
DEVELOPMENT PLAN AGREEMENT

THIS DEVELOPMENT PLAN AGREEMENT (the "Contract") is made as of July 1 ____, 2018, by and between the Big Sky Economic Development Corporation, a Montana nonprofit corporation (hereinafter referred to as "EDC"), and Landmark Development Services Company, LLC, a Wisconsin limited liability company (hereinafter referred to as "Developer").

RECITALS

WHEREAS, the EDC, along with each of the City of Billings (the "City"), Downtown Billings Partnership, Inc. ("DBP"), Billings Economic Development Authority, Billings Chamber of Commerce, and Billings Tourism Business Improvement District (together with the EDC, the "Strategy Partners"), desires to advance an economic development strategy for a multi-anchor district in Billings, Montana, commonly referred to as the One Big Sky District as described in the Development Plan, defined below (the "Project");

WHEREAS, the Developer previously completed, at its own cost and expense, the concept development plan that serves as the conceptual framework for the Project (the "Concept Development Plan");

WHEREAS, the Developer and the Strategy Partners are working together to advance the strategic redevelopment of the Billings downtown core by identifying the private-investment and public infrastructure investment opportunities in the health-wellness district and lifestyle district as identified in the Concept Development Plan, with a mutually beneficial outcome;

WHEREAS, the next phase of work for the Project will include evolving the master plan, conceptual design and engineering plans for the Project, as well as establishing a preliminary plan of finance for the One Big Sky District (all of those matters, the "Development Plan");

WHEREAS, because the Development Plan has significant potential to promote economic development resulting in major, positive economic and fiscal impacts for the region and the State of Montana, the EDC and the other Strategy Partners desire to work collaboratively with the Developer and contribute an amount not to exceed Six Hundred Seventy-Five Thousand and 00/100 Dollars (\$675,000.00) toward the Expenses (defined on Exhibit 1), but excluding direct personnel expenses of the Developer, to complete the Development Plan consistent with the Services as defined and more particularly described herein and in Exhibit 1 attached hereto; and

WHEREAS, once the Developer completes the Development Plan, it is the parties' current intent to work toward a definitive plan and continue their public - private partnership by collaboratively advancing an immediate phase of a public - private development opportunity the Development Plan identifies as a catalyst project or projects that includes a public infrastructure component (each, a "Catalyst Project").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Basic Definitions.

1.1 “Services” are those activities and services to be undertaken by the Developer and any Subconsultants (as hereinafter defined) with respect to the development, design, market analysis and financial structuring of the Project as more particularly described in Exhibit 1 attached hereto.

1.2 “Work” comprises completion of the Services described herein, including, but not limited to, all labor, materials, expenses and equipment used or incorporated therein.

2. Services.

2.1 Services. Developer represents that it has the knowledge and experience to undertake the Services as set forth in this Contract. Developer will perform the Services in a manner consistent with the standard of care applicable to firms having experience with providing services for projects having similar scope, function, schedule, budget, quality and complexity as the Project. It is the intent of the EDC and the Developer that this Contract include all reasonable items necessary for proper execution and completion of the Work.

2.2 Coordination; EDC and Other Strategy Partners Responsibilities. The Developer is responsible to coordinate its Services and the Work with EDC and other Strategy Partners. The EDC will cooperate with the Developer and use its best efforts to cause the other Strategy Partners to cooperate with the Developer to: (i) complete primary market research in support of the real estate program planned for the Development Plan; (ii) work with the Developer to prepare an outline of a capital improvement plan and budget for civic infrastructure costs and investment phased over time to support the Project development; (iii) work with the Developer to prepare a plan and timeline for achieving project elements to be outlined in the Development Plan; (iv) evaluate opportunities to acquire sites that may be desired or necessary to implement the Development Plan (if required); (v) negotiate exclusively with the Developer for the development, construction and operation of the private sector components of a civic convention and events center in the One Big Sky District for the entire term of the Contract; (vi) negotiate exclusively with the Developer for the planning and development of an adjacent private sector hotel and mixed-use development for the entire term of the Contract as described in Exhibit 1; (vii) contract for and fund, or cause to be contracted for and funded by the Billings Chamber of Commerce, a separate convention center market and feasibility study to further inform the Development Plan; (viii) work with the Developer to facilitate the financial administration of the Services and Work with the EDC serving as fiscal liaison on behalf of the Strategy Partners for the completion of the Work under the Contract; (ix) solicit support from the Governor’s Office of Economic Development, the Montana Department of Commerce, and other entities or individuals for State of Montana incentives programs; and (x) utilize the City’s current, relevant plans that relate directly to the Services. The exclusivity in subsections (v) and (vi) in this Section does not apply to the agreement Montdevco, LLC (“Montdevco”), has with DBP giving Montdevco the option to purchase real estate from DBP (the “Option”) or the transactions, discussions or events flowing from that sale if it occurs unless and until Developer exercises rights under the Option as assignee of Montdevco.

2.3 Delivery of Services. The Developer shall furnish to the EDC a complete list of any subconsultants or vendors the Developer intends to engage for purposes of providing or assisting with the Services described herein (together the “Subconsultants” or, individually, a “Subconsultant”). The Developer will use a competitive process to engage any Subconsultant, giving a preference for Subconsultants local to the Billings, Montana, area. Developer shall be responsible for the performance of, or failure in performance of, its personnel. The Subconsultant(s) will be responsible for the performance of, or failure in performance of, their respective portions of the Services. In each agreement the Developer signs with a Subconsultant for the Services, the Developer shall include a provision stating that EDC is a

third-party beneficiary and may pursue the Subconsultant directly if the Subconsultant fails to perform its respective portion of the Services or otherwise breaches that agreement (a "Subconsultant Breach"). The Developer shall report to the EDC's Executive Director or the Executive Director's designee with respect to all matters related to the Services hereunder, and shall provide a status report in person not less than quarterly to the EDC and other Strategy Partners as facilitated by the EDC. The EDC will be responsible to work with the Developer to provide interim updates (monthly) to the Strategy Partners.

2.4 Additional Services. Other than those Services set forth in Exhibit 1, the Developer shall not be required to provide any additional Services (the "Additional Services").

2.5 Compliance. In all matters pertaining to this Contract and the Services, Developer shall comply with all federal, state and local laws, regulations, ordinances and other requirements applicable to Developer.

2.6 No Conflict. EDC represents on behalf of itself and the other Strategy Partners that, notwithstanding the Services performed and Work undertaken pursuant to this Contract, Developer and its owners and affiliates shall be eligible to submit a proposal to any of the Strategy Partners for future services related to the development or management of public or private development or infrastructure related to the Project. The Developer shall not be prohibited in any manner as a result of this Contract from submitting proposals for the development of a project(s) or professional services engagement(s) involving the One Big Sky District, including the convention and events center if such project should materialize.

3. Work Product; Rights of Use. The Work will be compiled in the form of the final Development Plan resulting from the Services. The Development Plan shall be provided to the EDC and other Strategy Partners for their use in advancing the projects identified therein. The Developer shall own all Work and the Development Plan and hereby grants the Strategy Partners a perpetual royalty-free license to use the Development Plan in pursuit of the Project. The information in the Development Plan will include analyses, projections and forecasts of market demand, planning, cost, financial, fiscal-economic and other data based on industry standard methodologies, industry data, and other relevant information provided by third parties deemed to be reliable. The programs and project development opportunities considered as part of the Development Plan necessarily involve known and unknown risks, uncertainties and other factors that may influence the outcomes discussed therein. The EDC and other Strategy Partners and any other parties reviewing the Development Plan should make their own investigations, projections and conclusions about the information contained therein. Review or use of the Development Plan by any party does not create any legal liability on the part of Developer, its affiliates, assignees or any other third party involved in the Work.

4. Expenses and Payment.

4.1 Expenses. In consideration for the Services rendered hereunder and delivery of the Development Plan, EDC shall pay for up to Six Hundred Seventy-Five Thousand and 00/100 Dollars (\$675,000.00) in Expenses as deemed by the Developer to be necessary in performing the Work. Payment for any Additional Services shall be agreed upon between the EDC and Developer at the time such Additional Services, if any, are authorized in writing by the EDC (with concurrence of the Strategy Partners). No such Expenses shall be used to reimburse the Developer for its direct personnel expenses in performing the Services, except as expressly provided in Exhibit 1 hereto.

4.2 Payment. Prior to the EDC making payments for Expenses, the Developer shall submit to the EDC itemized Applications for Payment in the format set forth by the EDC in Exhibit 2 of this Contract, supported by such data as the EDC may deem reasonably necessary to substantiate Developer's request. The Developer shall submit an Application for Payment only during the first ten (10) business days of any

month. Applications for Payment submitted at any other time during the month will be deemed to have been submitted as of the first day of the following month. EDC shall approve or reject Developer's invoice on or before the 15th day of the month. Such amounts as EDC may approve, consistent with the terms hereof, shall be payable not later than fifteen (15) days from the date upon which the Application for Payment is approved by the EDC.

5. Term and Termination.

5.1 **Term.** The term of this Contract shall commence on the date hereof and shall continue until the soonest of these events to occur: (1) the Developer completes the Development Plan; (2) a period of 210 days from the date in the introductory clause of this Agreement elapses; or (3) a party terminates this Contract as provided in the following Section of this Article. The Term of this Contract may be extended by mutual written consent of the parties.

5.2 **Termination.** The EDC or Developer may terminate this Contract, with or without cause, upon thirty (30) days' written notice, in which case, EDC shall pay Expenses pertaining to the Work completed to the date of termination.

6. Insurance and Limitation of Liability.

6.1 **Requirements.** The Developer shall be responsible to purchase and maintain insurance coverage with a provider with an A.M. Best rating of A-VII or better, for commercial general liability, professional liability, workers' compensation, and umbrella in forms and amounts in accordance with the insurance coverage set forth in Exhibit 3 of this Contract. A Certificate of Insurance evidencing such coverage is attached in Exhibit 3 of this Contract. The insured parties below (the "Insured Parties") shall be additional insureds under the Developer's commercial general liability and umbrella policies. The Developer shall cause its insurer(s) to provide the Insured Parties with not less than thirty (30) days' written notice of any cancellation, non-renewal, termination, or material modification to the insurance coverage required hereunder. Except with respect to professional liability insurance, the Developer shall cause its insurer(s) to agree to waive any rights of subrogation they may have against EDC. Failure of Developer to procure or maintain required insurance shall constitute a material breach of this Contract, upon which EDC may immediately terminate this Contract. The Insured Parties shall include the parties listed below and any affiliates related thereto, including their respective trustees, shareholders, members, directors, officers, partners, managers, agents and employees, successors and assigns:

Named Insured Parties:

Big Sky Economic Development Corporation
City of Billings
Downtown Billings Partnership, Inc.
Big Sky Economic Development Authority
Billings Chamber of Commerce
Billings Tourism Business Improvement District

Additionally, the Developer shall be responsible to require each Subconsultant to obtain and maintain commercial general liability, professional liability, workers' compensation, and umbrella in forms and amounts Developer deems appropriate to the Subconsultant's scope of work.

6.2 **Limitations.** The obligation of the Developer to pay any damages, liabilities, obligations, losses or expenses pursuant to this Contract or the Project shall not exceed the insurance required to be provided by or through the Developer hereunder and the insurance limits associated therewith. To the extent that the Developer has obtained insurance as set forth in Section 6.1 above, and such coverage does not fully cover

any damages, liabilities, obligations, losses or expenses, the Developer's liabilities shall not exceed Five Thousand and 00/100 Dollars (\$5,000.00), regardless of the cause or extent of such damages, liabilities, losses or expenses. The limitations in the first two sentences of this Section 6.2 do not apply to damages EDC suffers occasioned by a Subconsultant Breach if EDC directly pursues a Subconsultant for a Subconsultant Breach.

6.3. Limitation of Liability. Neither EDC nor the other Strategy Partners will be liable to the Developer for damages pertaining to lost profits or opportunities or indirect, special, incidental or consequential damages arising from or related to this Contract; provided, however, that this limitation does not apply in any way to EDC's and Strategy Partners' obligations to pay developers capital costs as provided in Exhibit 1 to this Contract

7. Relationship. All Services provided under this Contract by Developer shall be as an independent contractor of EDC, and nothing in this Contract, or in the parties' activities in connection therewith, shall be deemed to create any partnership, joint venture, employment or other agency relationship between Developer and EDC or any other Strategy Partner. Developer shall be responsible for payment of all taxes, fees, contributions, and withholding or other charges applicable by law to Developer's Services, personal property, and employees, and shall require, by contract, its Subconsultants to pay all of their respective taxes, fees, contributions, and withholding or other charges applicable by law to their respective portion(s) of the Services, and their personal property and employees.

8. Miscellaneous.

8.1 Notices. Any and all notices required or permitted hereunder shall be in writing and shall be delivered to the individual(s) designated below for the recipient thereof or for such individuals' attention during normal business hours to a receptionist or other person available to receive incoming deliveries at the address designated below for such recipient or sent to such recipient via facsimile or electronic mail to the facsimile number/e-mail addresses designated below for such recipient or by registered or certified mail, return receipt requested and postage prepaid, to the address designated below for such recipient:

EDC: Attn: Executive Director
222 N. 32nd, Ste. 200
Billings, Montana 59101
Facsimile: (406) 256-6877
Electronic Mail: SteveA@bigskyeda.org

Developer: Robert P. Dunn
10 W. Mifflin Street, Ste. 400
Madison, Wisconsin 53703
Facsimile: (608)274-7442
Electronic Mail: dunnb@hammescosports.com

Notices delivered as provided above shall be deemed given upon such delivery. Notices sent via facsimile or electronic mail as provided above shall be deemed given upon their successful transmission. Notices mailed as provided above shall be deemed given on the date of their deposit in the United States mail. Any party hereto may change the individual, facsimile number, e-mail address or street address to which notices thereto should be given hereunder by giving notice of such change to the other party hereto in accordance with the provisions of this Section.

8.2 Force Majeure. Neither party shall be liable or in default hereunder for any delay or failure to perform under this Contract to the extent that such delay or failure was attributable to flood, hurricane,

tornado, earthquake, storm or other acts of God; war, acts of a public enemy, insurrection, riot, vandalism or other civil or military action, terrorism, accident, fire, explosion or other casualty; nationalization, violence; seizure, embargos or other government actions or restrictions of that type; walk outs, failure of transportation, supply or utilities, strike or other work interruption or any other similar causes beyond the reasonable control of such party.

8.3 **Further Assurance.** Each of the parties hereby agrees to execute and deliver such documents and to take such other actions at any time and from time to time hereafter as may be reasonably requested by the other party to carry out the provisions or purposes of this Contract.

8.4 **Successors.** This Contract shall be binding upon, and inure to the benefit of, the parties and their respective successors and assigns. No party may assign any of such party's rights or obligations under this Contract without the prior written consent of the other party hereto. This Contract shall not confer any rights or remedies upon any third-party beneficiary or other person other than the parties, except to the Strategy Partners as specifically provided herein.

8.5 **Severability.** In the event that any provision of this Contract is ever finally determined to be wholly or partially illegal, invalid or unenforceable, either in all jurisdictions and circumstances or in particular jurisdictions or circumstances, such provision shall be deemed severed herefrom in those jurisdictions and circumstances as to which it is so determined to be wholly illegal, invalid or unenforceable and shall be deemed limited to the extent required in those jurisdictions and circumstances as to which it is so determined to be partially illegal, invalid or unenforceable, and such severance or limitation shall not affect the legality, validity or enforceability of any of the other provisions hereof or of such provision to the extent not so severed or limited.

8.6 **Governing Law.** This Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of Montana.

8.7 **Interpretation.** The headings in this Contract are intended for convenience only, and shall not affect the meaning or interpretation hereof. In interpreting this Contract, whenever the context so permits, (a) the singular shall include the plural and the plural shall include the singular, (b) any gender shall include all genders and (c) the term "including" shall mean "including, without limitation." Reference to any federal or state statute shall be deemed to refer to all rules and regulations promulgated thereunder unless the context otherwise requires and shall be deemed to incorporate amendments thereto except to the extent that taking such amendments into account would defeat the purposes of this Contract. Any exhibit, schedule or other document referred to herein is incorporated in this Contract and made a part hereof. This Contract was drafted jointly by the parties, and no rule of construction or other presumption shall arise by reason of authorship of any of the provisions hereof.

8.8 **Execution.** This Contract may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Transmission of a copy of a signature page of this Contract purporting to be signed by a party from the recipient email address of such party hereunder to the recipient email address of another party shall be treated by both parties as the equivalent of physical delivery by such party to such other party of a complete original of this agreement executed by such party.

8.9 **Announcements.** No party shall, directly or indirectly, issue any press release or make any public announcements relating to the subject matter of this Contract at any time during the term of this Contract without the prior written consent or approval of all of the other parties, except as may be required by law. The Developer shall be allowed to use the name or marks or refer to the Project in any marketing, advertising and publicity related to this Project or the Developer's normal and ordinary business pursuits.

The EDC (together with the other Strategy Partners) shall have the right to provide appropriate information during public-information sessions throughout the planning process, with such appropriate information being determined by the parties in advance of such sessions. Nothing in this provision is intended to impede or prevent EDC or the other Strategy Partners from complying with their respective obligations, if any, relating to laws pertaining to open meetings or public documents.

8.10 Amendment. This Contract may be amended by, and only by, a written instrument signed by both parties. No failure or delay on the part of either party in the exercise or enforcement of any of its rights under any provision hereof shall be deemed to constitute a waiver or other relinquishment of any of such rights or of such provision in the absence of a written waiver signed by such party. Any such written waiver shall be effective only with respect to the specific matters covered thereby and shall not affect the parties' respective rights and obligations with respect to other or future items.

8.11 Integration. This Contract constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes any and all oral, written or other negotiations, warranties, representations, agreements or other understandings in regard thereto.

8.12 Survival. The provisions of this Contract with these descriptive headings will survive the termination or expiration of the term of this Contract: Compliance, No Conflict, Work Product, Rights of Use, Expenses, Payment, Insurance (including Limitations), Relationship, and Developer's Capital Costs in Exhibit 1.

[SIGNATURE PAGE FOLLOWS]

THIS DEVELOPMENT PLAN AGREEMENT is made and entered into as of the day and year first written above.

EDC:

BIG SKY ECONOMIC DEVELOPMENT CORPORATION

ERIC M. SIMONSEN
By: [Signature]
Title: CHAIR
Date: 7.2.2019

DEVELOPER:

LANDMARK DEVELOPMENT SERVICES COMPANY, LLC

Robert P. Dunn
By: [Signature]
Title: Managing Member
Date: 7-9-19

By signing below, the Strategy Partners: (1) acknowledge they approve this Contract pursuant to Section 1 of the Memorandum of Understanding between them; (2) agree they are obligated to EDC to perform the matters in this Contract (i) that EDC agreed to cause the Strategy Partners to perform, and (ii) that otherwise require or necessitate any of their participation, cooperation or collaboration; and (3) the Developer may enforce the payment and performance obligations of this Contract against each Strategy Partner in the same manner and to the fullest extent of the law as if each Strategy Partner were a party hereto.

City of Billings

By: [Signature]
Name: William A Cole
Title: Mayor

Downtown Billings Partnership, Inc.

By: [Signature]
Name: JAMIE A PATTEN
Title: PRESIDENT

Big Sky Economic Development Authority

By: [Signature]
Name: JEFFREY A SMITH
Title: CHAIR

Billings Chamber of Commerce

By: [Signature]
Name: John Brewer
Title: PRESIDENT/CEO

Billings Tourism Business Improvement District

By: [Signature]
Name: Ross Spence
Title: Board Chair

EXHIBIT 1

SERVICES

The "Services" to be provided by the Developer are described in this Exhibit 1 to the Development Plan Agreement.

The Developer, with the support of the EDC and other Strategy Partners, will organize the planning process and prepare the Work to include the following:

- Undertake efforts to prepare a Development Plan based upon the Concept Development Plan to address historic challenges faced by the City of Billings related to "place" that make urban redevelopment, workforce recruitment and driving visitation difficult, including development that is not always coordinated, underutilized or underdeveloped civic amenities, a transportation network that should be further refined, and an evolving community vision that needs to be aligned with a broader economic development strategy, responding to the stated needs and priorities of the growing, vibrant community.
- Prepare conceptual plans and a preliminary finance plan for an immediate phase of development to be the first anchoring project(s) in the One Big Sky District to include mixed-use program consisting of possible program elements such as: commercial office, residential, retail, hotel and other civic uses, including a convention and events center.
- Work in partnership with the EDC and the other Strategy Partners as a team, working together to define the Catalyst Project or Catalyst Projects and in that regard to incorporate the elements of proposed civic infrastructure into the Development Plan that may include a new convention and events center and other related civic elements.

Specifically, the Developer will undertake Services to produce the Work listed below, which will be presented as a Development Plan to the EDC and other Strategy Partners:

1. Concept Master Plan

- a. Concept Master Plan for the One Big Sky District
- b. Preliminary Master Planning Design Guidelines
- c. Evaluation of City Planning Guidelines and Planning Considerations
- d. Outline of Current City Infrastructure and Capacity Analysis
- e. Preliminary Civil Engineering Analysis Based on Proposed Capacities to Support Planned Development
- f. Conceptual Civic Infrastructure Plan
 - Assessment of City Sewer Improvement Plans
 - Assessment of City Water Quality Plans
 - Assessment of Other City Infrastructure
 - Preliminary Site Access, Circulation and Parking Plan
- g. Preliminary Transportation and Parking Analysis for the District Based on City Analysis
 - Preliminary Parking Plan and Transit Modeling
- h. Conceptual Design Documents
 - Outline of Mixed-Use Program for the District
 - Conceptual Design Studies
 - Project Program Development
 - Determine Site Massing and Density Limitations
 - Assessment of Zoning and Entitlement Restrictions
 - Other Site Parameters
 - Site Massing Models

- Thematic Design
- i. **Conceptual Design and Master Plan Documents for Cost Model for Major Program Elements**
 - Conceptual Master Plan
 - Architectural Design Concepts
 - Civil Engineering Plans (Preliminary)
 - Transportation / Circulation Plans (Preliminary)
 - Structural (Preliminary)
 - MEP (Preliminary)

2. Preliminary Finance Plan

- a. **Financing Structure**
 - Financing Overview
 - Revenue and Expense Recognition
 - Outline Public Finance and City Infrastructure Requirements
- b. **Preliminary Plan of Finance**
 - Sources and Uses of Funds
 - Financial Model(s)
 - Pricing / Sponsorship Analysis and Market Research
 - Market Research of Revenue Assumptions
 - Market Assessment of Expense Assumptions
 - Term Sheet(s)
 - Outline of Possible Equity Sources
 - Outline of Capital Structures (Debt)
- c. **Outline of Public Finance Structures and Alternatives**
- d. **Financing Schedule**
- e. **Preliminary Detailed Master Project Budget**

3. Legal / Definitive Deal Structure

- a. **Public Finance Term Sheets (As Required)**
- b. **Outline of Project Development Agreements**

4. Market Research

- a. **Market Research (Primary and Secondary)**
 - Economic Impact Analysis
 - Fiscal Impact Analysis
 - Target Market Surveys
 - Market Assessment of Primary Program Elements
 - Market Assessment of Sponsorship Programs
 - Market Evaluation and Measurement of Location

5. Development Management / Administration

- a. **Develop Scope of Services**
- b. **Primary Professional Services Agreements (e.g., Design Services Agreement, Consulting Services Agreement)**
- c. **Engage and Manage the Project Team**
- d. **Project Communications and Coordination Procedures**
- e. **Document Control and Distribution**
- f. **Accounting and Cost Control**
- g. **Community Relations Interface**
- h. **Complete Site Logistics Plan**
- i. **Outline of Public and Regulatory Approvals**

- Outline EIR Status / Addendum
- Outline Zoning Approvals
- Outline Other Public Approvals
- j. Undertake to Obtain Public Approvals (As Required)
- k. Preliminary Master Project Schedule
- l. Consolidated Schedule / Phasing
- m. Preparation of the Work to Include Key Deliverables
 - Outline of the Development Plan
 - Development Plan

Payment of Expenses:

EDC shall pay certain Expenses directly to the Subconsultants and pay the Developer directly for certain reimbursable Expenses, as set forth in the Expenses section below, which the Developer submits to the EDC as itemized Applications for Payment in the format set forth in Exhibit 2 of this Contract. Other than the Expenses, the Developer is responsible for all costs and expenses necessary for it to perform the Services and complete the Work, including its direct personnel expenses (“DPE”) in performing the Services and completing the Work set forth above, except as provided below.

Expenses:

Expenses shall include all expenses associated with the Developer’s completion of the Work, other than the Developer’s DPE, incurred by the Developer in the interest of the Development Plan (the “Expenses”), including:

- Costs of Subconsultants, as approved by the EDC or required to complete the Work; and
- Costs of the Work when contracts are held by the Developer; and
- Travel and reasonable subsistence expenses (e.g., living expenses, mileage and per diems) for travel to make quarterly status reports as required by Section 2.3 of the Contract and other travel expressly requested by the EDC to conduct Project meetings, but not for travel and subsistence expenses the Developer otherwise incurs in relation to performing the Services or Work; and
- Expenses of postage, handling and express delivery; and
- Costs of printing and reproductions associated with the Work; and
- Other expenses agreed to in writing and in advance by and between the EDC and the Developer.

Expenses will be billed at 1.0 times direct cost and will not exceed a total of Six Hundred Seventy-Five Thousand and 00/100 Dollars (\$675,000.00) (“Strategy Partners’ Capital Costs”). EDA will make the reimbursement for the travel and subsistence Expenses under the third bullet point above in this Expenses section from the portion of the \$675,000 comprising private sector contributions.

Developer’s Capital Costs:

To complete the Development Plan, the Developer reasonably expects to incur DPE and other expenses, which are not a part of the Strategy Partners’ Capital Costs, of One Million Three Hundred Forty Thousand and 00/100 Dollars (\$1,340,000.00) (the “Developer’s Capital Costs”). The Developer’s Capital Costs are not payable: (1) if one or more Catalyst Projects does not move forward consistent with the Development Plan within five (5) years of the end of the term of this Contract; or (2) if the Developer is contracted to Develop a Catalyst Project (where “Develop” means to undertake a substantial, material and significant portion of the additional services necessary to create the definitive building program, determine the design, assemble land, secure approvals, and finance such Catalyst Project and cause it to be constructed and to manage or transfer such project). The Developer’s Capital Costs will be payable to the Developer if one or more Catalyst Projects moves forward and the Developer is not contracted to Develop one of them; in which event EDC will cause the Strategy Partners responsible for obtaining the financing for such Catalyst project to pay the Developer’s Capital Costs from that financing, consistent with the categories described in Exhibit 4 up to an aggregate maximum amount of \$1,340,000.00, payable within 30 days of closing of the financing for such Catalyst Project which the Developer shall submit using an Application for Payment using the

same process required under Paragraph 4.2 of the Contract. Interest will not accrue on the Developer's Capital Costs. Nothing herein precludes either the Developer's Capital Costs or Strategy Partners' Capital Costs from being financed by any long-term construction financing or from any equity secured for Catalyst Project(s), or from being contributed to a Catalyst Project as equity, upon mutual agreement of the parties.

Work Plan:

The anticipated period for the Developer to complete the Work under this Contract and deliver the final Development Plan to the EDC is from July 2018 to January 2019, with the following schedule of Project milestones / deliverables:

- **Outline of Development Plan – Completed by October 2018**
The Outline of Development Plan will include a PowerPoint level presentation document that provides an overview of the key elements of the Work and major issues / considerations / decisions for consideration by the Strategy Partners
- **Draft Development Plan for Review – Completed by December 2018**
The Draft Development Plan will include a written report that addresses all aspects of the Work as described in this Contract
- **Development Plan – Completed by January 2019**

The Contract term and schedule may be extended by mutual written agreement of both parties.

Private Sector Components:

The anchoring project described in Section 2 of the Agreement has two primary components. Regarding the civic convention and events center component, no determination or recommendation has been made about which parts of that component will comprise private sector efforts, if any, and which will comprise public sector efforts, if any. The adjacent hotel and mixed-use development component will comprise a private sector effort and as part of that effort, EDC shall: (1) work in conjunction with Big Sky Economic Development Authority ("EDA") and the DBP to structure and facilitate land assemblage opportunities for the Developer; (2) assist and coordinate with the Developer if the Developer applies for funds available under these State of Montana programs (i) Big Sky Economic Development Trust Fund, (ii) Workforce Training Grant, (iii) Montana Infrastructure Tax Credits, (iv) Montana Board of Investment Participation Loan; (3) assist and coordinate with the Developer in obtaining other available local, state, or federal sponsored economic development incentive programs or grants that may benefit the development of the Private Sector Components; and (4) assist and coordinate with the Developer in pursuing property tax abatement opportunities. EDC will use its best efforts, diligently pursue, and act in good faith in undertaking its obligations under this paragraph.

EXHIBIT 2

APPLICATION FOR PAYMENT

The Developer's Application for Payment is included herein as Exhibit 2.

NOTE: The Developer will prepare a single consolidated application for payment of Expenses which includes all the payments due to Subconsultants and reimbursable Expenses from which EDC will make payment and certify that it is doing so each month

EXHIBIT 3

INSURANCE

Developer Insurance Coverages:

Commercial General Liability

General Aggregate \$2,000,000

Products/ Completed Operations Aggregate \$2,000,000

Each Occurrence \$2,000,000

Automobile Liability

Combined Single Limit \$1,000,000

Worker's Compensation

Statutory

Employer's Liability

Each Accident \$1,000,000

Disease - Policy Limit \$1,000,000

Disease - Each Employee \$1,000,000

Professional Liability

Each Occurrence \$2,000,000

EXHIBIT 4

CATEGORIES OF DEVELOPER'S CAPITAL COSTS

Category of Cost	Estimated Cost
Development planning / management	\$ 256,700.00
Preparation of master project budgets / schedules	93,400.00
Capital structuring / financial modeling	198,500.00
Market research & analysis	162,500.00
Site planning & evaluation	51,650.00
Design management and administration	175,000.00
Report production / design / narrative	182,250.00
Legal / deal structuring & drafting	155,000.00
Related capital expenses	65,000.00
TOTAL NOT TO EXCEED	\$ 1,340,000.00