the City shall be deemed or construed by the Parties, or by any third person, to create or imply any relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving the City.

12.9 Entire Agreement; Modification. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreements, negotiations and discussions. This Agreement may not be modified or

amended in any manner without the prior written consent of the Parties hereto. No term of this Agreement may be waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the Party benefited by such term.

12.10 Exhibits. All exhibits referred to herein and attached hereto shall be deemed part of this Agreement.

12.11 Force Majeure. Neither the City nor the MPEA shall be considered in breach of its obligations under this Agreement in the event of a delay due to unforeseeable events or conditions beyond the reasonable control of the Party affected which in fact interferes with the ability of such Party to discharge its obligations hereunder, including, without limitation, fires, floods, strikes, shortages of material and unusually severe weather or delays of subcontractors due to such causes. The time for the performance of the obligations shall be extended only for the period of the delay and only if the Party relying on this section requests an extension in writing within twenty (20) days after the beginning of any such delay.

12.12 Form of Documents. All documents required by this Agreement to be submitted, delivered or furnished to the City shall be in form and content satisfactory to the City.

12.13 Further Assurances. The MPEA agrees to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may become necessary or appropriate to carry out the terms, provisions and intent of this Agreement.

12.14 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

12.15 Headings. The headings of the various sections and subsections of this Agreement have been inserted for convenience of reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions hereof.

12.16 Limitation of Liability. No member, official or employee of the City shall be personally liable to the MPEA or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the MPEA from the City or any successor in interest or on any obligation under the terms of this Agreement.

12.17 No Waiver. No waiver by the City with respect to any specific default by the MPEA shall be deemed to be a waiver of the rights of the City with respect to any other defaults of the MPEA, nor shall any forbearance by the City to seek a remedy for any breach or default be deemed a waiver of its rights and remedies with respect to such breach or default, nor shall the City be deemed to have waived any of its rights and remedies unless such waiver is in writing.

12.18 Remedies Cumulative. The remedies of a party hereunder are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any other remedies of such party unless specifically so provided herein.

12.19 Right to Audit. The City shall have the right to audit, upon reasonable notice, all expenditures and financial records related to the Project. Upon written request by the City, the MPEA shall give the City access to all records controlled by, or in the possession of the MPEA relating to the Project or this Agreement, to permit the City to review such records in connection with conducting a reasonable audit.

12.20 Severability. If any term of this Agreement or any application thereof is held invalid or unenforceable, the remainder of this Agreement shall be construed as if such invalid part were never included herein and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

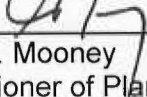
12.21 Successors and Assigns. Except as otherwise provided in this Agreement, the terms and conditions of this Agreement shall apply to and bind the successors and assigns of the Parties.

12.22 Venue and Consent to Jurisdiction. If there is a lawsuit under this Agreement, each party may hereto agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois and the United States District Court for the Northern District of Illinois.

*(Signature Page Follows)*

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed on or as of the date first above written.

**CITY OF CHICAGO**, an Illinois municipal corporation

By:  \_\_\_\_\_  
Andrew J. Mooney  
Commissioner of Planning and Development

**METROPOLITAN PIER AND EXPOSITION  
AUTHORITY**, a political subdivision, unit of local  
government, a body politic and an Illinois municipal  
corporation

By: \_\_\_\_\_  
James Reilly  
Its Chief Executive Officer

THIS INSTRUMENT PREPARED BY, AND  
AFTER RECORDING, PLEASE RETURN TO:

Lisa Misher  
Michael Gaynor  
City of Chicago Department of Law  
121 North LaSalle Street, Suite 600  
Chicago, Illinois 60602  
(312) 742-3932

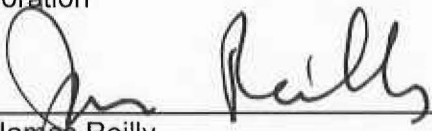


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121 North LaSalle Street, Suite 600  
Chicago, Illinois 60602  
(312) 742-3932





**EXHIBIT A**

**DEPICTION OF PROJECT SITE**

(ATTACHED)





**EXHIBIT B**

**LEGAL DESCRIPTION OF HOTEL PROPERTY**

**300 EAST CERMAK PARCEL:**

LOTS 10 TO 18, BOTH INCLUSIVE, IN BLOCK 24 OF GURLEY'S SUBDIVISION, BLOCKS 21 TO 28 OF ASSESSOR'S DIVISION, IN SECTION 22, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ALL OF THE NORTH/SOUTH VACATED ALLEY, LYING EAST OF AND ADJOINING LOTS 10 TO 18, ALL IN BLOCK 24 IN GURLEY'S SUBDIVISION AFORESAID, IN COOK COUNTY, ILLINOIS.

**ABC BUILDING PARCEL**

LOTS 8 AND 9 IN BLOCK 24 IN GURLEY'S SUBDIVISION OF BLOCKS 24 TO 28, BOTH INCLUSIVE, IN THE ASSESSOR'S DIVISION OF THE SOUTHWEST ¼ OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

THE EAST ½ OF THE NORTH/SOUTH VACATED ALLEY, LYING WEST OF AND ADJOINING LOTS 8 AND 9 IN BLOCK 24 IN GURLEY'S SUBDIVISION AFORESAID, IN COOK COUNTY, ILLINOIS.

ADDRESS: 300-30 EAST CERMAK ROAD  
CHICAGO, ILLINOIS 60616

PINS: 17-22-321-001  
17-22-321-018  
17-22-321-017  
17-22-321-016  
17-22-321-014

## EXHIBIT C

### PRELIMINARY SCOPE OF DEVELOPMENT

(SUBJECT TO CHANGE IN ACCORDANCE WITH FINAL PLANS AND SPECIFICATIONS)

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#### Rooms

1200 Keys

61 Suites of varying sizes

40	2 bay Executive Suites
10	2 bay hospitality Suites
2	3 bay Conference Suites
4	4 bay VIP Suites
2	5 bay Presidential Suites
3	4 bay Meeting Planner Suites

Concierge Lounge

#### Lobby & Reception

Main Lobby	4,000 SF
Registration	1,000 SF
Front Office	1,800 SF
Accounting	2,500 SF
Sales & Admin.	6,000 SF

#### Food and Beverage

Hotel Restaurant	300 Seats
Convention Bar	200 Seats
Rooftop Bar	100 Seats
Coffee and Convenience Store	30 Seats

#### Meeting Facilities\*

Grand Ballroom	30,000 SF
Junior Ballroom	18,000 SF
Banquet Rooms	30,000 SF
Meeting Rooms	12,000 SF
Board Rooms	1,600 SF
	91,600 SF Total

\*Meeting Facilities connected to McCormick Place West Building via Sky Bridge

#### Retail

Business Center	1,200 SF
Unassigned	6,000 SF

#### Recreation

Fitness Facility	4,000 SF
Indoor Pool	3,000 SF

Back of House

Main Kitchen	16,000 SF
Banquet Furniture	10,000 SF
Audio Visual	500 SF
Banquet Offices	1,000 SF
Coat Check & Toilets	8,000 SF
Receiving & Loading	3,000 SF
Security	600 SF
Staff Lockers & Toilets	6,000 SF
Housekeeping	3,500 SF
Linen Holding	1,200 SF
Maintenance	2,000 SF
General Storage	5,000 SF
MEP	TBD

Parking

On site valet	150 Spaces
Off Site	McCormick Place Garage – Parking Lot A

EXHIBIT D

PRELIMINARY PROJECT BUDGET

<b>MCCORMICK PLACE 1,200 ROOM CONVENTION HEADQUARTERS HOTEL</b>		
<b>DESCRIPTION</b>		<b>ESTIMATE</b>
Design-Build Contract Budget		\$ 325,049,000
Soft Cost Budget		\$ 22,551,000
Hotel FF&E Budget		\$ 48,400,000
Land Acquisition Budget		\$ 25,500,000
<b>Total Hotel Project Cost Budget</b>		<b>\$ 421,500,000</b>

**EXHIBIT E**

**LIST OF TIF-ELIGIBLE IMPROVEMENTS**

(PRELIMINARY — SUBJECT TO FINAL PROJECT BUDGET)

<u>TIF-ELIGIBLE PROJECT COSTS</u>	<u>ESTIMATES</u>
Land Acquisition Costs	\$25,500,000
Demolition & Site Preparation, Environmental Remediation, Survey & Geotechnical	\$4,500,000
Legal, Design, Planning, Financial, Engineering and Other Professional Consultant Fees	\$18,200,000
Publicly-Owned Exposition Headquarters Hotel Construction Costs	Greater than \$50,000,000

The Commissioner shall have the discretion to identify the specific amounts of TIF-eligible Project Costs that may be paid for from City Funds, subject to the \$55,000,000 maximum contribution. The actual amounts paid to the MPEA from City Funds for these TIF-Eligible Improvements may differ from these estimates, but will in total remain subject to the \$55,000,000 maximum contribution of City Funds.



## EXHIBIT F

### MPEA REQUIREMENTS

MPEA shall comply with the affirmative action goals set forth in 70 ILCS 210/23.1(b)-(c), and shall seek approval from the MPEA Board to enter into a community benefits agreement to memorialize MPEA's commitment to meeting such affirmative action goals. The community benefits agreement will acknowledge MPEA's agreement that the goals for the participation of minority and women owned enterprises shall be set at no less than 25% and 5% respectively and that the community hiring goals for the Project be set at no less than 7.5%.

In addition, the community benefits agreement shall:

- i) include a detailed traffic, parking, and truck loading plan;
- ii) include a security plan for days in which large crowds are expected in the local area around the Hotel due to activity at the future event center which is planned for the adjoining block to the west of the Project;
- iii) identify a process through which community residents with the required construction skills can be identified as eligible for work on the Project;
- iv) require MPEA to contract with a consultant which will be charged with developing an emerging firms program to identify minority and women owned firms to participate in the Project, such program to include a capacity building program that assists the firms in obtaining the appropriate financing and bonding;
- v) provide a framework through which MPEA and local elected officials can work together to seek opportunities to build additional open space and tourism opportunities for the enjoyment of neighborhood residents and visitors; and
- vi) be monitored by a committee to be formed by local elected officials, building owners, business owners, and residents.



**METROPOLITAN PIER AND EXPOSITION  
AUTHORITY**, a political subdivision, unit of local  
government, a body politic and an Illinois municipal  
corporation

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

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

Its Chief Executive Officer

Subscribed and sworn before me this \_\_\_\_ day of 20\_\_.

\_\_\_\_\_

My commission expires: \_\_\_\_\_

**Agreed and accepted:**

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

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

Title: \_\_\_\_\_

City of Chicago

Department of Planning and Development

## EXHIBIT H

### INSURANCE REQUIREMENTS

The MPEA must provide and maintain, at the MPEA's own expense, or cause to be provided and maintained during the term of this Agreement, the insurance coverage and requirements specified below, insuring all operations related to the Agreement.

(a) Construction. Prior to the construction of any portion of the Project, the MPEA will cause its architects, contractors, subcontractors, project managers and other parties constructing the Project to procure and maintain the following kinds and amounts of insurance:

(i) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employers Liability coverage with limits of not less than \$ 500,000 each accident, illness or disease.

(ii) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations (for a minimum of two (2) years following project completion), explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

(iii) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

(iv) Railroad Protective Liability

When any work is to be done adjacent to or on railroad or transit property, Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy must have limits of not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

(v) All Risk /Builders Risk

All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the Project. The City of Chicago is to be named as an additional insured and loss payee/mortgagee if applicable.

(vi) Professional Liability

When any architects, engineers, construction managers or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions with limits of not less than \$1,000,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with or precede start of work on the contract. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

(vii) Valuable Papers

When any plans, designs, drawings, specifications and documents are produced or used under this Agreement, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the re-creation and reconstruction of such records.

(viii) Contractors Pollution Liability

When any remediation work is performed which may cause a pollution exposure, the MPEA must cause the remediation contractor to provide Contractor Pollution Liability covering bodily injury, property damage and other losses caused by pollution conditions that arise from the contract scope of work with limits of not less than \$1,000,000 per occurrence. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede start of work on the contract. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The City of Chicago is to be named as an additional insured.

(c) Post Construction:

All Risk Property Insurance at replacement value of the property to protect against loss of, damage to, or destruction of the building/facility. The City is to be named as an additional insured and loss payee/mortgagee if applicable.

(c) Other Requirements:

The MPEA must furnish the City of Chicago, Department of Planning and Development, City Hall, Room 1000, 121 North LaSalle Street 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The MPEA must submit evidence of insurance on the City of Chicago Insurance Certificate Form or equivalent. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements under the Agreement. The failure of the City to obtain certificates or other insurance evidence from the MPEA is not a waiver by the City of any requirements for the MPEA to obtain and maintain the specified coverages. The MPEA shall advise all insurers of the Agreement provisions regarding



insurance. Non-conforming insurance does not relieve the MPEA of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work and/or terminate the Agreement until proper evidence of insurance is provided.

The insurance must provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self-insured retentions on referenced insurance coverages must be borne by the MPEA and contractors.

The MPEA hereby waives and agrees to require its insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by the MPEA in no way limit the MPEA's liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self-insurance programs maintained by the City of Chicago do not contribute with insurance provided by the MPEA under the Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

The MPEA must require its contractors and subcontractors to provide the insurance required herein, or the MPEA may provide the coverages for its contractors and subcontractors. All contractors and subcontractors are subject to the same insurance requirements of the MPEA unless otherwise specified in this Agreement.

If the MPEA or any contractor or subcontractor desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

The City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

EXHIBIT I

PRIOR EXPENDITURES

(ATTACHED)

(SUBJECT TO APPROVAL BY THE DEPARTMENT  
IN ACCORDANCE WITH THIS AGREEMENT)

EXHIBIT I  
PRIOR EXPENDITURES

HEADQUARTERS HOTEL PROJECT (Invoices Paid)						
	Name of Company	Invoice #	Amount	Date of Invoice	Date Paid	
<u>Survey</u>						
1-Apr-14						
1	National Survey Service, Inc.	129183	\$14,470.00	8/30/13	10/8/13	
May-14						
1	Neal & Leroy	3	\$8,543.75	1/24/14	4/7/14	
			\$23,013.75			
<u>Geotechnical</u>						
	Part of Jones Lang LaSalle invoices- See below					
<u>Legal</u>						
1-Apr-14						
1	Katten Muchin Rosenman	130127518	\$5,760.00	5/24/13	7/18/13	
2	Katten Muchin Rosenman	1301088530	\$1,860.00	2/6/14	3/21/14	
3	Katten Muchin Rosenman	1301081123	\$22,644.00	1/7/14	3/21/14	
4	Schiff Hardin	1803098	\$703.13	8/30/13	9/6/13	
5	Schiff Hardin	1776271	\$6,258.13	8/30/13	9/6/13	
6	Schiff Hardin	1793346	\$312.50	8/30/13	9/6/13	
7	Neal & Leroy	109	\$1,523.30	6/28/13	8/13/13	
8	Neal & Leroy	77	\$1,382.25	8/23/2013	10/30/2013	
9	Neal & Leroy	1	\$2,125.00	9/25/2013	12/19/2013	
10	Neal & Leroy	1	\$20,322.50	9/25/2013	12/19/2013	
11	Neal & Leroy	1	\$8,017.50	9/25/2013	12/19/2013	
12	Neal & Leroy	2	\$20,181.25	10/24/2013	12/19/2013	
13	Neal & Leroy	2	\$3,577.50	10/24/2013	12/19/2013	
14	Neal & Leroy	3	\$8,915.63	11/25/2013	1/24/14	
15	Neal & Leroy	2	\$985.00	11/25/2013	1/24/14	
16	Neal & Leroy	3	\$10,003.75	11/25/2013	1/24/14	
17	Neal & Leroy	2	\$2,182.50	11/25/2013	1/24/14	
18	Neal & Leroy	2	\$682.50	11/25/2013	1/24/14	
19	Neal & Leroy	4	\$5,205.25	12/23/2013	3/2/14	
20	Neal & leroy	5	\$6,750.00	12/23/2013	3/2/14	
May-14						
1	Neal & Leroy	6	\$3,500.00	1/24/2014	4/7/14	
2	Neal & Leroy	5	\$2,981.25	1/24/2014	4/7/14	
3	Neal & Leroy	6	\$1,722.50	2/21/2014	4/16/14	
4	Neal & leroy	7	\$43,277.50	2/21/2014	4/16/14	
			\$180,872.94			
<u>Design (Bridging Documents)</u>						
1-Apr-14						
1	Gensler Architecture	1	\$209,493.38	8/9/13	9/25/13	
2	Gensler Architecture	2	\$9,687.50	8/22/13	10/8/13	
3	Gensler Architecture	3	\$567,426.76	9/16/13	10/8/13	
4	Gensler Architecture	4	\$501,313.06	10/14/13	10/30/13	
5	Gensler Architecture	5	\$786,622.94	11/11/13	12/16/13	
6	Gensler Architecture	6	\$693,556.91	12/9/13	1/24/14	
7	Gensler Architecture	7	\$670,248.29	1/14/14	3/21/14	
May-14						
1	Gensler Architecture	8	\$480,833.45	2/12/14	4/7/14	

