

Holly Gray, Mayor Pro-Tem  
David Brundage, Councilmember  
VACANT, Councilmember



Carl E. Gierisch, Jr., Mayor

Brian Darby, Councilmember  
David Thompson, Councilmember  
VACANT, Councilmember

## **ROANOKE CITY COUNCIL AGENDA REGULAR MEETING**

**APRIL 28, 2026  
7:00 PM  
500 S. OAK STREET  
ROANOKE, TEXAS 76262**

### **A. CALL CITY COUNCIL TO ORDER**

Invocation and Pledge of Allegiance

### **B. ANNOUNCEMENTS**

### **C. PUBLIC INPUT**

This item is available for citizens to address the City Council on any issues that are not the subject of a public hearing. No action by law may be taken on the topic. The presiding officer reserves the right to impose a time limit on this portion of the agenda. In order to provide the highest quality audio, all speakers need to speak at the podium.

### **D. PROCLAMATION**

1. Mayor Gierisch will read a proclamation declaring May 7, 2026, as National Day of Prayer
2. Mayor Gierisch will read a proclamation declaring May 11–16, 2026 as National Police Week.

### **E. REPORTS**

1. Quarterly Financial Report

### **F. CONSENT AGENDA**



**AGENDA FOR THE MEETING  
OF THE ROANOKE CITY COUNCIL**

**April 28, 2026  
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All items listed below are considered routine and will be enacted with one motion. There will be no separate discussion of items unless a Councilmember or citizen so requests, in which event the item will be removed and considered separately.

1. Consider approval of the minutes from the regular City Council meeting held on April 14, 2026.
2. Consider approval of an Interlocal Agreement between the City of Roanoke and the North Central Texas Council of Governments for use of its map-based information system.
3. Consideration and approval of Ordinance No. 2026-119 amending Chapter 11 Article 11.1400 of the Code of Ordinances by adding a Section 11.1405 entitled "Penalty" by providing a penalty for a violation of the article; adopting a Water Conservation Plan and Drought Contingency Plan.
4. Consider approval of Resolution No. 2026-110R authorizing the filing of a grant application for the Motor Vehicle Crime Prevention Authority Grant Program.
5. Consideration and action on approval of a Municipal Advisory Agreement by and between Roanoke Convention Center Hotel Local Development Corporation and Hilltop Securities, Inc.
6. Consideration and action on approval of a Design Building Agreement (DBA) by and between Roanoke Convention Center Hotel Local Development Corporation and Brasfield & Gorrie.
7. Consideration and action on approval of Amendment #01 to a Design Building Agreement (DBA) by and between Roanoke Convention Center Hotel Local Development Corporation and Brasfield & Gorrie to start procurement and construction on the Model Room in the amount of \$349,527.
8. Consideration and action on approval of a Construction Monitor Agreement by and between Roanoke Convention Center Hotel Local Development Corporation and Brasfield & Gorrie in the amount of \$320,676.
9. Consideration and action on approval of a Lease Agreement for a Model Room and Construction Jobsite Office by and between Roanoke



AGENDA FOR THE MEETING  
OF THE ROANOKE CITY COUNCIL

April 28, 2026  
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Convention Center Hotel Local Development Corporation and the City of Roanoke.

**G. NEW BUSINESS**

1. Consideration and action on Resolution 2026-109R directing publication of notice of intention to issue combination tax and revenue certificates of obligation.
2. Consideration and action on Ordinance No. 2026-112, repealing and replacing Chapter 7, Article 7.300, Sections 7.301 to 7.331 entitled "Smoking" of the Code of Ordinances, establishing regulations for smoking, prohibiting the smoking in certain prohibited public places, City buildings, or enclosed area of a workplace, designating restaurants as non-smoking areas, authorizing restaurants to designate smoking areas, defining and prohibiting restricted smoking material, and prohibiting the sale or possession of certain restricted smoking material.
3. Consideration and action on Resolution No. 2026-111R, approval of the Roanoke Convention Center Hotel Local Development Corporation Bylaws.
4. Consideration and action to nominate and elect a President of the Roanoke Convention Center Hotel Local Development Corporation Board of Directors, to serve for a term of one year.

**H. EXECUTIVE SESSION**

The City Council will hold a closed Executive Session meeting pursuant to the provisions of Chapter 551 of the Texas Government Code, in accordance with the authority contained in:

**Section 551.087**

To deliberate commercial or financial information the City has received from a business prospect, and to deliberate the offer of a financial or other incentive to a business prospect.

-Roanoke Sports Complex, LLC

**RECONVENE INTO REGULAR SESSION**

The City Council will reconvene into Regular Session, pursuant to the provisions of Chapter 551 of the Texas Government Code, to take any action necessary.



**AGENDA FOR THE MEETING  
OF THE ROANOKE CITY COUNCIL**

**April 28, 2026  
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The City Council reserves the right to adjourn into Executive Session during the course of this meeting to discuss any item on the posted agenda as authorized by Chapter 551 of the Texas Government Code.

**I. ADJOURNMENT**

**CERTIFICATION**

I certify that the above notice was posted at City Hall, 500 South Oak Street, Roanoke, Texas, on Tuesday, April 21, 2026, by 5:00 pm, in accordance with Chapter 551, Texas Government Code.

A handwritten signature in black ink, which appears to read "Lindsay Rawlinson". The signature is written in a cursive, flowing style.

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Lindsay Rawlinson, City Secretary

\*Any person planning to attend this meeting that may require auxiliary aids or services should request accommodations two (2) days prior to the meeting by calling (817) 491-8152. **BRaille IS NOT AVAILABLE.**

📶 A public wireless network is now available in the Council Chambers for use during meetings. It is available from 7am to 11pm Monday thru Friday. The name of the network is: COR-Guests





## AGENDA ITEM

TO: Mayor and City Council

SUBJECT: 2026 National Day of Prayer

MEETING DATE: April 28, 2026

DEPARTMENT: City Secretary

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**ITEM SUMMARY:**

Mayor Gierisch will read a proclamation declaring May 7, 2026, as National Day of Prayer

**INFORMATION:****STAFF RECOMMENDATION:****SPECIAL CONSIDERATION:****FINANCIAL CONSIDERATION:****ATTACHMENTS:**

1. 2026 National Day of Prayer

# Proclamation

**WHEREAS**, throughout the history of America prayers have been lifted up, seeking the Lord in every generation for guidance, protection, and provision, so that God would be glorified and “Bless America,” resulting in America being filled with His glory, grace, and goodness as He has answered our prayers for over 250 years; and

**WHEREAS**, from the first pilgrims’ prayerful covenant with God in the Mayflower Compact to the Declaration of Independence, and in every State Constitution, God is glorified, given reverence and thanks, compelling the prayers of our Continental Congress that formed our nation to continue to flow fervently across America in this generation with our firm reliance on the protection of Almighty God; and

**WHEREAS**, The National Day of Prayer is a Public Law established in the United States Congress in 1952 approved by a Joint Resolution, signed by President Truman and amended by Congress and President Reagan with Public Law 100-307 in 1988, affirming that it is essential for us as a nation to pray and directs the President of the United States to set aside and proclaim the first Thursday of May annually as a National Day of Prayer; and

**WHEREAS**, Thursday, May 7, 2026 is the 75<sup>th</sup> Observance of the National Day of Prayer in our nation, and simultaneously the 34<sup>th</sup> consecutive observance held for the citizens of our 76262 communities, having as its theme for this year: “Glorify God Among the Nations, Seeking Him in All Generations” based on the verse in 1 Chronicles 16:24, “Tell of His glory among the nations, His wonderful deeds among all the peoples.”, and

**WHEREAS**, on this National Day of Prayer we come together as leaders, citizens and neighbors to join our hearts and voices together in a spirit of unity to express gratitude to God for the many blessings He has bestowed upon us as individuals and upon our communities, state and nation, to humbly seek His divine wisdom and strength to meet challenges we face both present and future, and to pray for peace throughout our nation and the world.

**NOW, THEREFORE, I**, Carl E. Gierisch, Jr., by the Power vested in me as Mayor of Roanoke, hereby proclaim Thursday, May 7, 2026, as

## ***A DAY OF PRAYER IN ROANOKE***

And invite all in our city to observe this day in ways appropriate to its importance and significance as a time for united prayer in our city.

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*Carl E. “Scooter” Gierisch, Jr., Mayor*





## AGENDA ITEM

TO: Mayor and City Council

SUBJECT: Recognition of National Police Week

MEETING DATE: April 28, 2026

DEPARTMENT: Police

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### ITEM SUMMARY:

In 1962, President Kennedy proclaimed May 15 as National Peace Officers Memorial Day and the calendar week in which May 15 falls, as National Police Week. Established by a joint resolution of Congress in 1962, National Police Week pays special recognition to those law enforcement officers who have lost their lives in the line of duty for the safety and protection of others. National Police Week occurs every May, and in 2026, will be commemorated Sunday, May 10 — Saturday, May 16. The National Law Enforcement Officers Memorial Fund will hold ceremonies, including the 38th Annual Candlelight Vigil, to honor the fallen officers whose names have recently been added to the Memorial. The 38th Annual Candlelight Vigil will be held on Wednesday, May 13 in Washington, D.C.

### INFORMATION:

Mayor Gierisch will read a proclamation declaring May 11–16, 2026 as National Police Week.

### STAFF RECOMMENDATION:

### SPECIAL CONSIDERATION:

### FINANCIAL CONSIDERATION:

### ATTACHMENTS:

1. 2026 National Police Week

# Proclamation



**WHEREAS**, in 1962, President Kennedy proclaimed May 15 as National Peace Officers Memorial Day and the calendar week in which May 15 falls, as National Police Week; and

**WHEREAS**, the members of the law enforcement agency of the City of Roanoke play an important role in safeguarding the rights and freedoms of the citizens of our community; and

**WHEREAS**, it is important that all citizens know and understand the problems, duties and responsibilities of their police department, and that members of our department recognize their duty to serve the people by safeguarding life and property, protecting them against violence or disorder, and protecting the innocent against deception and the weak against oppression or intimidation; and

**WHEREAS**, our police department has grown to be a modern and scientific law enforcement agency which unceasingly provides a vital public service; and

**WHEREAS**, I, Carl E. Gierisch, Jr., and the Council Members of the City of Roanoke urge our citizens to join in commemorating law enforcement officers, past and present, who by their faithful and loyal devotion to their communities has established for themselves the rights and security of all citizens.

**NOW, THEREFORE, I, Carl E. Gierisch, Jr.**, Mayor of the City of Roanoke, Texas, do hereby proclaim the week of May 11 through May 16, 2026 as

## ***National Police Week***

in the City of Roanoke and publicly salutes the service of law enforcement officers in our community and in communities across the nation.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the official seal to be affixed, this the 28<sup>th</sup> day of April, 2026.

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*Carl E. "Scooter" Gierisch, Jr., Mayor*



## CITY COUNCIL AGENDA ITEM

TO:

SUBJECT:

MEETING DATE: April 28, 2026

DEPARTMENT: Administration

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### ITEM SUMMARY:

This financial and investment report covers the period of October 1, 2025 through March 31, 2026, representing the 2nd quarter of fiscal year 2026.

Through March of 2026, the City of Roanoke has \$43.9m in operating revenues and expensed \$41.3m of its operating budget, leaving a year-to-date surplus of \$45.6m across the City's 7 operating funds. Note that revenues and expenses fluctuate independently throughout the year, so it is common for funds to run large deficits and surpluses depending on the month. Additionally, large portions of cash from the General Fund, Utility Fund, and REIDC Fund are slated to be used on large, non-recurring expenses.

### Sales tax highlight

While Roanoke's sales tax has been mostly flat this year, all DFW cities as well as several of our neighbors continue to post modest gains here. The lack of a regional trend could mean that a small turnaround into positive territory is coming for the City, but inflationary increases are nevertheless proving detrimental to consumer spending. Our most recent month showed a decrease of 1.7% from the same month last year. In total, FY26 receipts have brought an increase of 1% over FY25, net of audit adjustments. Staff will continue to monitor this information as it becomes available. We will maintain our conservative estimates into the FY27 budget process.

### Investment highlight

Roanoke has revised its investment practices substantially in the past several years. Rather than allowing cash balances to sit in our depository bank, Finance staff proactively invests available cash in the fixed income market, as permitted by State law. These instruments include state and local government bonds, federal agency debt, collateralized certificates of deposit, and local government investment pools. These investments carry maturities of up to 2 years, depending on cash flow projections. The City's current investment allocation is as follows:

|                              | Amount        | % of Total | Weighted Avg<br>Maturity |
|------------------------------|---------------|------------|--------------------------|
| Cash in Depository Bank      | \$ 18,016,161 | 20%        | Liquid                   |
| Certificates of Deposit      | \$ 15,819,924 | 18%        | 248 days                 |
| Mutual Fund Investment Pools | \$ 54,895,828 | 62%        | Liquid                   |



## CITY COUNCIL AGENDA ITEM

|       |               |      |
|-------|---------------|------|
| TOTAL | \$ 88,731,913 | 100% |
|-------|---------------|------|

Roanoke manages its investment program with the primary goals of safety and liquidity, meaning staff only considers low-risk, fixed-income instruments that fit with the City's liquidity needs. Once those objectives are met, staff will select investments with the highest return on investment.

### INFORMATION:

#### STAFF RECOMMENDATION:

There is no action required on this item.

#### SPECIAL CONSIDERATION:

#### FINANCIAL CONSIDERATION:

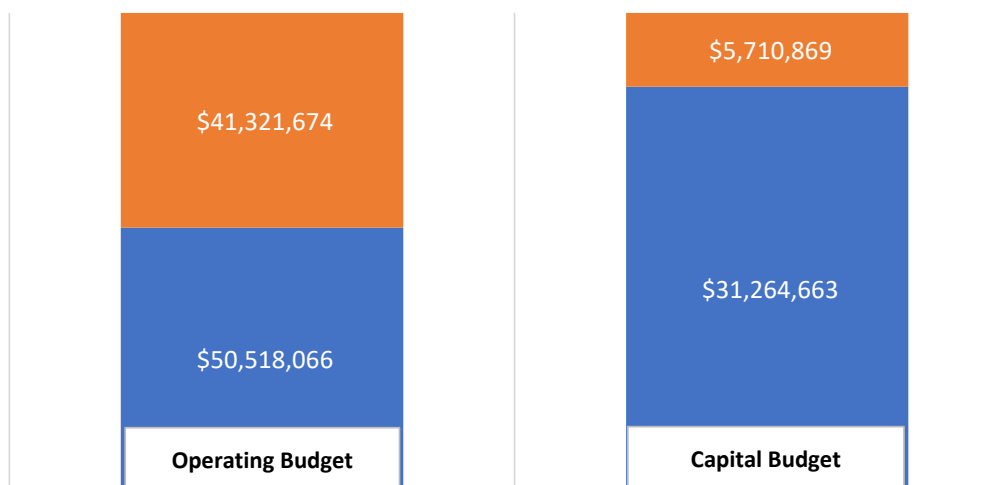
#### ATTACHMENTS:

1. Q2 FY26



## Staff Financial Report - Second Quarter 2026

### BUDGET PROGRESS

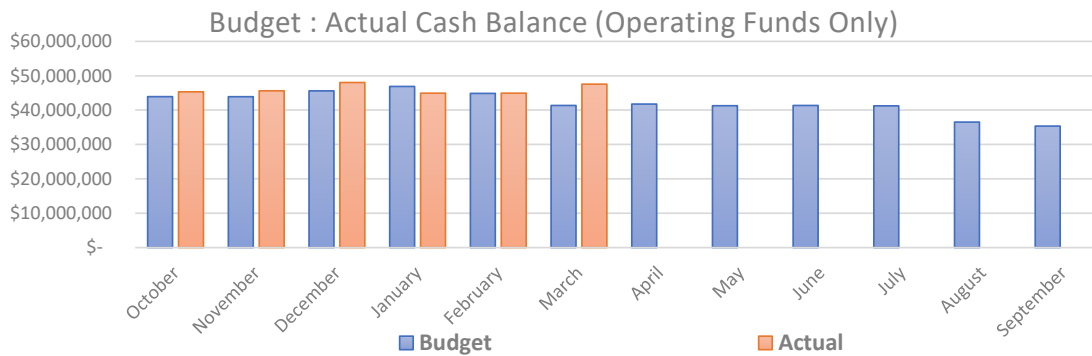


# Staff Financial Report - Second Qtr 2026

## YTD Consolidated Operating Funds Snapshot

| 50.0% of the year has been completed. | Budget 2025            | YTD 2025             | Budget 2026            | YTD 2026             |
|---------------------------------------|------------------------|----------------------|------------------------|----------------------|
| <b>Beg. Balance</b>                   | \$ 49,445,219          | \$ 49,445,219        | \$ 42,971,349          | \$ 42,971,349        |
| Operating Revenues                    | \$ 70,680,893          | \$ 44,610,252        | \$ 81,087,472          | \$ 43,948,040        |
| Operating Expenses                    | \$ 83,546,417          | \$ 40,946,408        | \$ 91,839,740          | \$ 41,321,674        |
| <b>Surplus/(Deficit)</b>              | <b>\$ (12,865,524)</b> | <b>\$ 3,663,845</b>  | <b>\$ (10,752,268)</b> | <b>\$ 2,626,366</b>  |
| <b>Ending Balance</b>                 | <b>\$ 36,579,695</b>   | <b>\$ 53,109,064</b> | <b>\$ 32,219,080</b>   | <b>\$ 45,597,714</b> |

\*The city has planned for a large use of operating cash for non-recurring capital projects. This is why the FY25 and FY26 budgets show large deficits.



| Operating Fund             | YTD Revenue          | YTD Expenses         | Surplus/(Deficit)   | YTD Fund Bal         |
|----------------------------|----------------------|----------------------|---------------------|----------------------|
| General Fund               | \$ 22,335,256        | \$ 20,081,860        | \$ 2,253,396        | \$ 19,342,137        |
| Debt Service               | \$ 7,966,802         | \$ 2,351,433         | \$ 5,615,369        | \$ 5,788,177         |
| Water/Wastewater Fund      | \$ 6,019,599         | \$ 8,328,282         | \$ (2,308,683)      | \$ 6,468,034         |
| Water Utility              | \$ 3,168,064         | \$ 3,095,626         | \$ 72,438           |                      |
| Sewer Utility              | \$ 2,851,535         | \$ 2,564,627         | \$ 286,908          |                      |
| Use of Balance             | \$ -                 | \$ 2,650,000         | \$ (2,650,000)      |                      |
| Hotel/Motel Fund           | \$ 40,341            | \$ 88,100            | \$ (47,759)         | \$ 145,343           |
| Special Events             | \$ 560,152           | \$ 1,015,760         | \$ (455,608)        | \$ 5,566             |
| REIDC Sales Tax Fund       | \$ 3,669,995         | \$ 5,896,183         | \$ (2,226,187)      | \$ 9,772,121         |
| CCPD                       | \$ 3,355,895         | \$ 3,560,057         | \$ (204,162)        | \$ 4,076,337         |
| <b>All Operating Funds</b> | <b>\$ 43,948,040</b> | <b>\$ 41,321,674</b> | <b>\$ 2,626,366</b> | <b>\$ 45,597,714</b> |

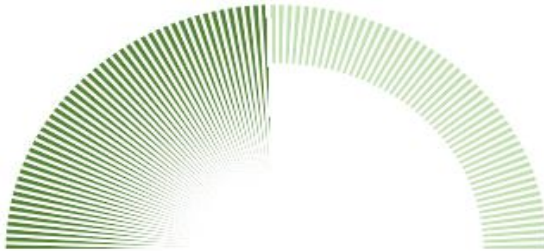
| Operating Funds           | YTD Balance          | % of Total  | Category (Restricted/Reserved) |
|---------------------------|----------------------|-------------|--------------------------------|
| Operating Reserve         | \$ 25,072,696        | 55%         | Reserved for Contingency       |
| Legally Restricted        | \$ 9,208,933         | 20%         | CCPD/HOT/REIDC Cash            |
| Available                 | \$ 11,316,086        | 25%         | Unreserved/Unrestricted        |
| <b>Total Fund Balance</b> | <b>\$ 45,597,714</b> | <b>100%</b> |                                |



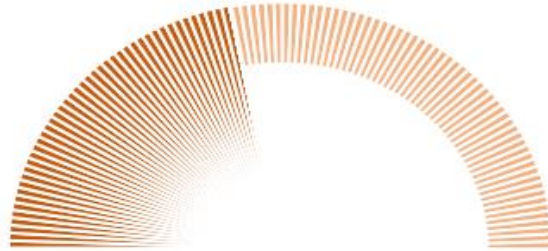
# Staff Financial Report - Second Qtr 2026

## YTD Operating Revenue/Expense Breakout

YTD Revenue Progress



YTD Expenditure Progress



### Revenue/Expenditure Highlights:

Through the second quarter of fiscal year 2026, the City of Roanoke has collected \$43.9m in operating revenues and expensed \$41.3m of its operating budget, which is in-line with our cashflow expectations. While Roanoke's sales tax has been mostly flat this year, all DFW cities as well as several of our neighbors continue to post modest gains here. The lack of a regional trend could mean that a small turnaround into positive territory is coming for the City, but inflationary increases are nevertheless proving detrimental to consumer spending. Staff will continue to monitor this monthly.

| Major Revenues              | FY26 Collected | FY25 Collected | Over/(Under) | Indicator |
|-----------------------------|----------------|----------------|--------------|-----------|
| * Sales Tax                 | \$ 14,388,471  | \$ 14,997,648  | -4%          | ↘         |
| General Property Taxes      | \$ 12,959,580  | \$ 11,865,271  | 9%           | ↑         |
| Service Charges             | \$ 7,990,758   | \$ 7,533,883   | 6%           | ↑         |
| Other Miscellaneous Revenue | \$ 894,669     | \$ 332,427     | 169%         | ↑         |
| Interfund Transfers         | \$ 5,889,700   | \$ 8,201,244   | -28%         | ↓         |
| Licenses and Permits        | \$ 253,852     | \$ 200,122     | 27%          | ↑         |
| Business/Franchise Fees     | \$ 1,208,250   | \$ 1,153,777   | 5%           | ↗         |
| Fines/Forfeitures           | \$ 362,760     | \$ 325,880     | 11%          | ↑         |
| All Operating Revenues      | \$ 43,948,040  | \$ 44,610,252  | -1%          | ↘         |

\*

Sales taxes are remitted by vendor to the State Comptroller, who then pays the city its share within two months.

| Major Expenditures              | FY26 Expensed | FY25 Expensed | Over/(Under) | Indicator |
|---------------------------------|---------------|---------------|--------------|-----------|
| Salaries and Benefits           | \$ 12,101,816 | \$ 11,746,616 | 3%           | ↗         |
| Supplies                        | \$ 523,908    | \$ 386,516    | 36%          | ↑         |
| Utilities/Professional Services | \$ 4,643,434  | \$ 2,071,508  | 124%         | ↑         |
| Maintenance/Repair              | \$ 4,028,625  | \$ 3,540,734  | 14%          | ↑         |
| Other Miscellaneous Services    | \$ 4,712,853  | \$ 3,163,296  | 49%          | ↑         |
| Finance Payments                | \$ 2,696,346  | \$ 7,513,963  | -64%         | ↓         |
| Capital Outlay                  | \$ 1,259,013  | \$ 2,264,796  | -44%         | ↓         |
| Transfers/Misc                  | \$ 11,355,679 | \$ 10,258,979 | 11%          | ↑         |
| All Operating Expenditures      | \$ 41,321,674 | \$ 40,946,408 | 1%           | ↗         |

## Staff Financial Report - Second Qtr 2026

### Investment/Cash Balances

| Fund Type        | FY25 YTD             | FY26 YTD             | Inc/(Dec.)         | Inc/(Dec.) % |
|------------------|----------------------|----------------------|--------------------|--------------|
| Operating        | \$ 50,609,642        | \$ 45,597,714        | \$ (5,011,927)     | -11.0%       |
| Capital          | \$ 36,537,443        | \$ 40,979,987        | \$ 4,442,544       | 10.8%        |
| Grants/Other     | \$ 1,661,719         | \$ 2,154,211         | \$ 492,492         | 22.9%        |
| <b>All Funds</b> | <b>\$ 88,808,805</b> | <b>\$ 88,731,913</b> | <b>\$ (76,892)</b> | <b>-0.1%</b> |

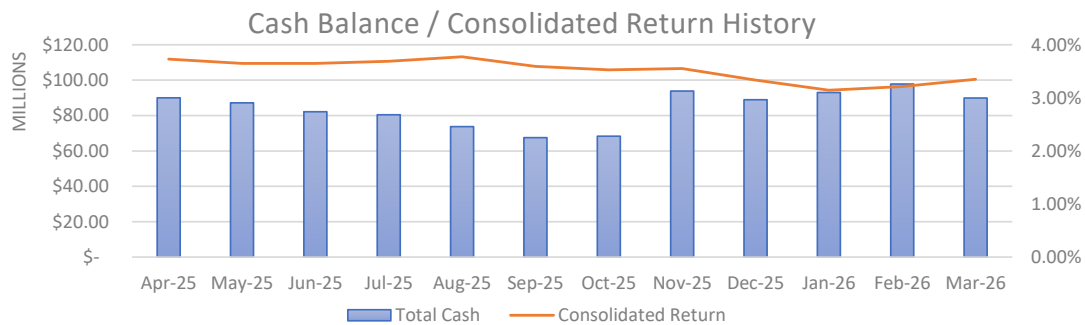
Roanoke's decrease in cash and investments from FY25 - FY26 is primarily a function of major capital project spending, most of which is bond-funded.

| Fund Type    | FY25 YTD             | FY26 YTD             | Inc/(Dec.)         | Inc/(Dec.) % |
|--------------|----------------------|----------------------|--------------------|--------------|
| Cash         | \$ 21,462,747        | \$ 18,016,161        | \$ (3,446,587)     | -19.1%       |
| Investments  | \$ -                 | \$ -                 | \$ -               | -            |
| CD's         | \$ 20,100,619        | \$ 15,819,924        | \$ (4,280,695)     | -27.1%       |
| LG Pool      | \$ 47,245,438        | \$ 54,895,828        | \$ 7,650,390       | 13.9%        |
| <b>Total</b> | <b>\$ 88,808,805</b> | <b>\$ 88,731,913</b> | <b>\$ (76,892)</b> | <b>-0.1%</b> |

Roanoke's FY25 and FY26 bond proceeds were initially deposited into our investment pools. This cash gets withdrawn and spent throughout each project's lifecycle.

| Est. Return Snapshot | Cash in Bank  | Invested      | % Invested | Avg. Annual Return |
|----------------------|---------------|---------------|------------|--------------------|
| All City Funds       | \$ 18,016,161 | \$ 70,715,752 | 79.7%      | 3.35%              |

| Interest Income   | FY25 YTD   | FY26 YTD     | Inc/(Dec.) | Inc/(Dec.) % |
|-------------------|------------|--------------|------------|--------------|
| Interest Received | \$ 346,653 | \$ 1,085,849 | \$ 739,196 | 68.1%        |



Roanoke shifted its investment practices in late 2021 toward keeping higher balances in state investment pools in order to maximize our return and lower our cash balances with our depository bank. Staff further revised these practices in 2024 to include longer-term fixed income instruments. These practices ensure adequate liquidity for operations while maximizing Roanoke's return on investment. Expectations for 2026 are that rates will continue to lower as the Federal Reserve attempts to manage inflation.

For any questions or comments regarding this report, please contact:

Kyle Lester  
Finance Director  
klester@roanoketexas.com  
817-491-6075

# Staff Financial Report - Second Qtr 2026

## Addendum: All Funds Summary

| Fund                   | FY26 Revenues        | FY26 Expenses        | Surplus/(Deficit)   | Ending Balance       |
|------------------------|----------------------|----------------------|---------------------|----------------------|
| General Fund           | \$ 22,335,256        | \$ 20,081,860        | \$ 2,253,396        | \$ 19,342,137        |
| Debt Service Fund      | \$ 7,966,802         | \$ 2,351,433         | \$ 5,615,369        | \$ 5,788,177         |
| Utilities Fund         | \$ 6,019,599         | \$ 8,328,282         | \$ (2,308,683)      | \$ 6,468,034         |
| Hotel Tax Fund         | \$ 40,341            | \$ 88,100            | \$ (47,759)         | \$ 145,343           |
| *Special Events Fund   | \$ 560,152           | \$ 1,015,760         | \$ (455,608)        | \$ 5,566             |
| REIDC Fund             | \$ 3,669,995         | \$ 5,896,183         | \$ (2,226,187)      | \$ 9,772,121         |
| CCPD Fund              | \$ 3,355,895         | \$ 3,560,057         | \$ (204,162)        | \$ 4,076,337         |
| <b>Operating Funds</b> | <b>\$ 43,948,040</b> | <b>\$ 41,321,674</b> | <b>\$ 2,626,366</b> | <b>\$ 45,597,714</b> |

\*The Special Events Fund is financed primarily through a series of quarterly transfers from the REIDC Fund. It is common for this fund to post a negative cash balance at different points in the year.

| Fund                 | FY26 Revenues        | FY26 Expenses       | Surplus/(Deficit)    | Ending Balance       |
|----------------------|----------------------|---------------------|----------------------|----------------------|
| Facilities CIP       | \$ 24,198,855        | \$ 2,252,893        | \$ 21,945,962        | \$ 26,061,121        |
| Streets CIP          | \$ 457,120           | \$ 220,555          | \$ 236,565           | \$ 7,521,564         |
| Parks CIP            | \$ 5,064             | \$ 360,897          | \$ (355,834)         | \$ 430,750           |
| Utility CIP          | \$ 1,993,383         | \$ 2,876,523        | \$ (883,140)         | \$ 5,173,072         |
| Veh. Repl. Fund      | \$ 1,070,845         | \$ 909,428          | \$ 161,416           | \$ 1,999,956         |
| CPU Repl. Fund       | \$ 58,093            | \$ -                | \$ 58,093            | \$ 311,543           |
| <b>Capital Funds</b> | <b>\$ 27,783,359</b> | <b>\$ 6,620,297</b> | <b>\$ 21,163,062</b> | <b>\$ 41,498,007</b> |

| Fund                 | FY26 Revenues    | FY26 Expenses     | Surplus/(Deficit)  | Ending Balance      |
|----------------------|------------------|-------------------|--------------------|---------------------|
| Fire Donations       | \$ 14,621        | \$ 112,330        | \$ (97,710)        | \$ 1,300,135        |
| Briarwyck PID        | \$ 2,062         | \$ -              | \$ 2,062           | \$ 245,826          |
| ARPA Grant           | \$ 434           | \$ -              | \$ 434             | \$ 434              |
| PD Grants            | \$ 8,874         | \$ 2,288          | \$ 6,586           | \$ 36,950           |
| Police Seizure       | \$ 481           | \$ -              | \$ 481             | \$ 16,653           |
| Parks Donations      | \$ -             | \$ -              | \$ -               | \$ 32,130           |
| Slaughter Park Fndtn | \$ 4,218         | \$ 155            | \$ 4,063           | \$ 4,063            |
| <b>Other Funds</b>   | <b>\$ 30,690</b> | <b>\$ 114,773</b> | <b>\$ (84,083)</b> | <b>\$ 1,636,192</b> |

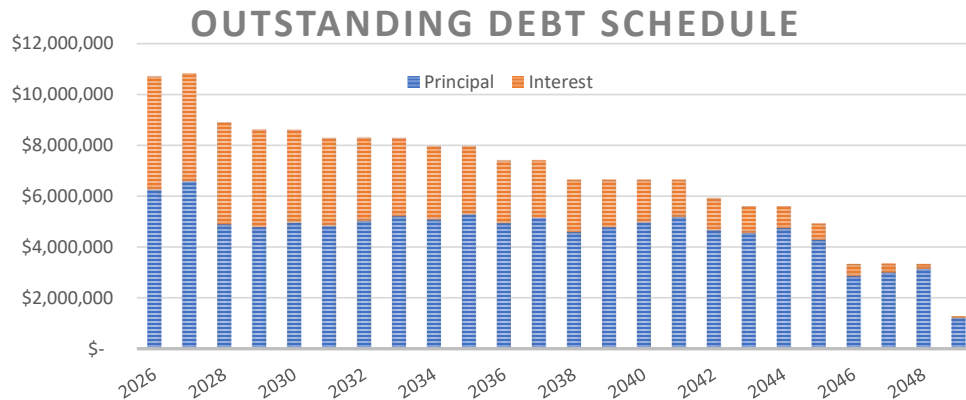
| Fund             | FY26 Revenues        | FY26 Expenses        | Surplus/(Deficit)    | Ending Balance       |
|------------------|----------------------|----------------------|----------------------|----------------------|
| <b>All Funds</b> | <b>\$ 71,762,089</b> | <b>\$ 48,056,744</b> | <b>\$ 23,705,345</b> | <b>\$ 88,731,913</b> |

Please note that several of the cities funds have significant restrictions regarding their use. For any further information on this, please contact Kyle Lester.

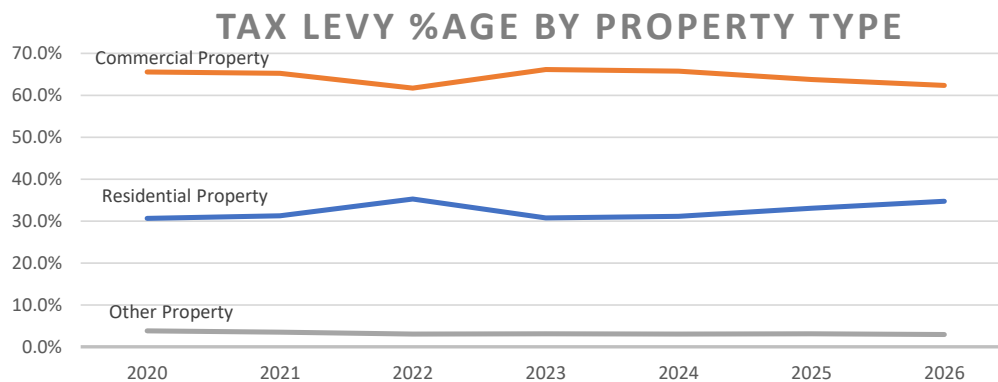
# Staff Financial Report - Second Qtr 2026

## Addendum: Debt & Tax Rate Summary

| Source       | Total Principal/Int.  | % of Total Debt | FY26 Debt Payment    | FY26 Est. Revenue    | % used for Debt |
|--------------|-----------------------|-----------------|----------------------|----------------------|-----------------|
| Property Tax | \$ 61,996,902         | 38.0%           | \$ 5,679,961         | \$ 13,225,132        | 42.9%           |
| Sales Tax    | \$ 92,300,723         | 56.6%           | \$ 4,483,615         | \$ 27,525,000        | 16.3%           |
| Utility Fees | \$ 8,846,923          | 5.4%            | \$ 531,976           | \$ 11,695,291        | 4.5%            |
| <b>Total</b> | <b>\$ 163,144,548</b> | <b>100.0%</b>   | <b>\$ 10,695,552</b> | <b>\$ 52,445,424</b> | <b>20.4%</b>    |



| Fiscal Year | Roanoke Rate | Avg. Home Val. | Roanoke Avg. Bill | NWISD/D. Co. Bill | Total Tax Bill |
|-------------|--------------|----------------|-------------------|-------------------|----------------|
| 2021        | 0.375120     | \$ 283,032     | \$ 1,061.71       | \$ 4,294          | \$ 5,355.28    |
| 2022        | 0.375120     | \$ 305,073     | \$ 1,144.39       | \$ 4,600          | \$ 5,743.94    |
| 2023        | 0.339779     | \$ 333,799     | \$ 1,134.18       | \$ 4,981          | \$ 6,114.94    |
| 2024        | 0.308039     | \$ 361,545     | \$ 1,113.70       | \$ 4,627          | \$ 5,740.34    |
| 2025        | 0.308039     | \$ 407,364     | \$ 1,254.84       | \$ 5,197          | \$ 6,451.86    |
| 2026        | 0.326182     | \$ 425,874     | \$ 1,389.12       | \$ 5,409          | \$ 6,797.89    |



# Staff Financial Report - Second Qtr 2026

## Addendum: Sales Tax Data (Source: TX Comptroller)

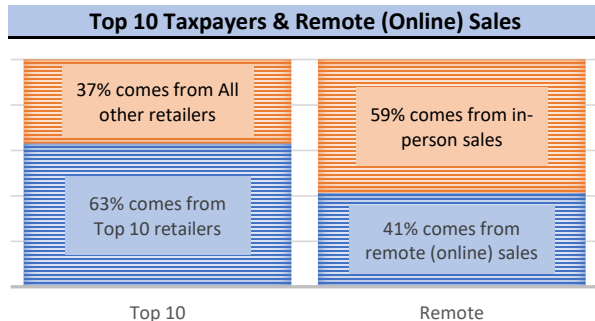
| Fund                    | 2022                 | 2023                 | 2024                 | 2025                 | 2025 YTD             | 2026 YTD             |
|-------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| Current Collected       | \$ 24,635,329        | \$ 24,875,554        | \$ 25,591,361        | \$ 26,839,924        | \$ 11,101,896        | \$ 11,199,768        |
| Period Adjustments      |                      |                      |                      |                      | \$ (143,739)         | \$ 67,291            |
| Audit Adjustments*      | \$ (142,036)         | \$ 212,789           | \$ 123,272           | \$ 3,102,658         | \$ 3,077,869         | \$ 483,194           |
| <b>Total Collection</b> | <b>\$ 24,493,292</b> | <b>\$ 25,088,344</b> | <b>\$ 25,714,633</b> | <b>\$ 29,942,583</b> | <b>\$ 14,036,026</b> | <b>\$ 11,750,252</b> |

|                        |                      |                      |                      |                      |                      |                      |
|------------------------|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| General Fund           | \$ 12,246,584        | \$ 12,679,177        | \$ 12,927,881        | \$ 15,372,363        | \$ 7,382,277         | \$ 5,975,457         |
| REIDC Fund             | \$ 6,123,292         | \$ 6,339,589         | \$ 6,463,941         | \$ 7,686,182         | \$ 3,691,138         | \$ 2,987,729         |
| CCPD/REDC Fund         | \$ 6,123,416         | \$ 6,069,578         | \$ 6,322,811         | \$ 6,884,038         | \$ 2,962,610         | \$ 2,787,067         |
| <b>Operating Funds</b> | <b>\$ 24,493,292</b> | <b>\$ 25,088,344</b> | <b>\$ 25,714,633</b> | <b>\$ 29,942,583</b> | <b>\$ 14,036,026</b> | <b>\$ 11,750,252</b> |

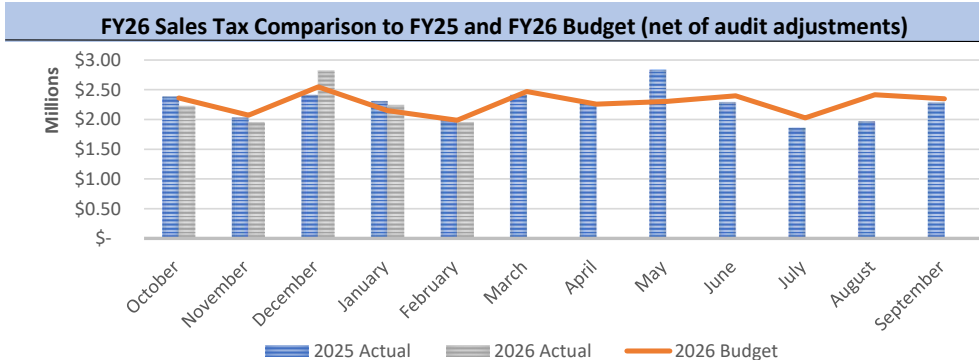
\*Each retailer sends its sales tax receipts directly to the State Comptroller, who deducts the state's portion and remits the remainder to the appropriate local jurisdiction. The Comptroller regularly audits these payments, correcting any over- or under-payment with a refund or deduction from the corresponding jurisdiction. These one-time audit adjustments are reported separately above, and can be negative or positive. The largest adjustment for Roanoke amounted to over \$3m in additional revenue, remitted to the City in 2025.

### General Comment on Collections

Roanoke's \$3m audit adjustment was collected in December and January of 2025, which makes our FY26 revenue appear to have decreased substantially. Netting out that anomaly to focus solely on sales taxes from each period, FY26 is showing a 0.9% increase through the second collection of the year (see comparison below).



| Comparisons (Current Coll. Only) |            |            |  |
|----------------------------------|------------|------------|--|
|                                  | MTD Change | YTD Change |  |
| Roanoke                          | ↓ -1.7%    | ↑ 0.9%     |  |
| DFW Cities                       | ↑ 11.8%    | ↑ 5.7%     |  |
| Texas Cities                     | ↑ 9.3%     | ↑ 4.5%     |  |
| Bedford                          | ↑ 5.0%     | ↑ 1.9%     |  |
| Hurst                            | ↑ 9.4%     | ↑ 6.0%     |  |
| Grapevine                        | ↑ 3.8%     | ↑ 5.8%     |  |
| Keller                           | ↑ 15.0%    | ↑ 4.3%     |  |
| Southlake                        | ↑ 12.8%    | ↑ 12.1%    |  |



**Excerpts from Roanoke's Investment Holdings Report**  
**Prepared by Valley View, L.L.C.**



**Investment Holdings**  
**March 31, 2026**

| Description               | Ratings | Coupon/<br>Discount | Maturity<br>Date | Settlement<br>Date | Par Value            | Book<br>Value        | Market<br>Price | Market<br>Value      | Life<br>(days) | Yield        |
|---------------------------|---------|---------------------|------------------|--------------------|----------------------|----------------------|-----------------|----------------------|----------------|--------------|
| JPMorgan Chase Bank MMA   |         | 1.21%               | 04/01/26         | 03/31/26           | \$ 18,547,075        | \$ 18,547,075        | 1.00            | \$ 18,547,075        | 1              | 1.21%        |
| InterBank MMA             |         | 3.81%               | 04/01/26         | 03/31/26           | 240,764              | 240,764              | 1.00            | 240,764              | 1              | 3.81%        |
| Prosperity Bank MMA       |         | 1.51%               | 04/01/26         | 03/31/26           | 70,887               | 70,887               | 1.00            | 70,887               | 1              | 1.51%        |
| InterBank ICS             |         | 3.75%               | 04/01/26         | 03/31/26           | 9,853,451            | 9,853,451            | 1.00            | 9,853,451            | 1              | 3.75%        |
| Texas Class LGIP          |         | 3.78%               | 04/01/26         | 03/31/26           | 12,998,087           | 12,998,087           | 1.00            | 12,998,087           | 1              | 3.78%        |
| LOGIC LGIP                |         | 3.79%               | 04/01/26         | 03/31/26           | 10,097,823           | 10,097,823           | 1.00            | 10,097,823           | 1              | 3.79%        |
| TexSTAR LGIP              |         | 3.65%               | 04/01/26         | 03/31/26           | 21,879,424           | 21,879,424           | 1.00            | 21,879,424           | 1              | 3.65%        |
| First National Bank CDARS |         | 4.10%               | 04/09/26         | 04/10/25           | 2,601,701            | 2,601,701            | 100.00          | 2,601,701            | 9              | 4.18%        |
| East West Bank CD         |         | 4.11%               | 05/15/26         | 05/15/25           | 2,073,376            | 2,073,376            | 100.00          | 2,073,376            | 45             | 4.20%        |
| First Bank Texas CD       |         | 4.00%               | 09/17/26         | 09/17/24           | 1,592,509            | 1,592,509            | 100.00          | 1,592,509            | 170            | 4.07%        |
| East West Bank CD         |         | 3.68%               | 11/13/26         | 11/13/25           | 2,028,224            | 2,028,224            | 100.00          | 2,028,224            | 227            | 3.75%        |
| American Nat'l B&T CDARS  |         | 4.10%               | 02/13/27         | 08/14/25           | 1,080,247            | 1,080,247            | 100.00          | 1,080,247            | 319            | 4.18%        |
| East West Bank CD         |         | 3.69%               | 03/23/27         | 03/23/26           | 2,602,367            | 2,602,367            | 100.00          | 2,602,367            | 357            | 3.76%        |
| First National Bank CDARS |         | 4.06%               | 04/08/27         | 04/10/25           | 1,040,275            | 1,040,275            | 100.00          | 1,040,275            | 373            | 4.14%        |
| American Nat'l B&T CDARS  |         | 3.95%               | 12/02/27         | 12/04/25           | 2,025,702            | 2,025,702            | 100.00          | 2,025,702            | 611            | 4.03%        |
|                           |         |                     |                  |                    | <b>\$ 88,731,913</b> | <b>\$ 88,731,913</b> |                 | <b>\$ 88,731,913</b> | <b>43</b>      | <b>3.25%</b> |
|                           |         |                     |                  |                    |                      |                      |                 |                      | <b>(1)</b>     | <b>(2)</b>   |

**(1) Weighted average life** - For purposes of calculating weighted average life, bank accounts, pools and money market funds are assumed to have an one day maturity.

**(2) Weighted average yield to maturity** - The weighted average yield to maturity is based on adjusted book value, realized and unrealized gains/losses and investment advisory fees are not considered. The yield for the reporting month is used for bank accounts, pools and money market funds.

## Book & Market Value Comparison



| Issuer/Description        | Yield        | Maturity Date | Book Value<br>12/31/25 | Increases            | Decreases              | Book Value<br>03/31/26 | Market Value<br>12/31/25 | Change in<br>Market Value | Market Value<br>03/31/26 |
|---------------------------|--------------|---------------|------------------------|----------------------|------------------------|------------------------|--------------------------|---------------------------|--------------------------|
| JPMorgan Chase Bank MMA   | 1.21%        | 04/01/26      | \$ 23,823,968          | \$ —                 | \$ (5,276,892)         | \$ 18,547,075          | \$ 23,823,968            | \$ (5,276,892)            | \$ 18,547,075            |
| InterBank MMA             | 3.81%        | 04/01/26      | 240,781                | —                    | (16)                   | 240,764                | 240,781                  | (16)                      | 240,764                  |
| Prosperity Bank MMA       | 1.51%        | 04/01/26      | 70,678                 | 209                  | —                      | 70,887                 | 70,678                   | 209                       | 70,887                   |
| InterBank ICS             | 3.75%        | 04/01/26      | 2,789,960              | 7,063,491            | —                      | 9,853,451              | 2,789,960                | 7,063,491                 | 9,853,451                |
| Texas Class LGIP          | 3.78%        | 04/01/26      | 12,876,530             | 121,558              | —                      | 12,998,087             | 12,876,530               | 121,558                   | 12,998,087               |
| LOGIC LGIP                | 3.79%        | 04/01/26      | 10,003,323             | 94,500               | —                      | 10,097,823             | 10,003,323               | 94,500                    | 10,097,823               |
| TexSTAR LGIP              | 3.65%        | 04/01/26      | 25,756,660             | —                    | (3,877,236)            | 21,879,424             | 25,756,660               | (3,877,236)               | 21,879,424               |
| East West Bank CD         | 4.34%        | 02/12/26      | 3,198,938              | —                    | (3,198,938)            | —                      | 3,198,938                | (3,198,938)               | —                        |
| First Bank Texas CD       | 4.89%        | 03/17/26      | 2,644,620              | —                    | (2,644,620)            | —                      | 2,644,620                | (2,644,620)               | —                        |
| First National Bank CDARS | 4.18%        | 04/09/26      | 2,575,532              | 26,168               | —                      | 2,601,701              | 2,575,532                | 26,168                    | 2,601,701                |
| East West Bank CD         | 4.20%        | 05/15/26      | 2,052,471              | 20,905               | —                      | 2,073,376              | 2,052,471                | 20,905                    | 2,073,376                |
| First Bank Texas CD       | 4.07%        | 09/17/26      | 1,576,905              | 15,604               | —                      | 1,592,509              | 1,576,905                | 15,604                    | 1,592,509                |
| East West Bank CD         | 3.75%        | 11/13/26      | 2,009,905              | 18,320               | —                      | 2,028,224              | 2,009,905                | 18,320                    | 2,028,224                |
| American Nat'l B&T CDARS  | 4.18%        | 02/13/27      | 1,069,382              | 10,865               | —                      | 1,080,247              | 1,069,382                | 10,865                    | 1,080,247                |
| East West Bank CD         | 3.76%        | 03/23/27      | —                      | 2,602,367            | —                      | 2,602,367              | —                        | 2,602,367                 | 2,602,367                |
| First National Bank CDARS | 4.14%        | 04/08/27      | 1,029,914              | 10,362               | —                      | 1,040,275              | 1,029,914                | 10,362                    | 1,040,275                |
| American Nat'l B&T CDARS  | 4.03%        | 12/02/27      | 2,006,069              | 19,633               | —                      | 2,025,702              | 2,006,069                | 19,633                    | 2,025,702                |
| <b>TOTAL / AVERAGE</b>    | <b>3.25%</b> |               | <b>\$ 93,725,635</b>   | <b>\$ 10,003,982</b> | <b>\$ (14,997,704)</b> | <b>\$ 88,731,913</b>   | <b>\$ 93,725,635</b>     | <b>\$ (4,993,722)</b>     | <b>\$ 88,731,913</b>     |

**Investment Policy Compliance**  
**March 31, 2026**



| <b>Authorized Investments</b>   | <b>Maximum %</b> | <b>Actual Market Value</b> | <b>% of Portfolio</b> | <b>Status</b> |
|---------------------------------|------------------|----------------------------|-----------------------|---------------|
| Financial Institution Deposits  | 100%             | \$ 75,733,825              | 85.35%                | Pass          |
| Repurchase Agreements           | 50%              | —                          | 0.0%                  | N/A           |
| U.S. Treasury Notes/Bonds/Bills | 100%             | —                          | 0.0%                  | N/A           |
| U.S. Agencies                   | 100%             | —                          | 0.0%                  | N/A           |
| Money Market Mutual Funds       | PFIA Limits      | —                          | 0.0%                  | N/A           |
| Local Gov't Investment Pools    | 100%             | 12,998,087                 | 14.6%                 | Pass          |
| State or Municipal Obligations  | 50%              | —                          | 0.0%                  | N/A           |
| <b>Total</b>                    |                  | <b>\$ 88,731,913</b>       | <b>100.0%</b>         |               |



Holly Gray, Mayor Pro-Tem  
David Brundage, Council Member  
VACANT, Council Member



Carl E. Gierisch, Jr., Mayor

Brian Darby, Council Member  
David Thompson, Council Member  
VACANT, Council Member

**MINUTES  
ROANOKE CITY COUNCIL  
REGULAR MEETING  
APRIL 14, 2026  
CITY HALL COUNCIL CHAMBERS  
500 S. OAK STREET  
7:00 P.M.**

**PRESENT:** Mayor Carl E. "Scooter" Gierisch, Jr., Council Members: Brian Darby, David Brundage, and David Thompson; City Manager Cody Petree, Assistant City Manager Jeriahme Miller, City Secretary Lindsay Rawlinson, and City Attorney Jeff Moore.

**DEPT. STAFF:** Chief of Police Jeff Williams, Fire Chief Chris Addington, Public Works Director Shawn Wilkinson, Library Director Kelly Holt, Economic Development Manager Siale Langi, Development Services Manager J.R. Hames, Parks and Recreation Director Ray McDonald III, Human Resources Manager Jamie Seil, Events Manager Michael Davenport, and Public Engagement Manager Sandra Pettigrew.

**ABSENT:** Mayor Pro Tem Holly Gray.

**A. CALL CITY COUNCIL TO ORDER**

Mayor Gierisch called the meeting to order at 7:01 p.m.

Invocation and Pledge of Allegiance given by Mayor Gierisch.

**B. ANNOUNCEMENTS**

Library Director Kelly Holt announced the Art & History Trail Committee will host a dedication of a new sculpture titled "Cadence" by artist Pascale M. Pryor on Thursday, April 23, 2026 at 6:00 p.m. at the Austin Street Plaza followed by an Evenings on Oak Street Concert.

**C. PUBLIC INPUT**

Clark Terborg, 111 South Pine Street, Roanoke, advised that he and his family have recently moved to Roanoke and love the community. He spoke regarding agenda item F1 and expressed concern regarding parking and noise near a residential neighborhood.



**MINUTES FOR THE REGULAR MEETING  
OF THE ROANOKE CITY COUNCIL**

**April 14, 2026  
Page 2 of 6**

**D. PRESENTATION**

1. Mayor Gierisch will read a proclamation declaring April 2026 as Child Abuse Prevention Month.

Mayor Gierisch presented a proclamation to Court Appointed Special Advocates (CASA) of Denton County Executive Director Debbie Jensen and CASA volunteer Mitchell Sizelove.

Mr. Sizelove provided a brief background of the work of CASA of Denton County and encouraged community involvement through volunteer opportunities.

**E. CONSENT AGENDA**

All items listed below are considered routine and will be enacted with one motion. There will be no separate discussion of items unless a Councilmember or citizen so requests, in which event the item will be removed and considered separately.

1. Consider approval of the minutes from the regular City Council meeting held on March 24, 2026.
2. Consider approval of three year Enterprise Agreement with ESRI for GIS Software.
3. Consideration and approval of Ordinance No. 2026-118 amending Chapter 11, Article 11.1300 of the Code of Ordinances of the City of Roanoke, Texas entitled "Impact Fees" by amending Section 11.1312 entitled "Credits" by providing for impact fee credits for certain efforts that promote water conservation and reuse, Consistent with Section 395.0231 of the Texas Local Government Code.

Motion made by Council Member Thompson and seconded by Council Member Brundage to approve the Consent Agenda.

Motion carried unanimously.

**F. OLD BUSINESS**

1. Consideration and recommendation on a Site Plan request from Pablo Medina, for a brewery, to be located on an approximate .931 acre parcel, being a part of the Original Town of Roanoke Addition, Block 3 Lot 7R, City of Roanoke Denton County, Texas; generally located on the east of Oak Street and south of Bowie Street. (SP-2026-01)

The applicant is proposing to construct a brewery on lots 7-15, Block 3, Old Town Roanoke Addition. The approximate 8,028 square-foot building will consist of a 4,328 square foot brewery, a 3,500 square-foot patio area, and a 200-square-foot kitchen in the Oak Street Zoning District. On April 6, 2026, the Planning & Zoning Commission voted unanimously to approve the site plan.

David Medina along with applicant Pablo Medina thanked the City Council and expressed excitement to open his business.



MINUTES FOR THE REGULAR MEETING  
OF THE ROANOKE CITY COUNCIL

April 14, 2026  
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Discussion ensued regarding the issues mentioned during Public Input as well as smoke from neighboring Hard Eight BBQ.

Mr. Medina advised that there is a plan for expanded parking availability and stated that they want to part of the community and good neighbors. They do not want to be a nuisance and will be mindful of noise.

Motion made by Council Member Thompson and seconded by Council Member Brundage to approve a Site Plan request from Pablo Medina, for a brewery, to be located on an approximate .931 acre parcel, being a part of the Original Town of Roanoke Addition, Block 3 Lot 7R, City of Roanoke Denton County, Texas; generally located on the east of Oak Street and south of Bowie Street. (SP-2026-01).

Motion carried unanimously.

**G. NEW BUSINESS**

1. **Public Hearing and consideration of action** on Ordinance No. 2026-117, reviewing the Youth Standards of Care.

In order to receive exempt status for a youth recreation program, a municipality must adopt standards of care by ordinance after a public hearing for the program on an annual basis.

Mayor Gierisch opened the public hearing at 7:15 p.m. and asked to hear from any proponents followed by opponents of the ordinance.

Hearing none, Mayor Gierisch closed the public hearing at 7:16 pm.

Motion made by Council Member Thompson and seconded by Council Member Brundage to approve Ordinance No. 2026-117, reviewing the Youth Standards of Care.

Motion carried unanimously.

2. **Conduct a public hearing and consider amending** Chapter 12, Article I, by amending Section 12.6 of the City of Roanoke, Code of Ordinances, entitled "Definitions" by adding a definition for "Retail Sales of CBD, Tobacco, E-Cigarettes, or Non-Traditional Smoking-Related Products" and amending Chapter 12, Article VI, Section 12.661, Appendix 3, of the City of Roanoke, Code of Ordinances entitled "Use Charts" to authorize "Retail Smoke/Tobacco/CBD Stores" use with a Specific Use Permit (SUP) within the Retail (R), Light Commercial (LC), and Business Park (BP) Districts. (ZTA-2026-02).

City Planner Ashlie Tolliver presented the item to the City Council and advised that the proposed ordinance amendment is a response to the increased likelihood of the establishment and operation of this use, and the regulation of smoke/tobacco stores/CBD (hemp related sales) stores is in the interests of public health, safety and general welfare in an effort to mitigate



MINUTES FOR THE REGULAR MEETING  
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April 14, 2026  
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undesirable impacts to the community. The amendment results in an addition of Retail Smoke/Tobacco/CBD Stores to the use chart, permitting the use by Specific Use Permit within the Retail (R), Light Commercial (LC), and Business Park (BP) Zoning Districts. By requiring a Specific Use Permit, the Planning & Zoning Commission and City Council will be able to determine if the use should be allowed on a case-by-case basis, allowing for consideration of potential undesirable impacts to the community and also providing the opportunity for the public to be consulted prior to the use being established.

Additionally, on April 6, 2026, the Planning & Zoning Commission held a public hearing and voted unanimously to recommend approval of the request.

Mayor Gierisch opened the public hearing at 7:18 p.m. and asked to hear from any proponents followed by opponents of the ordinance.

Hearing none, Mayor Gierisch closed the public hearing at 7:19 pm.

Motion made by Council Member Thompson and seconded by Council Member Brundage to approve Ordinance No. 2026-114, amending Chapter 12, Article I, by amending Section 12.6 of the City of Roanoke, Code of Ordinances, entitled "Definitions" by adding a definition for "Retail Sales of CBD, Tobacco, E-Cigarettes, or Non-Traditional Smoking-Related Products" and amending Chapter 12, Article VI, Section 12.661, Appendix 3, of the City of Roanoke, Code of Ordinances entitled "Use Charts" to authorize "Retail Smoke/Tobacco/CBD Stores" use with a Specific Use Permit (SUP) within the Retail (R), Light Commercial (LC), and Business Park (BP) Districts. (ZTA-2026-02).

Motion carried unanimously.

3. **Conduct a public hearing and consider amending** Chapter 12, Article VII, Division 10, of the City of Roanoke, Code of Ordinances, entitled "Special Regulations for Certain Types of Uses" by adding a new section, 12.932 entitled "Retail Smoke, Tobacco, and CBD Stores", establishing special regulations for Retail Smoke, Tobacco, and CBD Stores. (ZTA-2026-03)

City Planner Ashlie Tolliver presented the item to the City Council and advised that the proposed amendment is to the section titled "Special Regulations for Certain Types of Uses" of the Comprehensive Zoning Ordinance. The intent of the amendment is to establish special regulations that will apply to the operation of Retail Smoke, Tobacco, and CBD Stores within the City of Roanoke in addition to the base-zoning development standards required within the base zoning districts where operation of this use is permitted.

Staff is proposing the following Special Regulations that a Retail Smoke, Tobacco, and CBD store would be required to meet in to the proposed ordinance amendment that would alter the use chart to allow this type of use by Specific Use Permit:



**MINUTES FOR THE REGULAR MEETING  
OF THE ROANOKE CITY COUNCIL**

**April 14, 2026  
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1. Smoke/Tobacco/CBD Stores shall not be located within 1,000 feet from a school, family day care home, child care facility, youth center, community center, recreational facility, park, church or religious institution, hospital, or other similar uses.
2. The stores shall not be located within 1,000 feet from another smoke/tobacco/CBD store.
3. No stores with this use shall allow a minor that is not accompanied by their parent to enter or be present on the premises.
4. Signage stating minors cannot enter should be placed near the public entrance.
5. Before a Certificate of Occupancy is issued, the business must provide proof of the required state license to operate the business to the City.

Additionally, on April 6, 2026, the Planning & Zoning Commission held a public hearing and voted unanimously to recommend approval of the request.

Mayor Gierisch opened the public hearing at 7:20 p.m. and asked to hear from any proponents followed by opponents of the ordinance.

Hearing none, Mayor Gierisch closed the public hearing at 7:21 pm.

Motion made by Council Member Thompson and seconded by Council Member Brundage to approve Ordinance No. 2026-113, amending Chapter 12, Article VII, Division 10, of the City of Roanoke, Code of Ordinances, entitled "Special Regulations for Certain Types of Uses" by adding a new section, 12.932 entitled "Retail Smoke, Tobacco, and CBD Stores", establishing special regulations for Retail Smoke, Tobacco, and CBD Stores. (ZTA-2026-03)

Motion carried unanimously.

#### **H. EXECUTIVE SESSION**

The City Council held a closed Executive Session meeting pursuant to the provisions of Chapter 551 of the Texas Government Code, in accordance with the authority contained in:

##### **Section 551.087**

To deliberate commercial or financial information the City has received from a business prospect, and to deliberate the offer of a financial or other incentive to a business prospect.

- Roanoke Sports Complex, LLC

The City Council did not convene into Executive Session.



**MINUTES FOR THE REGULAR MEETING  
OF THE ROANOKE CITY COUNCIL**

**April 14, 2026  
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**I. ADJOURNMENT**

Motion made by Council Member Thompson and seconded by Council Member Darby to adjourn the meeting at 7:22 p.m.

Motion carried unanimously.

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Carl E. "Scooter" Gierisch, Jr., Mayor

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Lindsay Rawlinson, City Secretary



## AGENDA ITEM

TO: Mayor and City Council

SUBJECT: Consider approval of an Interlocal Agreement between the City of Roanoke and the North Central Texas Council of Governments for use of its map-based information system.

MEETING DATE: April 28, 2026

DEPARTMENT: Administration

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### **ITEM SUMMARY:**

Consider approval of an Interlocal Agreement between the City of Roanoke and the North Central Texas Council of Governments for use of its map-based information system

### **INFORMATION:**

The North Central Texas Council of Governments offers cities in the COG a discounted rate for a system called Nearmap that provides high-quality aerial photos of our City and surrounding areas. The subscription through the COG is more cost-effective than purchasing directly from Nearmap. This aerial imagery will be used by our Geographic Information Systems (GIS) group for use with printed maps and web-based mapping applications.

### **STAFF RECOMMENDATION:**

### **SPECIAL CONSIDERATION:**

### **FINANCIAL CONSIDERATION:**

The annual subscription cost is \$4,150. The total subscription cost over the term of five years will be \$20,750.

### **ATTACHMENTS:**

1. ILA\_Nearmap\_Roanoke



**INTERLOCAL AGREEMENT BETWEEN  
THE NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS AND  
CITY OF ROANOKE**

**WHEREAS**, the North Central Texas Council of Governments (NCTCOG) is a voluntary association of, by and for local governments and has an interest in providing information to its members to support planning, engineering, public safety, and municipal management activities; and,

**WHEREAS**, the CITY OF ROANOKE wishes to have its map-based information system include the Nearmap's recurring and/or oblique imagery and has determined that the acquisition of this resource provides information for a multitude of uses throughout the Entity and thus serves a valid public purpose; and,

**WHEREAS**, the Entity requires this information to accomplish this purpose and has determined that NCTCOG can provide this information; and,

**WHEREAS**, this Agreement is authorized by Chapter 791 of the Texas Government Code; and,

**WHEREAS**, NCTCOG and Entity are local governments as that term is defined in Section 791.003(4) of the Texas Government Code; and,

**WHEREAS**, Section 791.025 of the Texas Government Code authorizes local governments to agree with another local government to purchase goods and services; and,

**WHEREAS**, a local government that purchases goods and services under Section 791.025 of the Texas Government Code satisfies the requirement of the local government to seek competitive bids for the purchase of goods and services; and,

**WHEREAS**, NCTCOG and Entity, acting by and through their respective governing bodies, adopt the foregoing premises as findings of said governing bodies.

**NOW, THEREFORE**, the parties, Entity and NCTCOG, agree to the following terms and conditions regarding the purchase of Nearmap's recurring and/or oblique imagery under Master Service Agreement #2020-078.



## I. LICENSE AGREEMENT

The personnel specified in Appendix A will serve as points of contact for their respective organizations. NCTCOG has contracted with Nearmap to provide their product at negotiated not-to-exceed rates to the North Texas region.

Nearmap retains all ownership of intellectual property rights in its aerial and oblique imagery and data. Entity is purchasing a data license through NCTCOG and pursuant to the subscription terms set out in Appendix B. Notwithstanding **Section 2.3 of Appendix B**, Entity is permitted to grant access to the Content under the License to its contractor(s) for the purpose of performing work for Entity, provided that the contractor(s) enter into an agreement which requires them to (a) use the Content only to the extent necessary to perform work for the Entity, and (b) immediately delete and destroy the Content in their control or possession at the completion of such work. Entity understands and agrees that it is responsible for compliance with Appendix B and its failure may result in NCTCOG disabling or revoking its data license(s) hereunder.

## II. OBLIGATIONS

NCTCOG agrees to provide the Product(s) listed below for Entity's use consistent with the terms herein. Upon delivery of the Product(s), NCTCOG shall invoice Entity in the amount(s) provided and Entity agrees to pay NCTCOG within thirty (30) days.

**Population:** 9665

| <b>Recurring Aerial Photography</b> | <b>Amount</b> |
|-------------------------------------|---------------|
| 1-year subscription                 | NA            |
| 2-year subscription                 | NA            |
| 3-year subscription                 | NA            |
| 4-year subscription                 | NA            |
| 5-year subscription                 | \$4,150.00    |

| <b>Recurring Aerial Photography + Obliques</b> | <b>Amount</b> |
|------------------------------------------------|---------------|
| 1-year subscription                            | NA            |
| 2-year subscription                            | NA            |
| 3-year subscription                            | NA            |
| 4-year subscription                            | NA            |
| 5-year subscription                            | NA            |

|                                 |                    |
|---------------------------------|--------------------|
| <b>Annual Subscription Cost</b> | <b>\$4,150.00</b>  |
| <b>Total Subscription Cost</b>  | <b>\$20,750.00</b> |

You have agreed to the payment terms listed above and have secured the total amount with purchase order (PO) number \_\_\_\_\_ (please enter PO number and send PO document with returned agreement).

Invoice Term: ☐ Full Payment ☒ Invoice Annually (at beginning of term)

### III. TERMINATION

Provisions for terminating Nearmap's aerial and/or oblique imagery subscription can be found in Appendix B. Section 6. In the event Entity terminates this Agreement early for any reason, all funds paid to NCTCOG by Entity are non-refundable. In the event payment obligations for Entity's subscription exceed the amounts paid at the time of early termination, Entity shall be responsible for payment of all such amounts to NCTCOG subject to the non-appropriation clause contained herein.

### IV. MISCELLANEOUS

**Entirety of Agreement** The terms and provisions of this Agreement constitute the entire agreement of the undersigned parties and in the event of a conflict between this Agreement and any attachment thereto, the terms of this Agreement shall prevail.

**Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Texas and venue shall lie exclusively in Tarrant County, Texas. In performing its obligations hereunder, each party shall operate and perform in accordance with all applicable state and federal laws.

**Severability.** In the event that one or more provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability of the Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, and shall not affect the remaining provision of this Agreement, which shall remain in force and effect.

**Assignment.** No party to this Agreement may assign or otherwise transfer any of its interest in this Agreement without the express written consent of the other party.

**Immunity.** It is expressly understood and agreed that in the execution of this Agreement, that the parties, either individually or jointly, do not waive, nor shall they be deemed to waive, any immunity or defense that would otherwise be available to each against claims arising in the exercise of its powers or functions.

**Non-appropriation of Funds.** Each party paying for the performance of governmental functions in this Agreement must make those payments from current revenues available to the paying party. In the event no funds or insufficient funds are appropriated by the Entity in any fiscal period for any payments due hereunder, Entity will notify NCTCOG of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were

received without penalty or expense to the Entity of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds shall have been appropriated.

**Force Majeure.** The Entity and NCTCOG shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control. (force majeure), including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

**Certification.** The undersigned are properly authorized to execute this Agreement on behalf of the parties. and each party certifies to the other that any necessary resolutions extending such authority have been fully passed and are now in full force and effect.

**IN WITNESS WHEREOF,** the parties have executed this Agreement on the dates indicated below.

**NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS**

\_\_\_\_\_  
Todd Little  
Executive Director  
616 Six Flags Drive, Suite 200  
Arlington, Texas 76011

\_\_\_\_\_  
Date

**CITY OF ROANOKE**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name: Blake Gore

Title: Information Technology Manager

Email: bgore@roanoketexas.com

**APPENDIX A**

**NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS**

|                  | MAIN CONTACT                        |                | ADDITIONAL CONTACT                  |                |
|------------------|-------------------------------------|----------------|-------------------------------------|----------------|
| Name:            | Shelley Broyles                     |                | Donna Coggeshall                    |                |
| Title:           | Program Manager - Research          |                | Senior Program Manager - Research   |                |
| Department       | Information and Innovation Services |                | Information and Innovation Services |                |
| Organization:    | NCTCOG                              |                | NCTCOG                              |                |
| Street Address:  | 616 Six Flags Drive, Suite 200      |                | 616 Six Flags Drive, Suite 200      |                |
| City, State, Zip | Arlington, Texas 76011              |                | Arlington, Texas 76011              |                |
| Phone/Fax:       | (817) 695-9156                      | (817) 640-4428 | (817) 695-9168                      | (817) 640-4428 |
| E-mail:          | sbroyles@nctcog.org                 |                | dcoggeshall@nctcog.org              |                |

## APPENDIX B NEARMAP LICENSING TERMS



### MASTER SUBSCRIPTION AGREEMENT

THIS MASTER SUBSCRIPTION AGREEMENT IS ENTERED INTO BY AND BETWEEN NEARMAP AND CUSTOMER. BY EXECUTING AN ORDER FORM ATTACHED TO THIS MASTER SUBSCRIPTION AGREEMENT OR INCORPORATING THIS MASTER SUBSCRIPTION AGREEMENT BY REFERENCE, NEARMAP AND CUSTOMER AGREE TO BE BOUND BY THIS MASTER SUBSCRIPTION AGREEMENT, THE ORDER FORM, AND ALL TERMS INCORPORATED BY REFERENCE (COLLECTIVELY, THE “**AGREEMENT**”). THIS AGREEMENT BECOMES EFFECTIVE UPON THE EARLIER OF CUSTOMER ACCESSING OR USING ANY NEARMAP PRODUCTS OR AS SET FORTH ON THE ORDER FORM (“**EFFECTIVE DATE**”). IF CUSTOMER DOES NOT AGREE TO THIS MASTER SUBSCRIPTION AGREEMENT, CUSTOMER MUST NOT ACCESS OR USE ANY NEARMAP PRODUCTS. CAPITALIZED TERMS NOT DEFINED IN THIS MASTER SUBSCRIPTION AGREEMENT HAVE THE MEANINGS GIVEN TO THEM IN THE ORDER FORM.

#### 1. DEFINITIONS

- 1.1. “**Affiliate**” means (a) if Customer contracts with Nearmap AU, a “Subsidiary” or “Related Party,” each as defined in the Corporations Act; or (b) if Customer contracts with Nearmap US, an entity that, directly or indirectly, controls, is controlled by, or is under common control with a party. As used herein, “control” means the power to direct the management or affairs of an entity or the beneficial ownership of fifty percent (50%) or more of the voting equity securities or other equivalent voting interests of an entity.
- 1.2. “**APIs**” means Nearmap’s application programming interfaces made available by Nearmap under the Agreement.
- 1.3. “**Applicable Laws**” means all existing and future federal, state, provincial, regional, territorial and local laws, international treaties, statutes, statutory instruments, ordinances, regulations, rules, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters and other office releases, guidelines, and policies with the force of law, of or by any government, or any governmental authority, department, or agency thereof (including all federal and state banking laws, regulations, guidance, and policies), or any court of competent jurisdiction that are applicable to the parties in their performance of their obligations or exercise of their rights under the Agreement.
- 1.4. “**Authorized User**” means Customer’s employees, agents, independent contractors, and consultants that use the Products on Customer’s behalf; provided that, to the extent Customer desires its agents, independent contractors, and consultants to be Authorized Users, it must receive Nearmap’s prior, written consent (email to suffice).
- 1.5. “**Confidential Information**” has the meaning set forth in Section 10.1.
- 1.6. “**Corporations Act**” means Corporations Act 2001 (Cth) of Australia, as amended.
- 1.7. “**Customer**” has the meaning set forth in the applicable Order Form.
- 1.8. “**Customer Data**” means information, data, and other content, in any form or medium, that is uploaded to, or otherwise received by, the Platform, directly (including via a third-party provider) from an Authorized User.
- 1.9. “**De-identified Data**” has the meaning set forth in Section 3.4.
- 1.10. “**Derivative Works**” means a work that is based upon another work, such as a revision, modification, or any other form in which the original work may be recast, transformed, or adapted and that if prepared without the authorization of the owner of the copyright in the original work, would constitute a copyright infringement.
- 1.11. “**Documentation**” means any end user technical documentation provided by Nearmap for the Products located at <https://help.nearmap.com>.
- 1.12. “**Feedback**” has the meaning set forth in Section 4.2.
- 1.13. “**Fees**” has the meaning set forth in Section 5.1.
- 1.14. “**Nearmap**” means (a) if Customer is located in Australia or New Zealand, as determined by Customer’s billing address set forth in an Order Form, then the Nearmap contracting entity is Nearmap Australia Pty Ltd

(ABN 16 120 677 250) (NZCN 6603574) ("**Nearmap AU**"), with offices located at Level 4, Tower One, International Towers, 100 Barangaroo Avenue, Barangaroo NSW 2000; or (b) if Customer is located in the United States of America, Canada, or any other jurisdiction other than Australia or New Zealand, as determined by Customer's billing address set forth in an Order Form, then the Nearmap contracting entity is Nearmap US, Inc. ("**Nearmap US**"), with offices located at 1850 Ashton Blvd, Ste 500, Lehi, UT 84043.

1.15. "**Nearmap Data**" means any data made available by or on behalf of Nearmap to the Customer in connection with the APIs or a Platform.

1.16. "**Nearmap Policies**" has the meaning set forth in Section 2.9.

1.17. "**Order Form**" means a written document or electronic form, including any order, statement of work, proposal, quote, schedule, or other such documentation, whether or not labeled "Order Form," that details the Products, including quantities, specifications, pricing, payment terms, and any other pertinent terms and conditions agreed upon by both parties.

1.18. "**Output**" has the meaning set forth in Section 2.1.1.

1.19. "**Personal Data**" means any data or information that is linked or reasonably linkable to an identified or identifiable natural person.

1.20. "**Platform**" means Nearmap's online web-based application provided by Nearmap, as further described in the "Products" section of an Order Form.

1.21. "**Privacy Policy**" has the meaning set forth in Section 13.

1.22. "**Process**" or "**Processing**" means any operation or set of operations performed, whether by manual or automated means, on information or on sets of information, such as the collection, use, storage, disclosure by transmission, dissemination or otherwise making available, alignment or combination, analysis, restriction, deletion, or modification of information.

1.23. "**Products**" means, collectively, the API and Platform.

1.24. "**Product-Specific Terms**" means the terms and conditions governing the use of specific then-current Products generally available to Nearmap customers via the Nearmap website at <https://www.nearmap.com/us/en/legal/product-specific-terms>.

1.25. "**Service Level Agreement**" means the service level agreement provided by Nearmap for the Platform, as further described at <https://www.nearmap.com/legal/service-level-agreement>.

1.26. "**Subscription Term**" means the term specified on the Order Form, including without limitation in the "License Term," "Subscription Term," or "Subscription Period" section of the Order Form, together with any renewal terms.

1.27. "**Support Policy**" has the meaning set forth in Section 2.6.

1.28. "**Territory**" means, as applicable, Australia, Canada, New Zealand, and/or the United States of America. Coverage by Nearmap within the Territory is outlined at <https://www.nearmap.com/us/en/current-aerial-maps-coverage> for Canada and the United States of America, at <https://www.nearmap.com/au/coverage> for Australia, and at <https://www.nearmap.com/nz/coverage> for New Zealand.

1.29. "**Third-Party Services**" has the meaning set forth in Section 3.5.

1.30. "**Usage Data**" has the meaning set forth in Section 3.4.

## 2. NEARMAP PRODUCTS AND SERVICES

2.1. **Access to Products.** Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of the Agreement:

2.1.1. **Platform.** To the extent Customer elects to use the Platform or the Platform is specified in an Order Form, Nearmap hereby grants Customer a non-exclusive, non-sublicensable (unless otherwise permitted in this Agreement), royalty-free, non-transferable (except in compliance with Section 14.1)

right to access and use the Platform in the Territory during the Subscription Term to: (a) use the Platform and the Nearmap Data for Customer's internal business purposes subject to any further limitations set forth in an Order Form; (b) create Derivative Works of the Nearmap Data (subject to Section 2.2), strictly in the form of reports, presentations, maps or other documents for internal purposes only that are fixed in a non-manipulable medium (the "**Output**"); and (c) use, and make a reasonable number of copies of, the Documentation solely in connection with the exercise of Customer's rights under this Section 2.1.1, solely for use by Authorized Users in accordance with the Documentation and the terms and conditions herein.

- 2.1.2. **API.** To the extent Customer elects to use an API or an API is specified in an Order Form, Nearmap hereby grants to Customer a non-exclusive, non-sublicensable (unless otherwise permitted in this Agreement), royalty-free, and non-transferable (except in compliance with Section 14.1) right and license in the Territory during the

Subscription Term to: (a) access and use the APIs to receive Nearmap Data; (b) use the Nearmap Data for Customer's internal business purposes subject to any further limitations set forth in an Order Form; (c) create Output for internal purposes only; and (d) use, and make a reasonable number of copies of, the Documentation solely in connection with the exercise of Customer's rights under this Section 2.1.2.

- 2.1.3. **Other Rights Reserved.** Other than as expressly set out in Sections 2.1.1 and 2.1.2, Customer may not use the Platform, an API, or Nearmap Data for any other purpose without Nearmap's prior written consent, and all other rights therein and thereto are hereby reserved by Nearmap.

- 2.2. **Nearmap Attribution.** If Customer creates Output, Customer must expressly acknowledge Nearmap in a reasonably prominent manner on each Output (by displaying the Nearmap logo or such other attribution as reasonably requested by Nearmap), as the source of any data underlying the Output. Unless otherwise permitted in writing by Nearmap, Customer must not remove or cause to be removed any Nearmap logo, watermark, or other Nearmap attribution in any Output. Customer must include all requisite legends indicating and preserving Nearmap's rights in and to the Products. All Output must include the following copyright notice on the work: "Created with [TITLE OF PRODUCT]© [year] Nearmap US, Inc.", if the Nearmap contracting entity is Nearmap US; or "Created with [TITLE OF PRODUCT]© [year] Nearmap Australia Pty Ltd", if the Nearmap contracting entity is Nearmap AU.

- 2.3. **Authorized Users.** Authorized Users may use the Products on Customer's behalf, provided Customer remains liable and responsible for the acts and omissions of each such Authorized User. Customer acknowledges and agrees that each Authorized User must have its own unique password and cannot share such password with any other users. If Customer is given passwords to access the Products on Nearmap's systems, Customer shall require that all Authorized Users keep user ID and password information strictly confidential and not share such information with any unauthorized person. Customer shall be responsible for any and all actions taken using Customer's accounts and passwords.

- 2.4. **Use by Affiliates.** Each of Customer's Affiliates will be entitled to access and use the Products in accordance with the terms and conditions of this Master Subscription Agreement, provided that such Affiliate executes a separate Order Form with Nearmap.

- 2.5. **General Restrictions.** Customer shall not, and shall not allow or induce any third party (including any Authorized User) to: (a) sell, rent, lease, or use the Products for time sharing purposes; (b) use the Products to help develop, or help provide to any third party, any product or service similar to or competitive with the Products, or copy any ideas, features, functions, documentation, content, audio or visual material, images, graphics, photos, digitalmedia, or other materials or content of any type that are provided by, derived from, or based on the Products; (c) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code of the Products; (d) copy, modify, or create Derivative Works from the Products or any Documentation (except as permitted in Section 2.1.1(b) or Section 2.1.2(c));

(e) remove or obscure any copyright or proprietary or other notice contained in the Products or Documentation; (f) create an internal or commercial imagery dataset or Derivative Works composed principally of the Nearmap Data; (g) unless otherwise stated in an Order Form, make the Products publicly accessible or viewable; (h) use the Products for the purpose of product development, tuning, training, or modification of internal models, generation of aggregated analysis, or creation of data elements related to the Products; (i) create any Derivative Works from the Products combined with any third party imagery or based on any third party imagery; (j) propagate any virus, Trojan horse, or other malware or programming routine intended to damage any system or data; (k) access or use the Products in a manner intended to circumvent or exceed service account limitations, contractual usage limits, or requirements; (l) disrupt, disable, interfere with, or disrupt the integrity or performance of the Products or the data contained therein, including

through excessive use; (m) use any Products in a manner that violates any Applicable Law, regulation, or legal requirement or obligation; (n) use any Products in violation of any third-party rights of privacy or intellectual property rights; (o) use or permit the use of any tools in order to probe, scan, or attempt to penetrate or benchmark any Products; (p) post, upload, transmit, or provide any Customer Data that Nearmap reasonably deems to be unlawful, harmful, abusive, or otherwise objectionable; (q) attempt to gain unauthorized access to the Products or its related systems or networks; (r) utilize any machine learning products, including any open-source products, in connection with the use of the Products; or (s) use the Products except as expressly permitted by the Agreement.

- 2.6. **Support; Improvements.** Customer acknowledges that Nearmap may improve and modify the features and functionality of the Products during the Subscription Term. Nearmap will provide Customer with commercially reasonable notice of any changes made to a material feature or functionality of the Products and will provide support to Customer in accordance with its then-current support policies generally available to Nearmap customers via the Nearmap website: <https://support.nearmap.com> ("**Support Policy**"). Notwithstanding the foregoing, Nearmap has no obligation to provide Customer with any additional support, but if Nearmap and Customer agree to do so, Nearmap may charge Customer reasonable additional fees for the additional support provided to Customer by Nearmap.
- 2.7. **Product-Specific Terms.** For any Products listed on an Order Form, the applicable Product-Specific Terms are hereby incorporated into the Agreement by reference.
- 2.8. **Service Level Agreement.** Nearmap's uptimes, metrics, and provision of the Products are in accordance with the system status located at: <https://www.nearmap.com/status> ("**Status**"). Customer may subscribe to receive optional Status updates. Nearmap will provide the Platform in accordance with the availability obligations, service credits, and other terms set forth in the Service Level Agreement.
- 2.9. **Nearmap Policies.** Nearmap reserves the right to update its Product-Specific Terms, Support Policy, Documentation, and Privacy Policy (collectively "**Nearmap Policies**") at any time in its sole discretion provided that any updates shall not materially diminish the level of privacy, support, or obligations set forth in such Nearmap Policies during the Subscription Term in which Nearmap updates such Nearmap Policies.

### 3. CUSTOMER'S OBLIGATIONS; CUSTOMER DATA

- 3.1. **Customer Obligations.** Customer is solely responsible for the accuracy, content, and legality of all Customer Data. Customer represents and warrants to Nearmap that: (a) Customer's use of the Products and all Customer Data is and will be at all times compliant with all Applicable Laws; (b) Customer has provided all required notices and obtained and will maintain (and acknowledges it is solely responsible for obtaining and maintaining) all necessary consents as may be required by Applicable Laws to grant the Customer Data rights granted to Nearmap in Section 3.3, and Process such Customer Data as contemplated by the Agreement; (c) Nearmap's use of the Customer Data does not infringe or otherwise violate the rights of any third party, including any intellectual property rights, fiduciary duty, and/or privacy rights; (d) Customer will access the APIs using only the login credentials and API key(s) assigned to Customer and as provided by Nearmap; (e) Customer will comply with any limits placed on access to and use of the APIs in the Order Form or in the Documentation, including any rate or data limits on queries to the API; and (f) Customer is responsible for all activities that occur with respect to the Products, use of the Products, and compliance with the Agreement. Customer is responsible for, and will hold confidential, all login credentials, including usernames and passwords, for administrator accounts, as well as the accounts of the Authorized Users. Nearmap will not be responsible for any damages, losses, or liability to Customer, Authorized Users, or anyone else due to such information not being kept confidential by Customer or the Authorized Users, or if such information is correctly provided by an unauthorized third-party logging into and accessing the products.
- 3.2. **Customer Restrictions.** Unless otherwise agreed to in writing, Customer is prohibited from uploading, or otherwise providing, directly or indirectly (including via a third-party provider or an Authorized User) by or through the Products, or provided by Customer to Nearmap to input into the Products, Customer Data that includes any sensitive information, including a social security number, passport number, driver's license number, or similar identifier, credit card or debit card number, or any other similar information which may be subject to specific data privacy and security laws. Nearmap does not make any representations as to the adequacy of the Products to Process Customer Data or to satisfy any legal or compliance requirements which may apply to Customer Data, other than as described herein.
- 3.3. **Rights in Customer Data.** As between the parties, Customer shall retain all right, title and interest (including all patent, copyright, trade secret, and other intellectual property rights) in and to Customer Data. Customer hereby grants to Nearmap a non-exclusive, worldwide, irrevocable, transferable, sublicensable (through



multiple tiers), fully paid-up, royalty-free right and license to use, copy, store, transmit, modify, and display Customer Data in order to: (a) provide the Products to Customer; (b) perform such other actions as authorized or instructed by Customer in writing (email to suffice); and (c) as otherwise permitted by Applicable Laws. Nearmap will not share Customer Data with any third parties, except with (i) Nearmap's Affiliates, (ii) a subcontractor for a business purpose pursuant to a written agreement, provided that Nearmap shall be liable to Customer for the acts or omissions of any subcontractor to whom Nearmap has disclosed or permitted to access Customer Data as if they were the acts or omissions of Nearmap; and (iii) to third parties as necessary to comply with Applicable Laws.

3.4. **Usage Data and De-identified Data.** Customer acknowledges and agrees that Nearmap may create, collect, analyze, retain, and use data and other information that results or is derived from (a) Customer's use of the Products ("**Usage Data**"); and (b) Customer Data that is used solely in a deidentified manner such that the information is no longer Personal Data under Applicable Laws ("**De-identified Data**"), for the purposes of developing, maintaining, operating, improving, or providing the Products. For clarity, Usage Data and De-identified Data, and all intellectual property and proprietary rights therein, shall be exclusively owned by Nearmap. In the event Customer gains or retains any interest in the Usage Data or De-identified Data, Customer hereby irrevocably assigns to Nearmap any and all right, title, and interest in and to any Usage Data or De-identified Data.

3.5. **Third Party Application Service Providers.** Customer may be able to access and use certain third-party services or products (e.g., a third-party service that integrates with Nearmap via opt-in or uses Nearmap's APIs) through or with

its use of the Products ("**Third-Party Services**"). IF CUSTOMER USES ANY THIRD-PARTY SERVICES, CUSTOMER AGREES TO SUCH THIRD-PARTY SERVICES' TERMS AND CONDITIONS AND NEARMAP WILL NOT BE RESPONSIBLE FOR ANY ACT OR OMISSION OF ANY PROVIDER OF SUCH THIRD-PARTY SERVICES. NEARMAP DOES NOT WARRANT OR PROVIDE DIRECT SUPPORT FOR ANY THIRD-PARTY SERVICES. CUSTOMER ACKNOWLEDGES AND AGREES THAT NEARMAP WILL HAVE NO RESPONSIBILITY OR LIABILITY FOR THE ACTS OR OMISSIONS OF ANY AUTHORIZED USERS IN CONNECTION WITH ANY THIRD-PARTY SERVICES.

#### 4. IP OWNERSHIP

##### 4.1. Ownership.

4.1.1. **Nearmap Ownership.** Customer agrees that Nearmap or the providers of Third-Party Services own and retain all right, title, and interest (including all patent, copyright, trade secret, and other intellectual property rights) in and to (a) the Products, Documentation, Nearmap Data, Usage Data, De-identified Data, and any and all related and underlying technology, documentation, content, audio or visual material, images, graphics, photos, digital media, or other materials or content of any type, trademarks, and other information and (b) any idea, discovery, design, method, material, formula, trade secret, invention (including any discovery of a new technology and any improvement to existing technology), know-how, innovation, writing, work of authorship, compilation, and other development or improvement, whether or not patented or patentable, copyrightable, or reduced to practice or writing and all intellectual property rights thereto.

4.1.2. **Customer Ownership.** Subject to Section 6.4, Customer may continue using the Output provided that Nearmap may, by written notice to Customer at any time, limit Customer's use of certain Output or require Customer to cease using certain Output (and delete any copies of them) if Nearmap forms the view, in Nearmap's sole and absolute discretion, that Customer's use of the Output may infringe the rights of any third party. For the avoidance of doubt, Nearmap will continue to own all rights in and to any Nearmap Data embedded in any Output, but all other rights in and to the Output will belong to Customer.

4.2. **Feedback.** In the event Customer or its Authorized Users provide Nearmap with any suggestions, ideas, improvements, or other feedback with respect to any aspect of the Products ("**Feedback**"), Customer hereby irrevocably assigns to Nearmap any and all right, title, and interest in and to any Feedback.

#### 5. FEES AND PAYMENT

5.1. **Fees and Payment.** All undisputed fees set forth in the Order Form (the "**Fees**") shall be paid by Customer within thirty

(30) days of Nearmap's provision of an invoice to Customer. All Fees are due and payable in advance at the start of the applicable Subscription Term (and each renewal term), and except as set forth in an Order Form, all payments shall be

made in the currency detailed in the invoice provided by Nearmap via ACH, credit card, or such other method as Nearmap communicates to Customer. Except as expressly set forth in Section 7.1, or 9.1(iii), all Fees are non-refundable. Any late payments shall be subject to a service charge equal to the maximum amount allowed by law (plus the costs of collection and reasonable attorneys' fees). Nearmap's other contractual and/or statutory rights, claims, and remedies remain unaffected. Fees for the Products are based on units purchased during the Subscription Term and not actual usage. Customer acknowledges and agrees that the number of units purchased cannot be decreased during a Subscription Term and that the units purchased will not roll over to the next Renewal Subscription Term.

- 5.2. **Excess Fees.** Customer is responsible for paying all actual excess fees incurred by Nearmap based on: excess data, storage, processing, API calls, and access fees charged by Nearmap's third-party cloud service providers as a result of Customer's use in excess of the amount(s) permitted in the Agreement.
- 5.3. **Fee Dispute.** If Customer has a good faith belief that a particular invoice is incorrect, Customer must contact Nearmap in writing (email to suffice) within sixty (60) days of such invoice date detailing the basis of the dispute. Customer may only withhold payment on the timely disputed amount in accordance with this Section. Any payment not received by Nearmap by the due date and not subject to a good faith dispute may accrue late charges at the maximum rate permitted by law, from the date such payment was due until the date paid. Nearmap's other contractual and/or statutory rights, claims, and remedies remain unaffected.
- 5.4. **Taxes.** If Customer contracts with (a) Nearmap AU, Customer will be responsible for the payment of any and all local, state, federal, or foreign taxes, levies, and duties of any nature, including value-added, sales, use, withholding taxes, and applicable goods and services tax (GST) under A New Tax System (Goods and Services Tax) Act 1999 (Cth) (GST Law) of Australia and its associated regulations, as amended; or (b) Nearmap US, Customer will be responsible for the payment of any and all local, state, federal, or foreign taxes, levies, and duties of any nature, including value-added, sales, use, and withholding taxes. If GST is payable on a supply made by Nearmap, Customer must pay as additional consideration an amount equal to the amount of GST payable on that supply. Customer is responsible for paying all

taxes, excluding only taxes based on Nearmap's net income. If Nearmap has the legal obligation to pay or withhold taxes for which Customer is responsible under this Section 5.4, the appropriate amount shall be invoiced to and paid by Customer unless Customer is exempt from paying such taxes or subject to a reduced state of withholding tax and the Customer provides Nearmap with proof of a valid tax exemption certificate authorized by the appropriate taxing authority.

- 5.5. **Audit.** During the Subscription Term and for two (2) years after termination or expiration of the Agreement, Customer shall maintain accurate and complete records regarding its access and use of the Products. Customer shall permit Nearmap (or its auditors) access to such records, books, systems and Authorized Users to confirm compliance with the Agreement. Nearmap will give at least thirty (30) days' prior written notice of an audit and will not conduct an audit more than once per calendar year unless non-compliance findings are noted, in which case the audit period may be extended. If an audit results in findings of non-compliance, Nearmap may, at its discretion: (a) invoice any additional license fees due based on the Fees set forth in the applicable Order Form; (b) recover the reasonable cost of the audit if additional Fees exceed five percent (5%) of the Fees paid during the audit period; and (c) terminate the Agreement in accordance with Section 6.2. Customer must pay all invoices issued under this Section 5.5 within thirty (30) days following the date of invoice.

## 6. TERM; TERMINATION; SUSPENSION

- 6.1. **Subscription Term.** The initial term of the Products shall begin on the Effective Date of the subscription specified in the Order Form and extend for the Subscription Term specified in the applicable Order Form. Upon the expiration of the initial term specified in the applicable Order Form, the term will automatically renew for successive terms of twelve

(12) months each unless either party provides the other party at least thirty (30) days written notice prior to the expiration of the then-current Subscription Term of its intention not to renew the Subscription Term.

- 6.2. **Termination.** Either party may terminate the Agreement if the other party (a) fails to cure any material breach of the Agreement (including a failure to pay Fees) within thirty (30) days after written notice (such notice must contain sufficient detail as to the nature of the breach and state the intent to terminate and email notice is valid only in the case of termination for non-payment of Fees); (b) ceases operation without a successor; (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter); or (d) if applicable, a party suspends payment of its debts generally, or is or

becomes unable to pay its debts when they are due, or is or becomes unable to pay its debts within the meaning of the Corporations Act.

- 6.3. **Suspension of Products.** Upon written notice (email to suffice) to Customer, in addition to any of its other rights or remedies, Nearmap may immediately suspend Customer's access to the Products if (a) except as provided in Section 5.1, Customer's account is ten (10) days or more overdue until such amounts are paid in full; (b) Customer is in material breach of any term in this Agreement, provided that such suspension will be narrowly tailored to address the cause of suspension for only the duration needed for Customer to cure such breach; (c) there is an attack on the Products, the Products are accessed or manipulated by a third party, or there is another event for which Nearmap reasonably believes that the suspension of Customer's access to the Products is necessary to protect Nearmap's network or its other customers; (d) Nearmap is required to do so by law (e.g., where providing access to Customer or an Authorized User may be, or become, unlawful); or (e) a licensor, supplier, or provider of Third-Party Services offering its products or services to Nearmap has terminated its relationship with Nearmap or ceased to offer such products or services.
- 6.4. **Effect of Termination.** Upon termination or expiration, Customer agrees to: (a) stop all uses of the Products, Nearmap Data, and any Output; (b) permanently delete the Products, Nearmap Data, and any Output from all devices and systems of all Authorized Users (provided that, however, Customer may retain one copy of the Output and Nearmap Data included therein for compliance, regulatory, and archival purposes as required by Applicable Laws provided that such Output and Nearmap Data included therein shall remain subject to the confidentiality and non-use obligations set forth herein for so long as such Output and the Nearmap Data included therein is retained); and (c) within five (5) days of such termination, ensure that an officer of Customer certifies in writing that all applicable copies of the Products, Nearmap Data, and Output have been permanently deleted or destroyed. Except as otherwise set forth herein, termination of the Agreement is not an exclusive remedy and the exercise by either party of any remedy under the Agreement will be without prejudice to any other remedies it may have under the Agreement, by law, or otherwise. Except in the case of Customer's termination for Nearmap's material breach pursuant to Section 6.2, Customer shall pay to Nearmap all Fees accrued or payable to Nearmap upon the effective date of termination in accordance with Section 5.
- 6.5. **Customer Data.** Customer acknowledges that if Customer or an Authorized User deletes or modifies Customer Data from the Products, Customer Data may still reside in Nearmap's systems, applications, databases, and servers (including as backups and/or archives). Customer acknowledges that Customer's deletion or modification of Customer

Data during any Subscription Term may have an adverse impact on Customer's use of the Products (and Nearmap is not liable with respect thereto).

- 6.6. **Survival.** The following Sections shall survive any expiration or termination of the Agreement: 2.2, 3, 4, 5, 6.4, 6.5, 7.2, 8, 9, 10, 12, and 14.

## 7. LIMITED WARRANTY; DISCLAIMER

- 7.1. **Limited Warranty.** Nearmap warrants that (a) it will provide the Products in a manner consistent with general industry standards reasonably applicable to the provision thereof; and (b) Nearmap will not materially decrease the overall functionality of the Products. Nearmap's sole liability (and Customer's sole and exclusive remedy) for any breach of the warranties set forth in Section 7.1(a) and 7.1(b) shall be, in Nearmap's sole discretion and at no additional charge to Customer, to use commercially reasonable efforts to offer Customer an error correction or work-around so that the Product(s) materially conform(s) to the warranty, or if Nearmap determines such remedies to be impracticable, Nearmap may terminate the remaining Subscription Term and Customer shall receive as its sole remedy and Nearmap's entire liability shall be, a refund of any prepaid Fees for Products not used as of the date of the warranty claim. The limited warranty set forth in this Section 7.1 shall not apply: (a) unless Customer makes a written claim in accordance with Section 14.7 within thirty (30) days of the date on which the condition giving rise to the claim first appeared, (b) if the error was caused by misuse, unauthorized modifications or third-party hardware, software, or services, (c) if the decrease in functionality is caused by the combination of the Products with any services, hardware, connection, interface, data, or business processes not provided by Nearmap, or (d) to the Products provided on a no-charge or evaluation basis.
- 7.2. **Warranty Disclaimer.** EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION 7, THE PRODUCTS, AND ANY AND ALL RELATED AND UNDERLYING TECHNOLOGY, CONTENT, AUDIO OR VISUAL MATERIAL, IMAGES,

GRAPHICS, PHOTOS, DIGITAL MEDIA OR OTHER MATERIALS OR CONTENT OF ANY TYPE, TRADEMARKS, AND OTHER INFORMATION ARE PROVIDED "AS IS" AND NEARMAP AND ITS THIRD-PARTY PROVIDERS, AGENTS, MANDATARIES, AND AFFILIATES HEREBY DISCLAIM, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, OF MERCHANTABILITY, OR THAT THE PRODUCTS AND ANY AND ALL RELATED AND UNDERLYING TECHNOLOGY, CONTENT, AUDIO OR VISUAL MATERIAL, IMAGES, GRAPHICS, PHOTOS, DIGITAL MEDIA OR OTHER MATERIALS OR CONTENT OF ANY TYPE, TRADEMARKS, AND OTHER INFORMATION, OR ANY RESULTS OF OR THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, BE COMPATIBLE OR WORK WITH ANY PRODUCTS, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, CORRECT, RELIABLE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE. ADDITIONALLY, NEARMAP STRICTLY DISCLAIMS ALL WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCTS. CUSTOMER IS SOLELY RESPONSIBLE FOR ITS AND ITS AUTHORIZED USERS' INTERACTIONS AND SHARING OF INFORMATION WITH OTHER USERS.

- 7.3. Notwithstanding any other provision, the rights of a party under this Agreement are in addition to and do not exclude or limit any other rights or remedies under the Australian Consumer Law in the Competition and Consumer Act 2010 (Cth), to the extent the Customer contracts with Nearmap AU.

## 8. LIMITATION OF LIABILITY.

- 8.1. NEITHER PARTY SHALL BE LIABLE, UNDER ANY LEGAL OR EQUITABLE THEORY OF LAW, WITH RESPECT TO ANY SUBJECT MATTER OF THE AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING LOST PROFITS, BUSINESS, CONTRACTS, REVENUE, GOODWILL, PRODUCTION, AND ANTICIPATED SAVINGS OR DATA, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.
- 8.2. EXCEPT WITH RESPECT TO (A) EITHER PARTY'S OBLIGATIONS UNDER SECTION 9 (INDEMNIFICATION) (WHICH SHALL BE LIMITED IN THE AGGREGATE TO TWO TIMES (2X) THE FEES PAID BY CUSTOMER TO NEARMAP UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE (12) MONTH PERIOD PRIOR TO WHEN THE CLAIM AROSE); (B) EITHER PARTY'S OBLIGATIONS UNDER SECTION 10 (CONFIDENTIAL INFORMATION) (WHICH SHALL BE LIMITED IN THE AGGREGATE TO TWO TIMES (2X) THE FEES PAID BY CUSTOMER TO NEARMAP UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE (12) MONTH PERIOD PRIOR TO WHEN THE CLAIM AROSE); (C) CUSTOMER'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT; (D) CUSTOMER'S BREACH OF SECTION 2.5 (GENERAL RESTRICTIONS); OR (E) EITHER PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD AS DETERMINED BY A COURT OF FINAL AND COMPETANT JURISDICTION: EACH PARTY'S AGGREGATE LIABILITY SHALL IN NO EVENT EXCEED THE FEES PAID BY

CUSTOMER TO NEARMAP UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE (12) MONTH PERIOD PRIOR TO WHEN THE CLAIM AROSE.

- 8.3. THE LIMITATIONS UNDER THIS SECTION 8 APPLY WITH RESPECT TO ALL LEGAL THEORIES, WHETHER IN CONTRACT, TORT OR OTHERWISE, AND TO THE EXTENT PERMITTED BY LAW. THE PROVISIONS OF THIS SECTION 8 ALLOCATE THE RISKS UNDER THE AGREEMENT BETWEEN THE PARTIES, AND THE PARTIES HAVE RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO ENTER INTO THE AGREEMENT AND THE PRICING FOR THE PRODUCTS.

## 9. INDEMNIFICATION.

- 9.1. **Nearmap Indemnification.** Nearmap shall defend Customer at Nearmap's expense against any claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising from the direct infringement of a U.S. and Australia registered intellectual property rights asserted against Customer by a third party based upon Customer's use of the Products as delivered by Nearmap in accordance with the terms of the Agreement and Nearmap shall indemnify and hold Customer harmless against all reasonable costs (including attorneys' fees) finally awarded against Customer by a court of competent jurisdiction, or agreed in a written settlement agreement signed by Nearmap, provided that Nearmap shall have received from Customer: (a) prompt written notice of such claim (but in any event notice in sufficient time for Nearmap to respond without prejudice); (b) the exclusive right to control and direct the investigation, defense, or settlement (if applicable) of such claim (as long as such settlement releases Customer from any and all liability); and (c) all reasonable necessary cooperation of Customer. If Customer's use of any Products is, or in Nearmap's opinion is likely to be, enjoined due to the type of infringement specified above, or if required by settlement, or Nearmap exercises its right to require Customer to limit or

cease using Output under Section 4.1.2, Nearmap may, in its sole and reasonable discretion: (i) substitute substantially functionally similar products or services; (ii) procure for Customer the right to continue using the Products; or if (i) and (ii) are commercially impracticable, (iii) terminate the Agreement and refund to Customer any unused, prepaid Fees paid by Customer for the terminated period. The foregoing indemnification obligation of Nearmap shall not apply to the extent that the alleged infringement arises from: (1) any modification of the Products by any other party other than Nearmap; (2) access to or use of any Products in combination with any hardware, system, software, network, or other products, materials, or services not provided by Nearmap; (3) use of the Products in breach of the Agreement; or (4) Customer Data. THIS SECTION 9.1 SETS FORTH NEARMAP'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

9.2. **Customer Indemnification.** Customer agrees to defend, indemnify and hold harmless Nearmap and its affiliates, licensors, and suppliers, and Nearmap's and their respective employees, contractors, agents, officers, and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including reasonable attorneys' fees and costs) arising from: (a) Customer's and any Authorized User's use of the Products; and

(b) Customer's violation of Section 2.5 (General Restrictions).

## 10. CONFIDENTIALITY.

10.1. **Confidential Information.** Each party, as a receiving party, agrees to retain in confidence the non-public information and know-how disclosed to it pursuant to the Agreement which is either designated in writing as proprietary and/or confidential, if disclosed in writing, or if disclosed orally, is designated in writing (which may be via email) as confidential within thirty (30) days of the oral disclosure or should reasonably be understood to be confidential by the recipient (the "**Confidential Information**"). Notwithstanding any failure to so designate them, the Products, the Documentation, the Usage Data, the De-identified Data, the Nearmap Data, the Feedback, and the commercial terms of the Agreement as set forth in any Order Form shall be Nearmap's Confidential Information. Each party agrees to:

(a) preserve and protect the confidentiality of the other party's Confidential Information, using at least the same degree of care which it uses to prevent the disclosure of its own confidential information of like importance, but in no event less than reasonable care; (b) refrain from using the other party's Confidential Information except as contemplated herein; and (c) not disclose such Confidential Information to any third party except to employees, officers, affiliates, controlling stockholders, agents, advisors, subcontractors, and other representatives as is reasonably required in connection with the exercise of its rights and obligations under the Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein). Each party agrees to promptly notify the other party of any unauthorized disclosure or use of any Confidential Information and to assist the other party in remedying such unauthorized use or disclosure by taking such steps as are reasonably requested.

10.2. **Exceptions.** Notwithstanding the foregoing, Confidential Information shall not include information which is:

(a) already publicly known without breach of the Agreement; (b) discovered, created or independently developed by the receiving party without use of, reliance upon, or reference to, the Confidential Information of the disclosing party, as shown in records of the receiving party; (c) otherwise known to the receiving party through no wrongful conduct of the receiving party, or (d) required to be disclosed by law or court order or by the listing rules of any stock exchange where the

recipient's securities are listed or quoted; provided that the receiving party shall provide prompt notice thereof and commercially reasonable assistance to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. Moreover, either party hereto may disclose any Confidential Information hereunder to such party's agents, attorneys and other representatives (and only subject to confidentiality obligations at least as protective as those set forth herein) or any court of competent jurisdiction as reasonably required to resolve any dispute between the parties hereto. Each party agrees and acknowledges that any breach or threatened breach of this Section 10 may cause irreparable injury to the disclosing party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the disclosing party shall be entitled to seek injunctive relief against the threatened breach of the Agreement or the continuation of any such breach by the receiving party, without the necessity of proving actual damages or posting any bond, in addition to any other rights or remedies provided by law.

11. **SECURITY.** Each party shall comply with all Applicable Laws. Nearmap shall use reasonable physical, technical, and administrative procedures, which procedures may include SOC 2 certification or the equivalent thereof depending on the Product, designed to protect, safeguard and help prevent loss, misuse, and unauthorized access, disclosure, alteration or destruction of Customer Data, and will choose these safeguards based on the sensitivity of the information that is collected, Processed, and stored and the current state of applicable

technology. Upon Customer's written request, Nearmap shall, not more than once per rolling twelve (12) months, respond to a reasonable security questionnaire provided by Customer regarding Nearmap's compliance with the obligations set forth in this Section 11. All Nearmap's responses and information provided in response to Customer's security questionnaires are Confidential Information under this Agreement. In lieu of completing Customer's security questionnaire, Nearmap may make available to Customer information regarding Nearmap's compliance with the obligations set forth in this Section 11 in the form of a copy of the summary of Nearmap's then-current applicable security audit report.

12. **PUBLICITY.** Except as otherwise agreed in writing (email to suffice), neither party may use the other party's name, logos, or marks without such party's written pre-approval in each case.
13. **DATA PROCESSING.** Nearmap's data security and privacy practices form an integral part of Nearmap's product engineering and service delivery principles. Customer understands and acknowledges that to the extent Nearmap Processes any Personal Data, Nearmap shall do so in accordance with its privacy notice, which is available at <https://www.nearmap.com/us/en/legal/privacy-policy> (if contracting with Nearmap US) defined data or information under Applicable Laws, Nearmap will Process such information as a data "processor" or "service provider" (each term, as applicable) and a list of Nearmap's sub-processors will be made available upon Customer's written request (email to suffice).
14. **GENERAL TERMS**
  - 14.1. **Assignment.** The Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign the Agreement except upon the advance written consent of the other party, except that either party may assign the Agreement without such consent in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of such party's assets or voting securities (other than, in the case of Customer, to an entity that is reasonably deemed to be a direct competitor of Nearmap). Any attempt to transfer or assign the Agreement except as expressly authorized under this Section 14.1 will be null and void.
  - 14.2. **Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform any obligation under the Agreement if the delay or failure is due to unforeseen events which occur after the signing of the Agreement and which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, or failure or diminishment of power or telecommunications or data networks or services.
  - 14.3. **Subcontractors.** Nearmap may use the services of subcontractors for performance of services under the Agreement, provided that Nearmap remains responsible for such subcontractors' compliance with the terms of the Agreement.
  - 14.4. **Independent Contractors.** The parties to the Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise, or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.
  - 14.5. **Severability.** If any provision of the Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that the Agreement shall otherwise remain in effect.
  - 14.6. **Governing Law and Venue; Waiver of Jury Trial.**
    - 14.6.1. If Customer contracts with Nearmap AU, then the Agreement and any disputes arising out of or related hereto shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia, without giving effect to its conflicts of laws rules, the United Nations Convention on the International Sale of Goods, or the Uniform Computer Information Transactions Act. Except for claims for injunctive or equitable relief or claims regarding intellectual property rights (which may be brought in any competent court in New South Wales). The jurisdiction and venue for actions related to the subject matter hereof shall be the state and federal courts located in New South Wales, Australia and both parties hereby submit to the personal jurisdiction of such courts. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to the Agreement.
    - 14.6.2. If Customer contracts with Nearmap US, then the Agreement and any disputes arising out of or related hereto shall be governed by and construed in accordance with the laws of the State of Utah, United

States of America, without giving effect to its conflicts of laws rules, the United Nations Convention on the International Sale of Goods, or the Uniform Computer Information Transactions Act. The jurisdiction and venue for actions related to the subject matter hereof shall be the state and United States federal courts located in Salt Lake County, Utah except for claims for injunctive or equitable relief or claims regarding intellectual property rights (which may be brought in any competent court in Salt Lake County) and both parties hereby submit to the personal jurisdiction of such courts. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to the Agreement.

- 14.7. **Notice.** Notwithstanding anything to the contrary herein, any notice or communication required or permitted under the Agreement shall be in writing to the parties at the addresses set forth in the applicable Order Form or at such other address as may be given in writing by either party to the other in accordance with this Section. A notice shall be deemed to have been received by the addressee (a) if given by hand, immediately upon receipt; (b) if given by overnight courier service, immediately upon receipt; or (c) if given by registered or certified mail, postage prepaid and return receipt requested, the fourth day (excluding holidays) after such notice is deposited in the mail. In addition, any legal notices to Nearmap must be delivered to the following email address: [legal@nearmap.com](mailto:legal@nearmap.com) but, notwithstanding earlier receipt via email, legal notices will be deemed received when the physical notice is received as set forth in the preceding sentence.
- 14.8. **Order of Precedence.** In the event of any conflict between this Master Subscription Agreement, an Order Form, and the Product-Specific Term, the order of precedence shall be (a) Order Form; (b) this Master Subscription Agreement; and (c) the Product-Specific Terms (unless expressly stated otherwise in the Product-Specific Terms), in order of appearance.
- 14.9. **Amendments; Waivers.** All supplements, modifications, or amendments of the Agreement shall be executed in writing by a duly authorized representative of each party to the Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under the Agreement, nor will any waiver be effective unless in writing signed by a duly authorized representative on behalf of the party claimed to have waived. Purchase orders (and similar documents) issued by Customer are for administrative purposes only (e.g., setting forth products and services ordered and associated fees) and any additional or different terms or conditions contained in any such order shall not apply (even if the order is accepted, or performed on by Nearmap).
- 14.10. **Interpretation.** The words “hereof,” “herein,” and “hereunder” and words of similar import, when used in the Agreement, will refer to the Agreement as a whole and not to any particular provision of the Agreement. Terms defined in the singular will have correlative meanings when used in the plural, and vice versa. The headings herein are for convenience of reference only, do not constitute part of the Agreement and will not be deemed to limit or otherwise affect any of the provisions hereof. Where a reference in the Agreement is made to a section, exhibit, or schedule, such reference will be to a section, exhibit, or schedule to the Agreement unless otherwise indicated. Whenever the words “include,” “includes” or “including” are used in the Agreement, they will be deemed to be followed by the words “without limitation,” unless preceded by the word “not.” If a link herein redirects to a geographic-specific link, including but not limited to geographic-specific sites for Australia, New Zealand, and Canada, that geographic-specific link shall be given the same effect as if it were explicitly included in the Agreement in lieu of the link from which the redirect occurred that is set forth in the Agreement.
- 14.11. **No Third-Party Rights.** There are no third-party beneficiaries to the Agreement.
- 14.12. **Export Compliance.** Each party shall comply with all applicable export and re-export control and trade and economic sanctions laws, including the Export Administration Regulations maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC), and the International Traffic in Arms Regulations maintained by the U.S. State Department. Neither party, nor any of its subsidiaries or any person acting on its behalf or owning fifty percent (50%) or more of its equity securities or other equivalent voting interests, is (a) a person on the List of Specially Designated Nationals and Blocked Persons or any other list of sanctioned persons administered by OFAC or any other governmental entity, or (b) a national or resident of, or a segment of the government of, any country or territory for which the United States of America has embargoed goods or imposed trade sanctions.
- 14.13. **Compliance with Anti-corruption Laws.** Each party shall comply with the U.S. Foreign Corrupt Practices Act and any Applicable Laws related to anti-corruption of other countries, to the extent applicable. Each party shall not, at any time, directly or indirectly (through a subcontractor or other third party), pay, offer, give, or

promise to pay or give, or authorize the payment of, any monies or any other thing of value to influence the improper performance of any individual government officials and employees of state-owned enterprises.

- 14.14. **Entire Agreement.** The Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications, relating to the subject matter of the Agreement. Unless expressly agreed between the parties in writing in an Order Form, the terms, conditions, or provisions of any purchase order, invoice, or other administrative document issued by Customer in connection with the Agreement will not modify, alter, or expand the rights, duties, or obligations of the parties under, or will not otherwise modify, the Agreement, irrespective of the timing of its issuance or any failure of Nearmap to object to such terms, conditions, or provisions.



**ADDENDUM TO MASTER SUBSCRIPTION AGREEMENT  
(GOVERNMENT CUSTOMERS)**

1. Section 1.1 (Affiliate) of the Agreement is deleted in its entirety and replaced with the following:

“**Affiliate**” means an entity that, directly or indirectly, controls, is controlled by, or is under common control with a party. As used herein, “control” means the power to direct the management or affairs of an entity or the beneficial ownership of fifty percent (50%) or more of the voting equity securities or other equivalent voting interests of an entity.”

2. Section 1.6 (Corporations Act) of the Agreement is deleted in its entirety and replaced with “Intentionally Omitted”.

3. Section 1.14 (Nearmap) of the Agreement is deleted in its entirety and replaced with the following:

“**Nearmap**” means Nearmap US, Inc. (“Nearmap US”), with offices located at 1850 Ashton Blvd, Ste 500, Lehi, UT 84043.”

4. Section 1.28 (Territory) of the Agreement is deleted in its entirety and replaced with the following:

“**Territory**” means the United States of America. Coverage by Nearmap within the Territory is outlined at <https://www.nearmap.com/us/en/current-aerial-maps-coverage>.”

5. Section 2.2 (Nearmap Attribution) of the Agreement is deleted in its entirety and replaced with the following:

“**2.2 Nearmap Attribution.** If Customer creates Output, Customer must expressly acknowledge Nearmap in a reasonably prominent manner on each Output (by displaying the Nearmap logo or such other attribution as reasonably requested by Nearmap), as the source of any data underlying the Output. Unless otherwise permitted in writing by Nearmap, Customer must not remove or cause to be removed any Nearmap logo, watermark, or other Nearmap attribution in any Output. Customer must include all requisite legends indicating and preserving Nearmap’s rights in and to the Products. All Output must include the following copyright notice on the work: “Created with [TITLE OF PRODUCT]©[year] Nearmap US, Inc.”.

6. A new section 2.10 (Data Use for Government Customers) is inserted into the Agreement as follows:

“**2.10 Government Products.** Where the Customer purchases unlimited allowance Products, if set forth in the applicable Order Form, that are exclusively offered to government customers (“**Government Products**”), these Government Products will be subject to Nearmap’s Fair Use Policy, which is available at <https://www.nearmap.com/legal/fair-use-policy>. The following conditions will apply to the Customer’s use of Government Products: (a) the amount of Nearmap Data used by Customer when accessing the Government Products will be monitored and then calculated at the end of every Subscription Term based on the total data of all Authorized Users who access and use Customer’s Nearmap account during the Subscription Term; and (b) if the Customer elects to download and/or export Government Products available to Customer through the Platform, this will be applied to the calculation of the Licensee’s use of the Government Products.”

7. Section 5.1 (Fees and Payment) is deleted in its entirety and replaced with the following:

“**5.1 Fees and Payment.** All undisputed fees set forth in the Order Form (the “Fees”) shall be paid in accordance with the payment terms outlined in the Order Form. All Fees are due and payable in advance at the start of the applicable Subscription Term (and each renewal term), and except as set forth in an Order Form, all payments shall be made in the currency detailed in the invoice provided by Nearmap via ACH, credit card, or such other method as Nearmap communicates to Customer. Except as expressly set forth in Section 7.1, or 9.1(iii), all Fees are nonrefundable. Fees for the Products are based on units purchased during the Subscription

Term and not actual usage. Customer acknowledges and agrees that the number of units purchased cannot be decreased during a Subscription Term and that the units purchased will not roll over to the next Renewal Subscription Term.

8. Section 5.2 (Excess Fees) of the Agreement is deleted in its entirety and replaced with the following:

**“5.2 Excess Fees.** With the exception of Government Products, Customer is responsible for paying all actual excess fees incurred by Nearmap based on: excess data, storage, processing, API calls, and access fees charged by Nearmap’s third- party cloud service providers as a result of Customer’s use in excess of the amount(s) permitted in the Agreement.”

9. Section 5.4 (Taxes) of the Agreement is deleted in its entirety and replaced with the following:

**“5.4 Taxes.** Customer will be responsible for the payment of any and all local, state, federal, levies, and duties of any nature, including value-added, sales, use, and withholding taxes. Customer is responsible for paying all taxes, excluding only taxes based on Nearmap's net income. If Nearmap has the legal obligation to pay or withhold taxes for which Customer is responsible under this Section 5.4, the appropriate amount shall be invoiced to and paid by Customer unless Customer is exempt from paying such taxes or subject to a reduced state of withholding tax and the Customer provides Nearmap with proof of a valid tax exemption certificate authorized by the appropriate taxing authority.”

10. Section 5.5 (Audit) of the Agreement is deleted in its entirety and replaced with “Intentionally Omitted”.

11. Section 6.2 (Termination) of the Agreement is deleted in its entirety and replaced with the following:

**“6.2 Termination.** Either party may terminate the Agreement if the other party (a) fails to cure any material breach of the Agreement (including a failure to pay Fees) within thirty (30) days after written notice (such notice must contain sufficient detail as to the nature of the breach and state the intent to terminate and email notice is valid only in the case of termination for non-payment of Fees); (b) ceases operation without a successor; (c) seeks protection under any bankruptcy, receivership, trust deed, creditors’ arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter); or (d) if applicable, a party suspends payment of its debts generally, or is or becomes unable to pay its debts when they are due.

**6.2.1. Non Appropriation of Funding.** Nearmap acknowledges that the terms of the Agreement are contingent upon appropriation of Federal, State, or other sources of funding being provided to Customer, and that funding is on a fiscal year basis and subject to annual appropriations. Should Customer not receive funding during the Subscription Term, Customer shall be permitted to terminate the remaining Subscription Term of the Agreement at the end of the current appropriation period without further obligation or penalty, upon no less than thirty (30) days written notice before the end of the current appropriation period. Customer agrees to submit certified evidence to Nearmap of such non-appropriation of funding. Such termination will not affect Customer’s obligation with Fees during the current fiscal year for which funding is received and any termination of the Agreement will not entitle Customer to a refund of any prepaid Fees. Customer agrees that it will use best efforts to obtain sufficient funds, including but not limited to, requesting in its budget for each fiscal period during the Subscription Term sufficient funds to meet its obligations under the Agreement.”

12. Section 7.3 (Limited Warranty, Disclaimer) is deleted in its entirety and replaced with “Intentionally Omitted”.

13. Section 9.2 (Customer Indemnification) of the Agreement is deleted in its entirety and replaced with “Intentionally Omitted”.

14. Section 13 (Data Processing) of the Agreement is deleted in its entirety and replaced with the following:

"13. **DATA PROCESSING.** Nearmap's data security and privacy practices form an integral part of Nearmap's product engineering and service delivery principles. Customer understands and acknowledges that to the extent Nearmap Processes any Personal Data, Nearmap shall do so in accordance with its privacy notice, which is available at <https://www.nearmap.com/us/en/legal/privacy-policy> ("**Privacy Policy**"); provided, however, that to the extent Customer Data includes any information which is defined as "personal data," "personal information," "personal identifiable information," or similarly defined data or information under Applicable Laws, Nearmap will Process such information as a data "processor" or "service provider" (each term, as applicable) and a list of Nearmap's sub- processors will be made available upon Customer's written request (email to suffice)."

15. Section 14.6 (Governing Law and Venue; Waiver of Jury Trial) is deleted in its entirety and replaced with the following:

"14.6 **Governing Law and Venue; Waiver of Jury Trial.** The Agreement and any disputes arising out of or related hereto shall be governed by and construed in accordance with the laws of the State of Utah, United States of America, without giving effect to its conflicts of laws rules, the United Nations Convention on the International Sale of Goods, or the Uniform Computer Information Transactions Act. The jurisdiction and venue for actions related to the subject matter hereof shall be the state and United States federal courts located in Salt Lake County, Utah except for claims for injunctive or equitable relief or claims regarding intellectual property rights (which may be brought in any competent court in Salt Lake County) and both parties hereby submit to the personal jurisdiction of such courts. **Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to the Agreement.**"

16. Section 14.8 (Order of Precedence) is amended to insert the following language at the end of the section:

"If Customer purchases the Products through a reseller, the terms and conditions under this Agreement will apply. This Agreement between Nearmap and Customer supersedes all terms and conditions attached to Customer's and/or reseller's purchase order."

## FAIR USE POLICY

### GENERAL

1. It is important to Nearmap that all customers are able to access the Products and Services. Accordingly, we have devised a Fair Use Policy that applies to the data usage of the Products and Services.
2. In this Fair Use Policy:
  - a. **Excessive Use** has the meaning given to that term in section 7 of this Fair Use Policy;
  - b. **Fair Use Policy** means this policy;
  - c. **Nearmap, we, us or our** means Nearmap US, Inc.;
  - d. **Products** has the meaning given to that term in Your Nearmap Agreement;
  - e. **Services** has the meaning given to that term in Your Nearmap Agreement;
  - f. **You or Your** means any customer of Nearmap;
  - g. **Your Nearmap Agreement** means the agreement pursuant to which Nearmap provides You with various products and services; and
  - h. **Unreasonable Use** has the meaning given to that term in section 5 of this Fair Use Policy.
3. We reserve the right to vary the terms of this Fair Use Policy from time to time.
4. This Fair Use Policy is in addition to Your Nearmap Agreement and in the event of any inconsistency between the terms of this Fair Use Policy and the terms and conditions of Your Nearmap Agreement, Your Nearmap Agreement prevails.

### UNREASONABLE USE

1. We consider Your use of the Products and Services unreasonable where You use it in a manner which is reasonably considered by Nearmap to be fraudulent use, to be contrary to Your Nearmap Agreement or to adversely affect other Nearmap customers' use of or access to the Products and Services.
2. Among other things, "fraudulent use" includes resupply of the Products and Services without Nearmap's consent so that someone else may access or use the Products and Services or take advantage of the Products and Services.

### EXCESSIVE USE

1. Excessive Use is a continuing and unreasonably disproportionate use of the Products and Services when compared to other average individual named users.

### NEARMAP'S RIGHTS

1. Where Your use of the Products and Services constitutes Unreasonable Use and/or Excessive Use, Nearmap may contact You to discuss changing Your usage pattern so that it conforms with this Fair Use Policy, or to upgrade to a more suitable Product or Service (if applicable).
2. If, after Nearmap has contacted You, Your Unreasonable Use and/or Excessive Use continues, Nearmap may, without further notice to You:
  - a. restrict Your access to low resolution imagery for the remainder of the month; and/or
  - b. restrict Your access to low resolution imagery for the remainder of the month until Your data allowance is reset at the beginning of the next month (if applicable); and/or
  - c. restrict Your access for the remainder of the month; and/or
  - d. restrict Your access to Nearmap until Your data allowance is reset at the beginning of the next

- month (if applicable); and/or
- e. immediately cease Your access to Nearmap; and/or
- f. exercise any other right available to Nearmap under the terms of Your Nearmap Agreement.



## AGENDA ITEM

TO: Mayor and City Council

SUBJECT: Consideration and approval of Ordinance No. 2026-119 amending Chapter 11 Article 11.1400 of the Code of Ordinances

MEETING DATE: April 28, 2026

DEPARTMENT: Public Works

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### ITEM SUMMARY:

Consideration and approval of Ordinance No. 2026-119 amending Chapter 11 Article 11.1400 of the Code of Ordinances by adding a Section 11.1405 entitled "Penalty" by providing a penalty for a violation of the article; adopting a Water Conservation Plan and Drought Contingency Plan.

### INFORMATION:

In accordance with Section 2.3 of the wholesale water contract, wholesale customers are required to institute and apply the same rationing conservation measures or restrictions to the use of water by their customers for so long as their total water supply is being furnished by Fort Worth.

### STAFF RECOMMENDATION:

Staff recommends approval

### SPECIAL CONSIDERATION:

### FINANCIAL CONSIDERATION:

N/A

### ATTACHMENTS:

1. Ordinance No. 2026-119 Water Conservation and Drought Contingency Plan Amendment
2. 2019 Drought Contingency Plan

## ORDINANCE NO. 2026-119

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROANOKE, TEXAS, BY AMENDING CHAPTER 11, ARTICLE 11.1400 OF THE CODE OF ORDINANCES BY ADDING A SECTION 11.1405 ENTITLED "PENALTY" BY PROVIDING A PENALTY FOR A VIOLATION OF THE ARTICLE; ADOPTING A WATER CONSERVATION PLAN AND DROUGHT CONTINGENCY PLAN, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A, FOR THE CITY OF ROANOKE, TEXAS; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS; PROVIDING A REPEALER CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Roanoke, Texas, has discussed and considered such revisions and has determined that it is in the best interest of the City to amend its Water Conservation Plan and Drought Contingency Plan for the City of Roanoke, Texas.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROANOKE, TEXAS, THAT:**

### **SECTION 1.**

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

### **SECTION 2.**

Chapter 11, Article 11.1400 of the Code of Ordinances is hereby amended by adding a Section 11.1405, entitled "Penalty," which shall read as follows:

**"Sec. 11.1405. Penalty.**

- (a) A person who violates a provision of this article, or who fails to perform an act required by this article commits a misdemeanor offense.
- (b) An offense under this article is punishable by a fine not to exceed two thousand dollars (\$2,000.00)."

### **SECTION 3.**

The City Council of the City of Roanoke, Texas, does hereby adopt the Water Conservation Plan and Drought Contingency Plan, a copy of which is attached hereto as **Exhibit A**, and is incorporated herein for all purposes.

**SECTION 3.  
SEVERABILITY CLAUSE**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 4.  
PENALTY CLAUSE**

Any person, firm, or corporation violating any of the provisions or terms of this Ordinance shall be guilty of a misdemeanor and upon conviction, shall be fined a sum not to exceed \$2,000.00 for each offense, and each and every violation or day such violation shall continue or exist, shall be deemed a separate offense.

**SECTION 5.  
REPEALER CLAUSE**

Any provision of any prior ordinance of the City whether codified or uncoded which are in conflict with any provision of the Ordinance, are hereby repealed to the extent of the conflict, but all other provisions of the ordinances of the City whether codified or uncoded which are not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

**SECTION 6.  
PUBLICATION CLAUSE**

The City Secretary of the City is hereby directed to publish in the official newspaper of the City the caption, penalty clause, and effective date clause of this Ordinance as required by law.

**SECTION 7.  
EFFECTIVE DATE**

This Ordinance shall become effective immediately upon its passage and publication as required by law.



**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Roanoke, Texas, on this April 28, 2026.

**APPROVED:**

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Carl E. Gierisch, Jr., Mayor

**ATTEST:**

---

Lindsay Rawlinson, City Secretary

**APPROVED AS TO FORM:**

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Jeff Moore, City Attorney

***Exhibit A***

[Water Conservation Plan and Drought Contingency Plan]



**City of Roanoke, Texas  
500 S. Oak St  
Roanoke, Texas 76262**

## **Drought Contingency and Emergency Water Management Plan**

Developed to comply with the requirements of The Texas Commission on Environmental Quality  
and The Texas Water Development Board

**PWS# 0610008**

**Adopted by Ordinance No. 2026-119:**

**Effective April 28, 2026**

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## APPENDICES

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| <b>Appendix A</b> | List of References                                                                                                                                                                                                                                                                          |
| <b>Appendix B</b> | Texas Commission on Environmental Quality Rules on Drought Contingency Plans <ul style="list-style-type: none"><li>• Texas Administrative Code Title 30, Part 1, Chapter 288, Subchapter B, Rule §288.20 – Drought Contingency Plans for Municipal Uses by Public Water Suppliers</li></ul> |
| <b>Appendix C</b> | Letters to Region C Planning Group, TRWD, and Fort Worth                                                                                                                                                                                                                                    |
| <b>Appendix D</b> | Adoption of Drought Contingency and Water Emergency Response Plan                                                                                                                                                                                                                           |

## **1.0 INTRODUCTION AND OBJECTIVES**

The City of Roanoke has prepared this *Drought Contingency and Emergency Water Management Plan* in accordance with the requirements established by the Texas Commission on Environmental Quality (TCEQ), as well as the Texas Administrative Code in effect on January 21, 2019.<sup>1</sup> Roanoke purchases treated water from the City of Fort Worth (Fort Worth), who purchases raw water from Tarrant Regional Water District (TRWD). As a wholesale water customer of Fort Worth, Roanoke is required to institute and apply the same rationing, conservation measures and restrictions to the use of water as Fort Worth. This Plan complies with the requirements established in the City of Fort Worth *Drought Contingency and Emergency Water Management Plan for Retail and Wholesale Water Customers* adopted April 28, 2026.<sup>2</sup>

This Plan addresses all of the current TCEQ requirements for a Drought Contingency Plan which are included in Appendix B. This Plan replaces the Plan included in Ordinance 1700 dated April 17, 2014. The measures included in this *Drought Contingency and Emergency Water Management Plan* are intended to provide short-term water savings during drought or emergency conditions. Water savings associated with ongoing, long-term strategies are discussed in the City of Roanoke *Water Conservation Plan*.<sup>3</sup>

The purpose of this *Drought Contingency and Emergency Water Management Plan* is as follows:

- To conserve the available water supply in times of drought and emergency
- To maintain supplies for domestic water use, sanitation, and fire protection
- To protect and preserve public health, welfare, and safety
- To minimize the adverse impacts of water supply shortages
- To minimize the adverse impacts of emergency water supply conditions

In the absence of drought response measures, water demands tend to increase during a drought due to increases in outdoor irrigation. The severity of a drought depends on the degree of depletion of water supplies, and on the relationship of demand to available supplies. Roanoke considers a drought to begin or end when Fort Worth has made the determination that the drought has begun or ended.

<sup>1</sup> Superscripted numbers match references listed in Appendix A.

## **2.0 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY RULES**

TCEQ rule Title 30, Part 1, Chapter 288, subchapter A, rule 288.1 defines a drought contingency plan as “a strategy or combination of strategies for temporary supply and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies.”<sup>1</sup>

The TCEQ rules governing development of Drought Contingency Plans for public water suppliers are contained in Title 30, Part 1, Chapter 288, Subchapter B, Rule 288.20 of the Texas Administrative Code, a current copy of which is included in Appendix B.

TCEQ’s minimum requirements for Drought Contingency Plans are addressed in the following subsections of this report:

- 288.20(a)(1)(A) – Provisions to Inform the Public and Provide Opportunity for Public Input – Section 3.1
- 288.20(a)(1)(B) – Provisions for Continuing Public Education and Information – Section 3.2
- 288.20(a)(1)(C) – Coordination with the Regional Water Planning Group – Section 3.7
- 288.20(a)(1)(D) – Criteria for Initiation and Termination of Drought Contingency and Water Emergency Response Stages – Section 3.3
- 288.20(a)(1)(E) – Drought Contingency and Water Emergency Response Stages – Section 3.4
- 288.20(a)(1)(F) – Specific, Quantified Targets for Water Use Reductions – Section 3.4
- 288.20(a)(1)(G) – Water Supply and Demand Management Measures for Each Stage – Section 3.4
- 288.20(a)(1)(H) – Procedures for Initiation and Termination of Drought Contingency and Water Emergency Response Plan Stages – Section 3.3
- 288.20(a)(1)(I) - Procedures for Granting Variances – Section 3.5
- 288.20(a)(1)(J) - Procedures for Enforcement of Mandatory Restrictions – Section 3.6
- 288.20(a)(3) – Consultation with Wholesale Supplier – Section 3.3
- 288.20(b) – Notification of Implementation of Mandatory Measures – Section 3.4
- 288.20(c) – Review and Update of Plan – Section 3.8

### **3.0 DROUGHT CONTINGENCY AND EMERGENCY WATER MANAGEMENT PLAN**

#### **3.1 PROVISIONS TO INFORM THE PUBLIC AND OPPORTUNITY FOR PUBLIC INPUT**

The City of Roanoke provided opportunity for public input in the development of this *Drought Contingency and Emergency Water Management Plan* by the following means:

- Providing written notice of the proposed Plan and the opportunity to comment on the plan by posted notice, and notice on the City's web site ([www.roanoketexas.com](http://www.roanoketexas.com)).
- Making the draft plan available on the City's web site ([www.roanoketexas.com](http://www.roanoketexas.com)).
- Providing the draft plan at City Hall for anyone to review upon request.
- Providing opportunity for public comment on the plan at a City Council Meeting held on April 28, 2026.

#### **3.2 PROVISIONS FOR CONTINUING PUBLIC EDUCATION AND INFORMATION**

The City of Roanoke will inform and educate the public about the *Drought Contingency and Emergency Water Management Plan* by the following means:

- Preparing fact sheets describing the plan and making these available online and at various City of Roanoke sites, as well as at events where the Public Works Department may have a booth.
- Posting a copy of the Plan on the City's website ([www.roanoketexas.com](http://www.roanoketexas.com)).
- Notifying local organizations, schools, and civic groups that staff are available to make presentations on the Plan.
- Providing a public feedback comment window on the City of Roanoke's website.

At any time that this *Drought Contingency and Emergency Water Management Plan* is activated or the stage changes, the City will notify local media of the issues, the current response stage (if applicable), and the specific actions required of the public. The information will also be publicized on the City of Roanoke's website (if available). Billing inserts may also be used as appropriate.

### **3.3 INITIATION AND TERMINATION OF DROUGHT CONTINGENCY AND EMERGENCY WATER MANAGEMENT STAGES**

The provisions of this Plan shall apply to all persons, customers, and property utilizing potable water provided by the City of Roanoke. The terms “person” and “customer” as used in the Plan include individuals, corporations, partnerships, associations, and all other legal entities. The Plan does not apply to locations using treated wastewater effluent, private wells, or possessing their own water rights in the Trinity River.

The Plan may be applied to the entire city or geographic portions of the city as necessary. If the Plan is applied only to a limited sector, the boundaries will be defined in terms of roadways, creeks and other easily distinguishable features, such as city limits.

#### Initiation of a Drought Contingency or Emergency Water Management Stage

The City Manager or his/her official designee may order the implementation of a Drought Contingency or Emergency Water Management stage when one or more of the trigger conditions for that stage is met. The following actions will be taken when a Drought Contingency or Emergency Water Management stage is initiated:

- The public will be notified through local media and the City’s web site as described in Section 3.2.
- The City of Fort Worth and Tarrant Regional Water District (TRWD) will be notified by telephone and with a follow-up letter, or email that provides details of the reasons for initiation of the Drought or Emergency Water Management stage.
- The City will notify the Executive Director of the TCEQ within 5 business days when mandatory provisions of the Plan are activated.

Stages imposed by the City of Fort Worth must be initiated by the City of Roanoke per the wholesale water contract with the City of Fort Worth.

For other trigger conditions internal to the City, the City Manager or his/her official designee may decide not to order the implementation of a drought response or water emergency stage even though one or more of the trigger criteria for the stage are met. Factors which could influence such a decision include, but are not limited to, the time of the year, weather conditions, the anticipation of replenished water supplies, or the anticipation that additional facilities will become available to meet needs. The reason for this decision should be documented.



Termination of a Drought Contingency or Emergency Water Management Stage

The City Manager or his/her official designee may order the termination of a Drought Contingency or Emergency Water Management stage when the conditions for termination are met or at his/her discretion. The following actions will be taken when a Drought Contingency or Emergency Water Management stage is terminated:

- The public will be notified through local media and the City's web site as described in Section 3.2.
- The City of Fort Worth and TRWD will be notified by telephone with a follow-up letter or email.
- If any mandatory provisions of the *Drought Contingency or Emergency Water Management Plan* that have been activated are terminated, the City will notify the Executive Director of the TCEQ within 5 business days.

The City Manager or his/her official designee may decide not to order the termination of a drought response stage or water emergency even though the conditions for termination of the stage are met. Factors which could influence such a decision include, but are not limited to, the time of the year, weather conditions, or the anticipation of potential changed conditions that warrant the continuation of the drought stage. The reason for this decision should be documented.

### **3.4 DROUGHT CONTINGENCY AND EMERGENCY WATER MANAGEMENT PLAN STAGES AND MEASURES**

#### **Stage 1 – Water Watch**

Triggering Conditions

- Roanoke's water demand reaches or exceeds 90% of reliable delivery capacity for three consecutive days. The delivery capacity could be citywide or in a specified portion of the system.
- Roanoke's water supply sources or water distribution system becomes contaminated.
- Roanoke's water demand for all or part of the delivery system approaches delivery capacity because delivery capacity is inadequate.

City of Roanoke

- Roanoke’s water supply system is unable to deliver water due to the failure or damage of major water system components.
- Fort Worth initiates Stage 1 – Water Watch for one or more of the following reasons:
  - Total raw water supply in TRWD western and eastern division reservoirs drops below 75% (25% depleted) of conservation storage.
  - Water demand for all or part of the TRWD delivery system exceeds delivery capacity because delivery capacity is inadequate.
  - One or more of TRWD’s water supply sources has become limited in availability.
  - Water demand is projected to approach the limit of TRWD’s permitted supply.
  - TRWD’s supply source becomes contaminated.
  - TRWD’s water supply system is unable to deliver water due to the failure or damage of major water system components.
  - The TRWD General Manager finds that conditions warrant the declaration of a Stage 1 drought.

Terminating Conditions for Stage 1

Stage 1 will terminate when Fort Worth terminates its Stage 1 condition, or when the circumstances that caused the initiation of Stage 1 no longer prevail.

Goals for Use Reduction for Stage 1

The goal for water use reduction under Stage 1 – Water Watch is five percent (5%). If circumstances warrant, or if required by the City of Fort Worth, the City Manager or his/her official designee can set a goal for greater water use reduction.

Actions Available for Stage 1

The City Manager or his/her official designee may order the implementation of any or all of the actions listed below, as deemed necessary to achieve a five percent reduction in water use. The City Manager or his/her official designee must implement any action(s) required by the City of Fort Worth.

All Water Users

Initiate mandatory restrictions to prohibit non-essential water use as follows:

- Continue actions described in the Water Conservation Plan
- Prohibit hosing of paved areas, such as sidewalks, driveways, parking lots, tennis courts, patios, or other impervious surfaces, except to alleviate an immediate health or safety hazard. This may include premises with raw or processed food, pharmaceutical or vaccine processing, storage or vending establishments including restaurants and grocery stores may be washed to the extent necessary for sanitary purposes. These areas may also include:
  - Trash and dumpster areas
  - Areas around fuel pumps
  - Store front cleaning of areas with accumulated bird droppings, feathers and debris
  - Localized spot cleaning of parking areas to remove oil, grease buildup that may pose a health and safety issue.
- Prohibit hosing of buildings or other structures for purposes other than fire protection or surface preparation prior to painting.
- Prohibit using water in such a manner as to allow runoff or other waste, including:
  - failure to repair a controllable leak, including a broken sprinkler head, a leaking valve, leaking or broken pipes, or a leaking faucet;
  - operating a permanently installed irrigation system with: (a) a broken head; (b) a head that is out of adjustment and the arc of the spray head is over a street or parking lot; or (c) a head that is misting because of high water pressure;
  - during irrigation, allowing water to (a) to run off a property and form a stream of water in a street for a distance of 50 feet or greater; or (b) to pond in a street or parking lot to a depth greater than one-quarter of an inch; or
  - allowing or causing an irrigation system or other lawn watering device to operate during any form of precipitation or when temperatures are at or below 32 degrees Fahrenheit.
- Increase enforcement of the landscape watering restriction from the Water Conservation Plan to prohibit outdoor watering with sprinklers or irrigation systems between 10 a.m. and 6 p.m.

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- Increase the enforcement of the landscape watering restriction from the Water Conservation Plan to limit landscape watering with sprinklers or irrigation systems at each service address to a twice per week schedule as outlined below. This includes landscape watering of parks, golf courses, and sports fields.
  - Residential addresses ending in an even number (0, 2, 4, 6, or 8) may water on Wednesdays and Saturdays.
  - Residential addresses ending in an odd number (1, 3, 5, 7 or 9) may water on Thursdays and Sundays.
  - All non-residential locations (apartment complexes, businesses, industries, parks, medians, etc.) may water on Tuesdays and Fridays.

Exceptions:

- Lawns and landscaping may be watered on any day, at any time, by handheld hose, drip irrigation, a soaker hose or tree bubbler. (The intent of this measure is to allow for the protection of structural foundations, trees, and other high value landscape materials).
- Water use necessary for the repair of an irrigation system, plumbing line, fountain, etc. in the presence of the person making the repair.
- Outdoor watering at service addresses with large multi-station irrigation systems may take place in accordance with a variance granted by the Director of Public Works, if the Director determines that a property cannot be completely irrigated with an average of three-quarters of an inch of water in a single day, and that the property should be divided into sections to be irrigated on different days. If approved, no station will be watered more than twice per week.
- Establishing new turf is discouraged. If hydromulch, grass sod, or grass seed is installed for the purpose of establishing a new lawn, there are no watering restrictions for the first 30 days while it is being established. After that, the watering restrictions set forth in this stage apply. (This does not include over seeding with rye, or seasonal grasses, since turf already exists.)

City of Roanoke

- Golf courses may water greens and tee boxes as necessary, however watering must be done before 10 a.m. and after 6 p.m. Golf courses are encouraged to reduce water use by five percent.
- Skinned areas of sports fields may be watered as needed for dust control.
- Watering of athletic fields (fields only, does not include surrounding landscaped areas) used for organized sports practice, competition, or exhibition events may occur as necessary to protect the health and safety of the players, staff, or officials present for athletic events. Owners of such athletic fields are encouraged to reduce water use by five percent.

Exception Requiring a Variance:

- Public areas that are open to the public at-large and have a high-impact from frequent use may be allowed additional watering, with a variance granted by the Public Works Director, if it is deemed to be beneficial to serve and protect the community amenity. Examples may include but are not limited to: outdoor amphitheaters, demonstration gardens, public art exhibitions, outdoor learning areas, arboretums, etc.
- Discourage the filling, draining, or refilling of swimming pools, wading pools, hot tubs and Jacuzzi type pools except to maintain adequate water levels for structural integrity, proper operation and maintenance, and/or to alleviate an issue that poses a public safety risk.
- All users are encouraged to use native and adapted drought tolerant plants in landscaping.
- Washing of any motor vehicle, motorbike, boat, trailer, airplane, or other vehicle shall be limited to the use of a bucket or a hand-held hose equipped with a positive-pressure shutoff nozzle for quick rinses. Vehicle washing may be done at any time on the premises of a commercial car wash or commercial service station. Companies with an automated on-site vehicle washing facility may wash its vehicles at any time. Further, such washing may be exempt from these requirements if the health, safety, and welfare of the public are contingent upon frequent vehicle cleansing, such as garbage trucks and vehicles used to transport food and perishables.

City and Local Governments

In addition to the actions listed above:

City of Roanoke

- Review conditions and problems that caused Stage 1. Take corrective action.
- Increase public education efforts on ways to reduce water use.
- Increase enforcement efforts.
- Intensify leak detection and repair efforts.
- Audit all city and local government irrigation systems to ensure proper condition, settings, and operation.
- Identify and encourage voluntary reduction measures by high-volume water users through water use audits.
- Reduce non-essential water use. As used herein, non-essential water uses are those that do not have any health or safety impact and are not needed to meet the core function of the agency.
- Per the contract, wholesale customers of Fort Worth are required to institute and apply the same rationing, conservation measures or restrictions to the use of water by their customers for so long as any part of their total water supply is being furnished by Fort Worth.

Commercial or Industrial

- All actions listed above for all water users apply to commercial and industrial users.
- Stock at commercial plant nurseries is exempt from Stage 1 watering restrictions.
- Hotels, restaurants, and bars are encouraged to serve drinking water to patrons on an “on demand” basis.
- Hotels are encouraged to implement laundry conservation measures by encouraging patrons to reuse linens and towels.
- Car wash facilities must keep equipment in good working order, which should include regular inspections to be sure there are no leaks, broken or misdirected nozzles, and that all equipment is operating efficiently.
- All commercial and industrial customers are encouraged to audit irrigation systems.

**Stage 2 – Water Warning**

Triggering Conditions

City of Roanoke

- Roanoke’s water demand reaches or exceeds 95% of reliable delivery capacity for three consecutive days. The delivery capacity could be citywide or in a specified portion of the system.
- Roanoke’s water supply sources or water distribution system becomes contaminated.
- Roanoke’s water demand for all or part of the delivery system approaches delivery capacity because delivery capacity is inadequate.
- Roanoke’s water supply system is unable to deliver water due to the failure or damage of major water system components.
- Fort Worth initiates Stage 2 – Water Warning for one or more of the following reasons:
  - Total raw water supply in TRWD western and eastern division reservoirs drops below 60% (40% depleted) of conservation storage.
  - Water demand for all or part of the TRWD delivery system exceeds delivery capacity because delivery capacity is inadequate.
  - One or more of TRWD’s water supply sources has become limited in availability.
  - Water demand is projected to approach the limit of TRWD’s permitted supply.
  - TRWD’s supply source becomes contaminated.
  - TRWD’s water supply system is unable to deliver water due to the failure or damage of major water system components.
  - The TRWD General Manager finds that conditions warrant the declaration of a Stage 2 drought.

Terminating Conditions for Stage 2

Stage 2 may terminate when Fort Worth terminates its Stage 2 condition, or when the circumstances that caused the initiation of Stage 2 no longer prevail.

Goals for Use Reduction for Stage 2

The goal for water use reduction under Stage 2 is a reduction of ten percent (10%). If circumstances warrant or if required by the City of Fort Worth, the City Manager or official designee can set a goal for greater water use reduction.

Actions Available for Stage 2

City of Roanoke

The City Manager or his/her official designee may order the implementation of any of the actions listed below, as deemed necessary. The City Manager or his/her official designee must implement any action(s) required by the Tarrant Regional Water District.

- Continue or initiate any actions available under Stage 1.
- Initiate engineering studies to evaluate water supply alternatives should conditions worsen.

All Water Users

- Limit landscape watering with sprinklers or irrigation systems to a once per week schedule at each service address as determined by the Director of Public Works. This includes landscape watering at parks, golf courses, and sports fields. Roanoke may use a different watering schedule than the one used for Fort Worth retail customers as long as it limits each service address to once per week schedule; however, use of the same schedule would simplify the messages passed to customers through the news media.

Exceptions:

- Lawns and landscaping may be watered on any day, at any time, by handheld hose, drip irrigation, a soaker hose, or tree bubbler. (The intent of this measure is to allow for the protection of structural foundations, trees, and other high value landscape materials). If drip irrigation or a soaker hose is used to water a foundation, the system must be placed within 24-inches of the foundation and must not produce a spray of water above the ground. Tree watering is limited to an area not to exceed the drip line of the tree.
- Outdoor watering at service addresses with large multi-station irrigation systems may take place in accordance with a variance granted by the Director of Public Works, if the director determines that a property cannot be completely irrigated with an average of three-quarters of an inch of water in a single day, and that the property should be divided into sections to be irrigated on different days. If approved, no station will be watered more than once per week.
- Golf courses may water greens and tee boxes as needed to keep them alive, however watering must be done before 10 a.m. and after 6 p.m. Fairways are restricted to once per week watering as outlined above. Golf course rough cannot be watered.



City of Roanoke

- Watering of athletic fields (fields only, does not include surrounding landscaped areas) used for organized sports practice, competition, or exhibition events may occur as necessary to protect the health and safety of the players, staff, or officials present for athletic events. Owners of such athletic fields are encouraged to reduce water use by 10 percent.
- All users are encouraged to wait until the current drought or emergency situation has passed before establishing new landscaping and turf. Variances granted for establishing new turfgrass or landscaping will be for a maximum of 30 days from the date of approval. After that, the watering restrictions set forth in this stage apply. (This does not include over seeding with rye since turf already exists.)
- Prohibit use of water for dust control, except as required to protect public health.
- Prohibit the operation of ornamental fountains or ponds that use potable water except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.
- Discourage the filling, draining, or refilling of swimming pools, wading pools, hot tubs and Jacuzzi type pools except to maintain adequate water levels for structural integrity, proper operation and maintenance, and/or to alleviate an issue that poses a public safety risk.
- Encourage the use of covers for all types of pools, hot tubs, and Jacuzzi type pools when not in use.

City and Local Governments

- Review conditions or problems that caused Stage 2. Take corrective action.
- Increase frequency of media releases on water supply conditions.
- Further accelerate public education efforts on ways to reduce water use.
- Eliminate non-essential water use. As used herein, non-essential water uses are those that do not have any health or safety impact and are not needed to meet the core function of the agency.
- Prohibit wet street sweeping.

City of Roanoke

- Per the contract, wholesale customers of Fort Worth are required to institute and apply the same rationing, conservation measures or restrictions to the use of water for so long as any part of their total water supply is being furnished by Fort Worth.

Commercial or Industrial

- All actions listed above for all water users apply to commercial and industrial users.
- Use of water from fire hydrants for any purpose other than firefighting related activities or other activities necessary to maintain public health, safety and welfare requires a variance issued by the Director of Public Works. Fire hydrant use may be limited to only designated hydrants. Upon declaration of this drought stage, all holders or applicants of a Water Fire Hydrant Meter Agreement are required to apply for a variance as set forth in this plan. If conditions allow, as determined by the Director of Public Works, the use of water from hydrants may continue until the Director of Public Works or his/her designee issues a determination on the petition for variance. If conditions do not allow, the Director of Public Works may require all fire hydrant meters be immediately returned from the field, pending determination of each petition for variance.

**Stage 3 – Emergency Water Use**

Triggering Conditions

- Roanoke’s water demand has reached or exceeds 98% of reliable delivery capacity for one day. The delivery capacity could be citywide or in a specified portion of the system.
- Roanoke’s water supply sources or water distribution system becomes contaminated.
- Roanoke’s water demand for all or part of the delivery system approaches delivery capacity because delivery capacity is inadequate.
- Roanoke’s water supply system is unable to deliver water due to the failure or damage of major water system components.
- Fort Worth initiates Stage 3 – Emergency Water Use, which may also be initiated by one or more of the following:
  - Total raw water supply in TRWD western and eastern division reservoirs drops below 45% (55% depleted) of conservation storage.
  - Water demand exceeds the amount that can be delivered to customers.

City of Roanoke

- Water demand for all or part of the TRWD delivery system exceeds delivery capacity because delivery capacity is inadequate.
- One or more of TRWD's water supply sources has become limited in availability.
- Water demand is projected to approach or exceed the limit of TRWD's permitted supply.
- TRWD's supply source becomes contaminated.
- TRWD's water supply system is unable to deliver water due to the failure or damage of major water system components.
- The TRWD General Manager finds that conditions warrant the declaration of a Stage 3 drought.

Terminating Conditions for Stage 3

Stage 3 may terminate when Fort Worth terminates its Stage 3 condition, or when the circumstances that caused the initiation of Stage 3 no longer prevail.

Goals for Use Reduction for Stage 3

The goal for water use reduction under Stage 3 is a reduction of twenty percent (20%). If circumstances warrant or if required by the City of Fort Worth, the City Manager or official designee can set a goal for greater water use reduction.

Actions Available for Stage 3

The City Manager or his/her official designee may order the implementation of any of the actions listed below, as deemed necessary. The City Manager or his/her official designee must implement any action(s) required by the Tarrant Regional Water District.

- Continue or initiate any actions available under Stages 1 and 2.

All Water Users

- Prohibit landscape watering, including at parks, golf courses, and sports fields.

Exceptions:

- Watering with hand-held hose, soaker hose or drip irrigation system may occur any day and any time. (The intent of this measure is to allow for the protection of structural foundations, trees, and other high value landscape materials). If drip irrigation or a soaker

City of Roanoke

hose is used to water a foundation, the system must be placed within 24-inches of the foundation, and must not produce a spray of water above the ground. Tree watering is limited to an area not to exceed the drip line of the tree.

- Golf course greens only may be watered by hand-held hose as needed to keep them alive, however watering must be done before 10 a.m. or 6 p.m.
- Watering of athletic fields (fields only, does not include surrounding landscaped areas) used for organized sports practice, competition, or exhibition events may occur as necessary to protect the health and safety of the players, staff, or officials present for athletic events may be allowed to water by variance. A water management plan must be submitted to the Public Works Director detailing how each area will comply with Stage 3 drought measures.
- Prohibit establishment of new landscaping. Variances may be granted for those landscape projects started prior to the initiation of Stage 3 drought restrictions.
- Vehicle washing restricted to commercial car wash, commercial service station or a private on-site vehicle washing facility and can only be done as necessary for health, sanitation, or safety reasons, including but not limited to the washing of garbage trucks and vehicles used to transport food and other perishables. All other vehicle washing is prohibited.
- Prohibit the operation of ornamental fountains or ponds that use potable water except where necessary to support aquatic life.
- Prohibit the draining, filling, or refilling of swimming pools, wading pools and Jacuzzi type pools. Existing private and public pools may add water to maintain pool levels; however they may not be refilled using automatic fill valves.
- Prohibit hosing of buildings or other structures for purposes other than fire protection or surface preparation prior to painting with high-pressure equipment. Must be performed by a professional power washing service utilizing high efficiency equipment and a vacuum recovery system where possible.

City and Local Governments

In addition to actions listed above:

- Continue or initiate any actions available under Stages 1 and 2.

City of Roanoke

- Review conditions or problems that caused Stage 3. Take corrective action.
- Implement viable alternative water supply strategies.
- Increase frequency of media releases explaining emergency situation.
- Reduce city and local government water use to maximum extent possible.
- Prohibit the permitting of new swimming pools, Jacuzzi type pools, spas, ornamental ponds and fountain construction. Pools already permitted and under construction may be completely filled with water.
- Institute a mandated reduction in deliveries to all wholesale customers. Such a reduction will be distributed as required by Texas Water Code §11.039.
- If Fort Worth has imposed a reduction in water available to customers, impose the same percent reduction on Roanoke's customers.
- Per the contract, wholesale customers of Fort Worth are required to institute and apply the same rationing, conservation measures or restrictions to the use of water by their customers for so long as any part of their total water supply is being furnished by Fort Worth.

Commercial or Industrial

- All actions listed above for all water users apply to commercial and industrial users.
- Hotels, restaurants, and bars required to serve drinking water to patrons only on an "on demand" basis.
- Hotels are required to implement laundry conservation measures by encouraging patrons to reuse linens and towels.
- Stock at commercial plant nursery may be watered only with a hand-held hose, hand-held watering can, or drip irrigation system.
- Commercial and industrial water users required to reduce water use by a set percentage determined by the Director of Public Works.
- Use of water from hydrants for any purpose other than firefighting related activities or other activities necessary to maintain public health, safety and welfare requires a special permit issued by the Director of Public Works. Fire hydrant use may be limited to only designated hydrants.

### **3.5 PROCEDURES FOR GRANTING VARIANCES TO THE PLAN**

The Director of Public Works or his/her official designee may grant temporary variances for existing water uses otherwise prohibited under this *Drought Contingency and Emergency Water Management Plan* if one or more of the following conditions are met:

- Failure to grant such a variance would cause an emergency condition adversely affecting health, sanitation, or fire safety for the public or the person or entity requesting the variance.
- Compliance with this plan cannot be accomplished due to technical or other limitations.
- Alternative methods that achieve the same level of reduction in water use can be implemented.

Variances shall be granted or denied at the discretion of the Director of Public Works or his/her official designee. All petitions for variances should be in writing, using the forms provided, and must include the following information:

- Name and address of the petitioner(s)
- Purpose of water use
- Specific provisions from which relief is requested
- Detailed statement of the adverse effect of the provision from which relief is requested
- Description of the relief requested
- Period of time for which the variance is sought
- Detailed schedule of irrigation that shows a reduction in use over the 30 day period for new lawns and landscapes. Schedule should be designed so that at the end of the 30 day period, lawn and landscaped areas can adhere to the twice per week schedule defined in Stage 1.
- Alternative measures that will be taken to reduce water use
- Other pertinent information.

### **3.6 PROCEDURES FOR ENFORCING MANDATORY WATER USE RESTRICTIONS**

Mandatory water use restrictions may be imposed in Stages 1, 2, and 3. These mandatory water use restrictions will be enforced by warnings and penalties as follows:

City of Roanoke

- On the first violation, customers will be given a written warning that they have violated the mandatory water use restriction.
- On the second and subsequent violations, citations may be issued to customers, with minimum and maximum fines established by ordinance.
- After three violations have occurred, the utility may cut off water service to the customer.

Appendix D contains a copy of the City of Roanoke City ordinance adopting this Plan and the enforcement actions and penalties.

### **3.7 COORDINATION WITH OTHER ENTITIES**

The City of Roanoke's retail service area is located entirely within the Region C water planning area and the Tarrant Regional Water District. Appendix C includes copies of the letters sent to the Chair of the Region C Water Planning Group, the Tarrant Regional Water District, and the City of Fort Worth with a copy of this Plan.

### **3.8 REVIEW AND UPDATE OF DROUGHT CONTINGENCY AND EMERGENCY WATER MANAGEMENT PLAN**

As required by TCEQ rules, Roanoke will review this *Drought Contingency and Emergency Water Management Plan* at least every five years. The Plan will be updated as appropriate based on new or updated information.

## ***Appendix A***

### ***List of References***

#### **APPENDIX A**

#### **LIST OF REFERENCES**

1. Title 30 of the Texas Administrative Code, Part 1, Chapter 288, Subchapter B, Rule 288.20, downloaded from [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=2&ti=30](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=2&ti=30), January 21, 2019.
2. City of Fort Worth, *Drought Contingency and Emergency Water Management Plan for Retail and Wholesale Water Customers*, April 2019.



## ***Appendix B***

### ***Texas Commission on Environmental Quality Rules on Drought Contingency Plans***

## APPENDIX B

### TEXAS COMMISSION OF ENVIRONMENTAL QUALITY RULES ON DROUGHT CONTINGENCY PLANS

|                            |                                                                                     |
|----------------------------|-------------------------------------------------------------------------------------|
| <b><u>TITLE 30</u></b>     | ENVIRONMENTAL QUALITY                                                               |
| <b><u>PART 1</u></b>       | TEXAS COMMISSION ON ENVIRONMENTAL QUALITY                                           |
| <b><u>CHAPTER 288</u></b>  | WATER CONSERVATION PLANS, DROUGHT CONTINGENCY PLANS,<br>GUIDELINES AND REQUIREMENTS |
| <b><u>SUBCHAPTER B</u></b> | DROUGHT CONTINGENCY PLANS                                                           |
| <b>RULE §288.20</b>        | <b>Drought Contingency Plans for Municipal Uses by Public Water Suppliers</b>       |

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(a) A drought contingency plan for a retail public water supplier, where applicable, must include the following minimum elements.

(1) Minimum requirements. Drought contingency plans must include the following minimum elements.

(A) Preparation of the plan shall include provisions to actively inform the public and affirmatively provide opportunity for public input. Such acts may include, but are not limited to, having a public meeting at a time and location convenient to the public and providing written notice to the public concerning the proposed plan and meeting.

(B) Provisions shall be made for a program of continuing public education and information regarding the drought contingency plan.

(C) The drought contingency plan must document coordination with the regional water planning groups for the service area of the retail public water supplier to ensure consistency with the appropriate approved regional water plans.

(D) The drought contingency plan must include a description of the information to be monitored by the water supplier, and specific criteria for the initiation and termination of drought response stages, accompanied by an explanation of the rationale or basis for such triggering criteria.

City of Roanoke

(E) The drought contingency plan must include drought or emergency response stages providing for the implementation of measures in response to at least the following situations:

- (i) reduction in available water supply up to a repeat of the drought of record;
- (ii) water production or distribution system limitations;
- (iii) supply source contamination; or
- (iv) system outage due to the failure or damage of major water system components (e.g., pumps).

(F) The drought contingency plan must include specific, quantified targets for water use reductions to be achieved during periods of water shortage and drought. The entity preparing the plan shall establish the targets. The goals established by the entity under this subparagraph are not enforceable.

(G) The drought contingency plan must include the specific water supply or water demand management measures to be implemented during each stage of the plan including, but not limited to, the following:

- (i) curtailment of non-essential water uses; and
- (ii) utilization of alternative water sources and/or alternative delivery mechanisms with the prior approval of the executive director as appropriate (e.g., interconnection with another water system, temporary use of a non-municipal water supply, use of reclaimed water for non-potable purposes, etc.).

(H) The drought contingency plan must include the procedures to be followed for the initiation or termination of each drought response stage, including procedures for notification of the public.

(I) The drought contingency plan must include procedures for granting variances to the plan.

(J) The drought contingency plan must include procedures for the enforcement of mandatory water use restrictions, including specification of penalties (e.g., fines, water rate surcharges, discontinuation of service) for violations of such restrictions.

(2) Privately-owned water utilities. Privately-owned water utilities shall prepare a drought contingency plan in accordance with this section and incorporate such plan into their tariff.

City of Roanoke

(3) Wholesale water customers. Any water supplier that receives all or a portion of its water supply from another water supplier shall consult with that supplier and shall include in the drought contingency plan appropriate provisions for responding to reductions in that water supply.

(b) A wholesale or retail water supplier shall notify the executive director within five business days of the implementation of any mandatory provisions of the drought contingency plan.

(c) The retail public water supplier shall review and update, as appropriate, the drought contingency plan, at least every five years, based on new or updated information, such as the adoption or revision of the regional water plan.

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**Source Note:** The provisions of this §288.20 adopted to be effective February 21, 1999, 24 TexReg 949; amended to be effective April 27, 2000, 25 TexReg 3544; amended to be effective October 7, 2004, 29 TexReg 9384

## ***Appendix C***

### ***Letters to Region C Planning Group, TRWD and Fort Worth***

City of Roanoke

## **APPENDIX C**

### **LETTERS TO REGION C WATER PLANNING GROUP, TRWD AND FORT WORTH**

Date

Mr. Kevin Ward, Chair  
Region C Water Planning Group  
c/o Trinity River Authority  
P.O. Box 60  
Arlington, TX 76004

Dear Mr. Ward:

Enclosed please find a copy of the April 2019 draft *Drought Contingency and Emergency Water Management Plan* (which is an update to the June 2014 *Drought Contingency and Emergency Water Management Plan*) for the City of Roanoke. I am submitting a copy of this plan to the Region C Water Planning Group in accordance with the Texas Water Development Board and Texas Commission on Environmental Quality rules. The City Council of Roanoke adopted the updated Plan on April 28, 2026.

Sincerely,

Shawn Wilkinson  
Director of Public Works  
City of Roanoke

City of Roanoke

Date

Mr. Jim Oliver, General Manager  
Tarrant Regional Water District  
800 East Northside Drive  
Fort Worth, TX 76102

Dear Mr. Oliver:

Enclosed please find a copy of the April 2019 draft *Drought Contingency and Emergency Water Management Plan* (which is an update to the June 2014 *Drought Contingency and Emergency Water Management Plan*) for the City of Roanoke. I am submitting a copy of this plan to the Tarrant Regional Water District in accordance with the Texas Water Development Board and Texas Commission on Environmental Quality rules. The City Council of Roanoke adopted the updated Plan on April 28, 2026.

Sincerely,

Shawn Wilkinson  
Director of Public Works  
City of Roanoke

City of Roanoke

Date

Mr. Chris Harder, P.E., Water Director  
Fort Worth Water Department  
P.O. Box 870  
Fort Worth, TX 76101

Dear Mr. Harder:

Enclosed please find a copy of the April 2019 draft *Drought Contingency and Emergency Water Management Plan* (which is an update to the June 2014 *Drought Contingency and Emergency Water Management Plan*) for the City of Roanoke. I am submitting a copy of this plan to the City of Fort Worth in accordance with the Texas Water Development Board and Texas Commission on Environmental Quality rules.

Sincerely,

Shawn Wilkinson  
Director of Public Works  
City of Roanoke



## ***Appendix D***

# ***Adoption of Drought Contingency and Emergency Water Management Plan***

## **APPENDIX D**

### **ADOPTION OF DROUGHT CONTINGENCY AND WATER EMERGENCY RESPONSE PLAN**



**City of Roanoke, Texas  
500 S. Oak St  
Roanoke, Texas 76262**

## **Drought Contingency and Emergency Water Management Plan**

Developed to comply with the requirements of The Texas Commission on Environmental Quality  
and The Texas Water Development Board

**PWS# 0610008**

**Adopted by Ordinance No. 2026-119:**

**Effective April 28, 2026**

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## APPENDICES

|                   |                                                                                                                                                                                                                                                                                             |
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| <b>Appendix A</b> | List of References                                                                                                                                                                                                                                                                          |
| <b>Appendix B</b> | Texas Commission on Environmental Quality Rules on Drought Contingency Plans <ul style="list-style-type: none"><li>• Texas Administrative Code Title 30, Part 1, Chapter 288, Subchapter B, Rule §288.20 – Drought Contingency Plans for Municipal Uses by Public Water Suppliers</li></ul> |
| <b>Appendix C</b> | Letters to Region C Planning Group, TRWD, and Fort Worth                                                                                                                                                                                                                                    |
| <b>Appendix D</b> | Adoption of Drought Contingency and Water Emergency Response Plan                                                                                                                                                                                                                           |

## **1.0 INTRODUCTION AND OBJECTIVES**

The City of Roanoke has prepared this *Drought Contingency and Emergency Water Management Plan* in accordance with the requirements established by the Texas Commission on Environmental Quality (TCEQ), as well as the Texas Administrative Code in effect on January 21, 2019.<sup>1</sup> Roanoke purchases treated water from the City of Fort Worth (Fort Worth), who purchases raw water from Tarrant Regional Water District (TRWD). As a wholesale water customer of Fort Worth, Roanoke is required to institute and apply the same rationing, conservation measures and restrictions to the use of water as Fort Worth. This Plan complies with the requirements established in the City of Fort Worth *Drought Contingency and Emergency Water Management Plan for Retail and Wholesale Water Customers* adopted April 28, 2026.<sup>2</sup>

This Plan addresses all of the current TCEQ requirements for a Drought Contingency Plan which are included in Appendix B. This Plan replaces the Plan included in Ordinance 1700 dated April 17, 2014. The measures included in this *Drought Contingency and Emergency Water Management Plan* are intended to provide short-term water savings during drought or emergency conditions. Water savings associated with ongoing, long-term strategies are discussed in the City of Roanoke *Water Conservation Plan*.<sup>3</sup>

The purpose of this *Drought Contingency and Emergency Water Management Plan* is as follows:

- To conserve the available water supply in times of drought and emergency
- To maintain supplies for domestic water use, sanitation, and fire protection
- To protect and preserve public health, welfare, and safety
- To minimize the adverse impacts of water supply shortages
- To minimize the adverse impacts of emergency water supply conditions

In the absence of drought response measures, water demands tend to increase during a drought due to increases in outdoor irrigation. The severity of a drought depends on the degree of depletion of water supplies, and on the relationship of demand to available supplies. Roanoke considers a drought to begin or end when Fort Worth has made the determination that the drought has begun or ended.

<sup>1</sup> Superscripted numbers match references listed in Appendix A.

## **2.0 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY RULES**

TCEQ rule Title 30, Part 1, Chapter 288, subchapter A, rule 288.1 defines a drought contingency plan as “a strategy or combination of strategies for temporary supply and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies.”<sup>1</sup>

The TCEQ rules governing development of Drought Contingency Plans for public water suppliers are contained in Title 30, Part 1, Chapter 288, Subchapter B, Rule 288.20 of the Texas Administrative Code, a current copy of which is included in Appendix B.

TCEQ’s minimum requirements for Drought Contingency Plans are addressed in the following subsections of this report:

- 288.20(a)(1)(A) – Provisions to Inform the Public and Provide Opportunity for Public Input – Section 3.1
- 288.20(a)(1)(B) – Provisions for Continuing Public Education and Information – Section 3.2
- 288.20(a)(1)(C) – Coordination with the Regional Water Planning Group – Section 3.7
- 288.20(a)(1)(D) – Criteria for Initiation and Termination of Drought Contingency and Water Emergency Response Stages – Section 3.3
- 288.20(a)(1)(E) – Drought Contingency and Water Emergency Response Stages – Section 3.4
- 288.20(a)(1)(F) – Specific, Quantified Targets for Water Use Reductions – Section 3.4
- 288.20(a)(1)(G) – Water Supply and Demand Management Measures for Each Stage – Section 3.4
- 288.20(a)(1)(H) – Procedures for Initiation and Termination of Drought Contingency and Water Emergency Response Plan Stages – Section 3.3
- 288.20(a)(1)(I) - Procedures for Granting Variances – Section 3.5
- 288.20(a)(1)(J) - Procedures for Enforcement of Mandatory Restrictions – Section 3.6
- 288.20(a)(3) – Consultation with Wholesale Supplier – Section 3.3
- 288.20(b) – Notification of Implementation of Mandatory Measures – Section 3.4
- 288.20(c) – Review and Update of Plan – Section 3.8

### **3.0 DROUGHT CONTINGENCY AND EMERGENCY WATER MANAGEMENT PLAN**

#### **3.1 PROVISIONS TO INFORM THE PUBLIC AND OPPORTUNITY FOR PUBLIC INPUT**

The City of Roanoke provided opportunity for public input in the development of this *Drought Contingency and Emergency Water Management Plan* by the following means:

- Providing written notice of the proposed Plan and the opportunity to comment on the plan by posted notice, and notice on the City's web site ([www.roanoketexas.com](http://www.roanoketexas.com)).
- Making the draft plan available on the City's web site ([www.roanoketexas.com](http://www.roanoketexas.com)).
- Providing the draft plan at City Hall for anyone to review upon request.
- Providing opportunity for public comment on the plan at a City Council Meeting held on April 28, 2026.

#### **3.2 PROVISIONS FOR CONTINUING PUBLIC EDUCATION AND INFORMATION**

The City of Roanoke will inform and educate the public about the *Drought Contingency and Emergency Water Management Plan* by the following means:

- Preparing fact sheets describing the plan and making these available online and at various City of Roanoke sites, as well as at events where the Public Works Department may have a booth.
- Posting a copy of the Plan on the City's website ([www.roanoketexas.com](http://www.roanoketexas.com)).
- Notifying local organizations, schools, and civic groups that staff are available to make presentations on the Plan.
- Providing a public feedback comment window on the City of Roanoke's website.

At any time that this *Drought Contingency and Emergency Water Management Plan* is activated or the stage changes, the City will notify local media of the issues, the current response stage (if applicable), and the specific actions required of the public. The information will also be publicized on the City of Roanoke's website (if available). Billing inserts may also be used as appropriate.

### **3.3 INITIATION AND TERMINATION OF DROUGHT CONTINGENCY AND EMERGENCY WATER MANAGEMENT STAGES**

The provisions of this Plan shall apply to all persons, customers, and property utilizing potable water provided by the City of Roanoke. The terms “person” and “customer” as used in the Plan include individuals, corporations, partnerships, associations, and all other legal entities. The Plan does not apply to locations using treated wastewater effluent, private wells, or possessing their own water rights in the Trinity River.

The Plan may be applied to the entire city or geographic portions of the city as necessary. If the Plan is applied only to a limited sector, the boundaries will be defined in terms of roadways, creeks and other easily distinguishable features, such as city limits.

#### Initiation of a Drought Contingency or Emergency Water Management Stage

The City Manager or his/her official designee may order the implementation of a Drought Contingency or Emergency Water Management stage when one or more of the trigger conditions for that stage is met. The following actions will be taken when a Drought Contingency or Emergency Water Management stage is initiated:

- The public will be notified through local media and the City’s web site as described in Section 3.2.
- The City of Fort Worth and Tarrant Regional Water District (TRWD) will be notified by telephone and with a follow-up letter, or email that provides details of the reasons for initiation of the Drought or Emergency Water Management stage.
- The City will notify the Executive Director of the TCEQ within 5 business days when mandatory provisions of the Plan are activated.

Stages imposed by the City of Fort Worth must be initiated by the City of Roanoke per the wholesale water contract with the City of Fort Worth.

For other trigger conditions internal to the City, the City Manager or his/her official designee may decide not to order the implementation of a drought response or water emergency stage even though one or more of the trigger criteria for the stage are met. Factors which could influence such a decision include, but are not limited to, the time of the year, weather conditions, the anticipation of replenished water supplies, or the anticipation that additional facilities will become available to meet needs. The reason for this decision should be documented.



Termination of a Drought Contingency or Emergency Water Management Stage

The City Manager or his/her official designee may order the termination of a Drought Contingency or Emergency Water Management stage when the conditions for termination are met or at his/her discretion. The following actions will be taken when a Drought Contingency or Emergency Water Management stage is terminated:

- The public will be notified through local media and the City's web site as described in Section 3.2.
- The City of Fort Worth and TRWD will be notified by telephone with a follow-up letter or email.
- If any mandatory provisions of the *Drought Contingency or Emergency Water Management Plan* that have been activated are terminated, the City will notify the Executive Director of the TCEQ within 5 business days.

The City Manager or his/her official designee may decide not to order the termination of a drought response stage or water emergency even though the conditions for termination of the stage are met. Factors which could influence such a decision include, but are not limited to, the time of the year, weather conditions, or the anticipation of potential changed conditions that warrant the continuation of the drought stage. The reason for this decision should be documented.

### **3.4 DROUGHT CONTINGENCY AND EMERGENCY WATER MANAGEMENT PLAN STAGES AND MEASURES**

#### **Stage 1 – Water Watch**

Triggering Conditions

- Roanoke's water demand reaches or exceeds 90% of reliable delivery capacity for three consecutive days. The delivery capacity could be citywide or in a specified portion of the system.
- Roanoke's water supply sources or water distribution system becomes contaminated.
- Roanoke's water demand for all or part of the delivery system approaches delivery capacity because delivery capacity is inadequate.

City of Roanoke

- Roanoke’s water supply system is unable to deliver water due to the failure or damage of major water system components.
- Fort Worth initiates Stage 1 – Water Watch for one or more of the following reasons:
  - Total raw water supply in TRWD western and eastern division reservoirs drops below 75% (25% depleted) of conservation storage.
  - Water demand for all or part of the TRWD delivery system exceeds delivery capacity because delivery capacity is inadequate.
  - One or more of TRWD’s water supply sources has become limited in availability.
  - Water demand is projected to approach the limit of TRWD’s permitted supply.
  - TRWD’s supply source becomes contaminated.
  - TRWD’s water supply system is unable to deliver water due to the failure or damage of major water system components.
  - The TRWD General Manager finds that conditions warrant the declaration of a Stage 1 drought.

Terminating Conditions for Stage 1

Stage 1 will terminate when Fort Worth terminates its Stage 1 condition, or when the circumstances that caused the initiation of Stage 1 no longer prevail.

Goals for Use Reduction for Stage 1

The goal for water use reduction under Stage 1 – Water Watch is five percent (5%). If circumstances warrant, or if required by the City of Fort Worth, the City Manager or his/her official designee can set a goal for greater water use reduction.

Actions Available for Stage 1

The City Manager or his/her official designee may order the implementation of any or all of the actions listed below, as deemed necessary to achieve a five percent reduction in water use. The City Manager or his/her official designee must implement any action(s) required by the City of Fort Worth.

City of Roanoke

All Water Users

Initiate mandatory restrictions to prohibit non-essential water use as follows:

- Continue actions described in the Water Conservation Plan
- Prohibit hosing of paved areas, such as sidewalks, driveways, parking lots, tennis courts, patios, or other impervious surfaces, except to alleviate an immediate health or safety hazard. This may include premises with raw or processed food, pharmaceutical or vaccine processing, storage or vending establishments including restaurants and grocery stores may be washed to the extent necessary for sanitary purposes. These areas may also include:
  - Trash and dumpster areas
  - Areas around fuel pumps
  - Store front cleaning of areas with accumulated bird droppings, feathers and debris
  - Localized spot cleaning of parking areas to remove oil, grease buildup that may pose a health and safety issue.
- Prohibit hosing of buildings or other structures for purposes other than fire protection or surface preparation prior to painting.
- Prohibit using water in such a manner as to allow runoff or other waste, including:
  - failure to repair a controllable leak, including a broken sprinkler head, a leaking valve, leaking or broken pipes, or a leaking faucet;
  - operating a permanently installed irrigation system with: (a) a broken head; (b) a head that is out of adjustment and the arc of the spray head is over a street or parking lot; or (c) a head that is misting because of high water pressure;
  - during irrigation, allowing water to (a) to run off a property and form a stream of water in a street for a distance of 50 feet or greater; or (b) to pond in a street or parking lot to a depth greater than one-quarter of an inch; or
  - allowing or causing an irrigation system or other lawn watering device to operate during any form of precipitation or when temperatures are at or below 32 degrees Fahrenheit.
- Increase enforcement of the landscape watering restriction from the Water Conservation Plan to prohibit outdoor watering with sprinklers or irrigation systems between 10 a.m. and 6 p.m.

City of Roanoke

- Increase the enforcement of the landscape watering restriction from the Water Conservation Plan to limit landscape watering with sprinklers or irrigation systems at each service address to a twice per week schedule as outlined below. This includes landscape watering of parks, golf courses, and sports fields.
  - Residential addresses ending in an even number (0, 2, 4, 6, or 8) may water on Wednesdays and Saturdays.
  - Residential addresses ending in an odd number (1, 3, 5, 7 or 9) may water on Thursdays and Sundays.
  - All non-residential locations (apartment complexes, businesses, industries, parks, medians, etc.) may water on Tuesdays and Fridays.

Exceptions:

- Lawns and landscaping may be watered on any day, at any time, by handheld hose, drip irrigation, a soaker hose or tree bubbler. (The intent of this measure is to allow for the protection of structural foundations, trees, and other high value landscape materials).
- Water use necessary for the repair of an irrigation system, plumbing line, fountain, etc. in the presence of the person making the repair.
- Outdoor watering at service addresses with large multi-station irrigation systems may take place in accordance with a variance granted by the Director of Public Works, if the Director determines that a property cannot be completely irrigated with an average of three-quarters of an inch of water in a single day, and that the property should be divided into sections to be irrigated on different days. If approved, no station will be watered more than twice per week.
- Establishing new turf is discouraged. If hydromulch, grass sod, or grass seed is installed for the purpose of establishing a new lawn, there are no watering restrictions for the first 30 days while it is being established. After that, the watering restrictions set forth in this stage apply. (This does not include over seeding with rye, or seasonal grasses, since turf already exists.)

City of Roanoke

- Golf courses may water greens and tee boxes as necessary, however watering must be done before 10 a.m. and after 6 p.m. Golf courses are encouraged to reduce water use by five percent.
- Skinned areas of sports fields may be watered as needed for dust control.
- Watering of athletic fields (fields only, does not include surrounding landscaped areas) used for organized sports practice, competition, or exhibition events may occur as necessary to protect the health and safety of the players, staff, or officials present for athletic events. Owners of such athletic fields are encouraged to reduce water use by five percent.

Exception Requiring a Variance:

- Public areas that are open to the public at-large and have a high-impact from frequent use may be allowed additional watering, with a variance granted by the Public Works Director, if it is deemed to be beneficial to serve and protect the community amenity. Examples may include but are not limited to: outdoor amphitheaters, demonstration gardens, public art exhibitions, outdoor learning areas, arboretums, etc.
- Discourage the filling, draining, or refilling of swimming pools, wading pools, hot tubs and Jacuzzi type pools except to maintain adequate water levels for structural integrity, proper operation and maintenance, and/or to alleviate an issue that poses a public safety risk.
- All users are encouraged to use native and adapted drought tolerant plants in landscaping.
- Washing of any motor vehicle, motorbike, boat, trailer, airplane, or other vehicle shall be limited to the use of a bucket or a hand-held hose equipped with a positive-pressure shutoff nozzle for quick rinses. Vehicle washing may be done at any time on the premises of a commercial car wash or commercial service station. Companies with an automated on-site vehicle washing facility may wash its vehicles at any time. Further, such washing may be exempt from these requirements if the health, safety, and welfare of the public are contingent upon frequent vehicle cleansing, such as garbage trucks and vehicles used to transport food and perishables.

City and Local Governments

In addition to the actions listed above:

City of Roanoke

- Review conditions and problems that caused Stage 1. Take corrective action.
- Increase public education efforts on ways to reduce water use.
- Increase enforcement efforts.
- Intensify leak detection and repair efforts.
- Audit all city and local government irrigation systems to ensure proper condition, settings, and operation.
- Identify and encourage voluntary reduction measures by high-volume water users through water use audits.
- Reduce non-essential water use. As used herein, non-essential water uses are those that do not have any health or safety impact and are not needed to meet the core function of the agency.
- Per the contract, wholesale customers of Fort Worth are required to institute and apply the same rationing, conservation measures or restrictions to the use of water by their customers for so long as any part of their total water supply is being furnished by Fort Worth.

Commercial or Industrial

- All actions listed above for all water users apply to commercial and industrial users.
- Stock at commercial plant nurseries is exempt from Stage 1 watering restrictions.
- Hotels, restaurants, and bars are encouraged to serve drinking water to patrons on an “on demand” basis.
- Hotels are encouraged to implement laundry conservation measures by encouraging patrons to reuse linens and towels.
- Car wash facilities must keep equipment in good working order, which should include regular inspections to be sure there are no leaks, broken or misdirected nozzles, and that all equipment is operating efficiently.
- All commercial and industrial customers are encouraged to audit irrigation systems.

**Stage 2 – Water Warning**

Triggering Conditions

City of Roanoke

- Roanoke’s water demand reaches or exceeds 95% of reliable delivery capacity for three consecutive days. The delivery capacity could be citywide or in a specified portion of the system.
- Roanoke’s water supply sources or water distribution system becomes contaminated.
- Roanoke’s water demand for all or part of the delivery system approaches delivery capacity because delivery capacity is inadequate.
- Roanoke’s water supply system is unable to deliver water due to the failure or damage of major water system components.
- Fort Worth initiates Stage 2 – Water Warning for one or more of the following reasons:
  - Total raw water supply in TRWD western and eastern division reservoirs drops below 60% (40% depleted) of conservation storage.
  - Water demand for all or part of the TRWD delivery system exceeds delivery capacity because delivery capacity is inadequate.
  - One or more of TRWD’s water supply sources has become limited in availability.
  - Water demand is projected to approach the limit of TRWD’s permitted supply.
  - TRWD’s supply source becomes contaminated.
  - TRWD’s water supply system is unable to deliver water due to the failure or damage of major water system components.
  - The TRWD General Manager finds that conditions warrant the declaration of a Stage 2 drought.

Terminating Conditions for Stage 2

Stage 2 may terminate when Fort Worth terminates its Stage 2 condition, or when the circumstances that caused the initiation of Stage 2 no longer prevail.

Goals for Use Reduction for Stage 2

The goal for water use reduction under Stage 2 is a reduction of ten percent (10%). If circumstances warrant or if required by the City of Fort Worth, the City Manager or official designee can set a goal for greater water use reduction.

Actions Available for Stage 2

City of Roanoke

The City Manager or his/her official designee may order the implementation of any of the actions listed below, as deemed necessary. The City Manager or his/her official designee must implement any action(s) required by the Tarrant Regional Water District.

- Continue or initiate any actions available under Stage 1.
- Initiate engineering studies to evaluate water supply alternatives should conditions worsen.

All Water Users

- Limit landscape watering with sprinklers or irrigation systems to a once per week schedule at each service address as determined by the Director of Public Works. This includes landscape watering at parks, golf courses, and sports fields. Roanoke may use a different watering schedule than the one used for Fort Worth retail customers as long as it limits each service address to once per week schedule; however, use of the same schedule would simplify the messages passed to customers through the news media.

Exceptions:

- Lawns and landscaping may be watered on any day, at any time, by handheld hose, drip irrigation, a soaker hose, or tree bubbler. (The intent of this measure is to allow for the protection of structural foundations, trees, and other high value landscape materials). If drip irrigation or a soaker hose is used to water a foundation, the system must be placed within 24-inches of the foundation and must not produce a spray of water above the ground. Tree watering is limited to an area not to exceed the drip line of the tree.
- Outdoor watering at service addresses with large multi-station irrigation systems may take place in accordance with a variance granted by the Director of Public Works, if the director determines that a property cannot be completely irrigated with an average of three-quarters of an inch of water in a single day, and that the property should be divided into sections to be irrigated on different days. If approved, no station will be watered more than once per week.
- Golf courses may water greens and tee boxes as needed to keep them alive, however watering must be done before 10 a.m. and after 6 p.m. Fairways are restricted to once per week watering as outlined above. Golf course rough cannot be watered.



City of Roanoke

- Watering of athletic fields (fields only, does not include surrounding landscaped areas) used for organized sports practice, competition, or exhibition events may occur as necessary to protect the health and safety of the players, staff, or officials present for athletic events. Owners of such athletic fields are encouraged to reduce water use by 10 percent.
- All users are encouraged to wait until the current drought or emergency situation has passed before establishing new landscaping and turf. Variances granted for establishing new turfgrass or landscaping will be for a maximum of 30 days from the date of approval. After that, the watering restrictions set forth in this stage apply. (This does not include over seeding with rye since turf already exists.)
- Prohibit use of water for dust control, except as required to protect public health.
- Prohibit the operation of ornamental fountains or ponds that use potable water except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.
- Discourage the filling, draining, or refilling of swimming pools, wading pools, hot tubs and Jacuzzi type pools except to maintain adequate water levels for structural integrity, proper operation and maintenance, and/or to alleviate an issue that poses a public safety risk.
- Encourage the use of covers for all types of pools, hot tubs, and Jacuzzi type pools when not in use.

City and Local Governments

- Review conditions or problems that caused Stage 2. Take corrective action.
- Increase frequency of media releases on water supply conditions.
- Further accelerate public education efforts on ways to reduce water use.
- Eliminate non-essential water use. As used herein, non-essential water uses are those that do not have any health or safety impact and are not needed to meet the core function of the agency.
- Prohibit wet street sweeping.

City of Roanoke

- Per the contract, wholesale customers of Fort Worth are required to institute and apply the same rationing, conservation measures or restrictions to the use of water for so long as any part of their total water supply is being furnished by Fort Worth.

Commercial or Industrial

- All actions listed above for all water users apply to commercial and industrial users.
- Use of water from fire hydrants for any purpose other than firefighting related activities or other activities necessary to maintain public health, safety and welfare requires a variance issued by the Director of Public Works. Fire hydrant use may be limited to only designated hydrants. Upon declaration of this drought stage, all holders or applicants of a Water Fire Hydrant Meter Agreement are required to apply for a variance as set forth in this plan. If conditions allow, as determined by the Director of Public Works, the use of water from hydrants may continue until the Director of Public Works or his/her designee issues a determination on the petition for variance. If conditions do not allow, the Director of Public Works may require all fire hydrant meters be immediately returned from the field, pending determination of each petition for variance.

**Stage 3 – Emergency Water Use**

Triggering Conditions

- Roanoke’s water demand has reached or exceeds 98% of reliable delivery capacity for one day. The delivery capacity could be citywide or in a specified portion of the system.
- Roanoke’s water supply sources or water distribution system becomes contaminated.
- Roanoke’s water demand for all or part of the delivery system approaches delivery capacity because delivery capacity is inadequate.
- Roanoke’s water supply system is unable to deliver water due to the failure or damage of major water system components.
- Fort Worth initiates Stage 3 – Emergency Water Use, which may also be initiated by one or more of the following:
  - Total raw water supply in TRWD western and eastern division reservoirs drops below 45% (55% depleted) of conservation storage.
  - Water demand exceeds the amount that can be delivered to customers.

City of Roanoke

- Water demand for all or part of the TRWD delivery system exceeds delivery capacity because delivery capacity is inadequate.
- One or more of TRWD's water supply sources has become limited in availability.
- Water demand is projected to approach or exceed the limit of TRWD's permitted supply.
- TRWD's supply source becomes contaminated.
- TRWD's water supply system is unable to deliver water due to the failure or damage of major water system components.
- The TRWD General Manager finds that conditions warrant the declaration of a Stage 3 drought.

Terminating Conditions for Stage 3

Stage 3 may terminate when Fort Worth terminates its Stage 3 condition, or when the circumstances that caused the initiation of Stage 3 no longer prevail.

Goals for Use Reduction for Stage 3

The goal for water use reduction under Stage 3 is a reduction of twenty percent (20%). If circumstances warrant or if required by the City of Fort Worth, the City Manager or official designee can set a goal for greater water use reduction.

Actions Available for Stage 3

The City Manager or his/her official designee may order the implementation of any of the actions listed below, as deemed necessary. The City Manager or his/her official designee must implement any action(s) required by the Tarrant Regional Water District.

- Continue or initiate any actions available under Stages 1 and 2.

All Water Users

- Prohibit landscape watering, including at parks, golf courses, and sports fields.

Exceptions:

- Watering with hand-held hose, soaker hose or drip irrigation system may occur any day and any time. (The intent of this measure is to allow for the protection of structural foundations, trees, and other high value landscape materials). If drip irrigation or a soaker

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hose is used to water a foundation, the system must be placed within 24-inches of the foundation, and must not produce a spray of water above the ground. Tree watering is limited to an area not to exceed the drip line of the tree.

- Golf course greens only may be watered by hand-held hose as needed to keep them alive, however watering must be done before 10 a.m. or 6 p.m.
- Watering of athletic fields (fields only, does not include surrounding landscaped areas) used for organized sports practice, competition, or exhibition events may occur as necessary to protect the health and safety of the players, staff, or officials present for athletic events may be allowed to water by variance. A water management plan must be submitted to the Public Works Director detailing how each area will comply with Stage 3 drought measures.
- Prohibit establishment of new landscaping. Variances may be granted for those landscape projects started prior to the initiation of Stage 3 drought restrictions.
- Vehicle washing restricted to commercial car wash, commercial service station or a private on-site vehicle washing facility and can only be done as necessary for health, sanitation, or safety reasons, including but not limited to the washing of garbage trucks and vehicles used to transport food and other perishables. All other vehicle washing is prohibited.
- Prohibit the operation of ornamental fountains or ponds that use potable water except where necessary to support aquatic life.
- Prohibit the draining, filling, or refilling of swimming pools, wading pools and Jacuzzi type pools. Existing private and public pools may add water to maintain pool levels; however they may not be refilled using automatic fill valves.
- Prohibit hosing of buildings or other structures for purposes other than fire protection or surface preparation prior to painting with high-pressure equipment. Must be performed by a professional power washing service utilizing high efficiency equipment and a vacuum recovery system where possible.

City and Local Governments

In addition to actions listed above:

- Continue or initiate any actions available under Stages 1 and 2.

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- Review conditions or problems that caused Stage 3. Take corrective action.
- Implement viable alternative water supply strategies.
- Increase frequency of media releases explaining emergency situation.
- Reduce city and local government water use to maximum extent possible.
- Prohibit the permitting of new swimming pools, Jacuzzi type pools, spas, ornamental ponds and fountain construction. Pools already permitted and under construction may be completely filled with water.
- Institute a mandated reduction in deliveries to all wholesale customers. Such a reduction will be distributed as required by Texas Water Code §11.039.
- If Fort Worth has imposed a reduction in water available to customers, impose the same percent reduction on Roanoke's customers.
- Per the contract, wholesale customers of Fort Worth are required to institute and apply the same rationing, conservation measures or restrictions to the use of water by their customers for so long as any part of their total water supply is being furnished by Fort Worth.

Commercial or Industrial

- All actions listed above for all water users apply to commercial and industrial users.
- Hotels, restaurants, and bars required to serve drinking water to patrons only on an "on demand" basis.
- Hotels are required to implement laundry conservation measures by encouraging patrons to reuse linens and towels.
- Stock at commercial plant nursery may be watered only with a hand-held hose, hand-held watering can, or drip irrigation system.
- Commercial and industrial water users required to reduce water use by a set percentage determined by the Director of Public Works.
- Use of water from hydrants for any purpose other than firefighting related activities or other activities necessary to maintain public health, safety and welfare requires a special permit issued by the Director of Public Works. Fire hydrant use may be limited to only designated hydrants.

### **3.5 PROCEDURES FOR GRANTING VARIANCES TO THE PLAN**

The Director of Public Works or his/her official designee may grant temporary variances for existing water uses otherwise prohibited under this *Drought Contingency and Emergency Water Management Plan* if one or more of the following conditions are met:

- Failure to grant such a variance would cause an emergency condition adversely affecting health, sanitation, or fire safety for the public or the person or entity requesting the variance.
- Compliance with this plan cannot be accomplished due to technical or other limitations.
- Alternative methods that achieve the same level of reduction in water use can be implemented.

Variances shall be granted or denied at the discretion of the Director of Public Works or his/her official designee. All petitions for variances should be in writing, using the forms provided, and must include the following information:

- Name and address of the petitioner(s)
- Purpose of water use
- Specific provisions from which relief is requested
- Detailed statement of the adverse effect of the provision from which relief is requested
- Description of the relief requested
- Period of time for which the variance is sought
- Detailed schedule of irrigation that shows a reduction in use over the 30 day period for new lawns and landscapes. Schedule should be designed so that at the end of the 30 day period, lawn and landscaped areas can adhere to the twice per week schedule defined in Stage 1.
- Alternative measures that will be taken to reduce water use
- Other pertinent information.

### **3.6 PROCEDURES FOR ENFORCING MANDATORY WATER USE RESTRICTIONS**

Mandatory water use restrictions may be imposed in Stages 1, 2, and 3. These mandatory water use restrictions will be enforced by warnings and penalties as follows:

City of Roanoke

- On the first violation, customers will be given a written warning that they have violated the mandatory water use restriction.
- On the second and subsequent violations, citations may be issued to customers, with minimum and maximum fines established by ordinance.
- After three violations have occurred, the utility may cut off water service to the customer.

Appendix D contains a copy of the City of Roanoke City ordinance adopting this Plan and the enforcement actions and penalties.

### **3.7 COORDINATION WITH OTHER ENTITIES**

The City of Roanoke's retail service area is located entirely within the Region C water planning area and the Tarrant Regional Water District. Appendix C includes copies of the letters sent to the Chair of the Region C Water Planning Group, the Tarrant Regional Water District, and the City of Fort Worth with a copy of this Plan.

### **3.8 REVIEW AND UPDATE OF DROUGHT CONTINGENCY AND EMERGENCY WATER MANAGEMENT PLAN**

As required by TCEQ rules, Roanoke will review this *Drought Contingency and Emergency Water Management Plan* at least every five years. The Plan will be updated as appropriate based on new or updated information.

## ***Appendix A***

### ***List of References***



## **APPENDIX A**

### **LIST OF REFERENCES**

1. Title 30 of the Texas Administrative Code, Part 1, Chapter 288, Subchapter B, Rule 288.20, downloaded from [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=2&ti=30](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=2&ti=30), January 21, 2019.
2. City of Fort Worth, *Drought Contingency and Emergency Water Management Plan for Retail and Wholesale Water Customers*, April 2019.

## ***Appendix B***

### ***Texas Commission on Environmental Quality Rules on Drought Contingency Plans***

## **APPENDIX B**

### **TEXAS COMMISSION OF ENVIRONMENTAL QUALITY RULES ON DROUGHT CONTINGENCY PLANS**

**TITLE 30**

ENVIRONMENTAL QUALITY

**PART 1**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**CHAPTER 288**

WATER CONSERVATION PLANS, DROUGHT CONTINGENCY PLANS,  
GUIDELINES AND REQUIREMENTS

**SUBCHAPTER B**

DROUGHT CONTINGENCY PLANS

**RULE §288.20**

**Drought Contingency Plans for Municipal Uses by Public Water Suppliers**

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(a) A drought contingency plan for a retail public water supplier, where applicable, must include the following minimum elements.

(1) Minimum requirements. Drought contingency plans must include the following minimum elements.

(A) Preparation of the plan shall include provisions to actively inform the public and affirmatively provide opportunity for public input. Such acts may include, but are not limited to, having a public meeting at a time and location convenient to the public and providing written notice to the public concerning the proposed plan and meeting.

(B) Provisions shall be made for a program of continuing public education and information regarding the drought contingency plan.

(C) The drought contingency plan must document coordination with the regional water planning groups for the service area of the retail public water supplier to ensure consistency with the appropriate approved regional water plans.

(D) The drought contingency plan must include a description of the information to be monitored by the water supplier, and specific criteria for the initiation and termination of drought response stages, accompanied by an explanation of the rationale or basis for such triggering criteria.

City of Roanoke

(E) The drought contingency plan must include drought or emergency response stages providing for the implementation of measures in response to at least the following situations:

- (i) reduction in available water supply up to a repeat of the drought of record;
- (ii) water production or distribution system limitations;
- (iii) supply source contamination; or
- (iv) system outage due to the failure or damage of major water system components (e.g., pumps).

(F) The drought contingency plan must include specific, quantified targets for water use reductions to be achieved during periods of water shortage and drought. The entity preparing the plan shall establish the targets. The goals established by the entity under this subparagraph are not enforceable.

(G) The drought contingency plan must include the specific water supply or water demand management measures to be implemented during each stage of the plan including, but not limited to, the following:

- (i) curtailment of non-essential water uses; and
- (ii) utilization of alternative water sources and/or alternative delivery mechanisms with the prior approval of the executive director as appropriate (e.g., interconnection with another water system, temporary use of a non-municipal water supply, use of reclaimed water for non-potable purposes, etc.).

(H) The drought contingency plan must include the procedures to be followed for the initiation or termination of each drought response stage, including procedures for notification of the public.

(I) The drought contingency plan must include procedures for granting variances to the plan.

(J) The drought contingency plan must include procedures for the enforcement of mandatory water use restrictions, including specification of penalties (e.g., fines, water rate surcharges, discontinuation of service) for violations of such restrictions.

(2) Privately-owned water utilities. Privately-owned water utilities shall prepare a drought contingency plan in accordance with this section and incorporate such plan into their tariff.

City of Roanoke

(3) Wholesale water customers. Any water supplier that receives all or a portion of its water supply from another water supplier shall consult with that supplier and shall include in the drought contingency plan appropriate provisions for responding to reductions in that water supply.

(b) A wholesale or retail water supplier shall notify the executive director within five business days of the implementation of any mandatory provisions of the drought contingency plan.

(c) The retail public water supplier shall review and update, as appropriate, the drought contingency plan, at least every five years, based on new or updated information, such as the adoption or revision of the regional water plan.

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**Source Note:** The provisions of this §288.20 adopted to be effective February 21, 1999, 24 TexReg 949; amended to be effective April 27, 2000, 25 TexReg 3544; amended to be effective October 7, 2004, 29 TexReg 9384

## ***Appendix C***

### ***Letters to Region C Planning Group, TRWD and Fort Worth***

City of Roanoke

## **APPENDIX C**

### **LETTERS TO REGION C WATER PLANNING GROUP, TRWD AND FORT WORTH**

Date

Mr. Kevin Ward, Chair  
Region C Water Planning Group  
c/o Trinity River Authority  
P.O. Box 60  
Arlington, TX 76004

Dear Mr. Ward:

Enclosed please find a copy of the April 2019 draft *Drought Contingency and Emergency Water Management Plan* (which is an update to the June 2014 *Drought Contingency and Emergency Water Management Plan*) for the City of Roanoke. I am submitting a copy of this plan to the Region C Water Planning Group in accordance with the Texas Water Development Board and Texas Commission on Environmental Quality rules. The City Council of Roanoke adopted the updated Plan on April 28, 2026.

Sincerely,

Shawn Wilkinson  
Director of Public Works  
City of Roanoke

City of Roanoke

Date

Mr. Jim Oliver, General Manager  
Tarrant Regional Water District  
800 East Northside Drive  
Fort Worth, TX 76102

Dear Mr. Oliver:

Enclosed please find a copy of the April 2019 draft *Drought Contingency and Emergency Water Management Plan* (which is an update to the June 2014 *Drought Contingency and Emergency Water Management Plan*) for the City of Roanoke. I am submitting a copy of this plan to the Tarrant Regional Water District in accordance with the Texas Water Development Board and Texas Commission on Environmental Quality rules. The City Council of Roanoke adopted the updated Plan on April 28, 2026.

Sincerely,

Shawn Wilkinson  
Director of Public Works  
City of Roanoke



City of Roanoke

Date

Mr. Chris Harder, P.E., Water Director  
Fort Worth Water Department  
P.O. Box 870  
Fort Worth, TX 76101

Dear Mr. Harder:

Enclosed please find a copy of the April 2019 draft *Drought Contingency and Emergency Water Management Plan* (which is an update to the June 2014 *Drought Contingency and Emergency Water Management Plan*) for the City of Roanoke. I am submitting a copy of this plan to the City of Fort Worth in accordance with the Texas Water Development Board and Texas Commission on Environmental Quality rules.

Sincerely,

Shawn Wilkinson  
Director of Public Works  
City of Roanoke

## ***Appendix D***

# ***Adoption of Drought Contingency and Emergency Water Management Plan***

## **APPENDIX D**

### **ADOPTION OF DROUGHT CONTINGENCY AND WATER EMERGENCY RESPONSE PLAN**



## AGENDA ITEM

TO: Mayor and City Council

SUBJECT: Resolution No. 2026-110R - Motor Vehicle Crime Prevention Authority (MVCPA) Catalytic Converter Grant Program

MEETING DATE: April 28, 2026

DEPARTMENT: Police

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### **ITEM SUMMARY:**

Consider approval of Resolution No. 2026-110R authorizing the filing of a grant application for the Motor Vehicle Crime Prevention Authority Grant Program.

### **INFORMATION:**

Consider approval of a resolution authorizing the City of Roanoke to apply for the Motor Vehicle Crime Prevention Authority (MVCPA) Catalytic Converter Grant Program, as provided under Texas Transportation Code Chapter 1006. The resolution designates Captain Christopher Arndt as the Authorized Official to manage the grant application and related documents as well as the Program Director; and Finance Director Kyle Lester as the Financial Officer. The grant aims to support local law enforcement efforts in combating motor vehicle burglary and theft.

### **STAFF RECOMMENDATION:**

Approve the resolution authorizing the City of Roanoke to apply for the Motor Vehicle Crime Prevention Authority (MVCPA) Catalytic Converter Grant Program, as provided under Texas Transportation Code Chapter 1006

### **SPECIAL CONSIDERATION:**

### **FINANCIAL CONSIDERATION:**

### **ATTACHMENTS:**

1. RES NO 2026-110R SB224 Catalytic Converter Grant Program

**RESOLUTION NO. 2026-110R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROANOKE, TEXAS, AUTHORIZING AND APPROVING THE SUBMISSION OF A GRANT APPLICATION FOR THE MOTOR VEHICLE CRIME PREVENTION AUTHORITY GRANT PROGRAM.**

**WHEREAS**, under the provisions of the Texas Transportation Code Chapter 1006 and Texas Administrative Code Title 43; Part 3; Chapter 57, entities are eligible to receive grants from the Motor Vehicle Crime Prevention Authority (MVCPA) to provide financial support to law enforcement agencies for economic automobile theft enforcement teams and to combat motor vehicle burglary in the jurisdiction; and

**WHEREAS**, the SB224 Catalytic Converter Grant Program will assist the City of Roanoke to combat catalytic converter theft; and

**WHEREAS**, the City of Roanoke has agreed that in the event of loss or misuse of the grant funds, City of Roanoke assures that the grant funds will be returned in full to the Motor Vehicle Crime Prevention Authority.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF ROANOKE, TEXAS, THAT:**

**SECTION 1.**

Chris Arndt, Captain, is designated as the Authorized Official to apply for, accept, decline, modify, or cancel the grant application for the Motor Vehicle Crime Prevention Authority Grant Program and all other necessary documents to accept said grant; and

**SECTION 2.**

Clint Eustace, Captain, is designated as the Program Director and Kyle Lester, Finance Director, is designated as the Financial Officer for this grant.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Roanoke, Texas, on this April 28, 2026.

**APPROVED:**

**ATTEST:**

\_\_\_\_\_  
Carl E. Gierisch, Jr., Mayor

\_\_\_\_\_  
Lindsay Rawlinson, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jeff Moore, City Attorney



## AGENDA ITEM

TO: Mayor and City Council

SUBJECT: Municipal Advisory Agreement

MEETING DATE: April 28, 2026

DEPARTMENT: City Manager

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### ITEM SUMMARY:

Consideration and action on approval of a Municipal Advisory Agreement by and between Roanoke Convention Center Hotel Local Development Corporation and Hilltop Securities, Inc.

### INFORMATION:

The Roanoke Convention Center Hotel Local Development Corporation will have under consideration from time to time the authorization and issuance of municipal securities, including but not limited to the issuance and sale of evidences of indebtedness or debt obligations that may currently or in the future be authorized and issued or otherwise created or assumed by the Corporation, in amounts and forms which cannot presently be determined. The Corporation desires to obtain the professional services of Hilltop Securities as a municipal advisor to advise the Issuer regarding the issuance of municipal securities and any municipal financial products, all as more fully described herein, during the period in which this Agreement shall be effective.

### STAFF RECOMMENDATION:

### SPECIAL CONSIDERATION:

### FINANCIAL CONSIDERATION:

### ATTACHMENTS:

1. HTS Municipal Advisory Agreement - Roanoke Convention Center Hotel Local Development Corporation

## MUNICIPAL ADVISORY AGREEMENT

This Municipal Advisory Agreement (the “Agreement”) is made and entered into by and between **Roanoke Convention Center Hotel Local Development Corporation** (the “Issuer”) and Hilltop Securities Inc. (“HilltopSecurities”), and is dated, and shall be effective as of, the date executed by the Issuer as set forth on the signature page hereof (the “Effective Date”).

### WITNESSETH:

**WHEREAS**, the Issuer will have under consideration from time to time the authorization and issuance of municipal securities, including but not limited to the issuance and sale of evidences of indebtedness or debt obligations that may currently or in the future be authorized and issued or otherwise created or assumed by the Issuer, in amounts and forms which cannot presently be determined; and

**WHEREAS**, in connection with the authorization, sale, issuance and delivery of such municipal securities, as well as in connection with any matters relating to municipal financial products of the Issuer, the Issuer desires to retain a municipal advisor; and

**WHEREAS**, the Issuer desires to obtain the professional services of HilltopSecurities as a municipal advisor to advise the Issuer regarding the issuance of municipal securities and any municipal financial products, all as more fully described herein, during the period in which this Agreement shall be effective; and

**WHEREAS**, HilltopSecurities is willing to provide its professional services and its facilities as a municipal advisor in connection with the Issuer’s issuances of municipal securities and any municipal financial products, all as more fully described herein, during the period in which this Agreement shall be effective.

**NOW, THEREFORE**, the Issuer and HilltopSecurities, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, do hereby agree as follows:

### SECTION I SCOPE OF SERVICES

#### A. Scope of Services and Discharge of Responsibilities.

##### 1. *Scope of Services.*

(a) HilltopSecurities is engaged by the Issuer as its municipal advisor to provide the services set forth in **Appendix A** hereto (the “Municipal Advisory Services”). The Municipal Advisory Services, together with any services to be provided by HilltopSecurities as the Issuer’s independent registered municipal advisor (“IRMA”) pursuant to subparagraph B.1 of this Section I, are hereinafter collectively referred to as the “Scope of Services” hereunder. The Scope of Services to be provided by HilltopSecurities may be changed only as provided in paragraph D of this Section I.

(b) If the Issuer engages HilltopSecurities or any of its affiliates, in a capacity other than as municipal advisor, to provide additional services that are not municipal advisory activities (“Non-Municipal Advisor Services”), such engagement for Non-Municipal Advisor Services shall be evidenced by a separate agreement between the Issuer and such party. The parties hereto acknowledge that such Non-Municipal

Advisor Services shall not be governed by this Agreement and are intended to consist of activities not requiring registration as a municipal advisor under the Securities Exchange Act.

(c) The Issuer shall provide written notice to HilltopSecurities of any other municipal advisor engaged by the Issuer, whether in regard to all or any portion of the Municipal Advisory Services or for any other aspects of the issuance of municipal securities or municipal financial products outside the scope of the Municipal Advisory Services, as described in clause (c) of subparagraph B.1 of this Section I.

2. ***Inquiries and Information in Connection with HilltopSecurities' Duties.*** If and to the extent provided in the Scope of Services, HilltopSecurities is called upon to make recommendations to the Issuer or to review recommendations made by others to the Issuer, and in connection therewith to determine whether such recommendations are suitable for the Issuer, in order to fulfill its duties with respect to such recommendations and any associated suitability determinations, HilltopSecurities is required under applicable regulations to make reasonable inquiries of the Issuer as to the relevant facts. Such facts include, at a minimum, information regarding the Issuer's financial situation and needs, objectives, tax status, risk tolerance, liquidity needs, experience with municipal securities transactions or municipal financial products generally or of the type and complexity being recommended, financial capacity to withstand changes in market conditions during the term of the municipal financial product or the period that municipal securities to be issued in the municipal securities transaction are reasonably expected to be outstanding, and any other material information known by HilltopSecurities about the Issuer and the municipal securities transaction or municipal financial product. In addition, HilltopSecurities is required under applicable regulations to use reasonable diligence to know the essential facts about the Issuer and the authority of each person acting on behalf of the Issuer so as to effectively service HilltopSecurities' municipal advisory relationship with the Issuer, to act in accordance with any special directions from the Issuer, to understand the authority of each person acting on behalf of the Issuer, and to comply with applicable laws, regulations and rules.

Accordingly, the Issuer hereby agrees to provide accurate and complete information reasonably designed to permit HilltopSecurities to fulfill its responsibilities in connection with any such recommendations and suitability determinations and to provide to HilltopSecurities reasonable access to relevant documents and personnel in connection with its required investigation to determine that any recommendations are not based on materially inaccurate or incomplete information. The Issuer acknowledges that HilltopSecurities may not be able to make requested recommendations or suitability determinations if it is not provided access to such information and that the Issuer shall be estopped from claiming a violation of HilltopSecurities' fiduciary duty to the Issuer in connection with a recommendation or suitability determination made by HilltopSecurities based on materially inaccurate or incomplete information provided by the Issuer.

3. ***Actions Independent of or Contrary to Advice.*** The parties hereto acknowledge that the Issuer shall not be required to act in accordance with any advice or recommendation provided by HilltopSecurities to the Issuer. Upon providing such advice or recommendation to the Issuer, together with the basis for such advice or recommendation, HilltopSecurities shall have discharged its duties with regard to such advice or recommendation and shall not be liable for any financial or other damages resulting from the Issuer's election not to act in accordance with such advice or recommendation. Furthermore, the Issuer shall be estopped from claiming a violation of HilltopSecurities' fiduciary duty to the Issuer as a result of its election not to act in accordance with any advice or recommendation by HilltopSecurities, including but not limited to any claim that HilltopSecurities should have taken steps, in addition to providing its advice or recommendation together with the basis therefor, to cause the Issuer to follow its advice or recommendation.



4. ***Preparation of Official Statement in Connection with Issuance of Municipal Securities.***

If and to the extent provided in the Scope of Services, HilltopSecurities is called upon to assist the Issuer in the preparation of its official statement in connection with the issuance of municipal securities, the Issuer hereby agrees to provide accurate and complete information to HilltopSecurities reasonably designed to permit HilltopSecurities to fulfill its responsibility to have a reasonable basis for any information HilltopSecurities provides about the Issuer, its financial condition, its operational status and its municipal securities in connection with the preparation of the official statement. While HilltopSecurities may participate in the due diligence process in connection with the preparation of the official statement, if such participation is within the Scope of Services, HilltopSecurities shall not be obligated to undertake any inquiry or investigation in connection with such due diligence beyond any inquiries or investigations otherwise required by this Agreement. Furthermore, HilltopSecurities shall not be responsible for certifying the accuracy or completeness of the official statement, other than with respect to information about HilltopSecurities provided for inclusion in the official statement, if applicable. The Issuer agrees that HilltopSecurities may rely on any information provided to it by the Issuer for purposes of this paragraph.

5. ***Representations and Certifications.*** If and to the extent provided in the Scope of Services, HilltopSecurities is called upon to make representations and certifications with regard to certain aspects of matters pertaining to the Issuer, its municipal securities or municipal financial products arising as part of the Municipal Advisory Services to be provided pursuant to this Agreement, the Issuer hereby agrees to provide accurate and complete information to HilltopSecurities as may be reasonably necessary or otherwise helpful to HilltopSecurities in fulfilling its responsibility to have a reasonable basis for any representations, other than representations by HilltopSecurities regarding itself, made in a certificate signed by HilltopSecurities that may be relied upon by the Issuer, any other party involved in any matter arising as part of the Municipal Advisory Services, or investors in the Issuer's municipal securities. The Issuer agrees that HilltopSecurities may rely on any information provided to it by the Issuer for purposes of this paragraph.

**B. Services as Independent Registered Municipal Advisor.**

1. ***Designation as IRMA and Scope of Designation.***

(a) Subject to clause (b) of this subparagraph B.1, if the Issuer elects to designate HilltopSecurities, and HilltopSecurities agrees to represent the Issuer, as the Issuer's IRMA for purposes of Securities Exchange Commission ("SEC") Rule 15Ba1-1(d)(3)(vi) (the "IRMA exemption") with respect to the Municipal Advisory Services, HilltopSecurities will treat such role as IRMA as within the scope of Municipal Advisory Services. Any reference to HilltopSecurities, its personnel and its role as IRMA in the written representation of the Issuer contemplated under SEC Rule 15Ba1-1(d)(3)(vi)(B) shall be subject to prior approval by HilltopSecurities.

If there are any other aspects of the issuance of municipal securities or municipal financial products outside the scope of the Municipal Advisory Services with respect to which the Issuer seeks to have HilltopSecurities serve as its IRMA, such aspects, which are separate and distinct from Municipal Advisory Services for purposes of this Agreement, shall be included in Appendix A hereto and may be changed only as provided in paragraph D of this Section I. HilltopSecurities' duties as IRMA shall be strictly limited to the provision of advice to the Issuer with regard to third-party recommendations on any aspects of the issuance of municipal securities or municipal financial products outside the scope of the Municipal Advisory Services, subject to subparagraph B.3 of this Section I, and the provision of advice by HilltopSecurities to the Issuer with respect to such matters shall not result in a change in scope of the Municipal Advisory Services. By way of example, if HilltopSecurities serves as municipal advisor for an

issuance of municipal securities within the scope of Municipal Advisory Services, but is asked to review a recommendation made by a third party with respect to a different issuance of municipal securities not within the scope of Municipal Advisory Services, any advice with respect to such review would not, by itself, cause such other issuance to come within the scope of Municipal Advisory Services, and HilltopSecurities would not be obligated to undertake any of the services set forth in Appendix A with regard to such issuance unless the scope of Municipal Advisory Services hereunder is amended to include such issuance.

(b) If the Issuer elects not to designate HilltopSecurities to serve as an IRMA for purposes of the IRMA exemption with respect to the Municipal Advisory Services, or if the Issuer elects to designate HilltopSecurities to serve as IRMA for less than the full range of Municipal Advisory Services, such election shall be set forth in Appendix A.

(c) The Issuer shall provide written notice to HilltopSecurities of any other municipal advisor engaged by the Issuer, whether such other municipal advisor has been designated as an IRMA, and such notice shall include the scope of services of such municipal advisor. If the Issuer has engaged, or has caused HilltopSecurities to engage through subcontract, any other party to serve as municipal advisor to the Issuer with regard to all or any portion of the Municipal Advisory Services (“Joint Municipal Advisory Services”), whether engaged jointly with or separately from HilltopSecurities (a “Co-Municipal Advisor”), the Issuer agrees that such Co-Municipal Advisor shall not be entitled to treat HilltopSecurities as an IRMA with respect to the Joint Municipal Advisory Services. Notwithstanding the preceding sentence, the Issuer may seek to have HilltopSecurities provide advice on any recommendation made by a Co-Municipal Advisor with regard to matters within the scope of Joint Municipal Advisory Services on the same terms as set forth in subparagraph B.3 of this Section I, provided that any such advice provided by HilltopSecurities shall not serve to eliminate or reduce such Co-Municipal Advisor’s fiduciary or other duties as municipal advisor to the Issuer.

2. ***HilltopSecurities Not Responsible for Independence from Third Parties.*** Notwithstanding HilltopSecurities’ status as an IRMA, HilltopSecurities shall not be responsible for ensuring that it is independent, within the meaning of the IRMA exemption as interpreted by the SEC, from another party wishing to rely on the exemption from the definition of municipal advisor afforded under the IRMA exemption or for otherwise ensuring that any such party not be treated as a municipal advisor for purposes of Section 15B of the Securities Exchange Act or any SEC or Municipal Securities Rulemaking Board (“MSRB”) rule thereunder. The Issuer expressly acknowledges that it is the responsibility of such other party to make its own determination of independence and that such other party shall not be entitled to cause HilltopSecurities to make any personnel changes to allow such party to qualify for the IRMA exemption.

3. ***Recommendations Provided by Third Parties Relying on IRMA Exemption.*** The Issuer agrees that, to the extent the Issuer seeks to have HilltopSecurities provide advice with regard to any recommendation made by a third party relying on the IRMA exemption, the Issuer shall provide to HilltopSecurities written direction to provide advice with regard to such third party recommendation as well as any information it has received from such third party. In connection therewith, HilltopSecurities shall be authorized to communicate with such third party as necessary or appropriate in order for HilltopSecurities to have the information it needs to provide informed advice to the Issuer with regard to such recommendation. HilltopSecurities shall provide to the Issuer recommendations it receives directly from any third party but shall not be required to provide advice to the Issuer with regard to any such recommendation unless the Issuer has provided to HilltopSecurities the written direction as described above in this subparagraph B.3.

Except as may be otherwise expressly provided in writing by HilltopSecurities, no recommendation by a third-party (including but not limited to a Co-Municipal Advisor) shall be deemed to be a recommendation by HilltopSecurities, and the failure by HilltopSecurities to specifically address any aspect of a third-party recommendation shall not be viewed as HilltopSecurities having implicitly accepted or approved such aspect of the recommendation or otherwise having adopted the recommendation or any aspect thereof as its own recommendation. Furthermore, the Issuer agrees that, to the extent the Issuer does not seek to have HilltopSecurities provide advice with regard to any recommendation made by a third party relying on the IRMA exemption, HilltopSecurities shall not be required to provide any advice with regard to such recommendation notwithstanding any information it may have received from such third party. HilltopSecurities may rely on the absence of the Issuer's written direction to provide advice with regard to a third party recommendation as indicative that the Issuer does not seek to have HilltopSecurities provide such advice.

**C. Limitations on Scope of Engagement.**

1. ***Express Limitations.*** The Scope of Services with respect to HilltopSecurities' engagement as municipal advisor shall be solely as provided in paragraphs A and B of this Section I and Appendix A of this Agreement, subject to the express limitations set forth in this paragraph C. The failure of the parties hereto to set out any particular service or responsibility, or any particular type or aspect of the issuance of municipal securities or municipal financial products, within the express limitations in this paragraph C shall not, by its omission, cause such service, responsibility or product to be within the scope of this engagement if not contemplated by the mutual agreement of the parties hereto or if not reasonably viewed as encompassed by the description of the Municipal Advisory Services set forth in this Agreement.

2. ***Limitation as to Matters Within Then-Current Scope of Engagement.*** It is expressly understood that HilltopSecurities serves as municipal advisor to the Issuer only with respect to the matters, and with respect to specific aspects of matters, within the then-current Scope of Services. The Issuer acknowledges that HilltopSecurities is not a municipal advisor to the Issuer with respect to matters expressly excluded from such Scope of Services as set forth in this paragraph C or matters otherwise not within the Scope of Services as set forth in paragraphs A and B of this Section I and Appendix A hereto. Without limiting the generality of the preceding sentence, the parties hereto agree that HilltopSecurities' service as municipal advisor for one issuance of municipal securities would not result in HilltopSecurities being a municipal advisor to the Issuer for any other issuances of municipal securities if such other issuances are not within the Scope of Services. It is expressly understood that HilltopSecurities shall be municipal advisor with respect to a particular issuance of municipal securities or a particular municipal financial product beginning on the earlier of (a) the date on which HilltopSecurities is assigned to serve or is otherwise put on notice by the Issuer that it will serve as municipal advisor for such particular matter or (b) the date on which HilltopSecurities first provides advice to the Issuer with respect to such particular matter, and it is further understood that HilltopSecurities shall not be deemed to be a municipal advisor to the Issuer with respect to any such particular matter prior to such date merely due to the fact that the matter falls within the general description of the Scope of Services.

3. ***Transactions and Services Outside Scope of Engagement.*** To the extent that the Issuer engages in any transaction with HilltopSecurities, or any affiliate of HilltopSecurities, as principal relating to municipal securities (including but not limited to as underwriter for the issuance of municipal securities) or municipal financial products that are not within the Scope of Services and with respect to which HilltopSecurities does not in fact provide advice other than as permitted within the exceptions and exclusions of SEC Rule 15Ba1-1, the Issuer agrees that it would not view HilltopSecurities as serving as its municipal advisor with respect to such transaction or any related issuance of municipal securities or

municipal financial product. In addition, as noted in clause (b) of subparagraph A.1 of this Section I, the Issuer understands that Non-Municipal Advisor Services are outside the scope of this engagement.

4. ***Issuer Consent to Limitation in Scope.*** The Issuer expressly consents to the limitations in scope of the engagement as described in this paragraph C.

**D. Change in Scope of Services.** The scope of services to be provided by HilltopSecurities, whether within or outside of the scope of the Municipal Advisory Services, may be changed only by written amendment to Appendix A, and the parties hereto agree to amend such appendix promptly to reflect any material changes or additions to the scope of such services, as applicable. Furthermore, the parties hereto agree to amend paragraph C of this Section I to reflect any material changes or additions to the limitations on the overall Scope of Services.

The parties hereto agree that if, on an infrequent or inadvertent basis, HilltopSecurities takes any actions for or on behalf of the Issuer that constitute municipal advisory activities within the meaning of MSRB Rule G-42(f)(iv) but which are not within the Scope of Services under this Agreement, such actions shall not, by themselves, serve to change the Scope of Services under this Agreement without a written amendment as provided in this paragraph. Furthermore, to the extent that any such activities not within the Scope of Services under this Agreement consists of inadvertent advice provided with respect to the issuance of municipal securities or municipal financial products that are not within the Scope of Services under this Agreement, HilltopSecurities may take such action, if any, as it deems appropriate pursuant to Supplementary Material .07 of MSRB Rule G-42 with respect to such inadvertent advice, to maintain the Scope of Services under this Agreement consistent with the intent of the parties hereto.

Amendments to Appendix A may be effected by replacement of the prior version of the appendix with a new version or by the addition of an addendum to such appendix, provided that any such amended appendix shall be dated as of its effective date and shall cause Appendix A, taken together with the provisions of this Section I, to clearly set forth the then-current scope of HilltopSecurities' engagement hereunder and any limitations to such scope.

**E. Non-Municipal Advisory Activities Related to Scope of Services.** The Scope of Services under this Agreement is intended to encompass activities subject to the provisions of Securities Exchange Act Section 15B and the rules of the SEC and MSRB thereunder relating to municipal advisory activities. However, the Issuer and HilltopSecurities acknowledge that in some cases the range of activities necessary or appropriate to provide the intended services hereunder in a fair, effective and efficient manner for the benefit of the Issuer may involve a combination of actions that consist of municipal advisory activities and actions that may not qualify as municipal advisory activities. Unless otherwise prohibited by Securities Exchange Act Section 15B or any rule of the SEC or MSRB thereunder, the fact that HilltopSecurities serves as municipal advisor to the Issuer in connection with a particular matter shall not prohibit HilltopSecurities from undertaking such necessary or appropriate non-municipal advisory activities in connection therewith, and the fact that HilltopSecurities undertakes such non-municipal advisory activities within the Scope of Services under this Agreement would not, by itself, cause such activities to become municipal advisory activities for purposes Securities Exchange Act Section 15B or any rule of the SEC or MSRB thereunder.

## SECTION II TERM AND TERMINATION

A. **Term of this Engagement.** The term of this Agreement begins on the Effective Date and terminates according to paragraph B of this Section II.

B. **Termination of this Engagement.** This Agreement may be terminated with or without cause by the Issuer or HilltopSecurities upon the giving of at least thirty (30) days' prior written notice to the other party of its intention to terminate, specifying in such notice the effective date of such termination. In the event of such termination, it is understood and agreed that only the amounts due HilltopSecurities for services provided and expenses incurred to the date of termination will be due and payable. No penalty will be assessed for termination of this Agreement.

## SECTION III COMPENSATION, EXPENSES, LIABILITY AND OTHER FINANCIAL MATTERS

A. **Compensation.** The fees due to HilltopSecurities for the Municipal Advisory Services and any other services set forth in Appendix A hereto shall be as provided in **Appendix B** hereto. The Issuer has agreed to the compensation arrangements set forth in Appendix B and believes that they are reasonable and not excessive. If at any time the Issuer becomes concerned that, notwithstanding its initial belief that the compensation arrangements set forth in this Agreement are reasonable, the actual amount of compensation to be paid in accordance with such arrangements for any particular matter during the course of this engagement may potentially become excessive, the Issuer shall immediately notify HilltopSecurities in writing of its concern in that regard.

B. **Expenses.** HilltopSecurities shall be entitled to reimbursement of expenses incurred in connection with any services provided hereunder as set forth in Appendix B.

C. **Third-Party Payments.** The Issuer agrees that any request it makes to HilltopSecurities to make payments to any third party on its behalf (other than with any underwriter), whether pursuant to a fee-splitting arrangement or otherwise, shall be in writing and shall set forth the name of the recipient, the amount of payment, and a brief statement of the purpose of such payment. The Issuer agrees that the counter signature by HilltopSecurities of any such written request shall be satisfactory disclosure of such third-party payment or fee-splitting arrangement for purposes of MSRB Rule G-42(e)(i)(D) and shall, in the case of any such arrangements made after the Effective Date, serve as satisfactory written disclosure of any conflict of interest arising from such third-party payment or fee-splitting arrangement for purposes of MSRB Rule G-42(b)(i)(D) and (c)(ii).

D. **No Custody of Issuer Funds.** This engagement does not contemplate that HilltopSecurities receive deposit of or maintain custody of the Issuer's funds unless otherwise provided in Appendix A hereto.

E. **Limitation on Liability.** In the absence of willful misconduct, bad faith, gross negligence or reckless disregard of obligations or duties hereunder on the part of HilltopSecurities or any of its associated persons, HilltopSecurities and its associated persons shall have no liability to the Issuer for any act or omission in the course of, or connected with, rendering services hereunder or for any error of judgment, mistake of law, or any loss arising out of any issuance of municipal securities, any municipal financial product or any other investment.

#### SECTION IV REQUIRED DISCLOSURES

**A. Disclosure of Conflicts of Interest and Information Regarding Legal or Disciplinary Events.** The Issuer hereby acknowledges receipt of, and has read and understands the content of, the Municipal Advisor Disclosure Statement, attached hereto as **Appendix C**, current as of the date of this Agreement, setting forth disclosures by HilltopSecurities of material conflicts of interest (the “Conflict Disclosures”), if any, and of any legal or disciplinary events required to be disclosed pursuant to MSRB Rule G-42(b) and (c)(ii). The Conflict Disclosures also describe how HilltopSecurities addresses or intends to manage or mitigate any disclosed conflicts of interest, as well as the specific type of information regarding, and the date of the last material change, if any, to the legal and disciplinary events required to be disclosed on Forms MA and MA-I filed by HilltopSecurities with the SEC.

**B. Waiver of Disclosed Conflicts of Interest.** By executing this Agreement, the Issuer hereby waives any conflicts of interest disclosed by HilltopSecurities in the Conflict Disclosures as of the date of this Agreement.

**C. Consent to Electronic Delivery of Disclosures.** By executing this Agreement, the Issuer consents, for the full term of this Agreement, to the electronic delivery of the Conflict Disclosures at no cost to the Issuer, in lieu of delivery of hard copy. The Conflict Disclosures may be delivered by email to the Issuer at **cpetree@roanoketexas.com**, or at such other email address as the Issuer may hereafter provide in writing to HilltopSecurities.

#### SECTION V MISCELLANEOUS

**A. Choice of Law.** This Agreement shall be construed and given effect in accordance with the laws of the State of Texas.

**B. Binding Effect; Assignment.** This Agreement shall be binding upon and inure to the benefit of the Issuer and HilltopSecurities, their respective successors and assigns; provided however, neither party hereto may assign or transfer any of its rights or obligations hereunder without the prior written consent of the other party.

**C. Entire Agreement.** This instrument, including all appendices hereto, contains the entire agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this Agreement shall be of no force or effect except for a subsequent modification in writing signed by all parties hereto, subject to the provisions of paragraph D of Section I hereof.

*Signature page follows*

**HILLTOP SECURITIES INC.**

**ROANOKE CONVENTION  
CENTER HOTEL LOCAL  
DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
**John L. Martin, Jr.**  
Senior Managing Director

By: \_\_\_\_\_  
**President, Board of Directors**

Date: April 28, 2026

## **APPENDIX A MUNICIPAL ADVISORY SERVICES**

This Appendix A sets out the scope of the Municipal Advisory Services to be performed by HilltopSecurities pursuant to the Agreement, subject to the limitations in scope set out in paragraph C of Section I of the Agreement, and with the understanding that:

(a) Individual actions taken within this scope shall be consistent with any request or direction provided by an authorized representative of the Issuer or as HilltopSecurities determines to be necessary or appropriate in furtherance of any matter for which it serves as municipal advisor. However, not all listed activities will be appropriate, necessary or applicable to any particular matter subject to this Agreement.

(b) For purposes of this Agreement, an issuance of municipal securities (an “issuance”) shall encompass any and all stages in the life of an issuance, from the pre-issuance planning stage to the repayment stage.

**I. New Issuances of Municipal Securities.** At the direction of or upon the request of the Issuer, HilltopSecurities shall provide advice to the Issuer on any new issuances, including reofferings of outstanding issuances that are treated for purposes of the federal securities laws and/or federal tax laws as new issuances, throughout the term of this Agreement. The activities to be performed by HilltopSecurities may include, depending on the specific circumstances of an issuance and any request or direction of the Issuer, one or more of the following:

### **Planning for New Issuance**

1. ***Survey and Analysis.*** Surveying the financial resources of the Issuer in connection with its capacity to authorize, issue and service the contemplated issuance. This survey would be expected to include an analysis of any existing debt structure as compared with the existing and projected sources of revenues which may be pledged to secure payment of debt service and, where appropriate, would include a study of the trend of the assessed valuation, taxing power and present and future taxing requirements of the Issuer. In the event revenues of existing or projected facilities operated by the Issuer are to be pledged to repayment of the contemplated issuance, the survey would be expected to take into account any outstanding indebtedness payable from such revenues, additional revenues to be available from any proposed rate increases, and additional revenues resulting from improvements to be financed by the contemplated issuance, as projected by consulting engineers engaged by the Issuer.

2. ***Future Financings.*** In connection with the contemplated issuance, considering and analyzing future financing needs as projected by the Issuer's staff and consulting engineers or other experts, if any, engaged by the Issuer.

3. ***Recommendations.*** Making recommendations to the Issuer on the contemplated issuance, including such elements as the date of issue, interest payment dates, schedule of principal maturities, options for prepayment, security provisions, and such other provisions as may be appropriate.



4. **Market Information.** Advising the Issuer of HilltopSecurities' view of current bond market conditions, other related forthcoming bond issues and general information (including applicable economic data) which might normally be expected to influence interest rates or bidding conditions relevant to setting an appropriate date and time for the sale of the issuance.

5. **Elections.** In the event it is necessary to hold an election to authorize the contemplated issuance, assisting in coordinating the assembly of such data as may be required for the preparation of necessary petitions, orders, resolutions, ordinances, notices and certificates in connection with the election, including assistance in the transmission of such data to the Issuer's bond counsel.

#### **Debt Management and Financial Implementation for New Issuance**

6. **Method of Sale.** Evaluating the particular financing being contemplated, giving consideration to the complexity, market acceptance, rating, size and structure in order to make a recommendation as to an appropriate method of sale, and:

- a. If the issuance is to be sold by a competitive sale:
  - (1) Supervising the sale of the municipal securities;
  - (2) Disseminating information to prospective bidders, organizing such informational meetings as may be necessary, and facilitating prospective bidders' efforts in making timely submission of proper bids;
  - (3) Assisting the staff of the Issuer in coordinating the receipt of bids, the safekeeping of good faith checks and the tabulation and comparison of submitted bids;
  - (4) Advising the Issuer regarding the best bid and provide advice regarding acceptance or rejection of the bids; and
  - (5) Obtaining CUSIP numbers on behalf of the Issuer.
- b. If the issuance is to be sold by negotiated sale:
  - (1) Recommending for the Issuer's final approval and acceptance one or more investment banking firms, as sole underwriter or as managers of an underwriting syndicate, for the purpose of negotiating the purchase of the municipal securities;
  - (2) Cooperating with and assisting any selected sole or managing underwriter and its counsel, as well as any disclosure counsel retained by the Issuer, in connection with the preparation of any preliminary or final official statement or offering memorandum. HilltopSecurities will cooperate with and assist the underwriters in the preparation of a bond purchase contract, an underwriters' agreement and other related documents;
  - (3) Assisting the staff of the Issuer in the safekeeping of any good faith checks and providing a cost comparison to the then-current market of expenses, interest rates and prices which are proposed by the underwriters;
  - (4) Advising the Issuer on the fairness of the price offered by the underwriters;

(5) Advising the Issuer in connection with any terms and conditions it may wish to establish with respect to order priorities and other similar matters relating to the underwriting of the new issuance;

(6) If the new issuance will have a retail order period, advising the Issuer on retail eligibility criteria and other features of the retail order period and reviewing information provided by the underwriters to the Issuer in connection with retail orders received; and

(7) At the request of the Issuer, reviewing required disclosures by underwriters to the Issuer relating to their role as underwriter, conflicts of interests, material terms and risks of the issuance, and any other matters, and providing any appropriate advice to the Issuer in connection with such disclosures.

7. ***Offering Documents for Competitive Offerings.*** Coordinating the preparation of the notice of sale and bidding instructions, preliminary official statement (including cooperating with and assisting any disclosure counsel retained by the Issuer), official bid form and such other documents as may be required and submitting all such documents to the Issuer for examination, approval and certification. After such examination, approval and certification, HilltopSecurities shall provide the Issuer with a supply of all such documents sufficient to its needs and distribute sets of the same to prospective bidders for the municipal securities. HilltopSecurities also shall provide copies of the final official statement to the winning bidder purchasing the municipal securities in the MSRB-designated electronic format and in accordance with the notice of sale and bidding instructions promptly after the Issuer approves the final official statement for distribution.

8. ***Credit Ratings.*** Making recommendations to the Issuer on the advisability of obtaining one or more credit ratings for the issuance and, when directed by the Issuer, coordinating the preparation of such information as may be appropriate for submission to any rating agency. In those cases where the advisability of personal presentation of information to a rating agency may be indicated, HilltopSecurities will arrange for such personal presentations, utilizing such composition of representatives from the Issuer as may be approved or directed by the Issuer.

9. ***Trustee, Paying Agent, Registrar, Professionals and Other Transaction Participants.*** Upon request, providing advice to the Issuer in the selection of a trustee and/or paying agent/registrar, legal, accounting or other professionals, and other transaction participants relating to any issuance, and assisting in the negotiation of agreements pertinent to these services and the fees incident thereto.

10. ***Financial Publications.*** When appropriate, advising financial publications of the forthcoming sale of the municipal securities and providing them with all pertinent information.

11. ***Consultants.*** After consulting with and receiving directions from the Issuer, arranging for such reports and opinions of recognized independent consultants as may be appropriate for the successful marketing of the issuance.

12. ***Auditors.*** In the event formal verification by an independent auditor of any calculations incident to the issuance is required, making arrangements for such services.

13. **Issuer Meetings.** Attending meetings of the governing body of the Issuer, its staff, representatives or committees as requested when HilltopSecurities may be of assistance or service and matters within the scope of this engagement are to be discussed.
14. **Printing.** To the extent authorized by the Issuer, coordinating all work incident to printing or final production, physical or electronic, of the offering documents.
15. **Bond Counsel.** Maintaining liaison with bond counsel in the preparation of all legal documents pertaining to the authorization, sale and issuance of the municipal securities.
16. **Delivery of the Municipal Securities.** As soon as a bid for the purchase of a competitive issuance is accepted by the Issuer or the bond purchase contract for a negotiated issuance is signed by the Issuer, coordinating the efforts of all concerned to the end that the municipal securities may be delivered and paid for as expeditiously as possible and assisting the Issuer in the preparation or verification of final closing figures incident to the delivery of the municipal securities.
17. **Debt Service Schedule; Authorizing Resolution.** After the closing of the sale and delivery of the issuance, delivering to the Issuer a schedule of annual debt service requirements for the issuance and, in coordination with bond counsel, assuring that the paying agent/registrar and/or trustee has been provided with a copy of the authorizing ordinance, order or resolution.
18. **Continuing Disclosure.** Providing advice to the Issuer with regard to its continuing disclosure undertakings for its new issuances and its selection of a dissemination agent under its continuing disclosure undertakings; provided that, upon the mutual agreement of the Issuer and HilltopSecurities, HilltopSecurities may serve as dissemination agent under one or more of the Issuer's continuing disclosure undertakings upon such terms as the parties shall agree, with such service as dissemination agent being expressly excluded from the scope of this Agreement.

**II. Baseline Advice on Outstanding Issuances of Municipal Securities.** HilltopSecurities shall provide baseline on-going advice to the Issuer on any outstanding issuances throughout the term of this Agreement, which may include, depending on the specific circumstances of such issuance and any request or direction of the Issuer:

1. **Exercising Calls.** Providing advice and assistance to the Issuer with regard to exercising any calls of outstanding municipal securities unrelated to a refunding of such securities.
2. **Refundings and Tender Offers.** Providing advice to the Issuer with regard to opportunities for refundings of outstanding issuances or to make tender offers for outstanding issuances, whether by means of a new issuance, bank loans, or other funds of the Issuer, but not including serving as advisor in connection with the specific transaction through which such refunding or tender offer is effected. Transaction-based advice in connection with a specific new issuance of bonds to effectuate any such refunding or tender offer would be provided within the scope of Municipal Advisory Services for new issuances described in Section I above. Transaction-based advice in connection with a specific bank loan or other transaction to effectuate any such refunding or tender offer, other than by means of a new issuance of bonds would be provided pursuant to a separate agreement as described in Section IV below.
3. **Continuing Disclosure.** Providing advice to the Issuer with regard to continuing disclosure undertakings for outstanding issuances; processes, policies and procedures to comply with

continuing disclosure undertakings; and coordination of continuing disclosure obligations arising from different continuing disclosure undertakings for its various issuances. However, the preparation of continuing disclosure documents, other than in the capacity of dissemination agent under a continuing disclosure undertaking, would be provided within the scope of other services described in Section V. below.

**III. Particularized Services on Outstanding Issuances of Municipal Securities.** HilltopSecurities may provide to the Issuer certain additional advisory or related services in connection with particular outstanding issuances or matters affecting multiple outstanding issuances throughout the term of this Agreement, which may include, depending on the specific circumstances of such issuance and any request or direction of the Issuer:

1. ***Other Post-Sale Services.*** Reviewing the transaction features and documentation of outstanding issuances with legal counsel for the Issuer, bond counsel, auditors and other experts and consultants retained by the Issuer and assisting in developing appropriate responses to legal processes, audit procedures, inquiries, internal reviews and similar matters, or other services related to one or more outstanding issuances as may be agreed to by the Issuer and HilltopSecurities.
2. ***Brokerage of Municipal Escrow Investments.*** At the request of the Issuer, brokering the purchase of municipal escrow investments in connection with a refunding of an outstanding issuance, together with any recommendations by HilltopSecurities (but not by Hilltop Securities Asset Management, LLC as an investment adviser) with respect to such brokerage.

**IV. Services as Independent Registered Municipal Advisor (“IRMA”).** At the written request of the Issuer, HilltopSecurities shall, as the Issuer’s IRMA, review and provide advice to the Issuer in connection with any recommendations, proposals, ideas or matters suggested or otherwise communicated by a third party to the Issuer with respect to the same aspects of the issuance of municipal securities or municipal financial products that are within the scope of Municipal Advisory Services. There are no aspects of the issuance of municipal securities or municipal financial products that are outside the scope of Municipal Advisory Services set forth in this Appendix.

**V. Other Services Relating to Municipal Securities.** HilltopSecurities agrees to make available to the Issuer other services relating to municipal securities, when so requested by the Issuer and subject to the agreement by Issuer and HilltopSecurities regarding the specific requirements with respect to such services, which requirements shall be made part of the scope of Municipal Advisory Services and included in this Appendix as an amendment or addendum, which services may include, without limitation:

1. ***Capital Improvement Programs.*** Providing advice and assistance in the development of any capital improvement programs of the Issuer.
2. ***Long-Range Planning.*** Providing advice and assistance in the development of other long-range financing plans of the Issuer.
3. ***Refundings and Tender Offers.*** Providing advice and assistance in executing a refunding or tender offer of an outstanding issuance other than by means of refunding bonds, such as by means of a bank loan or other funds of the Issuer.
4. ***Continuing Disclosure Documents.*** Preparing and providing advice with regard to the content of continuing disclosure documents in compliance with the Issuer’s continuing disclosure

undertakings for its outstanding issuances, other than in the capacity of dissemination agent under a continuing disclosure undertaking.

\* \* \* \* \*

As provided in paragraph D of Section I of the Agreement, amendments to this Appendix A may be effected by replacement of this Appendix A with a new version hereof or by the addition of an addendum to this Appendix A, and this Appendix A, as it may have been amended, shall be dated and effective as of the most recent of the date set forth in any such amendment or the date set forth in any addendum to this Appendix A.

## **APPENDIX B FORM AND BASIS OF COMPENSATION**

This Appendix B sets out the form and basis of compensation to HilltopSecurities for the Municipal Advisory Services provided under this Agreement as set forth in Appendix A; provided that the compensation arrangements set forth in this Appendix B shall also apply to any additional services hereafter added to the scope of the Municipal Advisory Services, unless otherwise provided in the amendment to the Agreement relating to such change in scope of Municipal Advisory Services as provided in paragraph D of Section I of the Agreement.

**I. New Issuances of Municipal Securities.** The fees due HilltopSecurities in connection with the Municipal Advisory Services set forth in Section I of Appendix A hereto for each new issuance of municipal securities will not exceed those contained in our fee schedule as listed below:

**\$12.50 per \$1,000 of Municipal Securities issued**

The payment of charges as set forth in this Section I for new issuances shall be contingent upon the delivery of the new issuance and shall be due at the time that the municipal securities are delivered.

**II. Baseline Advice on Outstanding Issuances of Municipal Securities.** There shall be no additional fees due HilltopSecurities in connection with the Municipal Advisory Services set forth in Section II of Appendix A hereto, with the understanding that such services are integral to HilltopSecurities' engagement as municipal advisor to the Issuer and HilltopSecurities shall be compensated for such services through and as part of the fees paid for the other services provided by HilltopSecurities hereunder.

**III. Particularized Services on Outstanding Issuances of Municipal Securities.** In connection with Other Post-Sale Services described in Section III of Appendix A hereto, HilltopSecurities shall charge a fee as may be mutually agreed upon between Issuer and HilltopSecurities.

In connection with the brokerage of municipal escrow investments described in Section III of Appendix A hereto, HilltopSecurities shall charge a commission that is normal and customary for investments of that type under then-current market conditions and shall disclose such commission to the Issuer so that the Issuer may consider the information in making its investment decision.

**IV. Third-Party Recommendations, Proposals, Ideas or Other Matters as IRMA.** In connection with its review of and advice on third-party recommendations to Issuers as an IRMA as described in Section IV of Appendix A hereto, HilltopSecurities shall charge a fee as may be mutually agreed upon between Issuer and HilltopSecurities.

**V. Other Services Relating to Municipal Securities.** In connection with any services described in Section V of Appendix A hereto requested by the Issuer and agreed to by HilltopSecurities, the fees due with respect to any such services shall be as agreed to by the parties hereto, which terms shall be made part of the compensation provided under this Agreement and shall be included in this Appendix as an amendment or addendum hereto.

**VI. Expenses.** The Issuer shall be responsible for the following expenses in connection with the Municipal Advisory Services (including any additional services hereafter added to the scope of the Municipal Advisory Services), if and when applicable, whether they are charged to the Issuer directly as expenses or charged to the Issuer by HilltopSecurities as reimbursable expenses: bond counsel fees and

expenses, bond printing costs, bond ratings fees and expenses, computer structuring costs, credit enhancement fees and expenses, accountant fees for verifications and related activities in connection with refundings, official statement preparation and printing, paying agent/registrar/trustee fees and expenses, travel expenses, underwriter and underwriter's counsel fees and expenses, and other miscellaneous expenses incurred by HilltopSecurities in the furtherance of any matter for which it serves as municipal advisor, including copy, delivery, phone and other charges normally incurred in connection with engagements of this type.

The Issuer agrees that any expense that it requests that HilltopSecurities pay to any third party on the Issuer's behalf shall be made in writing and shall be in accordance with paragraph C of Section III of the Agreement.

The payment of reimbursable expenses that HilltopSecurities has assumed on behalf of the Issuer shall NOT be contingent upon the delivery of a new issuance of municipal securities or the completion of any other transactions for which such expenses have been assumed and shall be due at the time that services are rendered and payable upon receipt of an invoice therefor submitted by HilltopSecurities, unless otherwise provided for in any amendment or addendum hereto in connection with the compensation arrangements for any services provided under the Agreement for which such amendment or addendum is required.

## APPENDIX C MUNICIPAL ADVISOR DISCLOSURE STATEMENT

This disclosure statement (“Conflict Disclosures”) is provided by **Hilltop Securities Inc.** (“the Firm”) to you (the “Client”) in connection with our current municipal advisory agreement, (“the Agreement”). These Conflict Disclosures provide information regarding conflicts of interest and legal or disciplinary events of the Firm that are required to be disclosed to the Client pursuant to MSRB Rule G-42(b) and (c)(ii).

### **PART A – Disclosures of Conflicts of Interest**

MSRB Rule G-42 requires that municipal advisors provide to their clients disclosures relating to any actual or potential material conflicts of interest, including certain categories of potential conflicts of interest identified in Rule G-42, if applicable.

***Material Conflicts of Interest*** – The Firm makes the disclosures set forth below with respect to material conflicts of interest in connection with the Scope of Services under the Agreement with the Firm, together with explanations of how the Firm addresses or intends to manage or mitigate each conflict.

***General Mitigations*** – As general mitigations of the Firm’s conflicts, with respect to all of the conflicts disclosed below, the Firm mitigates such conflicts through its adherence to its fiduciary duty to Client, which includes a duty of loyalty to Client in performing all municipal advisory activities for Client. This duty of loyalty obligates the Firm to deal honestly and with the utmost good faith with Client and to act in Client’s best interests without regard to the Firm’s financial or other interests. In addition, because the Firm is a broker-dealer with significant capital due to the nature of its overall business, the success and profitability of the Firm is not dependent on maximizing short-term revenue generated from individualized recommendations to its clients but instead is dependent on long-term profitability built on a foundation of integrity, quality of service and strict adherence to its fiduciary duty. Furthermore, the Firm’s municipal advisory supervisory structure, leveraging our long-standing and comprehensive broker-dealer supervisory processes and practices, provides strong safeguards against individual representatives of the Firm potentially departing from their regulatory duties due to personal interests. The disclosures below describe, as applicable, any additional mitigations that may be relevant with respect to any specific conflict disclosed below.

**I. Affiliate Conflict.** The Firm, directly and through affiliated companies, provides or may provide services/advice/products to or on behalf of clients that are related to the Firm’s advisory activities within the Scope of Services outlined in the Agreement. Hilltop Securities Asset Management (HSAM), a SEC-registered affiliate of the Firm, provides post issuance services including arbitrage rebate and treasury management. The Firm’s arbitrage team verifies rebate and yield restrictions on the investments of bond proceeds on behalf of clients in order to meet IRS restrictions. The treasury management division performs portfolio management/advisor services on behalf of public sector clients. The Firm, through affiliate Hilltop Securities Asset Management (HSAM), provides a multi-employer trust tailor-made for public entities which allows them to prefund Other Post-Employment Benefit liabilities. The Firm has a structured products desk that provides advice to help clients mitigate risk through investment management, debt management and commodity price risk management products. These products consist of but are not limited to swaps (interest rate, currency, commodity), options, repos, escrow structuring and other securities. Continuing Disclosure services provided by the Firm work with issuers to assist them in meeting disclosure requirements set forth in SEC rule 15c2-12. Services include but are not limited to ongoing maintenance of issuer compliance, automatic tracking of issuer’s annual filings and public notification of material events. The Firm administers government investment pools. These programs offer governmental entities



investment options for their cash management programs based on the entities specific needs. The Firm and the aforementioned affiliate's business with a client could create an incentive for the Firm to recommend to a client a course of action designed to increase the level of a client's business activities with the affiliates or to recommend against a course of action that would reduce or eliminate a client's business activities with the affiliates. This potential conflict is mitigated by the fact that the Firm and affiliates are subject to their own comprehensive regulatory regimes.

**II. PlainsCapital Bank Affiliate Conflict.** The Firm, directly and through affiliated companies, provides or may provide services/advice/products to or on behalf of clients that are related to the Firm's advisory activities within the Scope of Services outlined in the Agreement. Affiliate, PlainsCapital Bank, provides banking services to municipalities including loans and custody. The Firm and the aforementioned affiliate's business with a client could create an incentive for the Firm to recommend to a client a course of action designed to increase the level of a client's business activities with the affiliates or to recommend against a course of action that would reduce or eliminate a client's business activities with the affiliates. This potential conflict is mitigated by the fact that the Firm and affiliates are subject to their own comprehensive regulatory regimes.

**III. Other Municipal Advisor or Underwriting Relationships.** The Firm serves a wide variety of other clients that may from time to time have interests that could have a direct or indirect impact on the interests of Client. For example, the Firm serves as municipal advisor to other municipal advisory clients and, in such cases, owes a regulatory duty to such other clients just as it does to Client. These other clients may, from time to time and depending on the specific circumstances, have competing interests, such as accessing the new issue market with the most advantageous timing and with limited competition at the time of the offering. In acting in the interests of its various clients, the Firm could potentially face a conflict of interest arising from these competing client interests. In other cases, as a broker-dealer that engages in underwritings of new issuances of municipal securities by other municipal entities, the interests of the Firm to achieve a successful and profitable underwriting for its municipal entity underwriting clients could potentially constitute a conflict of interest if, as in the example above, the municipal entities that the Firm serves as underwriter or municipal advisor have competing interests in seeking to access the new issue market with the most advantageous timing and with limited competition at the time of the offering. None of these other engagements or relationships would impair the Firm's ability to fulfill its regulatory duties to Client.

**IV. Secondary Market Transactions in Client's Securities.** The Firm, in connection with its sales and trading activities, may take a principal position in securities, including securities of Client, and therefore the Firm could have interests in conflict with those of Client with respect to the value of Client's securities while held in inventory and the levels of mark-up or mark-down that may be available in connection with purchases and sales thereof. In particular, the Firm or its affiliates may submit orders for and acquire Client's securities issued in an Issue under the Agreement from members of the underwriting syndicate, either for its own account or for the accounts of its customers. This activity may result in a conflict of interest with Client in that it could create the incentive for the Firm to make recommendations to Client that could result in more advantageous pricing of Client's bond in the marketplace. Any such conflict is mitigated by means of such activities being engaged in on customary terms through units of the Firm that operate independently from the Firm's municipal advisory business, thereby reducing the likelihood that such investment activities would have an impact on the services provided by the Firm to Client under this Agreement.

**V. Broker-Dealer and Investment Advisory Business.** The Firm is dually registered as a broker-dealer and an investment advisor that engages in a broad range of securities-related activities to service its clients, in addition to serving as a municipal advisor or underwriter. Such securities-related activities, which

may include but are not limited to the buying and selling of new issue and outstanding securities and investment advice in connection with such securities, including securities of Client, may be undertaken on behalf of, or as counterparty to, Client, personnel of Client, and current or potential investors in the securities of Client. These other clients may, from time to time and depending on the specific circumstances, have interests in conflict with those of Client, such as when their buying or selling of Client's securities may have an adverse effect on the market for Client's securities, and the interests of such other clients could create the incentive for the Firm to make recommendations to Client that could result in more advantageous pricing for the other clients. Furthermore, any potential conflict arising from the firm effecting or otherwise assisting such other clients in connection with such transactions is mitigated by means of such activities being engaged in on customary terms through units of the Firm that operate independently from the Firm's municipal advisory business, thereby reducing the likelihood that the interests of such other clients would have an impact on the services provided by the Firm to Client.

**VI. Compensation-Based Conflicts.** Fees that are based on the size of the issue are contingent upon the delivery of the Issue. While this form of compensation is customary in the municipal securities market, this may present a conflict because it could create an incentive for the Firm to recommend unnecessary financings or financings that are disadvantageous to Client, or to advise Client to increase the size of the issue. This conflict of interest is mitigated by the general mitigations described above.

Fees based on a fixed amount are usually based upon an analysis by Client and the Firm of, among other things, the expected duration and complexity of the transaction and the Scope of Services to be performed by the Firm. This form of compensation presents a potential conflict of interest because, if the transaction requires more work than originally contemplated, the Firm may suffer a loss. Thus, the Firm may recommend less time-consuming alternatives, or fail to do a thorough analysis of alternatives. This conflict of interest is mitigated by the general mitigations described above.

Hourly fees are calculated with, the aggregate amount equaling the number of hours worked by Firm personnel times an agreed-upon hourly billing rate. This form of compensation presents a potential conflict of interest if Client and the Firm do not agree on a reasonable maximum amount at the outset of the engagement, because the Firm does not have a financial incentive to recommend alternatives that would result in fewer hours worked. This conflict of interest is mitigated by the general mitigations described above.

## **PART B – Disclosures of Information Regarding Legal Events and Disciplinary History**

MSRB Rule G-42 requires that municipal advisors provide to their clients certain disclosures of legal or disciplinary events material to its client's evaluation of the municipal advisor or the integrity of the municipal advisor's management or advisory personnel.

Accordingly, the Firm sets out below required disclosures and related information in connection with such disclosures.

**I. Material Legal or Disciplinary Event.** The Firm discloses the following legal or disciplinary events that may be material to Client's evaluation of the Firm or the integrity of the Firm's management or advisory personnel:

- For related disciplinary actions please refer to the Firm's [BrokerCheck](#) webpage.
- From July 2011 to October 2015, Hilltop failed to submit required MSRB Rule G-32 information to EMMA in connection with 122 primary offerings of municipal securities for which the Firm served as placement agent. During the period January 2012 to September 2015, the Firm failed to provide MSRB Rule G-17 letters to issuers in connection with 119 of the 122 offerings referenced above. From October 2014 to September 2015, the Firm failed to report on Form MSRB G-37 that it had engaged in municipal securities business as placement agent for 45 of these 122 offerings. This failure was a result of a misunderstanding by one branch office of Southwest Securities. Hilltop discovered these failures during the merger of FirstSouthwest and Southwest Securities and voluntarily reported them to FINRA. The Firm paid a fine of \$100,000 for these self-reported violations.
- In connection with a settlement on July 9, 2021, the U.S. Securities and Exchange Commission found that, between January 2016 and April 2018, the Firm bought municipal bonds for its own account from another broker-dealer and that, on occasion during that time period, the other broker-dealer mischaracterized the Firm's orders when placing them with the lead underwriter. The SEC found that, among other things, the Firm lacked policies and procedures with respect to how stock orders were submitted for new issues bonds to third parties, including the broker-dealer that mischaracterized the Firm's orders. The SEC found violations of MSRB Rules G-27, G-17, and SEC rule 15B(c)(1) and a failure to reasonably supervise within the meaning of Section 15(b)(4)(E) of the Securities Exchange Act of 1934. The Firm was censured and ordered to pay disgorgement of \$206,606, prejudgment interest of \$48,587 and a penalty of \$85,000.
- On August 14, 2024, the Securities and Exchange Commission ("SEC") entered into a settlement order with Hilltop Securities Inc. ("Hilltop") to settle an administrative action finding that Hilltop failed to (1) maintain and preserve off-channel communications related to Hilltop's broker-dealer business, as well as related to recommendations made or proposed to be made and advice given or proposed to be given with respect to Hilltop's investment advisory business; and (2) reasonably supervise its personnel with a view to preventing or detecting certain of its personnel's aiding and abetting violations of certain provisions of the federal securities laws. Hilltop admitted to the facts in the settlement order, acknowledged its conduct violated the federal securities laws, and agreed to: (a) a cease-and-desist order, (b) a

censure, (c) payment of a civil monetary penalty in the amount of \$1,600,000, and (d) certain undertakings related to the retention of electronic communications.

**II. How to Access Form MA and Form MA-I Filings.** The Firm's most recent Form MA and each most recent Form MA-I filed with the SEC are available on the SEC's EDGAR system at [Forms MA and MA-I](#). The SEC permits certain items of information required on Form MA or MA-I to be provided by reference to such required information already filed by the Firms in its capacity as a broker-dealer on Form BD or Form U4 or as an investment adviser on Form ADV, as applicable. Information provided by the Firm on Form BD or Form U4 is publicly accessible through reports generated by BrokerCheck at <http://brokercheck.finra.org/>, and the Firm's most recent Form ADV is publicly accessible at the Investment Adviser Public Disclosure website at <http://www.adviserinfo.sec.gov/>. For purposes of accessing such BrokerCheck reports or Form ADV, click previous hyperlinks.

### **PART C – MSRB Rule G-10 Disclosure**

MSRB Rule G-10 covers Investor and Municipal Advisory Client education and protection. This rule requires that municipal advisors make certain disclosures to all municipal advisory clients. This communication is a disclosure only and does not require any action on your part. The disclosures are noted below.

1. Hilltop Securities Inc. is registered with the U.S. Securities and Exchange Commission and the Municipal Securities Rulemaking Board as a Municipal Advisor.
2. You can access the website for the Municipal Securities Rulemaking Board at [www.msrb.org](http://www.msrb.org)
3. The Municipal Securities Rulemaking Board has posted a municipal advisory client brochure. A copy of the brochure is attached to the memo. This link will take you to the electronic version [MA Client Brochure](#)

### **PART D – Future Supplemental Disclosures**

As required by MSRB Rule G-42, this Municipal Advisor Disclosure Statement may be supplemented or amended, from time to time as needed, to reflect changed circumstances resulting in new conflicts of interest or changes in the conflicts of interest described above, or to provide updated information with regard to any legal or disciplinary events of the Firm. The Firm will provide Client with any such supplement or amendment as it becomes available throughout the term of the Agreement.



## AGENDA ITEM

TO: Mayor and City Council

SUBJECT: Design Building Agreement (DBA)

MEETING DATE: April 28, 2026

DEPARTMENT: City Manager

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### ITEM SUMMARY:

Design Building Agreement (DBA)

### INFORMATION:

Design Building Agreement (DBA) – Construction Agreement between City/LGC & Brasfield & Gorrie. This will include approval of a contract value associated with the following:

- Preconstruction Activities (\$50k + markups) – GC guidance, design team management, and estimating support. GPP had \$183k in our budget. We'll roll-up the \$50k+ to the GC and move the remaining into Owner Contingency.
- Design Fees through CDs - Design Fees have technically already been approved in the MDA with GPP, and a portion paid through GPP, but this will move the fees under the GC now that they're on board and they will invoice the remainder. There have also been some updates to the Design Fees, such as, adding the Branding Consultant services which we were informed by hotel operator was required. \$2.3M has already been paid by the City through GPP.
- Design Assist Fees (\$341,900) - These are to bring onboard a couple of the Sub's delegated design teams to start shops and work with the Design Team in updating anything in the drawings as they work towards CDs. This would be for the precast garage, cold-formed metal framing, & elevators. GPP already showed \$400k in the budget we gained approval on in our MDA. This would shift over to the DBA.

### STAFF RECOMMENDATION:

### SPECIAL CONSIDERATION:



## **AGENDA ITEM**

### **FINANCIAL CONSIDERATION:**

#### **ATTACHMENTS:**

1. Roanoke Convention Center Hotel Project - Design-Build Agreement

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**ROANOKE CONVENTION CENTER HOTEL PROJECT**

**DESIGN-BUILD  
AGREEMENT AND GENERAL CONDITIONS  
BETWEEN OWNER AND DESIGN/BUILDER  
(Where the Basis of Payment is the Cost of the Work Plus a Fee,  
with a Guaranteed Maximum Price)**

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

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

**AGREEMENT**

This Agreement is made this \_\_\_\_th day of \_\_\_\_\_ in the year 2026, by and among the

**"DESIGN/BUILDER"**

**BRASFIELD & GORRIE, LLC  
8350 N. Central Expressway, Suite 1000  
Dallas, Texas 75206**

and the

**"OWNER"**

**ROANOKE CONVENTION CENTER HOTEL LOCAL  
DEVELOPMENT CORPORATION  
500 S. Oak Street  
Roanoke, Texas 76262**

and the

**CITY OF ROANOKE, TEXAS  
500 S. Oak Street  
Roanoke, Texas 76262**

for services in connection with the following:

**"PROJECT"**

The Project consists of the design and construction of a coordinated unified development consisting of three components in accordance with this Agreement and consistent with the Brand Standards: (1) an Upper-Upscale, multistory 200-room minimum, full-service hotel with appropriate support facilities such as a restaurant(s), a lounge(s), or bar(s), supporting back-of-house areas and food preparation facilities, together with such other amenities and features characteristic of a full-service convention center hotel (the "Hotel" or "Hotel Component"), (2) a publicly owned convention center facility consisting of a grand ballroom, junior ballroom, meeting rooms, a board room and allocable common areas within the same building structure as the Hotel, with related infrastructure and including furniture, fixtures, and equipment associated with such facilities (the "Convention Center Component"), and (3) a City-owned public structured parking facility directly connected to the Hotel and Convention Center Component with approximately 300 public parking spaces (the "Parking Component" and, collectively with the Hotel and Convention Center Component, the "Project"). The Project will be located upon the real property owned by the City of Roanoke, Texas, (the "City") as described in **Annex 2**, attached hereto and made a part hereof (the "Property"). The City has entered into the Master Development Agreement with Garfield Public/Private LLC ("Development Manager") to provide development management services for the entire Project.

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

## ARTICLE 1 DEFINITIONS

1.1 "Additional Services" is defined in Section 3.8.

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

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

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

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

1.6 "Bonds" or "Hotel Bonds" means the Owner's Hotel Bonds issued pursuant to the Bond Indenture for the purpose of financing the Construction Phase of the Hotel Component.

1.7 "Bond Trustee" means the national bank or trust company designated by Owner.

1.8 "City Debt" means, collectively, Certificates of Obligation and/or General Obligation Bonds or other debt obligations issued by the City to finance all or a portion of the Convention Center Component and Parking Component.

1.9 "Change Order" means a written order to Design/Builder executed by the Owner in accordance with this Agreement authorizing and directing an addition to, deletion from, or adjustment or revision to the requirements of the Contract Documents, or an adjustment to the compensation payable to Design/Builder, or to

the time for performance of this Agreement or completion of the Project, or any combination thereof.

1.10 "City" means the City of Roanoke, County of Denton, State of Texas.

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

1.12 "Construction Fund" means the fund established by Owner for the sole use of funding the development, construction and opening to the public of the Project and an amount for changes in the Work. The Construction Fund shall consist of the net proceeds received by Owner from the issuance of the Bonds and such other funds, including the Owner's Contingency, that Owner, in its sole discretion, desires and is legally and financially able to borrow or otherwise make available.

1.13 "Construction Monitor" means the person, if any, approved and hired by Owner to provide the services described in Section 4.5 hereof. The Construction Monitor is Cronin Construction Management.

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

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

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

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

**1.18 "Contract Value"** means the total Cost of the Work, General Conditions, Construction Contingency, and Design/Builder's Fee for the services of Design/Builder under this Agreement.

**1.19 "Convention Center Component"** means the convention center portion of the Project as defined in the "Project" paragraph on page 1 of this Agreement.

**1.20 "Cost of the Work"** means all costs necessarily incurred in the proper performance of the Work, including without limitation, all costs set forth in Section 8.1 and 8.2, costs for all labor, materials, supplies, equipment, taxes, fees, expenses and other items or amounts incurred or owing under the contracts entered into pursuant to this Design/Build Agreement. For avoidance of doubt, Cost of the Work does not include the Design/Builder's Fee which is set forth in Article 7 hereof.

**1.21 "Day"** means calendar day.

**1.22 "Design/Builder"** means **Brasfield & Gorrie**, and its permitted successors and assigns, the entity engaged as the design/build contractor for the Project.

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

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

**1.25 "Design Consultant"** means a professional (architect, engineer, or specialist), contracted under the Design/Builder, including, but limited to, the Architect, to provide design, engineering, construction administration, or similar services.

**1.26 "Design Phase"** means the phase of the Project up until the execution of the GMP Amendment and issuance of the Notice to Proceed under this Agreement.

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

**1.28 "Development Manager"** means Garfield Public/Private LLC.

**1.29 "Effective Date"** means the date of execution of this Agreement by all Parties.

**1.30 "Extreme Weather" or "Weather Events"** are those days when Contractor cannot proceed with Work on the critical path for more than four (4) hours in a day because of any of the following:

.1 Precipitation in excess of .10 of an inch, as measured by the precipitation gauge kept at the Project site.

.2 Project site conditions, such as mud, pooling of water, ice, or standing snow subsequent to the actual precipitation days, that prevent the performance of activities such as, but not limited to, mass grading, building pad grading, excavations, and backfill operations.

.3 Project site temperature measuring: (i) less than 40 degrees Fahrenheit or below product specification constraints related to temperature (examples include, but are not limited to, placing concrete, roofing applications, fireproofing application, waterproofing application, exterior envelope installation, and masonry activities); or (ii) in excess of 100 degrees Fahrenheit.

.4 Wet building component surfaces (examples include welding work, exterior finish application, and roofing application).

.5 Wind speeds, as measured by a Project site gauge, exceeding those permissible to use equipment or to perform certain tasks safely (example includes not being able to safely use crane(s) or other aerial equipment for erection of the building structure).

.6 Installation of temporary protection measures and/or dismantling of equipment necessary to prepare the Project site for extreme weather events, such as named storms and flooding; removal of temporary protections, clean-up, and restoration of Project site as needed to resume construction activities once site clearance is granted by the authority having jurisdiction.

.7 Lightning detected within a ten (10) mile radius of the Project site and approaching. Work will resume thirty (30) minutes after the last lightning strike within ten (10) miles of the Project site.

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

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

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

**1.34 "Force Majeure"** means war, riots, civil commotion, strikes, labor disputes, embargoes, natural disasters, acts of God, materially adverse litigation relating to the Project or any other cause or contingency similarly beyond the reasonable control of the Parties. A delay or default of performance hereunder by any Party due to Force Majeure shall not be an Excusable Delay unless, pursuant to Section 6.11.1, timely notice is given to the other Parties of the Force Majeure event making performance impossible.

**1.35 "GMP"** means the Guaranteed Maximum Price for the Work, as defined and subsequently established in the GMP Amendment, and includes the Design/Builder's Fee and the Cost of the Work.

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

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

**1.38 "Hazardous Materials"** means, per industry standard, any substance, waste, or chemical that, due to its quantity, concentration, or physical/chemical characteristics, poses a significant present or potential risk to human health, safety, or the environment including without limitation: explosives, compressed gas, flammable liquids, flammable solids, combustible liquids, oxidizers, poisons, radioactive materials, corrosives, etiological agents, and other materials classified as hazardous by Title 40 Code of Federal Regulations (CFR) – Part 261) or applicable state and federal regulations.

**1.39 "Hotel Component"** means the Hotel portion of the Project as defined in the "Project" paragraph on page 3 of this Agreement.

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

**1.41 "IT"** means per industry standard the systems, equipment, and software used for automated data acquisition, building automation, storage, analysis, and transmission within the Project, including without limitation computers, network equipment, routers, cabling, security/surveillance systems, networking, and specialized communication technologies that need to be integrated into the physical structure.

**1.42 "Master Development Agreement"** means that certain development management agreement dated effective as of October 28, 2025, between Development Manager and City, as amended.

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

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

**1.45** "Operator" means a Separate Contractor who enters into a contract with the Owner to operate all components of the Project.

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

**1.47** "Owner" means **ROANOKE CONVENTION CENTER HOTEL LOCAL DEVELOPMENT CORPORATION**, a public, non-profit corporation incorporated pursuant to and governed by Subchapter D of Chapter 431, Texas Transportation Code; Chapter 394 of the Texas Local Government Code.

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

**1.49** "Owner's Representative" means the individual named by Owner to act on Owner's behalf in the administration of this Agreement, initially the person named in Section 4.4 hereof.

**1.50** "Parking Component" is defined in the Project paragraph on page 3.

**1.51** "Party" or "Parties" means Owner, City and Design/Builder.

**1.52** "Project Budget" means the budget for the Project included in the Program.

**1.53** "Program" means the initial description of the Owner's objectives for the Project, including

budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements, a copy of which is attached hereto as Annex 1.

**1.54** "Revised Substantial Completion Date" or "Revised SC Date" means the new date established for Substantial Completion of the Project resulting from extensions of time permitted by this Agreement which extend the date of Substantial Completion for the Project.

**1.55** "Schedule of Work" means the schedule that sets forth the dates and times for the completion of the Work during design and construction phases. (It is also sometimes herein referred to as the "Construction Schedule" as described in Section 3.3.6.)

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

**1.57** "Services" means those services, functions, roles, responsibilities, obligations and duties required of Design/Builder pursuant to the terms of the Contract Documents.

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

**1.59** "Subcontractor Default Protection Program" or "SDP" means obtaining default insurance coverage, procuring payment and performance bonds, or self-insuring the risk for the full and faithful performance of Design/Builder's Subcontractors as described in Section 3.2.11.

**1.60** "Subcontracts" means the contracts between Design/Builder and any Subcontractor but does not include those with the Architect. Owner acknowledges that some of the

subcontracts will be fixed price or lump sum agreements and will be treated as such in any financial audit pursuant to Section 8.3.

**1.61 "Substantial Completion"** means the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, including being sufficiently complete for the Operator to open the Project for business to the public. Notwithstanding any provision of the Contract Documents to the contrary, including but not limited to Section 6.2 hereof, Substantial Completion shall not occur for the Project unless and until (i) Owner's Commissioning Agent has been provided adequate time and opportunity under commercially reasonable standards to complete Owner's third-party commissioning of applicable building systems per the commissioning checklist(s) set forth as an Exhibit to the GMP Amendment; (ii) the Contractor achieves sign-off from the Owner's Commissioning Agent per the commissioning checklist(s); and (iii) the Owner and Operator have had sufficient access to and availability of the Project for the training of all necessary onsite personnel and the installation of FF&E, OS&E, and IT; subject only to Owner approved punch list items, of which the Design/Builder will diligently pursue to cure and complete no later than the Final Completion date.

**1.62 "Substantial Completion Date" or "SC Date"** is that certain date set forth in the GMP Amendment, or in an applicable subsequent Change Order, as the date the Design/Builder agrees to achieve Substantial Completion of the Project.

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

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

**1.65 "Value Engineering"** means the detailed analysis of systems, equipment, materials, services, facilities, and supplies required by the Contract Documents for the purpose of achieving

the desired and essential functions of the Project, and when applicable, at the lowest Life Cycle Cost consistent with required and necessary performance, reliability, quality and safety. Value Engineering is to be performed during the Design Phase as a part of the Services required to reach a GMP for the Project acceptable to all Parties. "Life Cycle Cost" means the sum of all costs of the Project over its useful life, and includes the cost of design, construction, acquisition, operation, maintenance, and salvage/resale value.

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

**1.67 "Work"** is defined in Section 2.5.

## **ARTICLE 2 GENERAL PROVISIONS**

**2.1 TEAM RELATIONSHIP** The Owner and the Design/Builder agree to proceed with the Project on the basis of good faith and fair dealing, and shall take such actions that are reasonably necessary to perform this Agreement in an economical and timely manner, including consideration of design modifications and alternative materials or equipment that will permit the Work to be constructed within the Guaranteed Maximum Price ("GMP") and by the Substantial Completion and Final Completion Dates. The Design/Builder shall cause the Architect and all design professionals to design the Work in accordance with the GMP; however, the Design/Builder may take reasonable actions necessary to maintain the GMP including minor changes to the drawings or specifications for a particular material, device, or system after the GMP is accepted subject to the prior written consent of the Owner. The Design/Builder may also utilize Value Engineering, subject to the prior written consent and approval of the Owner and alternative systems analysis so long as the original intent of the systems or components within the Project is maintained. The Design/Builder agrees to procure the architectural and engineering services set forth

below, and to furnish construction and administration of the Work. Nothing in this Agreement or any other Contract Document shall be construed or interpreted to establish a fiduciary relationship between the Design/Builder and the Owner or any other party.

Owner agrees that in executing this Agreement and selecting a design/build procedure to design and build the Project, the Owner has complied with the requirements of TEXAS GOVERNMENT CODE Section 2269.301, et seq.

**2.2 ARCHITECT** Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Design/Builder or furnished by licensed employees of the Design/Builder. **BOKA Powell LLC** has been selected as Architect for the Project on the basis of demonstrated competence and qualifications, as provided by TEXAS GOVERNMENT CODE Section 2254.004. The person or entity providing architectural and engineering services is referred to as the Architect. The Architect is an independent design professional. The architectural and engineering services shall be procured pursuant to a separate agreement between the Design/Builder and the Architect subject to the approval of the Owner's Representative, which approval shall not be unreasonably withheld. Design/Builder shall contractually obligate Architect to indemnify the Owner and Development Manager consistent with the provisions of Chapter 130, TEXAS CIVIL PRACTICES AND REMEDIES CODE, and Section 271.904, TEXAS LOCAL GOVERNMENT CODE, and to maintain insurance for the benefit of the Owner and Development Manager and their officers and employees as additional insureds (where applicable), in each case in form and substance not less than is customary for a project with a similar scope as the Work. Furthermore, it is agreed that the Owner has reviewed the insurance of the Architect and finds it to be acceptable. It is understood that the Owner, Development Manager and Design/Builder are third-party beneficiaries under the insurance coverages to be provided by the Architect, but no other third-party beneficiary relationship is created herein. All contracts relating to the architectural and engineering services of the Work shall contain provisions that: (i) indemnify the Owner and Development Manager, and their officers and employees against any costs or liabilities thereunder to the extent allowed by

Texas law, (ii) acknowledge that Owner and Development Manager have no obligations and liability thereunder, (iii) identify the Owner and Development Manager as intended third-party beneficiaries thereof entitled to enforce their rights thereunder in their own name; (iv) list the Owner and the Development Manager along with their officers and employees as additional insureds on policies excluding Professional Liability and Workers Compensation; and (v) otherwise comply with the other requirements of this Agreement. The Architect may not be changed by the Design/Builder without prior written consent of the Owner.

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

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

**2.4 CONTRACT DOCUMENTS** The Contract Documents consist of:

- .1 Change Orders and written amendments to this Agreement signed by the Owner, Design/Builder and, where applicable, Architect, including the GMP Amendment and its attachments;
- .2 this Agreement and all Exhibits attached hereto;
- .3 [Not Used.]
- .4 the most current Contract Documents approved by the Owner pursuant to Sections 3.1.5, 3.1.6, or 3.1.7;
- .5 the information provided by the Owner pursuant to Section 4.1.2.1.

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the Contract

Documents shall govern in the order in which they are listed above.

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

### **ARTICLE 3 DESIGN/BUILDER'S RESPONSIBILITIES**

The Design/Builder shall be responsible for overseeing the completion of the design and for the construction of the Work consistent with this Agreement and the Contract Documents. The Design/Builder acknowledges and agrees that design documents for the Project have been developed under separate agreements between the Architect and Owner prior to this Agreement. Design/Builder further acknowledges and agrees that it will work with the Architect to complete the design process for the Project based upon the drawings and documents already produced for the Project. The Design/Builder shall exercise reasonable skill and judgment in the performance of its Services but does not warrant or guarantee schedules and estimates other than those that are part of the GMP Amendment. The Design/Builder's representative is Neil Caudle.

#### **3.1 DESIGN PHASE SERVICES**

**3.1.1 STANDARD OF CARE.** The standard of care for all professional services performed to execute the Work pursuant to this Agreement shall be the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license.

#### **3.1.2 PRELIMINARY EVALUATION** Previously completed.

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

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

#### **3.1.5 SCHEMATIC DESIGN DOCUMENTS** Previously completed.

#### **3.1.6 DESIGN DEVELOPMENT DOCUMENTS**

In accordance with the Schedule of Work, the Design/Builder shall submit to the Owner for Owner's approval Design Development Documents based on the approved Schematic Design Documents. The Design Development Documents further define the components of the Project including drawings and outline specifications fixing and describing the Hotel Component, Convention Center Component, and Parking Component size and character, and other appropriate elements incorporating the systems for the overall Project, including but not limited to structural, architectural, mechanical and electrical systems. One set of these documents shall be furnished to the Owner. If and when the Owner approves the Design Development Documents, the



Design/Builder shall update the schedule and issue the GMP Amendment based on the Design Development Documents

### **3.1.7 CONSTRUCTION DOCUMENTS**

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

### **3.1.8 OWNERSHIP OF DOCUMENTS**

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

**3.1.8.2** Additionally, it is agreed that Owner and Design/Builder intend this to be a contract for services, and each considers the products and results of the services to be rendered by Design/Builder under this Agreement in connection with the Project to be a work made for hire. Design/Builder acknowledges and agrees that this work product (and all rights in this Agreement, including, without limitations, Intellectual Property) (hereinafter "Work

Product") belongs to and will be the sole and exclusive property of Owner. Notwithstanding the foregoing, ownership of the Work Product shall not vest in the Owner unless and until the Design/Builder is paid in full for all amounts properly due for such Work Product under this Agreement. To the extent any portion of the Work Product is determined not to constitute a work made for hire under applicable law, the Design/Builder shall assign, effective upon full payment as described above, all right, title, and interest in and to such Work Product to the Owner. The foregoing shall not apply to, and Design/Builder expressly reserves all rights, in, its standard details, designs, specifications, components, or other pre-existing or reusable materials developed independently of this Project, provided that Owner shall have a perpetual, irrevocable, royalty-free license to use such excluded materials solely as incorporated into the Work Product for the design, construction, occupancy, operation, and maintenance of the Project. Owner shall have the right to use such Work Product in connection with the construction of, and any repairs or alterations to, the Project. Owner releases the Architect, the Design/Builder and the Development Manager from any claims or damages resulting from any material alteration of the Work Product by Owner in connection with the Project which is not approved by Design/Builder and the Architect and/or the use of such Work Product in the construction, repair or alteration of something other than the Project.

### **3.1.9 SCHEDULE OF FEES AND EXPENSES**

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

### **3.1.10 COORDINATION OF CONSTRUCTION**

The structures

constituting the components of the Project, viz. the Convention Center Component, the Parking Component and the Hotel Component, will be connected with one another as part of an integral whole. This Agreement is drafted to accommodate the connection and integration of these three components of the Project. Accordingly, the Architect, and many of the Subcontractors and Sub-Subcontractors, will be providing services on more than one component of the Project and in certain situations a Subcontract may include work on more than one component of the Project. In these situations, the Design/Builder will allocate the cost of any such Subcontract in accordance with any written instructions provided Owner that accurately reflect the cost of the services performed for that portion of the Project. If no such written instructions are timely provided by Owner, Design/Builder will allocate the cost of any such Subcontract among the applicable structures based on Design/Builder's best estimate as to the value of the services or material provided for each structure. Design/Builder shall provide Owner with its reason and justification of each Subcontract allocation with the applicable Application for Payment.

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

Design/Builder in accordance with Section 6.11 of this Agreement.

### **3.2 GUARANTEED MAXIMUM PRICE**

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

**3.2.2** The GMP Proposal shall include amounts for approval by Owner for Construction Contingency for the Project. The Construction Contingency shall not be allocated to any particular item of the Cost of the Work and is established for increases in the Cost of the Work incurred by Design/Builder due to any scope gaps, exigencies or unforeseen causes at the time of execution of this Agreement. It is not intended for changes in the scope of the Work or for reimbursement of expenses and costs not otherwise recoverable as a Cost of the Work under Article 8 of this Agreement. It is understood that the amount of the Construction Contingency is the maximum sum available to the Design/Builder to cover the Cost of the Work not included in the GMP which is incurred by the Design/Builder as a result of such unforeseeable causes and exigencies, and it is further understood that cost overruns in excess of the amount of the Construction Contingency or other costs not reimbursable as Cost of the Work will be borne by the Design/Builder. The Design/Builder will not be allowed to use any part of the Construction Contingency without prior notice to Owner, and Construction Contingency will be tracked in the monthly reports. Design/Builder will provide a monthly written statement summarizing the Construction Contingency

activity and any balance adjustment from the previous period, which shall be subject to approval by Owner. To avoid confusion, the Design/Builder shall have no right at any time to any monies held by Owner within Owner's Contingency.

**3.2.3 BASIS OF THE GUARANTEED MAXIMUM PRICE** The Design/Builder shall include with the GMP Proposal a written statement of the basis of the proposal, organized by Project Component and including all Work Packages (described in Section 3.2.6.1 below), the details of which shall include but not be limited to:

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

.9 statement of Additional Services included, if any; and

.10 the time limit for acceptance of the GMP Proposal, which shall not be less than 30 Days.

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

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

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

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

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

- .1 When the price proposal for any portion of the Work is agreed upon by the Owner and Design/Builder it shall be set forth in a Work Package Authorization which (1) describes the specific scope of the Work to be performed thereunder; (2) establishes a price based on Costs of the Work as

defined in Article 8 plus Design/Builder's Fee; and (3) establishes a completion date for such Work and liquidated damage provision, if any, as the Parties may agree. No Work will be authorized to commence hereunder until the Design/Builder has complied with the requirements of this Section 3.2.6.1 and Owner and Design/Builder have entered into a written work package authorization (a "Work Package Authorization").

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

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

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

**3.2.7.1** The GMP Amendment shall not alter or modify any language or provision of this Agreement without Owner's approval and unless such modification is clearly and explicitly noted and includes (i) the numerical reference to the section of this Agreement that is to be modified, and (ii) the rationale for such modification.

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

- .1 terminate this Agreement by providing the Design/Builder with notice of termination. Promptly after such termination, receipt of final conditional releases from the Design/Builder, its Subcontractors, Sub-Subcontractors, material suppliers, and Architect, and the receipt of all documents, including, without limitation, the Construction Documents, requested by Owner, Owner shall pay the Design/Builder all costs incurred to the date of termination, supported by appropriate documentation, subject to Owner's approval, as full payment for all Work and Services performed by the Design/Builder to that point, which shall be the exclusive and total amount due the Design/Builder in connection with this Agreement and the termination thereof pursuant to this Section; or
- .2 direct the Design/Builder to continue to participate in Value Engineering exercises so that the Design/Builder can submit another GMP Proposal at a reduced cost, in which case, Owner shall decide whether to accept the revised GMP Proposal or terminate this Agreement and shall have the right to proceed or terminate as to that revised GMP Proposal as set forth in this Section. Unless otherwise agreed by the Design/Builder, the Design/Builder shall not be required to perform Value Engineering exercises to attempt to get the GMP within the budget for more than thirty (30) Days after the GMP Proposal has first been rejected by Owner. The Design/Builder shall not be required to perform Value Engineering exercises if the amount of the GMP in the GMP Proposal is within the budget.

Prior to the issuance of the GMP Amendment and a written Notice to Proceed with the Construction

Phase, the Design/Builder shall not incur any cost to be reimbursed as part of the Cost of the Work for the Construction Phase, except as Owner may specifically authorize in writing.

**3.2.9 SALES TAX** The Owner is a governmental entity created under Texas Transportation Code Chapter 431, Subchapter D and is exempt from state and local sales taxes pursuant to Section 431.102(b) of that chapter. Owner will provide the Design/Builder with Sales and Use Tax Exemption Certificates enabling the Design/Builder to make non-taxable purchases of goods and services to be incorporated into the Project, to the extent allowed by law. Owner shall not pay or reimburse the Design/Builder for the payment of sales or use taxes.

#### **3.2.10 PAYMENT, PERFORMANCE, AND MAINTENANCE BONDS**

- a. The Design/Builder shall furnish separate performance, maintenance and payment bonds, each in the sum of one hundred percent (100%) of the total contract price, in such forms as the Owner may approve and with sureties as the Owner may approve, for this purpose, guaranteeing faithful performance of the contract, faithful performance of work during the warranty period and faithful payment to all persons supplying labor and materials or furnishing any equipment in the execution of this Agreement. The payment bond for the Project shall be in the form provided in **Exhibit G** and Design/Builder shall execute a memorandum of contract for filing of the payment bond, as provided in **Exhibit G**. The cost of the performance and payment bonds shall be 0.678% of the Contract Value. The cost of the maintenance bond shall be submitted for approval as part of the GMP Proposal. A maintenance bond is not required if the performance bond covers in duration and scope the warranty period for the facilities to be constructed under this Agreement.
- b. All performance and payment bonds required herein shall remain in effect throughout the term of this Agreement and the maintenance bond shall remain in effect for a period of one (1) year after the completion of the work and shall be extended for any warranty work to cover the warranty period.
- c. If at any time during the term of this Agreement or in the required period thereafter, the bond or bonds become invalid or ineffective for any reason, the Design/Builder shall promptly supply within ten (10) Days such other bond or bonds, which bond or bonds shall assure performance, maintenance or payment as required. Such replacement bond(s) shall be issued by a surety acceptable to the Owner.
- d. Subject to Article 9, the Design/Builder shall make such changes and alterations as the Owner may see fit in the work herein contemplated, or any part thereof without affecting the validity of this Agreement and any work accompanying payment & performance bond. If such changes or alterations diminish the quantity of the work to be done, they shall not constitute the basis for any claim for damages or anticipated profits on the work that may be dispensed with.
- e. The Bond Trustee shall be named as a dual obligee on the bonds required by this Section 3.2.10.

#### **3.2.11 SUBCONTRACTOR DEFAULT PROTECTION PROGRAM**

In addition to and not in lieu of the Design/Builder's payment and performance bonds, the Design/Builder shall put in place a Subcontractor Default Protection Program to cover one hundred percent (100%) of the subcontracted volume. The cost of the SDP shall be included in the GMP and shall be 1.3% of the applicable subcontracted and purchase order volume attributed to the Project.

### **3.3 CONSTRUCTION PHASE SERVICES**

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

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

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

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

**3.3.5** The Design/Builder shall give all notices and comply with all laws and ordinances which govern the proper performance of the Work, including noise ordinances and construction work hours as detailed in the City ordinances; provided, however, in the event City or any other authority having jurisdiction enacts any law or ordinance following the date of execution of this Agreement, that causes the Cost of

the Work to increase, Owner acknowledges and agrees that the GMP will be adjusted appropriately.

**3.3.6** The Design/Builder shall prepare and submit a Schedule of Work for the Owner's written approval. This schedule shall indicate the dates for the start and completion of the various stages of the construction of the Hotel Component, Convention Center Component, and Parking Component and the overall Project, including the dates when information and approvals are required from the Development Manager or Owner. It shall be revised as required by the conditions of the Work.

**3.3.7** The Design/Builder shall secure the building and any other permits necessary for the construction of the Project. The Design/Builder will not be required to pay any permit fees for permits to be issued by the City for the Project, which fees will be waived in conjunction with this Agreement. However, permitting fees assessed by applicable jurisdictions other than the City may not be waived.

**3.3.8** The Design/Builder shall take necessary precautions for the safety of its employees on the Project and shall comply with all applicable provisions of federal, state and municipal safety laws to prevent accidents or injury to persons on, about or adjacent to the Project Site. The Design/Builder, directly or through its Subcontractors and Sub-Subcontractors, shall erect and properly maintain at all times, as required by the conditions and progress of the Work, necessary safeguards for the protection of workers and the public. The Design/Builder, however, shall not be responsible for the elimination or abatement of safety hazards created or otherwise resulting from work at the Project Site carried on by the Development Manager and/or Owner or its employees, agents, Separate Contractors or tenants. The Owner agrees to cause their employees, agents, Separate Contractors and tenants to abide by and fully adhere to all applicable provisions of federal, state and municipal safety laws and regulations. The above provision shall not relieve Subcontractors or

Sub-Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with all applicable provisions of relevant laws. The Design/Builder shall coordinate the Work on the Convention Center Component and Parking Component with the work on the Hotel Component in such a manner that construction phase services for all portions of the Project shall be seamless and handled in all respects for safety purposes as if all components of the Project were one project.

**3.3.9** Subject to Section 8.3 herein, the Design/Builder shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. Without cost to the Owner, the Design/Builder shall allow Owner the right at any time and from time to time, during normal business hours, to have access to any or all of Design/Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to the Project and this Agreement. Design/Builder agrees to make such records available to Owner at a convenient location at the Project upon two business days' notice from Owner. The Design/Builder shall preserve all such records for a period of three years after the final payment or longer where required by law.

**3.3.10** The Design/Builder shall provide a copy of the daily jobsite reports and monthly written reports to the Owner on the progress of the Work and the Project overall as agreed to by the Owner and Design/Builder. The Design/Builder's Representative shall meet at least weekly with Owner's Representative and Development Manager's Representative at the Site, or on a virtual call, to review the progress of the Work and any substantive issues that could delay or otherwise negatively impact the Work and the Project overall.

**3.3.11** The Design/Builder has developed a system of cost reporting for the Work and the Project overall, including regular monitoring of actual costs for activities in progress and estimates for uncompleted

tasks and proposed changes in the Work and/or Project. Design/Builder will share the appropriate project cost reports generated by Design/Builder's cost management software if requested by Owner.

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

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

### **3.4 HAZARDOUS MATERIAL**

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

**3.4.2** Design/Builder shall not be obligated to commence or continue Work until any Hazardous Material discovered at the Site and existing at the Site prior to Notice to Proceed ("Pre-Existing Hazardous Material") has been removed, rendered or determined to be harmless. If any Pre-Existing Hazardous Material is discovered at the Project Site, Design/Builder shall immediately stop Work in the affected area and notify Owner and Architect. Upon receipt of Design/Builder's notice, Owner shall obtain the services of a certified independent testing laboratory and (if required) approved by the appropriate government agency, to investigate, render

a decision on the nature of the alleged Pre-Existing Hazardous Material, and if found to be hazardous remove and clean up the Site. Owner may rely conclusively and without inquiry on the independent testing laboratory hired. The Design/Builder shall resume Work in the area affected by any Pre-Existing Hazardous Material only after the Pre-Existing Hazardous Material has been removed or rendered harmless with written mutual agreement among the Parties. **To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design/Builder and its agents and employees from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance is Pre-Existing Hazardous Material and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the Design/Builder. The Parties acknowledge that Owner is a governmental entity and as such the indemnifications set forth in this paragraph may be subject to statutory limitations.**

**3.4.3** [Intentionally omitted]

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

**3.4.5** Design/Builder shall be solely responsible for any costs of testing or remediation of Hazardous Materials brought onto the Site by Design/Builder, Architect, any Subcontractor or Sub-Subcontractor or any other person for whom the Design/Builder is responsible.

**To the fullest extent permitted by law, Design/Builder shall defend, indemnify and hold harmless, Development Manager and Owner and the agents, officers, directors, members and employees of each of them, from and against any and all claims, damages, losses, costs and expenses including, but not limited to, reasonable attorney's fees, cost and expenses whether direct or indirect incurred in connection with litigation, mediation or arbitration arising out of or resulting from Hazardous Substances at the property brought on site by the Design/Builder, its Subcontractors, Sub-Subcontractors and material suppliers, the Architect and the agents and employees of each of them provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the indemnified party.**

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

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

**3.6 CONFIDENTIALITY** Design/Builder shall treat as confidential and not disclose to third persons, except Subcontractors, Sub-Subcontractors, material suppliers, the Architect and their respective employees and



agents as is necessary for the performance of the Work, including authorities having jurisdiction, or use for its own benefit any of Development Manager's and Owner's development strategies, confidential information, know-how, discoveries, production methods and the like that may be disclosed and identified as confidential to Design/Builder by the Owner or the Development Manager in connection with the Work. Owner (to the extent permitted by Law) shall treat as confidential information, and not disclose to any unnecessary third persons or parties, all of Design/Builder's estimating systems, historical and parameter cost data, or any other confidential information that may be disclosed and identified as confidential to Owner by Design/Builder in connection with the performance of this Agreement. Notwithstanding the foregoing or anything to the contrary contained herein, the Design/Builder acknowledges that Owner is a governmental entity subject to the TEXAS PUBLIC INFORMATION ACT, TEXAS GOVERNMENT CODE CHAPTER 552, and Design/Builder acknowledges that this Agreement and confidential information received from Design/Builder, Owner and Development Manager that is covered by this Agreement will be considered public records and will be subject to disclosure in compliance with Texas law, except for information falling within one of the exemptions therefrom. The Owner is required to and shall comply with all Applicable Laws with regard to any records, documents and information related to Owner's dealings and relationship with the Design/Builder. Nothing in this Agreement shall be deemed or construed as a limitation on Owner's discretion relating to compliance with Applicable Laws. Nevertheless, Owner will use reasonable efforts to provide notice as stated in Section 552.305 of TEXAS GOVERNMENT CODE within ten (10) business days after receiving any request, or consistent with state law, that seeks disclosure of information provided by or concerning the Design/Builder but shall have no liability arising out of its failure to do so in a timely manner or at all. The Parties shall reasonably cooperate to determine whether or to what extent the requested information may be released without objection and without seeking a written opinion of the Texas Attorney General. If the Design/Builder asks the Owner to seek an opinion from the Texas Attorney General raising any applicable exception to release of such information, Design/Builder shall be solely responsible to draft and submit to the Texas Attorney General the

substantive comments or arguments in support of such opinion request. The Design/Builder and the City will comply with the resulting opinion of the Texas Attorney General.

### **3.7 WARRANTIES AND COMPLETION**

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

reasonable manner by Owner or other 3<sup>rd</sup> party not under the Design/Builder's control.

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

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

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

**3.7.5** Design/Builder shall be responsible for startup, functional testing, and commissioning of the Project systems and equipment in accordance with the requirements set forth in the Contract Documents (the "Commissioning Requirements"). When the Project systems and equipment have met the Commissioning Requirements, Design/Builder shall notify Development Manager. Development Manager shall then notify the Owner's Building Systems Commissioning Agent (the "Agent") to verify that all Commissioning Requirements have been met and that all Project systems and equipment function correctly. The Agent then shall ask the Design/Builder to run the systems and equipment through a series of checks to confirm conformance. If non-conformance is found, a punch list of items to be corrected will be provided to the Design/Builder. Once all such punch list items are found to be in conformance, the Agent shall provide a Final Commissioning Report. Owner will be responsible for all post-commissioning operations consistent with the manufacturer's instructions.

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

**3.7.7** Design/Builder shall immediately proceed to correct Work rejected in accordance with this Agreement by Owner as defective or failing to conform to the Contract Documents, unless such Work is accepted in accordance with other provisions of this Agreement. Design/Builder as a charge against the GMP shall bear all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections and any fees and expenses of the Architect made necessary thereby, without adjustment to the GMP, provided, however, in the event such damaged or nonconforming Work cannot be assigned or otherwise attributed to any Subcontractor or other responsible party, the Design/Builder may use the Construction Contingency within the GMP to pay for any such costs and expenses as provided in Section 3.2.2..

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

THE WARRANTIES SET FORTH IN THIS SECTION 3.7 ARE SOLE, AND IN LIEU OF ANY AND ALL OTHER WARRANTIES OF

DESIGN/BUILDER RELATED TO THE CONSTRUCTION OF THE PROJECT, WHETHER EXPRESS OR IMPLIED, AND DESIGN/BUILDER DISCLAIMS ANY SUCH OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY AND ALL WARRANTIES OF MERCHANTABILITY AND WARRANTIES ARISING FROM A COURSE OF DEALING AND/OR USAGE OF TRADE. ANY OTHER STATEMENT OF FACT OR DESCRIPTIONS EXPRESSED IN THE CONTRACT DOCUMENTS SHALL NOT BE DEEMED TO CONSTITUTE A WARRANTY BY DESIGN/BUILDER OF THE CONSTRUCTION

OF THE PROJECT OR ANY PART THEREOF, PROVIDED, HOWEVER, THIS SECTION 3.7.8 DOES NOT WAIVE, RELEASE OR OTHERWISE LIMIT OR AFFECT ANY WARRANTY (i) BY DESIGN BUILDER AS EXPRESSLY SET FORTH IN THE CONTRACT DOCUMENTS, (ii) BY ANY SUBCONTRACTOR, SUB-SUBCONTRACTOR, SUPPLIER, CONSULTANT, SUB-CONSULTANT OR MANUFACTURER IN CONNECTION WITH THE PROJECT CONTAINED IN THEIR APPLICABLE CONTRACT OR (ii) WHICH IS EXPRESSLY GRANTED TO OWNER, IN ITS CAPACITY AS A GOVERNMENTAL ENTITY OF THE STATE OF TEXAS, BY THE LAWS OF THE STATE OF TEXAS.

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

- .1 Artistic models for any part of the Project or the Work.
- .2 Making revisions to the Design Development, Construction Documents or documents forming the basis of the GMP after they have been approved by the Owner, and which are due to causes beyond the control of the Design/Builder and upon which the Design/Builder has relied and has

expended funds in accordance therewith.

- .3 Estimates, proposals, appraisals, consultations, negotiations and services in connection with the repair or replacement of an insured loss.
- .4 Services requested by the Owner or required by the Work which are not specified in the Contract Documents, and which are not normally part of generally accepted design and construction practice.
- .5 Serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project.

#### **ARTICLE 4 DEVELOPMENT MANAGER'S/ OWNER'S RESPONSIBILITIES**

##### **4.1 INFORMATION AND SERVICES PROVIDED BY OWNER**

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

**4.1.2** The Owner shall provide:

- .1 where currently available, general information describing the physical characteristics of the Site, including surveys, site evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations; the definition of the wetland boundaries; and

- .2 tax exempt certificate, if applicable.

**4.1.3** The Owner shall provide reasonable evidence satisfactory to the Design/Builder and in compliance with applicable law, including without limitation Tex. Bus. and Comm. Code Ch. 56, prior to commencing the Work, and during the progress of the Work, that sufficient funds are available and committed for the entire cost of the

Project, including an allowance for changes in the Work as may be approved in the course of the Work.

**4.1.4** The Design/Builder shall review the information for completeness and accuracy as to the information and services required by this Section 4.1. The Owner does not warrant the accuracy of any information provided pursuant to Section 4.1.2.1; however, the Design/Builder may rely on the accuracy of such information to the same extent the Owner is entitled to rely on such information.

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

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

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

**4.1.8** Wherever it is required under this Agreement that Design/Builder give notice to, receive approval from, or otherwise communicate with Owner, the Parties acknowledge and agree that such notice, approval or communication shall be made to and through Development Manager, who shall act in all respects as a representative for Owner in the performance of this Agreement. Notwithstanding anything in this Agreement to the contrary, Development Manager shall not have

authority to execute a Change Order or otherwise modify the Project Budget.

## **4.2 OWNER'S RESPONSIBILITIES DURING DESIGN PHASE**

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

## **4.3 DEVELOPMENT MANAGER'S/OWNER'S RESPONSIBILITIES DURING CONSTRUCTION PHASE**

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

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

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

**4.4 DESIGN/BUILDER'S, OWNER'S AND DEVELOPMENT MANAGER'S REPRESENTATIVES** Subject to Section 1.49, the Owner's Representative is Cody Petree, the Design/Builder's representative is Neil Caudle, and the Development Manager's representative

is Steve Galbreath, all of whom are agreed to by the Parties. Design/Builder and Development Manager shall seek the consent of the City before making a change to their respective representatives, such consent not to be unreasonably withheld. The City need provide only written notice of any change to its representative. The representatives:

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

**4.5 Construction Monitor** The Construction Monitor will make scheduled, periodic review visits to the Project to observe, without limitation, the quality of workmanship, substantiation of costs in place and adequacy of balances to complete, and the status of construction completion. Construction Monitor will include, as part of its scheduled visits, attendance in the Project's monthly meetings where the pencil draw of the next proposed application for payment of costs is reviewed (as described in Article 10). Design/Builder will respect the duties of the Construction Monitor and respond to the reasonable requests of the Construction Monitor for information and applicable documentation. The Construction Monitor will report to the Owner and will respond to the reasonable requests of the Development Manager for information and applicable documentation. The Construction Monitor is independent of the Development Manager and has no approval rights or other responsibilities under this Agreement.

## **ARTICLE 5 SUBCONTRACTS**

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

**5.1 RETAINING SUBCONTRACTORS** The Design/Builder shall not retain any Subcontractor to whom the Owner has a reasonable and timely objection, provided that the objecting party agrees to compensate the Design/Builder for any additional costs, time, or other obligations incurred by the Design/Builder as a result of such objection. The Design/Builder shall not be required to retain any Subcontractor to whom the Design/Builder has a reasonable objection. Design/Builder will provide Owner with a list of acceptable Subcontractors prior to subcontracting and allow Owner fourteen (14) Days to review and provide comment to Design/Builder prior to Design/Builder subcontracting with Subcontractors including, without limitation, Design/Builder or its affiliate as a Subcontractor. Owner acknowledges that Design/Builder will be allowed to purchase material, rent equipment, and procure services from B&G Equipment and Supply, L.P., an affiliate of Brasfield & Gorrie, L.L.C., provided that the prices charged to Owner for such services or procurement are equal to or more favorable to Owner than market pricing. Lakeview Risk Partners is a related party that may serve as an agent in bonding and insurance transactions.

### **5.1.1 BIDDING AND CONTRACT AWARD**

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

shall provide written certification satisfactory to Owner of its compliance with Section 5.1 and this Section 5.1.1 at the time of bidding. The contracts with Subcontractors shall require that the schedule of work for the Subcontractor shall conform to the Design/Builder's Schedule of Work as described in Section 3.3.4.

#### **5.1.2 COMPETITIVE PROCUREMENT**

Design/Builder shall use competitive procurement methods consistent with state law, and subject to market availability by trade, shall use reasonable efforts to secure at least three (3) competitive proposals for each unit of work over \$100,000.00. To the extent Design/Builder wishes to submit a bid for the performance of work by its own forces (including without limitation excavation, concrete, reinforcing steel, miscellaneous steel, structural steel, carpentry) it shall include such information in the bids with the other competitive bids noting that it is the designated bidder. All such bids shall be considered as any other competitive bid. Owner represents that public bidding procedures are not required, and Design/Builder is authorized to negotiate with apparent responsive bidders to search out best value for the Project. Design/Builder will comply with statutory requirements as follows:

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

#### **5.2 MANAGEMENT OF SUBCONTRACTORS**

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

#### **5.3 ASSIGNMENT OF SUBCONTRACT AGREEMENTS**

The Design/Builder shall provide for assignment of subcontract agreements and Warranties, express or implied, in the event that the Owner terminates this Agreement for cause as provided in Section 12.2. Following such termination, the Owner shall notify in writing, those Subcontractors whose assignments will be accepted, subject to the rights of sureties.

**5.4 COMPLIANCE WITH LAWS** All agreements between Design/Builder and any Subcontractors shall include the agreement of such

Subcontractors to comply with Applicable Laws relating to the performance of the Work.

#### **5.5 BOND TRUSTEE REQUIREMENTS**

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

### **ARTICLE 6 CONTRACT TIME**

#### **6.1 COMMENCEMENT OF THE WORK**

Design/Builder shall commence Work on the Construction Phase when Notices to Proceed are issued by the Owner. Notices to proceed with any Work Package shall be set forth in the Work Package Authorization.

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

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

#### **6.3 LIQUIDATED DAMAGES.**

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

compensation, and other increased costs associated with delays in the opening of the Project to the public and that these damages may additionally be comprised of such things as, but not necessarily limited to, lost profits and damages, liabilities and judgments arising from claims of third parties against the Owner for breach of promises or commitments to third parties associated with delay and/or potential delay in the opening of the Project. Accordingly, the Owner and the Design/Builder agree that the liquidated damages will be assessed as set forth below. These liquidated damages shall be the Owner's sole and exclusive remedy for Contractor's delay in achieving Substantial Completion within the Contract Time, but not for any other breach of this Agreement by Design/Builder.

| Days of Delay | Daily Rate |
|---------------|------------|
| 0-21          | \$2,500    |
| 22-44         | \$5,000    |
| 45-60         | \$10,000   |
| 61+           | \$30,000   |

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

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

**6.5** Upon receipt of the Design/Builder's list in accordance with Section 6.4, the Architect, Owner and Development Manager will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Design/Builder's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design/Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Design/Builder shall then submit a request for another inspection by the Architect, Owner and Development Manager to determine Substantial Completion.

**6.6** When the conditions for Substantial Completion as set forth in Section 1.61 have been met, Development Manager shall recommend to the Owner that the Owner direct the Architect to perform its own requisite diligence, and if in the Architect's professional opinion, Substantial Completion has been met, the Architect shall prepare a Certificate of Substantial Completion that shall make record of the date on which Substantial Completion has been achieved. Architect shall at the same time establish responsibilities of the Owner and Design/Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design/Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work for the whole of the Project unless otherwise provided in the Certificate of Substantial Completion.

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

Notwithstanding anything to the contrary, the Substantial Completion Certificate Date shall be a single date for all three Components of the

Project, unless otherwise mutually agreed by the Owner and Design/Builder.

**6.8 Design/Builder Bonus** Notwithstanding any provision of this Agreement to the contrary, in the event Design/Builder gives Owner notice at least 180 Days prior to the SC Date that Design/Builder will achieve Substantial Completion of the Project prior to the SC Date set forth in the GMP Amendment, Design/Builder shall be entitled to a bonus fee in addition to Design/Builder's Construction Phase Compensation, consisting of \$1000 per Day for each Day up to and including the sixtieth (60th) Day prior to the SC Date conditioned upon availability of funds in the Construction Fund. Once Design/Builder provides the notice required herein, the SC Date will then become the Revised SC Date which shall be the date Design/Builder must achieve Substantial Completion of the Project.

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

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

## **6.11 DELAYS IN THE WORK**

**6.11.1** If causes beyond the Design/Builder's control delay the critical path of Design/Builder's Work, then the GMP, compensation for Design Phase Services, the Design/Builder's Fee and the SC Date shall be modified by Change Order, as appropriate. Such causes, to the extent they impact the critical path of the Design/Builder's Work, shall include but not be limited to: changes ordered in the Work, acts or omissions of the Development Manager or Owner or Separate Contractors employed by the Owner which prevent the Design/Builder from performing the Work, the Owner preventing the Design/Builder from performing the Work pending dispute resolution, Pre-Existing Hazardous Materials, and differing site conditions which have or will have a material adverse effect on the Work, Force Majeure, or Extreme Weather (collectively "Excusable Delay"). Any such Excusable Delay to the critical path of the schedule shall be identified

by the Design/Builder and written notice of such critical path delay and the cause given to the Owner within fourteen (14) Days of the occurrence of the event or fourteen (14) Days of Design/Builder's knowledge of the event, whichever is later, giving rise to the Excusable Delay. Any disagreement as to the significance or effect of said Excusable Delay, including Extreme Weather, to critical path, or to the Work and its progress will be handled in accordance with Article 13. Notwithstanding the foregoing, the Design/Builder acknowledges and agrees that neither adjustment in the SC Date, nor adjustment in the GMP will be permitted to the extent that (a) any delay is caused by the negligence, errors, omissions or fault of the Design/Builder or its Subcontractors or (b) Design/Builder failed to provide Owner with written notice as set forth above.

### **6.11.1.1 Weather Event Delays**

**6.11.1.1.1** The Schedule of the Work is based on the assumption that Contractor shall be able to perform Work on the critical path five (5) days per Work Week. The Work Week shall be defined as Monday through Friday. The Work Week and the days assumed whereby work can be performed shall be reduced by any Design/Builder holidays, a schedule of which shall be included with the GMP Proposal.

**6.11.1.1.2** Design/Builder has included two (2) Weather Event days per month in the schedule. In the event the Design/Builder encounters more than 2 Weather Events of delay to the critical path of the Project in a month then the Design/Builder will be entitled to an extension of time in accordance with Section 6.11.1.

**6.11.1.1.3** All Weather Event days shall be recorded by the onsite Project management team. A copy of Design/Builder's Weather Events days record is available to Owner upon request. Notwithstanding any terms to the contrary herein, any claims by Design/Builder for Weather Event delays shall be made in writing at the end of each month.

**6.11.2** In the event delays to Project are encountered for any reason, the Parties agree to undertake reasonable steps to mitigate the effect of such delays. If the delays to the critical path of the Project are the result of causes beyond the Design/Builder's control, the Design/Builder shall be compensated for any and all additional costs and expenses incurred by the Design/Builder to



mitigate the effect of such critical path delays as approved by the Owner, such approval not to be unreasonably withheld, and the GMP shall be increased by a Change Order by the amount of the additional costs and expenses incurred by the Design/Builder to mitigate such critical path delays. Reasonable costs, expenses and damages incurred by the Design/Builder to mitigate a critical path delay shall be considered a Cost of the Work.

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

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

## **ARTICLE 7 COMPENSATION/ LIMITS**

**NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE 7 OR ELSEWHERE IN THIS AGREEMENT, OWNER'S LIABILITY FOR PAYMENT OF ANY AMOUNTS TO ANY PERSON HEREUNDER SHALL BE LIMITED TO THE CONSTRUCTION FUND.**

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

### **7.2 DESIGN PHASE COMPENSATION**

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

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

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

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

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

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

### **7.3 CONSTRUCTION PHASE COMPENSATION**

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

- .1 the Cost of the Work (including General Conditions costs) as allowed and defined in Article 8, (less retainage as provided herein) excluding any unused Construction Contingency.
- .2 the Construction Phase fee of 3.85% (which is not part of the General Conditions cost) times an amount equal to the Cost of the Work.

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

**7.3.3** Payment for Construction Phase Services shall be as set forth in Article 10. If Design Phase Services continue to be provided after construction has commenced, the Design/Builder shall be compensated as provided in Section 7.3.1 or as mutually agreed by Owner and Design/Builder.

**7.4 DESIGN/BUILDER'S FEE** The Design/Builder's Fee includes the following:

- .1 salaries and other mandatory or customary compensation of the Design/Builder's employees at its

principal and branch offices, except employees listed in Section 8.2.2;

- .2 general and administrative expenses of the Design/Builder's principal and branch offices other than the field office, except as may be expressly included in Article 8; and
- .3 the Design/Builder's capital expenses, including interest on the Design/Builder's capital employed for the Work, provided that the Design/Builder is paid per the terms of this Agreement.

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

- .1 for changes in the Work as provided in Article 9, the Design/Builder's Fee shall be 3.85% of the Cost of the Work associated with the change.
- .2 for delays in the Work caused by Owner, to the extent such Owner caused delays are not the responsibility of the Design/Builder, Design/Builder will be allowed 3.85% Fee in addition to its increased expenses (as approved by Owner) except that such expenses shall not be duplicated as Fee and as a Cost of the Work; and
- .3 if the Design/Builder is placed in charge of managing an insured or uninsured loss on the Project at the express written request of the Owner, the Design/Builder shall be paid a Fee of 3.85%.

### **ARTICLE 8 COST OF THE WORK**

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

#### **8.1 COST ITEMS FOR DESIGN PHASE SERVICES**

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

## **8.2 COST ITEMS FOR CONSTRUCTION PHASE SERVICES**

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

8.2.2 Salaries of Design/Builder's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office listed in **Exhibit A**, at the hourly rates provided for in **Exhibit A**, for such part of their time as devoted to the Work and may be adjusted annually by the rate set forth in the GMP Amendment, provided such adjustment shall not increase the GMP.

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

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

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

8.2.6 Payments made or payments due by the Design/Builder to Subcontractors for Work performed under this Agreement. Owner's audit of Design/Builder's final accounting of Subcontractor and Design

Consultant costs shall be for the purpose of determining that the Subcontractor and Design Consultant costs were in fact paid by Design/Builder to Subcontractors and Design Consultants in the performance of the Work. Subcontractors' and Design Consultants' costs of performance shall not be subject to audit unless incurred pursuant to a cost-plus subcontract which expressly provides that Subcontractor or Design Consultant's costs may be audited by Owner. Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage. The Owner and Design/Builder shall agree upon a mutually acceptable procedure for review and approval of payment retention for Subcontractors.

8.2.6.1 Incentive compensation and any other discretionary payments paid to any Subcontractor or Design Consultant, with the Owner's prior approval.

8.2.6.2 Design-Builder may, with Owner's prior approval, perform certain lump-sum packages of Work within the overall GMP using Design-Builder's own forces and/or the forces of other third parties. All provisions outlined in this Section 8.2.6 shall apply to all lump-sum work packages performed by Design-Builder.

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

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

8.2.9 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the site of the Work, whether rented from the Design/Builder or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs at rental charges consistent with those prevailing in the area. Equipment owned by

Design/Builder may be used when and if available from Design/Builder's fleet. Design/Builder has provided Owner with a list of equipment (stipulated and agreed to in **Exhibit B**) it commonly uses from its fleet with its rental rates agreed to by Owner.

**8.2.10** That portion of premiums for insurance, bonds, and loss funding as set forth in **Exhibit F**. Owner acknowledges that Design-Builder may utilize large deductible and/or retention insurance policies and shall charge to Owner an amount to fund for expected losses which are included in the rate established in this Section. The cost of Design/Builder Insurance and Risk Management shall be included in the GMP and shall be 1.3% of Contract Value. The Design/Builder, as part of its normal business practice, has implemented a Subcontractor Default Protection Program. The cost for the SDP Program shall be included in the Cost of the Work and reimbursed at a fixed rate of 1.3% of the value of Subcontract volume and purchase orders to be determined and included in the GMP, as set forth in **Exhibit F**. Design-Builder may, in its sole discretion, procure payment and performance bonds, enroll the Subcontractor in a default insurance program, or self-insure the risk. Cost for the SDP Program shall be submitted and payable with the first progress billing.

**8.2.11** Sales, use, gross receipts or other taxes, tariffs or duties related to the Work for which the Design/Builder is liable, except to the extent the Project is designated to be sales/use tax exempt. However, the Contract Value and, if applicable, the Contract Time, shall be equitably adjusted by Change Order for additional costs and/or time resulting from any change in law, including increased taxes or tariffs, that may be assessed after execution of the Agreement, when bids are received, or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

**8.2.12** Fees, licenses, tests, royalties, damages for infringement of patents and/or copyrights, including costs of defending related suits for which the Design/Builder is

not responsible as set forth in Section 3.5, and deposits lost for causes other than the Design/Builder's negligence.

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

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

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

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

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

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

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

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

**8.2.21** Reasonable legal, mediation and arbitration fees and costs, other than those arising from disputes between the Owner and the Design/Builder, resulting from the Design/Builder's performance of the Work.

**8.2.22** All other costs directly incurred in the performance of the Work and not included

in the Design/Builder's Fee as set forth in Article 7, which are reasonably inferable from the Contract Documents as necessary to produce the intended results, but only with the pre-approval of Owner, not to be unreasonably withheld.

**8.2.23** All costs associated with administration of a wrap-up insurance program (CCIP), if any, including expenditures for deductibles, where applicable, which will be paid as a Cost of the Work but will not increase the GMP.

**8.2.24** Costs to correct defective or non-conforming work performed or supplied by Design/Builder or a Subcontractor or material supplier and not corrected by them, provided such defective or non-conforming work did not result from the gross negligence or willful misconduct of the Design/Builder and only to the extent that the cost of correcting the defective or non-conforming work is not recoverable by the Design/Builder from the Subcontractor or material supplier. It is understood and agreed that costs described in this Section 8.2.24 may be covered by the Construction Contingency pursuant to Section 3.2.2 herein.

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

- .1 Salaries and other compensation of the Design/Builder's personnel stationed at the Design/Builder's principal office or offices other than the site office, except as specifically provided in Section 8.2.2;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Design/Builder or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Design/Builder's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article 8;

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

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

**8.3.1** The provisions of this Section 8.3 shall apply to all costs reimbursable as Cost of the Work except: 1) fixed or lump-sum general conditions costs; 2) Work that is self-performed by Design/Builder on a

lump-sum basis; 3) preconstruction costs; and 4) any cost based upon a rate or sum stipulated in this Agreement.

**8.3.2** In performing their review of Design/Builder's final accounting, Owner's auditors may perform an audit sampling of Design-Builder's costs to verify that appropriate accounting and control systems were implemented by Design-Builder. Certain provisions of this Agreement reflect the agreement of Owner and Design/Builder to fixed rates, percentages, sums, or other charges to be included in the Cost of the Work. Owner and Design-Builder agree that the rates, percentages, sums, or other charges set forth in this Agreement are reasonable and appropriate as a reimbursable job cost included in the Cost of the Work. For any audit sampling performed by Owner's auditors, its auditors shall verify only whether the rates, percentages, sums, or other charges contained in Design/Builder's final accounting and Application for Payment are the rates, percentages, sums, or other charges set forth in this Agreement.

**8.3.3** Subject to law, Owner agrees that it and any auditor performing a review of Design-Builder's final accounting will sign a confidentiality and non-disclosure agreement before reviewing any financial data or other confidential information provided for auditing purposes.

**8.3.4** Owner agrees that it will not contract with any auditor(s) to perform services related to this Agreement on a contingent fee basis.

#### **8.4 Costs of Construction Materials Testing.**

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

## **ARTICLE 9 CHANGES IN THE WORK**

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

**9.1 CHANGE ORDERS** A Change Order is a written instrument, issued after execution of the GMP Amendment, signed by the Owner and Design/Builder stating their agreement upon a change and the adjustment, if any, in the GMP, the compensation for Design Phase Services, the Design/Builder's Fee and/or the date of Substantial Completion and/or Final Completion. Each adjustment in the GMP resulting from a Change Order shall clearly state the Component of the Project for which the Change Order is applicable and separate the amount attributable to compensation for Design Phase Services, other Cost of the Work and the Design/Builder's Fee.

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

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

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

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

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

**9.5.1** Submission of the GMP Proposal shall constitute a representation by the Design/Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed. The Design/Builder, Architect, Consultant and each Subcontractor represent that they have evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed to the extent that such conditions and limitations can be observed with reasonable diligence, including, without limitation (1) the location, condition, layout, and nature of the Project site and surrounding areas including all access, hoisting requirements and conditions, site logistics, (2) generally prevailing climatic conditions, (3)

anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, (5) any applicable policies, procedures, rules and restrictions of Owner relating to construction on the real property that have been provided to Design/Builder, and (6) Applicable Laws.

#### **9.6 CLAIMS FOR ADDITIONAL COST OR TIME**

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

**9.7 EMERGENCIES** In any emergency affecting the safety of persons and/ or property, the Design/Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the GMP, compensation for Design Phase Services, the Design/Builder's Fee and/or extension of the SC Date on account of emergency work shall be determined as provided in this Article.

### **ARTICLE 10 PAYMENT FOR CONSTRUCTION PHASE SERVICES**

#### **10.1 PROGRESS PAYMENTS**

**10.1.1 PROGRESS PAYMENTS.** Design/Builder shall submit, as a part of the GMP Amendment and the normal progress payments, a schedule of values for all of the Work, which will subdivide the Work into its respective parts and will include values for all items comprising the Work.

The schedule of values shall serve as the basis for monthly progress payments made to Design/Builder throughout the Project. On or about the 25th day of each month, the Design/Builder shall review with the Development Manager's Representative, the Owner's Representative and the Construction Monitor, if any, a pencil draw of the proposed application for payment for costs, including the relevant supporting documentation, incurred during that month and projected through the end of that month. Any invoices for costs which are not included in such pencil draw will be held over until the next monthly pay period. The amount agreed to at the pencil draw review meeting shall be processed and submitted, together with the relevant supporting documentation, as an approved Application for Payment on or about the first Day of the following calendar month (an "Approved Application for Payment").

#### **10.1.2 APPLICATIONS FOR PAYMENT.**

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

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

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

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

**10.1.4 PAYMENT TIME FRAMES.** Commencing with the first Application of



Payment, if an Approved Application for Payment is received by the Owner or Owner's Representative after the first Day of the month, Owner shall make payment on such Approved Application for Payment within 30 Days after receipt of such monthly Application for Payment and all other documents required for payment as described herein along with verification by the Owner's Representative that such application matches the agreed upon pencil draw amounts. All funds will be paid directly via electronic wire transfer to the Design/Builder, the appropriate amounts for which Approved Application for Payment is made, less amounts previously paid by the Owner and less the applicable retainage. Any Approved Application for Payment received prior to the first Day of the month shall be treated as if it had been submitted on the first Day of the month and shall not be obligated to be paid any earlier than the thirtieth (30th) day of the month. It is further acknowledged that, notwithstanding Section 10.1.2, the timing of payments hereunder shall be further subject to the requirements of the Bond Indenture.

**10.1.4.1** The Owner shall make payment to Design-Builder strictly in accordance with the instructions set forth in Design/Builder's Application for Payment. The Owner shall, immediately upon making an electronic payment, send an email to the address provided in the Application for Payment to notify Design-Builder that an electronic payment has been made. The email shall include the payor name, job number, invoice number, and payment amount for proper application of payment. **To avoid the risk of third-party fraud, Owner understands that Design-Builder will never propose changes to the instructions above by telephone, email, or any other form of electronic communication, and Owner agrees that the instructions above shall only be changed by a written Modification signed in person by the Owner's Representative and the Design/Builder's Representative in each other's physical presence. Any payment contrary to the instructions above shall be at Owner's sole risk and expense.**

#### **10.1.4.2**

**10.1.5** If the Owner fails to pay the Design/Builder for any Approved Application for Payment at the time payment of any amount becomes due, then the Design/Builder, after serving written notice of the amount due and of the possibility that the Work being stopped if payment is not received within ten (10) Days after receipt of the notice by Owner, may stop the Work until payment of the amount owing has been received; provided, however, Owner shall be entitled to withhold payment to Design/Builder, after providing ten (10) Days' notice and opportunity to cure, as a result of (i) defective design or Work not remedied; (ii) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design/Builder; (iii) failure of the Design/Builder to make payments in accordance with the subcontracts and consulting agreements to Architect, Subcontractors or suppliers (of any tier) for design, labor, materials or equipment; (iv) failure to carry out the Work in accordance with the Contract Documents; (v) material breach of this Agreement; or (vi) failure of the Design/Builder to submit its Application for Payment in the form required by the Owner and/or with the required certifications and supporting documentation. If Owner withholds payment for one of the reasons stated above, Design/Builder shall not be entitled to stop the Work. If the Design/Builder properly stops the Work as provided above, a Change Order may be issued to increase the GMP for remobilization costs, if any, incurred by the Design/Builder as a result of having to stop the Work and restart the Work. In addition, the Design/Builder shall be entitled to an extension of the Contract Time equal to any delays that are incurred in the performance of the Work from the date of the stoppage of Work by the Design/Builder to the date that payment is received by the Design/Builder.

**10.1.6** Payments due but unpaid shall bear interest from the 31st Day after the later of (i) the date Owner received an Approved Application for Payment or (ii) the date the Work progressed to the extent described in

the draw schedule, in accordance with Texas Government Code Section 2251.

**10.1.7** So long as Owner makes timely payments to Design/Builder, title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the Owner upon receipt of such payment by the Design/Builder free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to as "liens".

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

**10.1.9** Upon Substantial Completion and after delivery of all documents listed in this Section 10.1.9 and in **Exhibit D** to the Owner, the Owner shall pay the Design/Builder the unpaid balance of the Cost of the Work including retainage, compensation for Design Phase Services and the Design/Builder's Fee, less a sum equal to two hundred percent (200%) of the Design/Builder's estimated cost of completing any unfinished items, as agreed to among the Owner and Design/Builder as to extent and time for completion. The Owner thereafter shall pay the Design/Builder monthly the amount retained for unfinished items as each item is completed.

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

- .1 an affidavit in substantial accordance with Tex. Prop. Code Section 53.085 that (i) the improvements have been completed in accordance with the Contract Documents except for punch list items; (ii) payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered have been paid or will be paid out of funds advanced under the Final Application for Payment,

and (iii) with respect to the Application for Final Payment or other Applications for Payment for which the Design/Builder has not received full payment, such indebtedness will be paid only, as a condition precedent, promptly after the Design/Builder's actual receipt of full payment from the Owner;

- .2 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 Days' prior written notice has been given to the Owner;
- .3 a written statement that the Design/Builder knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- .4 consent of surety, if any, to final payment;
- .5 Waivers and Release of Lien on Final Payment documents from Design/Builder, Architect, and all Subcontractors and suppliers furnishing materials, equipment or labor on the Project, in such form as required by Applicable Laws;
- .6 all governmental or other approvals and permits required for the beneficial use and occupancy of the Project, including a Certificate of Occupancy, have been received;
- .7 one set of Record Drawings, in form and substance as required by Owner, showing all utility lines, piping, ducts and similar work installed or altered by Design/Builder;
- .8 all Warranties as required on specific products or portions of the Work;
- .9 operations and maintenance manuals, records, instructions and data;
- .10 a written statement that all commissioning and training on identified equipment has been scheduled and has occurred;

- .11 keys, access cards, and any other items for access to and security of the premises, as well as spare parts, overages, and maintenance materials; and

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

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

## 10.2 FINAL PAYMENT

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

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

- .1 outstanding liens or liens that could be filed within the time periods provided under Applicable Laws;
- .2 improper workmanship or defective materials as provided in Section 3.7.1 of this Agreement;
- .3 Work not in conformance with the Contract Documents;

- .4 terms of any special warranties required by the Contract Documents;
- .5 unknown or latent defects in the Design/Builders Services and Work through the applicable Statutes of Repose; and
- .6 claims made in writing, but which remain unsettled.

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

## ARTICLE 11 INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION

### 11.1 INDEMNITY

**11.1.1 INDEMNITY — GENERAL.** SUBJECT TO SECTION 11.1.2, DESIGN/BUILDER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OWNER, DEVELOPMENT MANAGER, THE CITY, BOND TRUSTEE, AND THEIR MEMBERS, OFFICERS, EMPLOYEES, AND APPOINTEES ("INDEMNITEES") FROM AND AGAINST ANY AND ALL THIRD-PARTY CLAIMS, ACTIONS, DAMAGES, LIABILITIES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, ACCOUNTANTS, CONSULTANTS AND OTHER EXPERTS, LITIGATION AND COURT COSTS) FOR OR RELATING TO PERSONAL INJURY (INCLUDING DEATH) PROPERTY DAMAGE, OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, ARISING OUT OF OR RESULTING FROM DESIGN/BUILDER'S NEGLIGENT, WILLFUL OR STRICTLY LIABLE ACT OR OMISSION OF DESIGN/BUILDER, ITS OFFICERS, AGENTS, EMPLOYEES, OR SUBCONTRACTORS AND INCLUDING THE ARCHITECT (COLLECTIVELY "DESIGN/BUILDER'S PARTIES"), IN THE PERFORMANCE OF THIS AGREEMENT. IT IS THE EXPRESSED

INTENTION OF THE PARTIES HERETO, DESIGN/BUILDER, DEVELOPMENT MANAGER, AND OWNER, THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS INDEMNITY BY DESIGN/BUILDER TO INDEMNIFY AND PROTECT OWNER FROM THE CONSEQUENCES OF DESIGN/BUILDER'S PARTIES' OWN WILLFUL MISCONDUCT, NEGLIGENCE; DESIGN/BUILDER'S PARTIES' INTENTIONAL TORTS; AND DESIGN/BUILDER'S PARTIES FAILURES TO PROPERLY MAKE PAYMENTS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, SO LONG AS OWNER IS IN COMPLIANCE WITH ITS PAYMENT OBLIGATIONS HEREUNDER. SUCH INDEMNITY SHALL NOT APPLY, HOWEVER, TO LIABILITY ARISING FROM THE PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE OF PERSONS THAT, IN WHOLE OR IN PART, IS CAUSED BY OR RESULTS FROM THE NEGLIGENCE OF ANY PERSON OTHER THAN DESIGN/BUILDER'S PARTIES. SUBJECT TO SECTION 11.1.2, IN THE EVENT THAT ANY ACTION OR PROCEEDING IS BROUGHT AGAINST THE OWNER FROM WHICH THE OWNER IS INDEMNIFIED, DESIGN/BUILDER FURTHER AGREES TO DEFEND THE ACTION OR PROCEEDING BY LEGAL COUNSEL REASONABLY ACCEPTABLE TO THE OWNER. THE INDEMNITY PROVIDED HEREINABOVE SHALL SURVIVE THE TERMINATION AND/OR EXPIRATION OF THIS AGREEMENT.

11.1.2 INDEMNITY- PROFESSIONAL ERRORS AND OMISSIONS. FOR INDEMNITY OBLIGATIONS THAT ARISE FROM PROFESSIONAL ERRORS AND OMISSIONS, DESIGN/BUILDER, TO THE FULLEST EXTENT PERMITTED BY LAW, SHALL INDEMNIFY THE INDEMNITEES FROM AND AGAINST CLAIMS, LOSSES, DAMAGES, LIABILITIES, INCLUDING ATTORNEYS' FEES AND EXPENSES, FOR NON-PARTY BODILY INJURY, SICKNESS, OR DEATH AND NON-PARTY PROPERTY DAMAGE OR DESTRUCTION (OTHER

THAN TO THE WORK ITSELF) BUT ONLY TO THE EXTENT RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF DESIGN-BUILDER, DESIGN CONSULTANTS, SUBCONTRACTORS, ANYONE EMPLOYED DIRECTLY OR INDIRECTLY BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE.

11.1.3 INDEMNITY — EMPLOYEE INJURY CLAIMS. IN ADDITION TO THE INDEMNIFICATION PROVIDED IN SECTION 11.1.1 AND 11.1.2 ABOVE, DESIGN/BUILDER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER AND ALL INDEMNITEES FROM AND AGAINST ANY THIRD PARTY CLAIM, DAMAGE, LOSS, OR EXPENSE (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEYS' FEES AND COSTS), ARISING OUT OF, RESULTING FROM OR ATTRIBUTABLE TO ANY CLAIM OF BODILY INJURY, SICKNESS, DISEASE OR DEATH OF ANY EMPLOYEE OF DESIGN/BUILDER PARTIES BROUGHT BY SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS' COMPENSATION INSURANCE CARRIER (HEREINAFTER REFERRED TO AS AN "EMPLOYEE INJURY CLAIM"), EVEN TO THE EXTENT SUCH EMPLOYEE INJURY CLAIM, IS ALLEGED TO BE CAUSED, IN PART, BY THE NEGLIGENCE OF OWNER OR THE INDEMNITEE SEEKING INDEMNITY. IT BEING THE EXPRESSED INTENT OF THE OWNER AND THE DESIGN/BUILDER THAT, IN SUCH EVENT, THE DESIGN/BUILDER IS TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE OWNER AND INDEMNITEES FROM THE CONSEQUENCES OF THEIR OWN CONCURRENT NEGLIGENCE, BUT SHALL NOT BE OBLIGATED TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE OWNER AND THE INDEMNITEES TO THE EXTENT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS DUE TO THEIR SOLE NEGLIGENCE. IN THE EVENT THAT ANY ACTION OR PROCEEDING IS BROUGHT AGAINST THE OWNER FROM WHICH THE OWNER IS INDEMNIFIED,

**DESIGN/BUILDER FURTHER AGREES AND COVENANTS TO DEFEND THE ACTION OR PROCEEDING BY LEGAL COUNSEL REASONABLY ACCEPTABLE TO THE OWNER, THE DESIGN/BUILDER AND THE DESIGN/BUILDER'S INSURERS. THE INDEMNITY PROVIDED HEREINABOVE SHALL SURVIVE THE TERMINATION AND/OR EXPIRATION OF THIS AGREEMENT.**

**11.1.4** The provisions of this Section are solely for the benefit of the Parties and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

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

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

**11.1.7 LIMITED WAIVER OF IMMUNITY.** Notwithstanding anything to the contrary herein, the Design/Builder, Development Manager and Owner hereby acknowledge and agree that to the extent this Agreement is subject to the provisions of Subchapter I of Chapter 271, TEXAS LOCAL GOVERNMENT CODE, as amended, the Owner's and the City's immunity from suit is waived only as set forth in Subchapter I

of Chapter 271, TEXAS LOCAL GOVERNMENT CODE.

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

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

## **11.2 DESIGN/BUILDER'S LIABILITY INSURANCE**

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

- .1 workers' compensation, disability and other employee benefit claims under acts applicable to the Work;
- .2 under applicable employers' liability law, bodily injury, occupational sickness,

disease or death claims of the Design/Builder's employees;

- .3 bodily injury, sickness, disease or death claims for damages to persons not employed by the Design/Builder,
- .4 personal injury liability claims for damages directly or indirectly related to the person's employment by the Design/Builder or for damages to any other person;
- .5 damage to or destruction of tangible property, including resulting loss of use, claims for property other than the Work itself and other property insured under Section 11.5;
- .6 bodily injury, death or property damage claims resulting from motor vehicle liability in the use, maintenance or ownership of any motor vehicle; and
- .7 contractual liability claims involving the Design/Builder's obligations under Section 11.1.1.

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

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

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

lower than what is required in this Agreement for Design/Builder.

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

### **11.3 PROFESSIONAL LIABILITY INSURANCE**

The Architect and Design/Builder shall each be responsible to obtain professional liability insurance for claims arising from the negligent performance of professional services under this Agreement and the design agreement between Architect and Design/Builder. Policies shall both be written for \$5,000,000 per claim and \$5,000,000 in the aggregate with a deductible or self-insured retention not to exceed \$ 750,000.00 without Owner's approval. These requirements shall be continued in effect for two (2) year(s) after the date of Substantial Completion. If the Architect retains consultants for a portion of the design, their professional liability insurance coverage, including deductible/retention amounts, shall be as set forth above, unless otherwise agreed to by the Parties.

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

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

### **11.5 INSURANCE TO PROTECT PROJECT**

**11.5.1** As set forth in **Exhibit F**, the Design/Builder shall obtain and maintain Builder's Risk insurance at the a rate to be determined at the time of the GMP Amendment in a form acceptable to the Owner and the Bond Trustee upon the entire Project, for the full cost of replacement at the time of any loss during

the Construction Phase, including professional fees, design fees, consultants' fees, overtime premiums, expediting expenses, and all other expenses incurred to replace or repair the insured property. Such insurance shall be procured from insurance companies authorized to do business in the state in which the Project is located. This insurance shall include Design/Builder, Owner, City, Subcontractors and Sub-Subcontractors at all tiers as named insureds and the Development Manager and Bond Trustee, as additional insureds or additional named insureds if available. This insurance shall insure against loss from the perils of fire and extended coverage and shall include "all risk" insurance for physical loss or damage including without duplication of coverage at least: theft, vandalism, malicious mischief, certified acts of terrorism, collapse, falsework, temporary buildings, debris removal, flood, earth movement, high wind, water damage, tornadoes, testing, and damage resulting from defective design, workmanship or material. Coverage shall include physical loss or damage to the Work, including materials and equipment in domestic transit, stored at the Site, or stored at another location as may be indicated in Design/Builder's Application for Payment and approved by Owner. The Design/Builder shall increase limits of coverage, if necessary, to reflect estimated replacement cost. The Design/Builder shall be responsible for any co-insurance penalties or deductibles resulting from Design/Builder's negligence as a Cost of the Work in the GMP, but such costs shall not increase the GMP. Notwithstanding the terms and coverages under Design/Builder's builder's risk or other property insurance applicable to the Work, Design/Builder's responsibility for deductibles or self-insured retentions shall not exceed \$100,000 for any water damage loss and \$25,000 for any other type of loss. For clarity, the Design/Builder will not be responsible for all other deductibles required by the Builder's Risk insurance policy procured, including but not limited to flood, named windstorm and loss of use (if applicable). The Owner, at Owner's option and expense, may purchase a Differences in Coverage policy to provide coverage on

an equal basis to Owner's customarily required Builder's Risk and loss of use coverages.

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

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

The limits of liability and indemnity period for such loss of use or delay coverage shall be established by the Owner in writing prior to procurement. Design/Builder shall have no obligation to obtain such coverage unless and until such information is provided, and the Owner expressly assumes all risk of loss for any uninsured loss of use, delay, or related damages arising from its failure to do so.

**11.5.4**

**11.5.5** Upon the Bond Trustee's or Owner's request, the Design/Builder shall provide a

redacted copy of all General Liability and Umbrella/Excess policies before an exposure to loss may occur. Copies of any subsequent endorsements to the policies shall be furnished to the Bond Trustee or Owner. The Bond Trustee or Owner shall be given thirty (30) Days' notice of cancellation, non-renewal, or any endorsements restricting or reducing coverage.

**11.5.6** At Substantial Completion of the Project, the Owner shall provide property insurance for Project in forms and amounts reasonably acceptable to the Design/Builder, to replace the Design/Builder's Builders' Risk Insurance provided as defined in Section 11.5, written for the total value of the Project on a replacement cost basis, which shall remain in effect until expiration of the period for correction of the Work. The parties will execute a property transfer agreement evidencing that Owner is providing the property insurance upon Substantial Completion.

## **11.6 PROPERTY INSURANCE LOSS ADJUSTMENT**

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

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

## **11.7 WAIVER OF SUBROGATION**

**11.7.1** The Design/Builder, Owner, and Development Manager waive all rights against each other and any of their

respective consultants, including the Architect, Subcontractors, Sub-Subcontractors, employees, designated representatives, and agents, for damages caused by risks covered by insurance provided in Section 11.5 and **Exhibit F** to the extent of actual recovery of any insurance proceeds of such insurance, except such rights as they may have to the proceeds of such insurance held by the Owner, Development Manager and Design/Builder. The Design/Builder and Development Manager shall require similar waivers (as appropriate) from the Architect and all Subcontractors, Sub-Subcontractors, Consultants, and Separate Contractors and shall require each of them to include similar waivers in their respective contracts, Subcontracts, Sub-Subcontracts and consulting agreements. The Owner shall also provide similar waivers in its agreement with any Separate Contractors. Such waivers shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, or did not have an insurable interest in the property damaged. These waivers shall not contain any restriction or limitation that will impair the full and complete extent of their applicability unless agreed to in writing prior to execution of this Agreement. All waivers under this Section shall survive termination or completion of this Agreement.

**11.7.2** If during the Project construction period the Owner insures properties, real or personal, at or adjacent to the Site under policies separate from those insuring the Project, or if after Final Payment property insurance is provided on the completed Project through a policy other than those insuring the Project during construction, the Owner waives all rights in accordance with Section 11.7.1 for damages caused by fire or other causes of loss covered by such separate property insurance.

**11.7.3** If the policies of insurance referred to in this Section require an endorsement to provide for continued coverage where



there is a waiver of subrogation, the providers of such policies will cause them to be so endorsed.

#### **11.8 WAIVER OF CONSEQUENTIAL DAMAGES**

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

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

#### **12.1 TERMINATION BY THE DESIGN/BUILDER**

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

- .1 If the Work has been stopped for a thirty (30) Day period, which period shall be extended by a maximum of 15 Days if the Owner is pursuing relief from such stoppage,

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

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

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

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

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

- .1 if the Design/Builder utilizes improper materials and/or inadequately skilled workers; or
- .2 if the Design/Builder does not make proper payment to the Architect or to laborers, material suppliers or Subcontractors pursuant to the terms of the applicable design services or subcontract agreements; or
- .3 if the Design/Builder repeatedly fails to abide by the orders, regulations, rules, ordinances or laws of governmental authorities having jurisdiction; or
- .4 if the Design/Builder otherwise materially breaches this Agreement; or
- .5

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

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

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

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

**12.2.5** This Agreement may be terminated by the Owner, in accordance with Sections 12.3 and 12.3.1, if Bonds are not issued by September 2, 2026, unless such date is extended by mutual agreement of the Parties.

### **12.3 TERMINATION BY OWNER WITHOUT CAUSE OR FOR SPECIAL CIRCUMSTANCES**

If the Owner terminates this Agreement (i) other than as set forth in Section 12.2 or (ii) pursuant to section 12.5, the Owner shall pay the Design/Builder for all Work executed and for any proven loss, cost or expense in connection with the Work, plus all demobilization costs. In addition, the Design/Builder shall be paid an amount calculated as set forth below:

- .1 if the Owner so terminates this Agreement prior to commencement of the Construction Phase, whether or not financing is obtained, the Design/Builder shall be paid from funds obtained by the Owner from other sources, the Design/Builder's and Architect's Design Phase Compensation as set forth in Section 7.2.2.
- .2 if the Owner terminates this Agreement after commencement of the Construction Phase, the Design/Builder shall be paid the

Design/Builder's and Architect's Design and Construction Phase Compensation as set forth in Section 7.3 and that amount of the Design/Builder's Fee earned as of the date of termination.

.3 in either event, all payments as provided in Section 7.1 shall be credited to the Owner at the time of termination.

.4 The Owner shall assume and become liable for obligations, commitments and unsettled claims that the Design/Builder has previously undertaken or incurred in good faith in connection with the Work or as a result of the termination of this Agreement. As a condition of receiving the payments provided under this Article 12, the Design/Builder shall cooperate with the Owner by taking all steps necessary to accomplish the legal assignment of the Design/Builder's rights and benefits to the Owner, including the execution and delivery of required papers.

#### **12.4 SUSPENSION BY OWNER FOR CONVENIENCE**

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

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

Agreement is applied to render an equitable adjustment.

**12.4.3 NOTICE TO CITY** The City shall be copied on all notices transmitted under this Article 12.

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

#### **ARTICLE 13 DISPUTE RESOLUTION**

**13.1 INITIAL DISPUTE RESOLUTION** If a dispute arises out of or relates to this Agreement or its breach, the Parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the Parties may endeavor to settle the dispute by mediation before recourse to litigation. The location of the mediation, if any, shall be in Denton County, Texas, unless the Parties mutually agree otherwise. Once one party files a request for mediation with the other contracting party, the Parties agree to endeavor to conclude such mediation within sixty (60) Days of the filing of the request. If the Parties are unable to agree on a mediator for a dispute arising under this Agreement, either party may request the American Arbitration Association to appoint a mediator in accordance with the Construction Industry Mediation Procedures.

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

**13.3 MULTIPARTY PROCEEDING** The Parties agree that all parties necessary to resolve a claim shall be parties to the same mediation

proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the consolidation of mediations.

**13.4 COST OF DISPUTE RESOLUTION** If any action at law or in equity, is necessary to enforce or interpret the terms of this Agreement, the Court shall determine the prevailing party and award to such prevailing party, in addition to any other relief to which such party is entitled to recover, its reasonable attorneys' fees, expert witness fees, costs, and other reasonable expenses incurred in such proceeding.

**13.5 LIMITATION OF LIABILITY FOR DESIGN ERRORS** To the fullest extent permitted by law and to the extent not otherwise covered by applicable insurance, the total liability for design errors, in the aggregate, of Design/Builder to the Owner and anyone claiming by, through, or under the Owner for any and all claims, losses, costs, or damages caused by the negligence, professional errors or omissions of Design/Builder or those working under Design/Builder shall not exceed \$10M.

**13.6**

#### **ARTICLE 14 MISCELLANEOUS PROVISIONS**

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

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

or procedural requirements applicable to actions or claims against or involving Owner.

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

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

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

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

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

**14.8 OWNER AGENCY** The Owner may retain and appoint such consultants and advisers that it,

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

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

**14.9.1** It is understood and agreed that the issuance of debt by the Owner and the City is a governmental function and subject to the sole discretion of Owner's Board of Directors and the City Council. It shall not be deemed or construed to constitute willful misconduct or bad faith under this Agreement or any other Contract Document, or otherwise be actionable against the Owner or City, in the exercise of its discretion, to elect, for any reason whatsoever or for no reason, not to issue the debt obligations to fund the Construction Fund or not to issue the Hotel Bonds or City Debt for the Convention

Center Component and Parking Component.

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

**To Owner:**

Office of the City Administrator  
500 S. Oak Street  
Roanoke, TX 76262  
Attn: Cody Petree, City Manager  
cpetree@roanoketexas.com

With a Copy to:

Brown and Hofmeister, LLP  
740 East Campbell Road, Suite 800  
Richardson, Texas 75081  
Attn: Jeff Moore, City Attorney  
jmoore@bhlaw.net

With a Copy to:

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

With a Copy to (Construction Monitor):

Owner/Cronin Construction Management  
2929 Wesleyan St, Suite 1907  
Houston, TX 77027

Attn: Hugh Cronin  
Email: Hugh@cronincm.com

**To Design/Builder:**

Brasfield & Gorrie, LLC  
8350 N. Central Expressway, Suite 1000  
Dallas, Texas 75206  
Attn: Neil Caudle  
Email: NCaudle@brasfieldgorrie.com

With a Copy to:

Legal Department  
Brasfield & Gorrie, LLC  
3021 7<sup>th</sup> Avenue South  
Birmingham, Alabama 35233  
Email: AHight@brasfieldgorrie.com

**14.11 PRESERVATION OF CONTRACTING**

**INFORMATION** Design/Builder acknowledges that Subchapter J, Chapter 552, Texas Government Code, may apply to this Agreement and Design/Builder acknowledges that this Agreement can be terminated for cause if the Design/Builder knowingly or intentionally fails to comply with a requirement of that subchapter. During the term of this Agreement, and in accordance with records retention requirements governed by Chapters 201 and 205 of the Texas Local Government Code and Texas Administrative Code Title 13, Chapter 7, and any other applicable statute, ordinance, or policy, Design/Builder acknowledges that it must preserve all contracting information, as defined by Section 552.003 of the Texas Government Code, related to this Agreement. Upon receiving a written request from the Owner, Design/Builder shall promptly provide any contracting information related to this Agreement that is in the custody or possession of Design/Builder. Upon the expiration or termination of this Agreement, Design/Builder shall either (a) provide, at no cost to Owner, all contracting information related to this contract that is in the custody or possession of Design/Builder; (b) preserve the contracting information related to this Agreement as provided by the records retention requirements applicable to the Owner.

**14.12** The Design/Builder hereby represents and warrants for itself and its affiliates, for purposes of Chapter 2270 of the Texas Government Code, that, at the time of execution and delivery of this Agreement, neither itself nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate, as applicable, boycotts Israel. The Design/Builder agrees that, except to the extent otherwise required by applicable federal law, including, without limitation, 50 U.S.C. Section 4607, neither the Design/Builder nor any wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate, as applicable, will boycott Israel during the term of this Agreement. The terms "boycotts Israel" and "boycott Israel" as used in this section have the meaning assigned to the term "boycott Israel" in Section 808.011 of the Texas Government Code.

**14.13** The Design/Builder hereby represents and warrants for itself and its affiliates, for purposes of Subchapter F of Chapter 2252 of the Texas Government Code, that, at the time of execution and delivery of this Agreement, neither Design/Builder nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate, as applicable, (i) engages in business with Iran, Sudan or any foreign terrorist organization as described in Chapters 2270 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller under Sections 807.051, 2270.0201, or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" as used in this section has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

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

SIGNATURE PAGE FOLLOWS

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This Agreement is entered into as of \_\_\_\_\_, 2026.

**DESIGN/BUILDER:**

**Brasfield & Gorrie, LLC**

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

PRINT NAME: Neil Caudle

PRINT TITLE: Division Manager

**OWNER:**

**ROANOKE CONVENTION CENTER HOTEL  
LOCAL DEVELOPMENT CORPORATION**

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

PRINT NAME: \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_

**City of Roanoke, Texas**

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

PRINT NAME: \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_

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

Pursuant to Section 3.2 of the Agreement dated \_\_\_\_\_, among

the Owner, **ROANOKE CONVENTION CENTER HOTEL LOCAL DEVELOPMENT CORPORATION**  
**and the City of Roanoke, Texas,**

and the Design/Builder, **Brasfield & Gorrie, LLC**

for the **Project,**

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

**ARTICLE 1. GUARANTEED MAXIMUM PRICE**

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

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

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

**ARTICLE 2. DATES OF COMPLETION**

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

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



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

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

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

This Amendment is entered into as of \_\_\_\_\_, \_\_\_\_\_.

**DESIGN/BUILDER:**

**Brasfield & Gorrie**

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

PRINT NAME: \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_

**OWNER:**

**ROANOKE CONVENTION CENTER HOTEL  
LOCAL DEVELOPMENT CORPORATION**

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

PRINT NAME: \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_

**City of Roanoke, Texas**

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

PRINT NAME: \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_

ANNEX 1  
PROJECT PROGRAM

[See Attached]

## ANNEX 1

### PROJECT PROGRAM (BY SPACE) Roanoke Hotel & Convention Center

| NAME                        | AREA (SF) | NAME                   | AREA (SF) | NAME                              | AREA (SF)  | NAME                              | AREA (SF)   |
|-----------------------------|-----------|------------------------|-----------|-----------------------------------|------------|-----------------------------------|-------------|
| CONVENTION CENTER (LEVEL 1) |           |                        |           | TOWER (LEVELS 2-5)                |            |                                   |             |
| ADMIN AREAS                 |           | ENGINEERING/SECURITY   |           | CONVENTION                        |            | GUESTROOMS                        | BAYS KEYS   |
| ADMIN / FUTURE RETAIL       | 1,815     | ENG. OFFICE            | 162       | BALLROOM 1                        | 3,922      | King                              | 108 108     |
| ADMIN OFFICE                | 394       | ENG. STORAGE           | 194       | BALLROOM 2                        | 1,765      | King - ADA                        | 6 6         |
| LUGGAGE                     | 99        | ENGINEERING            | 585       | BALLROOM 3                        | 1,874      | Double Queen                      | 80 80       |
| CASH                        | 43        | HAZ. STOR.             | 114       | BOARD ROOM                        | 320        | Double Queen - ADA                | 4 4         |
| CASHIER                     | 138       | SECURITY               | 120       | FOYER                             | 115        | VP Suite                          | 4 2         |
| DIR. EVENTS                 | 95        | STORAGE                | 204       | MEETING ROOM 1                    | 1,150      | Exec. Suite                       | 8 4         |
| DIR. FINANCE                | 124       | SUBTOTAL               | 1,379     | MEETING ROOM 2                    | 1,143      | Presidential Suite                | 3 1         |
| DIR. FRONT OFFICE           | 110       |                        |           | PRE-FUNCTION NORTH                | 2,835      | Total Bays                        | 213         |
| DIR. REV. MGMT.             | 95        | HOUSEKEEPING           |           | PRE-FUNCTION SOUTH                | 2,135      | Total Keys                        | 205         |
| DIR. SALES                  | 152       | CLEAN LINEN / STORAGE  | 242       | VESTIBULE                         | 356        |                                   |             |
| DR. OPERATIONS              | 100       | HK OFFICE              | 100       | ANTIROOM                          | 47         | LEVEL 2                           | 22,435      |
| GM                          | 146       | HOUSEKEEPING / LAUNDRY | 602       | ANTIROOM                          | 47         | LEVEL 3                           | 22,435      |
| FRONT OFFICE                | 241       | SOILED LINEN           | 265       | BANQUET STORAGE                   | 1,288      | LEVEL 4                           | 22,435      |
| HR INTERVIEW                | 150       | STOR.                  | 87        | EVENT PANTRY                      | 114        | LEVEL 5                           | 22,235      |
| HR MGR.                     | 120       | UNIFORM                | 189       | EVENT PANTRY                      | 114        | SUBTOTAL                          | 89,541 GSF  |
| HR RECEPTION                | 220       | SUBTOTAL               | 1,485     | PREP                              | 61         |                                   |             |
| PURCHASE                    | 119       |                        |           | STORAGE                           | 81         | Corridors                         | 11,861      |
| STOR.                       | 32        | BOH CIRCULATION        |           | WOMEN'S R.R.                      | 438        | BOH / Shafts                      | 3,346       |
| STOR.                       | 29        | BOH                    | 67        | MEN'S R.R.                        | 432        |                                   |             |
| SUBTOTAL                    | 4,222     | CIRCULATION            | 4,645     | STOR.                             | 514        | TOWER (LEVELS 2-5)                | 104,748 GSF |
|                             |           | RECEIVING              | 269       | SUBTOTAL                          | 18,751     |                                   |             |
| F&B OUTLETS                 |           | SUBTOTAL               | 4,981     |                                   |            | PROJECT BUILDING AREAS (BY LEVEL) |             |
| 3 MEAL REST.                | 2,886     |                        |           | MEP                               |            | LEVEL 1                           | 61,268      |
| BAR                         | 129       | HOTEL AMENITY          |           | AV                                | 90         | LEVEL 2                           | 26,237      |
| BAR / LOUNGE                | 2,478     | FITNESS                | 117       | ELEC                              | 109        | LEVEL 3                           | 26,237      |
| CIRCULATION                 | 90        | R.R (FITNESS)          | 71        | ELEC                              | 84         | LEVEL 4                           | 26,237      |
| CORRIDOR                    | 95        | WET R.R (POOL DECK)    | 96        | IDF                               | 115        | LEVEL 5                           | 26,037      |
| MARKET                      | 2,004     | WET R.R (POOL DECK)    | 49        | JAN.                              | 28         |                                   |             |
| MARKET / BAR LOUNGE PANTRY  | 213       | SUBTOTAL               | 333       | MAIN ELEC.                        | 384        | TOTAL BUILDING AREA               | 166,016 GSF |
| PDR                         | 315       |                        |           | MDF                               | 236        |                                   |             |
| R.R                         | 65        | RECEPTION / LOBBY      |           | POOL EQUIPMENT                    | 199        |                                   |             |
| R.R                         | 65        | ELEV. LOBBY            | 472       | PUMP ROOM                         | 227        | PARKING GARAGE AREAS              |             |
| AMBIENT WINE STORAGE        | 51        | ENTRY LOBBY            | 1,500     | WATER HEATER                      | 257        | LEVEL 1                           | 35,128      |
| BANQUET AND CATER OFFICE    | 56        | ENTRY VESTIBULE        | 199       | WATER SOFTEN.                     | 188        | LEVEL 2                           | 35,082      |
| BAR SUPPORT                 | 223       | LOBBY                  | 283       | SUBTOTAL                          | 1,917      | LEVEL 3                           | 23,687      |
| BAR/LOUNGE SUPPORT          | 347       | SUBTOTAL               | 2,454     |                                   |            | PARKING GARAGE TOTAL              | 93,897 GSF  |
| CHEF'S OFFICE               | 91        |                        |           | WALLS & STRUCTURE                 | 9,157      |                                   |             |
| EXPO KITCHEN                | 196       | EMPLOYEE AREA          |           |                                   |            | TOTAL PARKING SPACES              | 294         |
| GARDE MANGER                | 96        | EMPLOYEE BREAK         | 828       | CONVENTION CTR (INTERIOR) TOTAL   | 61,268 GSF |                                   |             |
| GENERAL MANAGER'S OFFICE    | 90        | WORK RM.               | 77        |                                   |            |                                   |             |
| JAN                         | 14        | PANTRY                 | 107       | EXTERIOR AREAS / PATIOS (LEVEL 1) |            |                                   |             |
| KITCHEN STORAGE             | 375       | MEN RR                 | 275       | COURTYARD                         | 6,593      |                                   |             |
| KITCHEN VESTIBULE           | 134       | DRESS (MEN)            | 47        | EAST COURTYARD PATIO              | 1,525      |                                   |             |
| MAIN KITCHEN                | 3,646     | MENS LOCKER            | 294       | WEST COURTYARD PATIO              | 1,189      |                                   |             |
| PURCHASING RECEIVING OFFICE | 55        | WOMEN RR (EMPLOYEE)    | 275       | EXTERIOR COVERED ENTRY            | 3,002      |                                   |             |
| ROOM SERVICE OFFICE         | 76        | DRESS (WOMEN)          | 47        | EXTERIOR COVERED (BAR)            | 651        |                                   |             |
| WINE REF.                   | 92        | WOMENS LOCKER          | 294       | MEETING ROOM PATIO 1              | 684        |                                   |             |
| RR                          | 41        | MOTHER                 | 80        | MEETING ROOM PATIO 2              | 523        |                                   |             |
| RR                          | 41        | RR                     | 71        | EXTERIOR COVERED ENTRY            | 56         |                                   |             |
| RR                          | 41        | SUBTOTAL               | 2,395     | EXTERIOR MARKET ENTRY             | 28         |                                   |             |
| RR (ADA)                    | 90        |                        |           | EXTERIOR LOADING DOCK RAMP        | 1,123      |                                   |             |
| RR (MARKET)                 | 99        |                        |           | SUBTOTAL                          | 15,374 GSF |                                   |             |
| SUBTOTAL                    | 14,194    |                        |           |                                   |            |                                   |             |

ANNEX 2  
PROPERTY DESCRIPTION

[See Attached]

**ANNEX 2**  
**Legal Description of Property**

**Approximately 3.2690-acres consisting of Lot 1, Block B of the Roanoke City Center Addition, and addition to the City of Roanoke, Denton County, Texas.**

EXHIBIT A  
DESIGN/BUILDER'S PERSONNEL LIST  
*[To be included with GMP Amendment.]*



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

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



EXHIBIT C  
WAGE DETERMINATION

[See Attached]

EXHIBIT C  
WAGE DETERMINATION

"General Decision Number: TX20260243 01/02/2026

Superseded General Decision Number: TX20250243

State: Texas

Construction Type: Building

County: Denton County in Texas.

BUILDING CONSTRUCTION PROJECTS (does not include single family homes or apartments up to and including 4 stories).

|                     |                  |
|---------------------|------------------|
| Modification Number | Publication Date |
| 0                   | 01/02/2026       |

ASBE0021-011 06/01/2025

|                                                                                          | Rates    | Fringes |
|------------------------------------------------------------------------------------------|----------|---------|
| ASBESTOS WORKER/HEAT & FROST INSULATOR (Duct, Pipe and Mechanical System Insulation).... | \$ 33.23 | 7.52    |

-----  
BOIL0074-003 01/01/2025

|                  | Rates    | Fringes |
|------------------|----------|---------|
| BOILERMAKER..... | \$ 33.17 | 24.92   |

-----  
CARP1421-002 10/01/2023

|                 | Rates    | Fringes |
|-----------------|----------|---------|
| MILLWRIGHT..... | \$ 32.02 | 11.27   |

-----  
ELEV0021-006 01/01/2025

|                        | Rates    | Fringes    |
|------------------------|----------|------------|
| ELEVATOR MECHANIC..... | \$ 51.93 | 38.435+a+b |

FOOTNOTES:

A. 6% under 5 years based on regular hourly rate for all hours worked. 8% over 5 years based on regular hourly rate for all hours worked.

B. New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the Friday after Thanksgiving Day, Christmas Day, and Veterans Day.

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ENGI0178-005 06/01/2020

|                                                                                               | Rates    | Fringes |
|-----------------------------------------------------------------------------------------------|----------|---------|
| POWER EQUIPMENT OPERATOR                                                                      |          |         |
| (1) Tower Crane.....                                                                          | \$ 32.85 | 13.10   |
| (2) Cranes with Pile Driving or Caisson Attachment and Hydraulic Crane 60 tons and above..... | \$ 28.75 | 10.60   |
| (3) Hydraulic cranes 59                                                                       |          |         |

|                                                                                                                   |          |         |
|-------------------------------------------------------------------------------------------------------------------|----------|---------|
| Tons and under.....                                                                                               | \$ 32.35 | 13.10   |
| -----                                                                                                             |          |         |
| IRON0263-005 06/01/2025                                                                                           |          |         |
|                                                                                                                   | Rates    | Fringes |
| IRONWORKER (ORNAMENTAL AND<br>STRUCTURAL).....                                                                    | \$ 29.64 | 8.43    |
| -----                                                                                                             |          |         |
| PLUM0100-008 11/01/2024                                                                                           |          |         |
|                                                                                                                   | Rates    | Fringes |
| HVAC MECHANIC (HVAC Unit<br>Installation Only).....                                                               | \$ 39.76 | 14.04   |
| -----                                                                                                             |          |         |
| SUTX2014-019 07/21/2014                                                                                           |          |         |
|                                                                                                                   | Rates    | Fringes |
| BRICKLAYER.....                                                                                                   | \$ 19.89 | 0.00    |
| CARPENTER, Excludes Drywall<br>Hanging, Form Work, and Metal<br>Stud Installation.....                            | \$ 19.25 | 0.00    |
| CAULKER.....                                                                                                      | \$ 16.63 | 0.00    |
| CEMENT MASON/CONCRETE FINISHER...                                                                                 | \$ 12.93 | 0.00    |
| DRYWALL HANGER AND METAL STUD<br>INSTALLER.....                                                                   | \$ 15.42 | 0.00    |
| ELECTRICIAN (Alarm<br>Installation Only).....                                                                     | \$ 18.83 | 3.32    |
| ELECTRICIAN (Communication<br>Technician Only).....                                                               | \$ 19.98 | 3.64    |
| ELECTRICIAN (Low Voltage<br>Wiring Only).....                                                                     | \$ 15.80 | 2.18    |
| ELECTRICIAN, Excludes Low<br>Voltage Wiring and<br>Installation of Alarms/Sound<br>and Communication Systems..... | \$ 18.82 | 0.83    |
| FORM WORKER.....                                                                                                  | \$ 12.13 | 0.00    |
| GLAZIER.....                                                                                                      | \$ 16.55 | 3.13    |
| HIGHWAY/PARKING LOT STRIPING:<br>Operator (Striping Machine).....                                                 | \$ 10.04 | 2.31    |
| INSTALLER - SIDING<br>(METAL/ALUMINUM/VINYL).....                                                                 | \$ 14.74 | 0.00    |
| INSTALLER - SIGN.....                                                                                             | \$ 15.61 | 0.00    |
| INSULATOR - BATT.....                                                                                             | \$ 13.00 | 0.00    |
| IRONWORKER, REINFORCING.....                                                                                      | \$ 14.02 | 0.00    |
| LABORER: Common or General.....                                                                                   | \$ 11.76 | 0.00    |

|                                                                                 |          |      |
|---------------------------------------------------------------------------------|----------|------|
| LABORER: Mason Tender - Brick...                                                | \$ 10.54 | 0.00 |
| LABORER: Mason Tender -<br>Cement/Concrete.....                                 | \$ 10.75 | 0.00 |
| LABORER: Pipelayer.....                                                         | \$ 13.00 | 0.35 |
| LABORER: Plaster Tender.....                                                    | \$ 12.22 | 0.00 |
| LABORER: Roof Tearoff.....                                                      | \$ 11.28 | 0.00 |
| LABORER: Landscape and<br>Irrigation.....                                       | \$ 12.50 | 0.48 |
| LATHER.....                                                                     | \$ 16.00 | 0.00 |
| OPERATOR:<br>Backhoe/Excavator/Trackhoe.....                                    | \$ 12.83 | 0.00 |
| OPERATOR: Bobcat/Skid<br>Steer/Skid Loader.....                                 | \$ 13.93 | 0.00 |
| OPERATOR: Bulldozer.....                                                        | \$ 18.29 | 1.31 |
| OPERATOR: Drill.....                                                            | \$ 15.69 | 0.50 |
| OPERATOR: Forklift.....                                                         | \$ 13.21 | 0.81 |
| OPERATOR: Grader/Blade.....                                                     | \$ 12.48 | 0.00 |
| OPERATOR: Loader.....                                                           | \$ 13.46 | 0.85 |
| OPERATOR: Mechanic.....                                                         | \$ 17.52 | 3.33 |
| OPERATOR: Paver (Asphalt,<br>Aggregate, and Concrete).....                      | \$ 18.44 | 0.00 |
| OPERATOR: Roller.....                                                           | \$ 15.04 | 0.00 |
| PAINTER (Brush, Roller and<br>Spray), Excludes Drywall<br>Finishing/Taping..... | \$ 13.21 | 2.33 |
| PAINTER: Drywall<br>Finishing/Taping Only.....                                  | \$ 13.76 | 2.84 |
| PIPEFITTER, Excludes HVAC<br>Pipe Installation.....                             | \$ 22.98 | 6.35 |
| PLASTERER.....                                                                  | \$ 15.75 | 0.00 |
| PLUMBER (HVAC Pipe<br>Installation Only).....                                   | \$ 22.16 | 5.46 |
| PLUMBER, Excludes HVAC Pipe<br>Installation.....                                | \$ 20.84 | 4.74 |
| ROOFER.....                                                                     | \$ 17.19 | 0.00 |
| SHEET METAL WORKER (HVAC Duct<br>Installation Only).....                        | \$ 20.88 | 5.19 |
| SHEET METAL WORKER, Excludes<br>HVAC Duct Installation.....                     | \$ 24.88 | 5.97 |

|                                         |          |      |
|-----------------------------------------|----------|------|
| SPRINKLER FITTER (Fire Sprinklers)..... | \$ 22.94 | 0.00 |
| TILE FINISHER.....                      | \$ 11.22 | 0.00 |
| TILE SETTER.....                        | \$ 14.25 | 0.00 |
| TRUCK DRIVER: 1/Single Axle Truck.....  | \$ 16.40 | 0.81 |
| TRUCK DRIVER: Dump Truck.....           | \$ 12.39 | 1.18 |
| TRUCK DRIVER: Flatbed Truck.....        | \$ 19.65 | 8.57 |
| TRUCK DRIVER: Semi-Trailer Truck.....   | \$ 12.50 | 0.00 |
| TRUCK DRIVER: Water Truck.....          | \$ 12.00 | 4.11 |

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Note: Executive Order 13658 generally applies to contracts subject to the Davis-Bacon Act that were awarded on or between January 1, 2015 and January 29, 2022, and that have not been renewed or extended on or after January 30, 2022. Executive Order 13658 does not apply to contracts subject only to the Davis-Bacon Related Acts regardless of when they were awarded. If a contract is subject to Executive Order 13658, the contractor must pay all covered workers at least \$13.30 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2025. The applicable Executive Order minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under Executive Order 13658 is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

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The body of each wage determination lists the classifications and wage rates that have been found to be prevailing for the type(s) of construction and geographic area covered by the wage determination. The classifications are listed in alphabetical order under rate identifiers indicating whether the particular rate is a union rate (current union negotiated rate), a survey rate, a weighted union average rate, a state adopted rate, or a supplemental classification rate.

#### Union Rate Identifiers

A four-letter identifier beginning with characters other than ""SU"", ""UAVG"", ?SA?, or ?SC? denotes that a union rate was prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2024. PLUM is an identifier of the union whose collectively bargained rate prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. The date, 07/01/2024 in the example, is the effective date of the most current negotiated rate.

Union prevailing wage rates are updated to reflect all changes over time that are reported to WHD in the rates in the collective bargaining agreement (CBA) governing the classification.

#### Union Average Rate Identifiers

The UAVG identifier indicates that no single rate prevailed for those classifications, but that 100% of the data reported for the classifications reflected union rates. EXAMPLE: UAVG-OH-0010 01/01/2024. UAVG indicates that the rate is a weighted union average rate. OH indicates the State of Ohio. The next number, 0010 in the example, is an internal number used in producing the wage determination. The date, 01/01/2024 in the example, indicates the date the wage determination was updated to reflect the most current union average rate.

A UAVG rate will be updated once a year, usually in January, to reflect a weighted average of the current rates in the collective bargaining agreements on which the rate is based.

#### Survey Rate Identifiers

The ""SU"" identifier indicates that either a single non-union rate prevailed (as defined in 29 CFR 1.2) for this classification in the survey or that the rate was derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As a weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SUFL2022-007 6/27/2024. SU indicates the rate is a single non-union prevailing rate or a weighted average of survey data for that classification. FL indicates the State of Florida. 2022 is the year of the survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 6/27/2024 in the example, indicates the survey completion date for the classifications and rates under that identifier.

?SU? wage rates typically remain in effect until a new survey is conducted. However, the Wage and Hour Division (WHD) has the discretion to update such rates under 29 CFR 1.6(c)(1).

#### State Adopted Rate Identifiers

The ""SA"" identifier indicates that the classifications and prevailing wage rates set by a state (or local) government were adopted under 29 C.F.R 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. The date, 01/03/2024 in the example, reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

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#### WAGE DETERMINATION APPEALS PROCESS

1) Has there been an initial decision in the matter? This can be:

- a) a survey underlying a wage determination
- b) an existing published wage determination
- c) an initial WHD letter setting forth a position on a wage determination matter
- d) an initial conformance (additional classification and rate) determination

On survey related matters, initial contact, including requests for summaries of surveys, should be directed to the WHD Branch of Wage Surveys. Requests can be submitted via email to [davisbaconinfo@dol.gov](mailto:davisbaconinfo@dol.gov) or by mail to:

Branch of Wage Surveys  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

Regarding any other wage determination matter such as conformance decisions, requests for initial decisions should be directed to the WHD Branch of Construction Wage Determinations. Requests can be submitted via email to [BCWD-Office@dol.gov](mailto:BCWD-Office@dol.gov) or by mail to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2) If an initial decision has been issued, then any interested party (those affected by the action) that disagrees with the decision can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Requests for review and reconsideration can be submitted via email to [dba.reconsideration@dol.gov](mailto:dba.reconsideration@dol.gov) or by mail to:

Wage and Hour Administrator

U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210.

=====

END OF GENERAL DECISION

"



EXHIBIT D  
HOTEL BRAND PROJECT COMPLETION REQUIREMENTS

*[To be included with GMP Amendment.]*

EXHIBIT E  
DESIGN & PRE-CONSTRUCTION BUDGET

[See Attached]

**EXHIBIT E**  
**Design and Preconstruction Budget**

| Roanoke Hotel & Convention Center<br>Design & Preconstruction Budget<br>8/28/2026 | Brasfield & Gorrie<br>Base Contract<br>Remaining | Previously Paid<br>Thru GPP | Brasfield & Gorrie<br>Base Contract<br>Totals |
|-----------------------------------------------------------------------------------|--------------------------------------------------|-----------------------------|-----------------------------------------------|
| <b>Pre-Construction</b>                                                           |                                                  |                             |                                               |
| General Contractor Pre-Construction                                               | \$50,010.00                                      | \$0.00                      | \$50,010.00                                   |
| General Contractor Hotel Design Assist Partners                                   | \$325,000.00                                     | \$0.00                      | \$325,000.00                                  |
| <b>Design Consultant Fees</b>                                                     |                                                  |                             |                                               |
| Schematic Design                                                                  | \$0.00                                           | \$673,086.30                | \$673,086.30                                  |
| Design Development                                                                | \$0.00                                           | \$1,241,649.23              | \$1,241,649.23                                |
| Construction Documents                                                            | \$1,252,484.99                                   | \$407,211.24                | \$1,659,696.23                                |
| <b>Hard Costs Subtotal</b>                                                        | <b>\$1,627,494.99</b>                            | <b>\$2,321,946.77</b>       | <b>\$3,949,441.76</b>                         |
| Contractor Insurance & Risk Mgmt 1.30% <a href="#">Contract Sum</a>               | \$54,049.13                                      | \$0.00                      | \$54,049.13                                   |
| Contractor Fee 3.85% <a href="#">Cost of Work</a>                                 | \$154,134.40                                     | \$0.00                      | \$154,134.40                                  |
| <b>Soft Costs Subtotal</b>                                                        | <b>\$208,183.53</b>                              | <b>\$0.00</b>               | <b>\$208,183.53</b>                           |
|                                                                                   |                                                  |                             |                                               |
| <b>CONTRACT SUM TOTAL</b>                                                         | <b>\$1,835,678.52</b>                            | <b>\$2,321,946.77</b>       | <b>\$4,157,625.29</b>                         |

EXHIBIT E1  
DESIGN & PRE-CONSTRUCTION SCHEDULE

[See Attached]

## Design & Preconstruction Schedule

|                                                                                     |                                                   |                                                           |
|-------------------------------------------------------------------------------------|---------------------------------------------------|-----------------------------------------------------------|
|  | <b>31207 - Roanoke Hotel - Amendment Schedule</b> | Page 1 of 2<br>File - 31207-JP-7<br>Data Date - 20-Apr-26 |
|-------------------------------------------------------------------------------------|---------------------------------------------------|-----------------------------------------------------------|

| Activity ID       | Activity Name                                                | Orig Dur | At Completion Duration | Start       | Finish      | 2026                                                                  |   |   |   |   |   |   |   |   |   |   |   | 2027 |   |   |   |   |   |   |   |   |   |   |   | 2028 |   |   |   |  |  |  |  |  |  |  |  |
|-------------------|--------------------------------------------------------------|----------|------------------------|-------------|-------------|-----------------------------------------------------------------------|---|---|---|---|---|---|---|---|---|---|---|------|---|---|---|---|---|---|---|---|---|---|---|------|---|---|---|--|--|--|--|--|--|--|--|
|                   |                                                              |          |                        |             |             | A                                                                     | J | J | A | S | O | N | D | J | F | M | A | M    | J | J | A | S | O | N | D | J | F | M | A | M    | J | J | A |  |  |  |  |  |  |  |  |
| A10860            | RFQ GC Selection                                             | 1        | 4                      | 03-Feb-26 A | 06-Feb-26 A | C Selection                                                           |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A10870            | Contract Development / Negotiations                          | 15       | 57                     | 09-Feb-26 A | 28-Apr-26   | Contract Development / Negotiations                                   |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A10890            | Owner / Council Review & Approval - DBA #1                   | 11       | 17                     | 06-Apr-26 A | 28-Apr-26   | Owner / Council Review & Approval - DBA #1                            |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A10820            | Owner / Council Approval of Contract                         | 1        | 1                      | 29-Apr-26   | 29-Apr-26   | Owner / Council Approval of Contract                                  |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A10880            | Contract Execution                                           | 1        | 1                      | 29-Apr-26   | 29-Apr-26   | Contract Execution                                                    |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A10900            | DBAAmendment #1 Executed / NTP for Model Room & Contr        | 1        | 1                      | 29-Apr-26   | 29-Apr-26   | DBAAmendment #1 Executed / NTP for Model Room & Contract Review       |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A11910            | Owner / Council Review & Approval - DBA #2                   | 11       | 27                     | 06-Apr-26 A | 12-May-26   | Owner / Council Review & Approval - DBA #2                            |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A11660            | DBAAmendment #2 Executed / NTP for Permit & Enabling Wo      | 1        | 1                      | 13-May-26   | 13-May-26   | DBAAmendment #2 Executed / NTP for Permit & Enabling Work             |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A6380             | Owner / Council Review & Approve - DBA#3                     | 23       | 23                     | 06-May-26   | 08-Jun-26   | Owner / Council Review & Approve - DBA #3                             |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A10990            | Bond Issuance                                                | 0        | 0                      | 09-Jun-26   |             | Bond Issuance                                                         |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A11000            | Bond Closing / Project Funded                                | 60       | 60                     | 09-Jun-26   | 01-Sep-26   | Bond Closing / Project Funded                                         |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A11010            | DBAAmendment #3 Executed / NTP for Construction              | 1        | 1                      | 02-Sep-26   | 02-Sep-26   | DBAAmendment #3 Executed / NTP for Construction                       |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A6410             | Owner / Council Review & Approve CDPricing                   | 10       | 10                     | 10-Sep-26   | 23-Sep-26   | Owner / Council Review & Approve CDPricing                            |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| Hotel Flag        |                                                              |          |                        |             |             |                                                                       |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A11090            | Hotel Flag Onboarded                                         | 5        | 5                      | 09-Mar-26 A | 13-Mar-26 A | Hotel Flag Onboarded                                                  |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A11100            | Review & Approve Model Room CD Package                       | 15       | 15                     | 09-Mar-26 A | 27-Mar-26 A | Review & Approve Model Room CD Package                                |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A11180            | DD Package Review & Approval                                 | 21       | 21                     | 10-Apr-26 A | 08-May-26   | DD Package Review & Approval                                          |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A11110            | CD Coordination & Ongoing Review / Approvals                 | 64       | 49                     | 10-Apr-26 A | 18-Jun-26   | CD Coordination & Ongoing Review / Approvals                          |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A10960            | Complete Model Room Brand Review & Approval                  | 5        | 5                      | 21-Aug-26   | 27-Aug-26   | Complete Model Room Brand Review & Approval                           |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| Procurement Agent |                                                              |          |                        |             |             |                                                                       |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A11120            | Award Procurement Agent                                      | 1        | 1                      | 04-Feb-26 A | 04-Feb-26 A | Procurement Agent                                                     |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A11130            | Onboarding & Garfield PO Request Approval                    | 10       | 30                     | 05-Feb-26 A | 18-Mar-26 A | Onboarding & Garfield PO Request Approval                             |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A11150            | Model Room Purchase Orders & Funding                         | 7        | 2                      | 19-Mar-26 A | 20-Mar-26 A | Model Room Purchase Orders & Funding                                  |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A11640            | Submittal / Shop Drawings Development                        | 20       | 20                     | 02-Apr-26 A | 29-Apr-26   | Submittal / Shop Drawings Development                                 |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A11140            | Design Team FFE / OFCI / OSE Submittal Review & Approval -   | 10       | 22                     | 02-Apr-26 A | 01-May-26   | Design Team FFE / OFCI / OSE Submittal Review & Approval - Model Room |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A11200            | Submittal Development - Hotel / Convention                   | 60       | 60                     | 29-Jul-26   | 21-Oct-26   | Submittal Development - Hotel / Convention                            |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A11190            | FFE / OFCI / OSE Submittal Review & Approval - Hotel / Conve | 60       | 60                     | 26-Aug-26   | 18-Nov-26   | FFE / OFCI / OSE Submittal Review & Approval - Hotel / Conven         |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| A11230            | Hotel / Convention Purchase Orders                           | 60       | 60                     | 08-Oct-26   | 06-Jan-27   | Hotel / Convention Purchase Orders                                    |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| Permitting        |                                                              |          |                        |             |             |                                                                       |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| BIM               |                                                              |          |                        |             |             |                                                                       |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| Procurement       |                                                              |          |                        |             |             |                                                                       |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |
| Construction      |                                                              |          |                        |             |             |                                                                       |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |

EXHIBIT F  
INSURANCE REQUIRED OF DESIGN/BUILDER

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

INSURANCE COVERAGES REQUIRED:

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

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

**2. Commercial General Liability**

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

**3. Commercial Auto Liability**

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

**4. Excess Liability**

Excess Liability coverage with a limit of \$40,000,000 per occurrence/\$40,000,000 aggregate, to follow form of the Design/Builder's Commercial General Liability, Employer's Liability and Automobile Liability policies.

**5. Pollution Liability**

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

**6. Design/Builder's Professional Liability**

Design/Builder shall provide and maintain Professional Liability coverage with limits of \$5,000,000 each claim/\$5,000,000 annual aggregate, issued by an insurance carrier approved in advance by Owner and licensed, or otherwise authorized as a surplus lines insurer, to provide such coverage in Texas to insure from and against all negligent acts, errors, and omissions in the professional services performed by Design/Builder, its agents, representatives, employees, Subcontractors and/or Sub-

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

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

#### **BUILDER'S RISK:**

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

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

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

3. **Owner Furnished Equipment (OFE).** The Builder's Risk property insurance shall include coverage for Owner Furnished Equipment ("OFE"), defined as equipment, materials, supplies, and other items provided by Owner for incorporation into the Work and identified in the OFE Schedule incorporated into the Contract Documents. Any changes to coverage for OFE shall be made by Change Order with additional premium costs borne by Owner. To the extent OFE is not listed in the OFE Schedule or exceeds the scheduled amount, Owner accepts the risk of loss. If no amount is inserted, coverage shall be \$0 and Owner shall provide separate property insurance equivalent to that required herein or the parties will provide for the OFE coverage in the GMP Amendment.



EXHIBIT F-1  
SUBCONTRACT INSURANCE REQUIREMENTS

*[To be included with GMP Amendment.]*

## PROPERTY INSURANCE TRANSFER ACKNOWLEDGEMENT

The Parties agree the Project was Substantially Complete on \_\_\_\_\_. Accordingly, the builder's risk insurance heretofore provided will terminate and Owner's permanent property insurance will take effect on \_\_\_\_\_ ("Transfer Date"). As of the Transfer Date, Owner's permanent property insurance shall be for the total value of the Project on a replacement cost basis.

In the event the Contract Documents require Contractor to pay deductibles or self-insured retentions, Owner's permanent property insurance shall be consistent with the terms and coverages of the builder's risk insurance that was in effect prior to the Transfer Date, and Contractor's responsibility for Owner's deductibles or self-insured retentions shall not exceed the amounts for such deductibles or self-insured retentions contained in the Contract Documents. The Owner's permanent property insurance shall also include the interests of Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds until expiration of the period for correction of the Work or for as long as otherwise required by the Contract Documents. On or prior to the Transfer Date, Owner shall provide a certificate of insurance and any other necessary documents reasonably requested by Contractor confirming compliance with this paragraph.

By signing this acknowledgement, Owner agrees that its permanent property insurance shall be primary in the event of any loss or damage to the Project on or after the Transfer Date and shall be adjusted by Owner's permanent property insurance carrier in accordance with all other terms of the Contract Documents.

All other terms in the Contract Documents shall be unmodified and shall remain in full force and effect. \*

\_\_\_\_\_  
(Owner)

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT G  
FORM OF PAYMENT BOND & MEMORANDUM OF CONTRACT

*[To be included with GMP Amendment.]*

## EXHIBIT H

### SUMMARY OF CERTAIN PROVISIONS OF THE MASTER DEVELOPMENT AGREEMENT BETWEEN CITY AND GARFIELD PUBLIC/PRIVATE

| <u>Section No.</u> | <u>Summary of Text</u>                                                                                                                                                                                                                                                                                                                                                                                                                              |
|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3.1                | The Project construction drawings shall be segregated into those for the City Facilities and those for the Hotel such that the expenditure of the City Contribution and Design and Development Funds can be allocated and tracked to the construction drawings and specifications for the Components of the Project, and such that the General Contractor can enter into separate construction contracts for the City Facilities and for the Hotel. |
| 4.1.2(a)           | Construct or cause to be constructed the Hotel in conformance with the Hotel Development Agreement and the final plans and specifications approved by Hotel Owner and in accordance with the conceptual design and materials approved by the City Council and all applicable building codes and regulations.                                                                                                                                        |
| 4.1.2(b)           | Cause the Hotel to be constructed and to facilitate payment for all development and construction costs of the Hotel as they come due.                                                                                                                                                                                                                                                                                                               |
| 4.1.2(c)           | Apply for or cause to be applied for the balance of the building permits, utility permits, utility easements, certificates of occupancy and all other licenses and permits required for the operation of the Hotel, including an alcoholic beverage permit.                                                                                                                                                                                         |
| 4.2.1              | Provide the City Representative and Hotel Owner with monthly written progress reports that reflect construction progress and all costs due or paid under the Development Budget during the preceding month and which also reflect a comparison of aggregate costs paid for budgeted items through the end of the preceding month with total budgeted costs for such items.                                                                          |
| 4.2.3              | Notify the City Representative and Hotel Owner promptly of any actual or anticipated increase in the Development Budget of which Garfield becomes aware.                                                                                                                                                                                                                                                                                            |
| 4.2.4              | Notify the City Representative and Hotel Owner promptly of any actual or anticipated change or delay in the Development Plan of which Garfield becomes aware.                                                                                                                                                                                                                                                                                       |
| 4.2.5              | Assist in refining the design of the Project (or assist in the process of approving any changes to the design of the Project) by providing information based on Garfield's hotel development and operating experience.                                                                                                                                                                                                                              |
| 4.2.6              | Observe the timely and efficient performance of Contractors and the Design Professionals under their respective contracts with Garfield, Hotel Owner or the City, as the case may be, to confirm that all work is being performed in a professional and workmanlike manner.                                                                                                                                                                         |
| 4.2.7              | Confirm that all design and construction criteria that are specifically required by the Brand or the Operator, as applicable, are correctly integrated into the design and construction of the Project, and that any on-site inspections and approvals specifically required by the Brand or the Operator, as applicable, are arranged and carried out on a timely basis.                                                                           |
| 4.3.3              | Test, commission, and if necessary, implement modifications to the operations of the Project.                                                                                                                                                                                                                                                                                                                                                       |
| 4.3.4              | Apply for the initial licenses and permits required for the operation of the Project.                                                                                                                                                                                                                                                                                                                                                               |

|       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4.3.5 | In general, render such other miscellaneous services incidental to the preparation and organization of the Project's operations as may be reasonably required for the Project to be adequately staffed and capable of operating upon opening.                                                                                                                                                                                                                                                                                                                                                             |
| 4.4.2 | Upon Final Completion of construction provide a copy of the final certificate of occupancy for the Hotel and City Facilities from the appropriate officials of the City.                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 4.4.3 | Upon Final Completion of construction provide a long form release of mechanics' liens executed by the General Contractor applicable to the entire Project, or a letter in form reasonably acceptable to Hotel Owner, and City Representative from a title insurance underwriter acceptable to Hotel Owner and City Representative stating that it will issue title policies to Hotel Owner and the City, as applicable, and a mortgagee's title policy to the trustee for the Hotel Construction Phase Financing, without excepting filed and unfiled mechanics' liens from coverage under such policies. |
| 4.4.4 | Prior to or upon Final Completion of construction provide Certifications from the Project Architect that the Hotel and City Facilities have reached substantial completion in accordance with the final plans and specifications;                                                                                                                                                                                                                                                                                                                                                                         |
| 4.4.5 | Upon Final Completion of construction provide an "as-built" survey of all improvements for the Project prepared by a registered surveyor or engineer; and                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 4.4.6 | Upon Final Completion of construction provide a full and complete set of "record drawings" plans for the Project and any accessory structure(s).                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

## EXHIBIT H-1

### EXCERPTS FROM INDENTURE OF TRUST

| Section No.        | Summary of Text                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5.04               | <p><i>Disbursement Procedures for Payment of Project Costs.</i></p> <p>The Trustee shall, upon receipt of a Requisition Requesting Disbursement of Project Costs executed by the Design/Builder and approved by an Authorized Issuer Representative and the Construction Monitor, disburse funds from the Project Account and apply such funds to the Project Costs in accordance with such Requisition Requesting Disbursement of Project Costs. The Construction Monitor shall review all such requisitions and consult with the Authorized Issuer Representative prior to providing its approval.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 6.05(iii)          | <p>With the exception of minor changes permitted under Article 9 of the Design Build Agreement, the Issuer shall not cause, agree to, permit or suffer any Change Order under and as defined in the Design Build Agreement without the prior written approval of the Construction Monitor, which approval may be granted or denied in accordance with the following standards:</p> <p>Requests for approval of any proposed Change Order shall be submitted to the Construction Monitor on a Change Order form acceptable to the Construction Monitor and signed by the Issuer, the Architect and the Design/Builder.</p> <p>As a condition to its approval, (i) the Issuer may require satisfactory evidence of the cost and of the time necessary to complete the proposed change, and (ii) to the extent the Construction Monitor advises the Issuer that the proposed change may result in any increased cost, the Issuer may deposit, or cause the deposit of an amount of the increased costs into the Development Project Fund.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 6.05(vii) – (viii) | <p>The Issuer grants the Construction Monitor and its representatives all rights of access necessary for each of them to carry out and enforce the rights of the Issuer hereunder and shall permit the Construction Monitor to conduct inspections and obtain information related to the Hotel and the Bonds, including without limitation, as follows:</p> <ul style="list-style-type: none"> <li>(a) The Construction Monitor shall have the right at all times to enter upon the Property, to inspect the Hotel and all materials to be used in the construction of the Hotel, and to examine the Plans and all shop drawings which are or may be kept at the Property. The Issuer shall cooperate with the Construction Monitor and shall cause the Design/Builder and Development Manager to cooperate with the Construction Monitor.</li> <li>(b) The Construction Monitor shall have the right at all reasonable times to examine, copy and make extracts of the books, records, accounting data and other documents of the Issuer in connection with the construction of the Hotel, including without limitation, all permits, licenses, consents and approvals related thereto.</li> <li>(c) Without in any way limiting the foregoing, the Issuer may inspect the Project, or any part thereof, directly or through any of its representatives, including the Construction Monitor (a) prior to each Disbursement, (b) at least once each month during the course of construction, whether or not any Disbursement is to be made for that month, (c) prior to pouring foundations and footings, and (d) upon completion of construction of the Project, so long as any of the Bonds remain Outstanding, and for any applicable statute of limitations period thereafter.</li> </ul> |





## AGENDA ITEM

TO: Mayor and City Council

SUBJECT: Amendment #01 to a Design Building Agreement (DBA)

MEETING DATE: April 28, 2026

DEPARTMENT: City Manager

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### ITEM SUMMARY:

BA Amendment #01 | Model Room

### INFORMATION:

**DBA Amendment #01 | Model Room (\$349,527)** - This will approve Brasfield & Gorrie to start procurement and construction on the Model Room. GPP already showed this in our approved budget for \$303k under "Owner Model Room Construction Contingency". This will be rolled up to the GC.

### STAFF RECOMMENDATION:

### SPECIAL CONSIDERATION:

### FINANCIAL CONSIDERATION:

### ATTACHMENTS:

1. DBA Amendment #1 - Model Room 2026.04.21



## Design-Build Amendment (Change Order)

|                   |                                                                                                                                                                                       |                                                                                                          |
|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| Amendment Number: | 0001                                                                                                                                                                                  | Amendment Effective Date:<br>(upon execution by all parties)                                             |
| Project:          | Roanoke Convention Center Hotel                                                                                                                                                       | Design-Builder's Project No 31207                                                                        |
|                   |                                                                                                                                                                                       | Date of Agreement: 4/29/2026                                                                             |
| Owner:            | Roanoke Convention Center Hotel Local Development Corporation<br>500 S. Oak Street<br>Roanoke, Texas 76262<br><br>City of Roanoke, Texas<br>500 S. Oak Street<br>Roanoke, Texas 76262 | Design-Builder: Brasfield & Gorrie, LLC<br>8350 N. Central Expressway, Suite 1000<br>Dallas, Texas 75206 |

### Scope of Work:

Change to current DBA agreement to include the construction of (1) Model Room per the Consolidated Schedule of Values and List of Clarifications and Pricing Assumptions included in this package.

Grant of License Provision to be included with Model Room Amendment to Design/Build Agreement.

**GRANT OF LICENSE.** Owner hereby grants to Design/Builder an exclusive license and right-of-way for the Term (the Term of the License shall be coterminous with the Design/Build Agreement), on, over and across the Premises for the following purposes (the "License"):

- (1) To construct within the Premises the model room in accordance with Section 3.1.11 of the Agreement;
- (2) To occupy and use certain office space at the Premises during the Term of the Agreement.

This License shall be effective throughout the entire Term. The License includes the right to access, including using appropriate vehicles, over existing roads and pathways at the Premises, while respecting the rights of other tenants at the Premises. The License may be exercised by Design/Builder and by Design/Builder's subcontractors of any tier.

|                                    |                 |
|------------------------------------|-----------------|
| Original Contract Value:           | \$ 4,157,625.29 |
| Net Change by Previous Amendments: | \$ 0.00         |
| This Amendment Increase/Decrease:  | \$ 349,526.88   |
| New Contract Value:                | \$ 4,507,152.17 |

|                                                 |           |
|-------------------------------------------------|-----------|
| Original Contract Completion Date:              | 7/28/2026 |
| Adjustments by Previous Amendments:             | 0         |
| This Amendment Contract Time Increase/Decrease: | 21        |
| Revised Substantial Completion Date:            | 8/18/2026 |

By executing this Amendment, Owner and Design-Builder agree to modify the Agreement's Scope of Work, Contract Value and Contract Time as stated above. Upon execution, this Amendment becomes a Contract Document issued in accordance with the Design-Build Agreement and General Conditions Between Owner and Design/Builder.

### OWNER:

By: \_\_\_\_\_  
Printed Name and Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name and Title: \_\_\_\_\_  
Date: \_\_\_\_\_

### DESIGN-BUILDER:

By:   
Printed Name and Title: Neil Caudle Division Manager  
Date: 04/20/2026



**BRASFIELD  
& GORRIE**

## MODEL ROOM

For Roanoke Hotel and  
Convention Center

04.17.2026



# Contents

**Section 1** | SOV

**Section 2** | Clarifications

**Section 3** | Drawing Exhibit



# 1

SOV

## Consolidated Schedule of Values



### Roanoke Hotel Model Room 90% CD Pricing

Garfield Public Private  
Roanoke, Texas

### TOTAL PROJECT

| Item of Work                   | 100 Model Room   | Total Cost       | % of Total    |
|--------------------------------|------------------|------------------|---------------|
| 0174 Final Clean               | \$500            | <b>\$500</b>     | 0.1%          |
| 0241 Demolition                | \$8,445          | <b>\$8,445</b>   | 2.4%          |
| 0620 Standing & Running Trim   | \$7,747          | <b>\$7,747</b>   | 2.2%          |
| 0784 Firestopping              | \$3,502          | <b>\$3,502</b>   | 1.0%          |
| 0810 Doors, Frames, Hardware   | \$25,379         | <b>\$25,379</b>  | 7.3%          |
| 0881 Glass & Glazing           | \$5,701          | <b>\$5,701</b>   | 1.6%          |
| 0920 Drywall & Ceilings        | \$37,942         | <b>\$37,942</b>  | 10.9%         |
| 0931 Hard Tile                 | \$6,848          | <b>\$6,848</b>   | 2.0%          |
| 0960 Flooring                  | \$7,533          | <b>\$7,533</b>   | 2.2%          |
| 0991 Painting & Wallcovering   | \$9,282          | <b>\$9,282</b>   | 2.7%          |
| 1000 Specialties               | \$6,254          | <b>\$6,254</b>   | 1.8%          |
| 1014 Signage                   | \$600            | <b>\$600</b>     | 0.2%          |
| 1028 Shower Enclosures         | \$1,830          | <b>\$1,830</b>   | 0.5%          |
| 2100 Fire Protection           | \$2,649          | <b>\$2,649</b>   | 0.8%          |
| 2200 Plumbing                  | \$36,144         | <b>\$36,144</b>  | 10.3%         |
| 2300 HVAC                      | \$16,684         | <b>\$16,684</b>  | 4.8%          |
| 2600 Electrical & Fire Alarm   | \$37,021         | <b>\$37,021</b>  | 10.6%         |
| 2700 Data, AV, Security        | \$11,056         | <b>\$11,056</b>  | 3.2%          |
| 9900 General Conditions        | \$50,468         | <b>\$50,468</b>  | 14.4%         |
| 9905 General Requirements      | \$44,582         | <b>\$44,582</b>  | 12.8%         |
| Contractor Insur & Risk Mgmt   | \$4,569          | <b>\$4,569</b>   | 1.3%          |
| Builders Risk Insurance        | \$534            | <b>\$534</b>     | 0.2%          |
| Subcontract Default Protection | \$2,979          | <b>\$2,979</b>   | 0.9%          |
| Payment & Performance Bond     | -                | -                | -             |
| Construction Contingency       | \$8,249          | <b>\$8,249</b>   | 2.4%          |
| <b>Subtotal</b>                | <b>\$336,499</b> | <b>\$336,499</b> | <b>96.3%</b>  |
| <b>Project Fee</b>             | <b>\$13,028</b>  | <b>\$13,028</b>  | <b>3.7%</b>   |
| <b>Totals</b>                  | <b>\$349,527</b> | <b>\$349,527</b> | <b>100.0%</b> |





# 2

## Clarifications

# Roanoke Hotel & CC

Roanoke, TX

## Model Room Pricing dated April 03, 2026

### List of Clarifications and Pricing Assumptions

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## 100 GENERAL

1. We have based our pricing on the following:
  - a. Model Room Review Drawings by BOKA Powell dated 12/19/2025
  - b. Hotel Roanoke – Model Room CFCI Specs dated 12/19/2025
  - c. Hotel Roanoke – Model Room OFCI Specs dated 12/19/2025
  - d. Model Room Permit Drawings by BOKA Powell dated 3/13/2026
  - e. Interior Markup 3.23.26\_GPP Comments dated 3/26/2026
2. Our Model Room pricing is based on the plans and specs provided. However, we are providing the following clarifications in an effort to point out specific inclusions/exclusions or deviations from the documents. This is not intended to be an all-inclusive list of our scope of work.
3. The following Clarifications include assumptions made for Roanoke Hotel & Conference Center – Model Room.
4. All pricing in this proposal is based on market conditions as of 4/3/2026. As a result of many disruptive market forces, including hurricanes, tariffs on a wide range of construction related materials, labor strikes, and international armed conflicts, the construction industry is experiencing rising material, labor and transportation cost. At the moment, there is not an effective method to predict future market conditions; thus, any unforeseen or unquantifiable price escalation or schedule impacts are excluded from this proposal.
5. We do not include contingency for future escalation or unforeseen market conditions based on our proposed project schedule. B&G can assist in providing historical market escalation data upon request.
6. We have included 2.5% Construction Contingency due to the possibility of certain unanticipated items occurring during the execution of the work. Examples of these items include, but are not limited to, the following:
  - a. Work sequencing changes
  - b. Work coordination issues
  - c. Manpower adjustments
  - d. Use of temporary measures to facilitate the work
  - e. Mitigate scope gaps or buyout issues
  - f. Repairing / replacing damaged or non-conforming work

This contingency is for the Construction Manager's exclusive use and is not intended to be used for scope changes, weather events, unforeseen sub-surface conditions, material cost escalation, or other issues that constitute a change in the work per the contract; these items would be handled via a change order to the

contract. It's recommended that the owner carry a separate contingency to manage those items listed in the preceding sentence if they occur.

7. Brasfield & Gorrie includes performing the following construction elements with its own crews:
  - a. Final Clean

## Inclusions

1. Contractor's Insurance & Risk Mitigation
2. Subcontractor Default Insurance
3. Builder's Risk Insurance
4. Design Contingency
5. Payment & Performance Bond

## Exclusions

1. Escalation
2. Liquidated Damages
3. Air Rights Agreements for Cranes
4. Building Permit and/or Permit Expediter Cost(s)
5. Site Survey Cost
6. Asbestos Survey Cost
7. Asbestos Testing
8. Construction Material Testing Cost
9. Special Inspections Cost
10. Architectural, Civil, & Structural Design Fees
11. Fees for Waterproofing Consultant
12. Fees for ADA and/or FHA Consultants
13. Responsibility for Design to Meet Local, State, and Federal Codes
14. Impact Fees by any Municipality (City/County/State/Federal: Sewer, Water, Transportation, Public Works, etc.)
15. Cost for Code Required Inspections (Rebar, Etc.)
16. Water and Sewer Tap / Impact Fees
17. Construction Primary Utilities (Electrical, Gas, Water, Etc.)
18. Utility Meters (Electrical, Gas, Water, Etc.)
19. Land Disturbance Permit Cost
20. Telephone and CATV Service and Manholes / Pull-Boxes Outside of Property Lines
21. Sales Tax on Materials
22. Permanent Trash Compactors
23. Acoustic Testing
24. All Signage / Graphics
25. FF&E materials
26. Exterior Wall Assembly
27. Prevailing wages
28. GC Trailer Cost, assumed to use Old City Hall as Office and Model Room Construction Site
29. All Utilities associated with GC Office
30. All costs associated with Permits and Inspections
31. All Queen Room finishes
32. Commissioning of existing modified systems
33. Tear down of Model Room at project completion



## 174 FINAL CLEAN

### Inclusions

1. Clean King Room for Hilton Review

### Exclusions

1. Hotel Housekeeping Level cleaning of OS&E and FFE

## 241 DEMOLITION

### Inclusions

1. Remove existing ACT and grid
2. Remove existing carpet flooring and base
3. Remove existing fans
4. Remove existing light fixtures
5. Remove existing millwork
6. Remove existing raised platform

### Exclusions

1. Removal of any Asbestos containing materials
2. Removal of any Owner items not vacated for Model Room construction

## 620 MILLWORK AND STANDING & RUNNING TRIM

### Inclusions

1. Drapery pocket per 5/ID2.01MR
2. Upper wall trim per 13/ID2.01MR
3. Bathroom door casing per 12/ID2.01MR
4. Installation of FFE/ OFCI vanity for King Room – assume vanities are pre-assembled
5. Allowance of \$500.00 for Guestroom Door Casing not referenced in drawings
6. Chair Rail (AE-10) shown on 4/ID1.01MR no detail provided. Included as 1-1/8" X 7-1/8" SOLID POPLAR PROFILED CHAIR RAIL

### Exclusions

1. Window Trim
2. Installation of FFE/ OFCI vanity for Queen Room
3. Furnishing of any guestroom vanities
4. Furnishing and installation of all FFE
5. Furnishing and installation of headboards

## 784 FIRESTOPPING

### Inclusions

1. Firestopping and sealing
2. New wall joints
3. New MEP penetrations

### Exclusions

1. Empty, blank, or abandoned penetrations
2. Waterproofing
3. Third-party testing and inspections

## 810 DOORS, FRAMES, HARDWARE

### Inclusions

1. Hollow metal frame
2. 3070 Wood doors pre-machined, pre-finished quarter-sawn walnut veneer doors
3. Hardware based on preliminary Assa Abloy hardware specs
4. Doors 100A and 100B hardware included for aesthetics but non functional.
5. Door 100C assumed hardware of standard passage set.

### Exclusions

1. Full lumber stile/ rail qtr. Sawn walnut doors

## 881 GLASS & GLAZING

### Inclusions

1. 2 1/2" x 7 1/2" YKK Curtain Wall YCW 750 IG Black Finish at King Room
2. Clear tempered glass
3. Interior caulking

### Exclusions

1. Window at Queen Room

## 920 DRYWALL & CEILINGS

### Inclusions

1. 6" stud and track, 18 ga ceiling reinforcement
2. 3 5/8" metal stud and track, 20 ga
3. 6" metal stud and track, 20 ga
4. 2" x 6" fire-rated wood blocking
5. 3/4" fire-rated plywood panels
6. R11 unfaced batt insulation
7. R19 unfaced batt insulation
8. 5/8" Type X gypsum board
9. 5/8" moisture-resistant gypsum board
10. 5/8" cement backer board

### Exclusions

1. Wood panels and glass doors
2. Deck height assumed at 10'-0"

## 931 HARD TILE

### Inclusions

1. Minor prep
2. Presealed grout
3. Waterproofing and crack isolation
4. Shower pan as Kerdi
5. Transitions as Schluter
6. Thresholds

### Exclusions

1. Major floating excluded

## 960 FLOORING

### Inclusions

1. Installation of Owner provided Carpet
2. Furnish and Install of VF-01
3. Furnish and install VB-10 and VB-01

## Exclusions

1. Any LVT pad required at VF-01

## 991 PAINT & WALLCOVERINGS

### Inclusions

1. Tape, bed, and paint new walls
2. Level 4 finish
3. Level 5 finish at wallcovering locations
4. Tape, bed, and paint gypsum ceilings
5. Install owner-furnished wallcovering: WC-1, WC-2, WC-3, WC-4, WC-10, WC-11
6. Paint doors and frames
7. Interior caulking as needed

### Exclusions

1. Level 5 finish in areas not to receive Wallcovering

## 1000 SPECIALTIES

### Inclusions

1. (1) Corridor Mirror
2. Wall mounted double soap dispensers
3. Towel Ring
4. Towel Bar
5. Single Robe Hook
6. Toilet Paper Holder
7. 3/8" Frameless Inline Glass Shower Door with HD Hinges and Towel Bar Combo Handle
8. 3/8" Fixed panel in brushed bronze hardware

### Exclusions

1. Fire extinguishers and cabinets
2. Corner guards
3. Low iron glass
4. Self-cleaning protective glass coating or film

## 1014 SIGNAGE

### Inclusions

1. Allowance of \$600 included

## 2100 FIRE PROTECTION

### Inclusions

1. Recessed pendants / sidewalls

### Exclusions

1. System intended for mock-up / coordination / aesthetic purposes only
2. Systems are assumed non-active
3. All piping, heads only provided for visual
4. CPVC not included

## 2200 PLUMBING

### Inclusions

1. Plumbing systems assumed non-functional
2. Furnishing, installation, and rough-in of fixtures per plumbing schedule including:
  - a. King Model Room: faucet PB-02, toilet PB-03, shower kit PB-04, shower drain PB-05
3. Rough-in for lavatory PB-01 integral to bathroom vanity in king model room

### Exclusions

1. Saw cutting and coring

## 2300 HVAC

### Inclusions

1. One AC system per permit update plans by Blum Consulting Engineers dated 3/13/2026
2. Motor starters and disconnects integral with furnished equipment
3. VFDs for equipment furnished under scope in accordance with bid documents, with installation by Division 26 unless integral/factory-mounted
4. Permanent HVAC systems may be operated for finishes if building is weather-tight, powered, dried-in, and protected

## Exclusions

1. Cutting and patching of building structure and structural fireproofing
2. Concrete work of any kind
3. Seismic bracing and restraints
4. Asbestos and hazardous materials work
5. Repairs to existing equipment or systems unless clearly identified
6. Maintenance, inspections, and filter changes after substantial completion
7. Demo of existing systems or equipment
8. Cutting of doors for air transfer/return air
9. Valve tags and pipe markers on refrigerant lines
10. Fire/smoke dampers not clearly indicated
11. Vibration isolation not required by manufacturer
12. Refrigerant piping accessories not required by manufacturer
13. Venting of baths, kitchens, dryers, laundry rooms, and water heaters

## 2600 ELECTRICAL

### Inclusions

1. Lighting and lighting controls per drawings
2. Power shown on drawings and tie-back to existing main building panel
3. Install all OFCI lighting shown in specifications
4. Raceway, boxes, and low-voltage rough-in
5. Furnish and install fire alarm devices for architectural review only, excluding cabling
6. Grounding and surge protection
7. Acoustical treatment of in-wall boxes as needed for rating and sound requirements
8. Low-voltage infrastructure including empty conduits, backboards, grounding systems, raceways, sleeves, and pull lines
9. Conduits, wire, and hookup for door hardware requiring security provisions
10. Labeling of electrical scope per code
11. Coordination of receptacle and switch finishes with interior design plans
12. Installation and lamping of owner-provided light fixtures
13. Install lit mirror in bathroom LT-01

### Exclusions

1. Fully integrated electrical / HVAC controls to BMS for guestroom occupancy monitoring
2. Large ceiling hung FFE fixtures / sculptures
3. Colored conduits
4. Furnish / install of TVs and TV brackets

## 2700 DATA, AV, SECURITY

### Inclusions

1. Allowance of \$11,000 for Data, AV, Security

| Activity ID                                | Activity Name | Orig Dur | At Completion Duration | Start | Finish | 2026                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 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| 31207 - Roanoke Hotel - Amendment Schedule |               |          |                        |       |        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      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| Activity ID | Activity Name    | Orig Dur | At Completion Duration | Start     | Finish    | 2026 |   |   |   |   |   |   |   |   |   |   |   | 2027 |   |   |   |   |   |   |   |   |   |   |   | 2028 |   |   |   |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |    |
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| A11540      | Rough Clean - MR | 1        | 1                      | 10-Aug-26 | 10-Aug-26 |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |   |   |   |   |   |   |   |   |      |   |   |   |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  | </ |





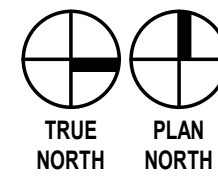
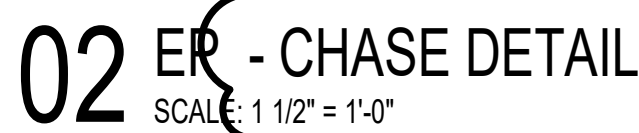


# Drawing Exhibit 3









## 01 ENLARGED FLOOR PLAN - BATHROOM



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The logo for BOKA Powell, featuring the word "BOKA" in a bold, white, sans-serif font inside a black square, with the word "Powell" in a bold, black, sans-serif font below it.

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1 PERMIT UPDATES 03/13/2026

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# E2.01





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title

REFLECTED CEILING PLAN

project number

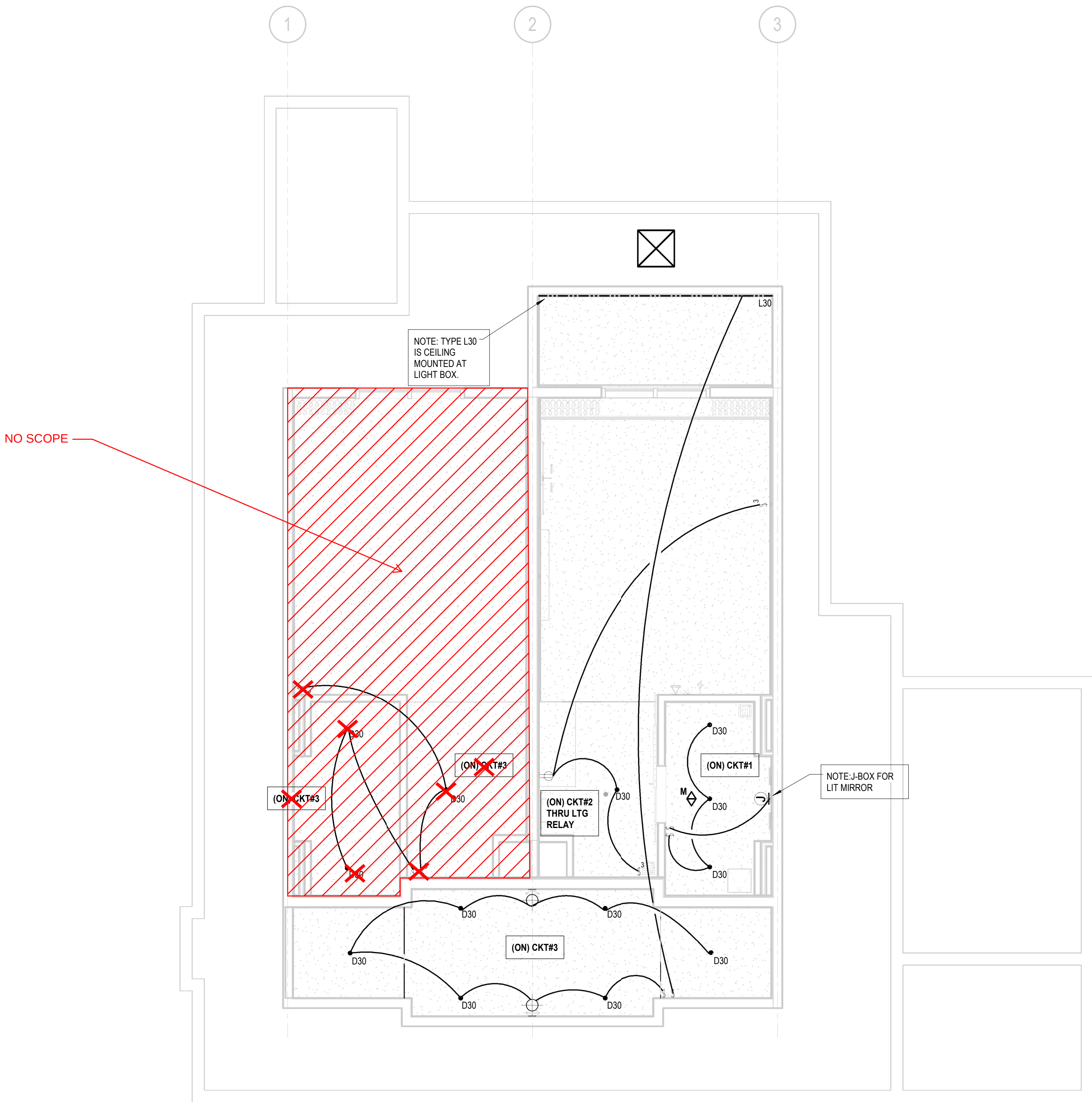
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E3.01



01 LEVEL 1 REFLECTED CEILING PLAN - LIGHTING

SCALE: 1/4" = 1'-0"



| LA KEYNOTE LEGEND |                                                                                                                  |
|-------------------|------------------------------------------------------------------------------------------------------------------|
| NO.               | DESCRIPTION                                                                                                      |
| 705               | ROOM SIGNAGE. REFER TO CONSULTANT DRAWINGS FOR ADDITIONAL INFORMATION.                                           |
| 706               | ART BY FFE. GC TO PROVIDE BLOCKING AS REQUIRED.                                                                  |
| 713               | DOWNLIGHTS BY OTHERS. REFER TO CONSULTANT DRAWINGS FOR ADDITIONAL INFORMATION.                                   |
| 716               | DOOR AND DOOR HARDWARE. REFER TO ARCHITECT DRAWINGS/SCHEDULES. REFER TO ID FINISH PLANE/ELEVATIONS FOR FINISHES. |



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**WORRELL DESIGN**

title

CORRIDOR - MODEL ROOM

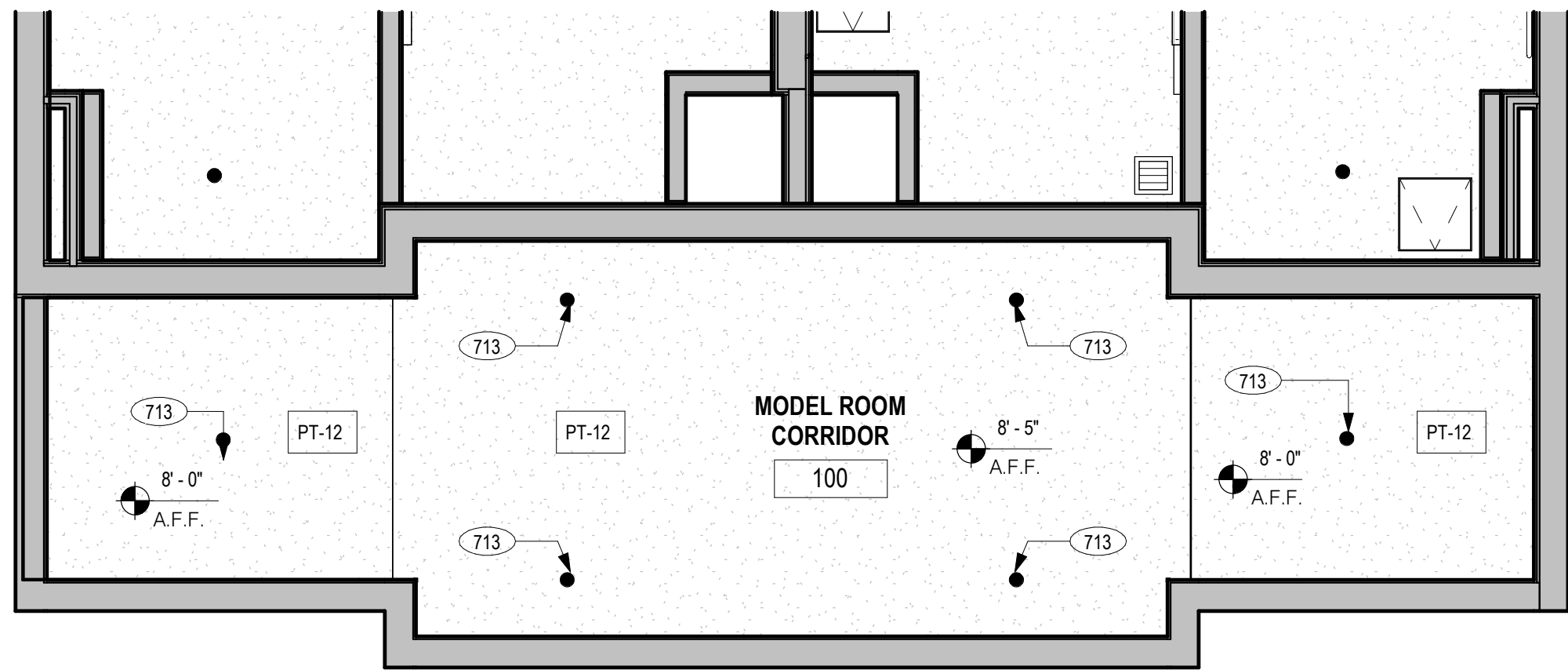
project number 1835.0

date 12/19/20

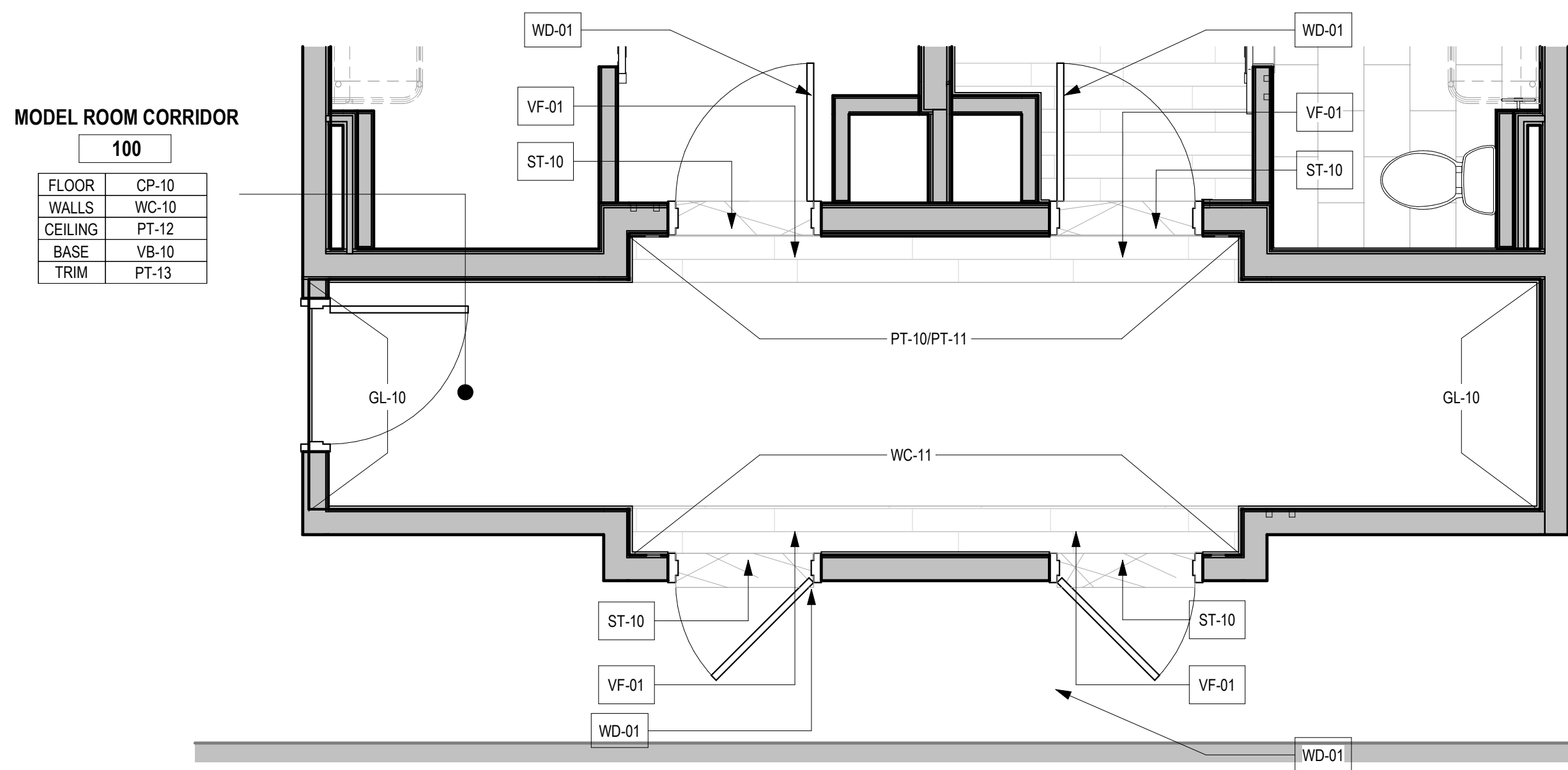
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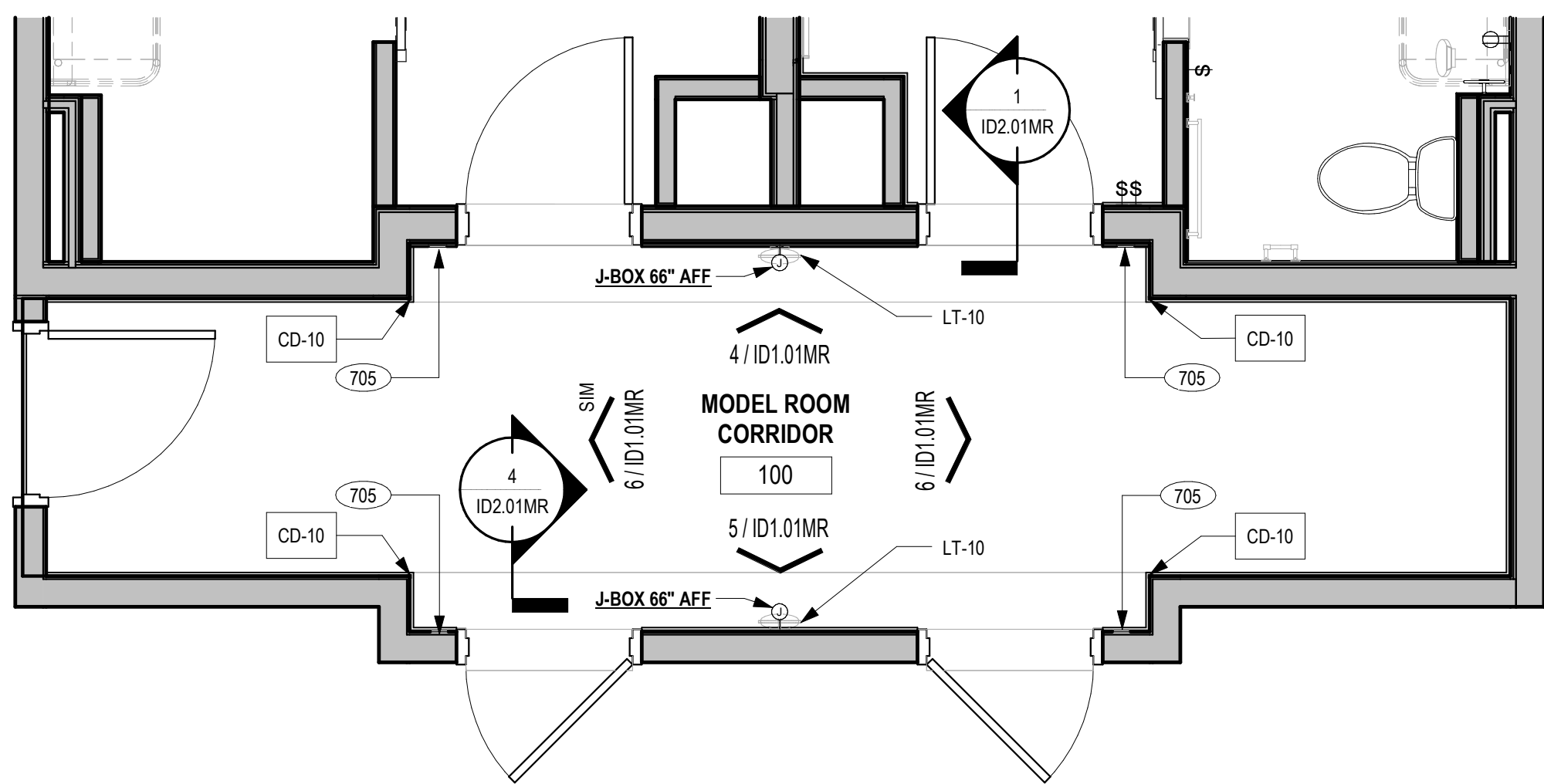
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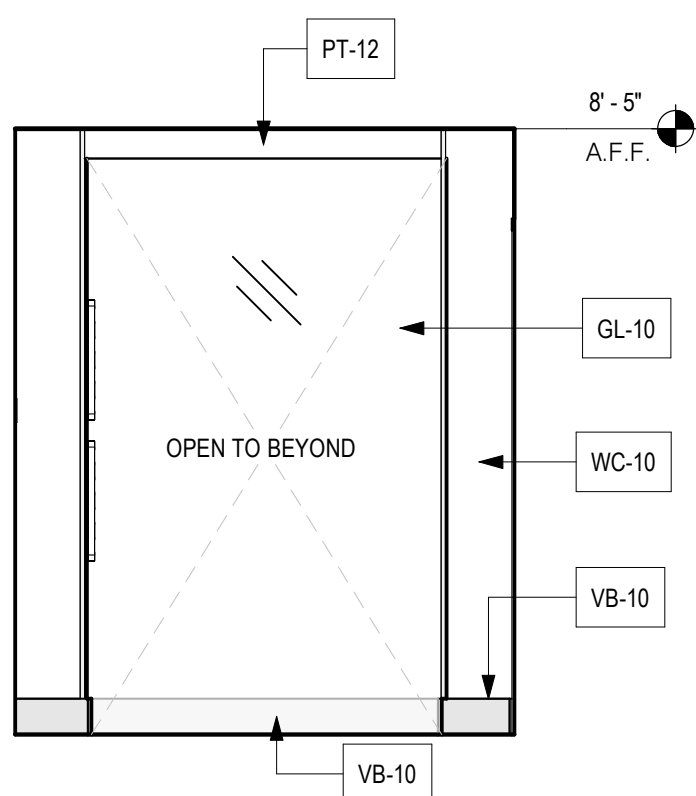
### 3 ENLG RCP - MODEL ROOM CORRIDOR



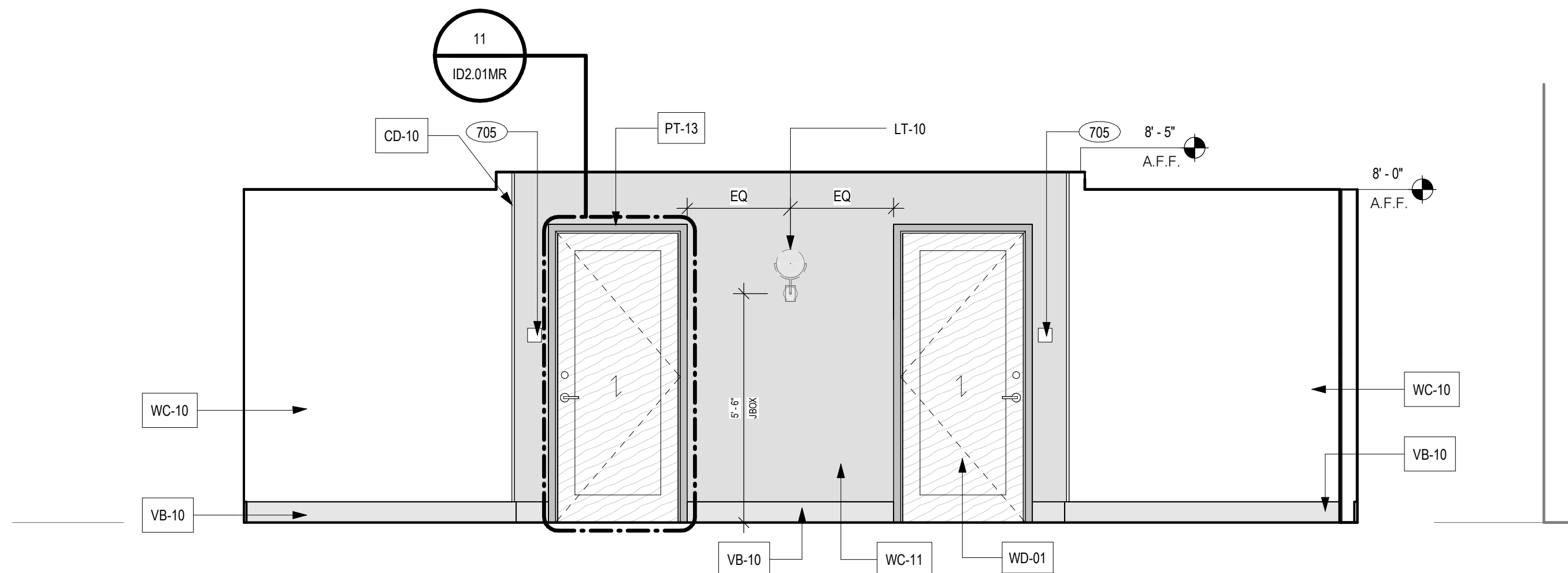
## 2 ENLG FINISH PLAN - MODEL ROOM CORRIDOR



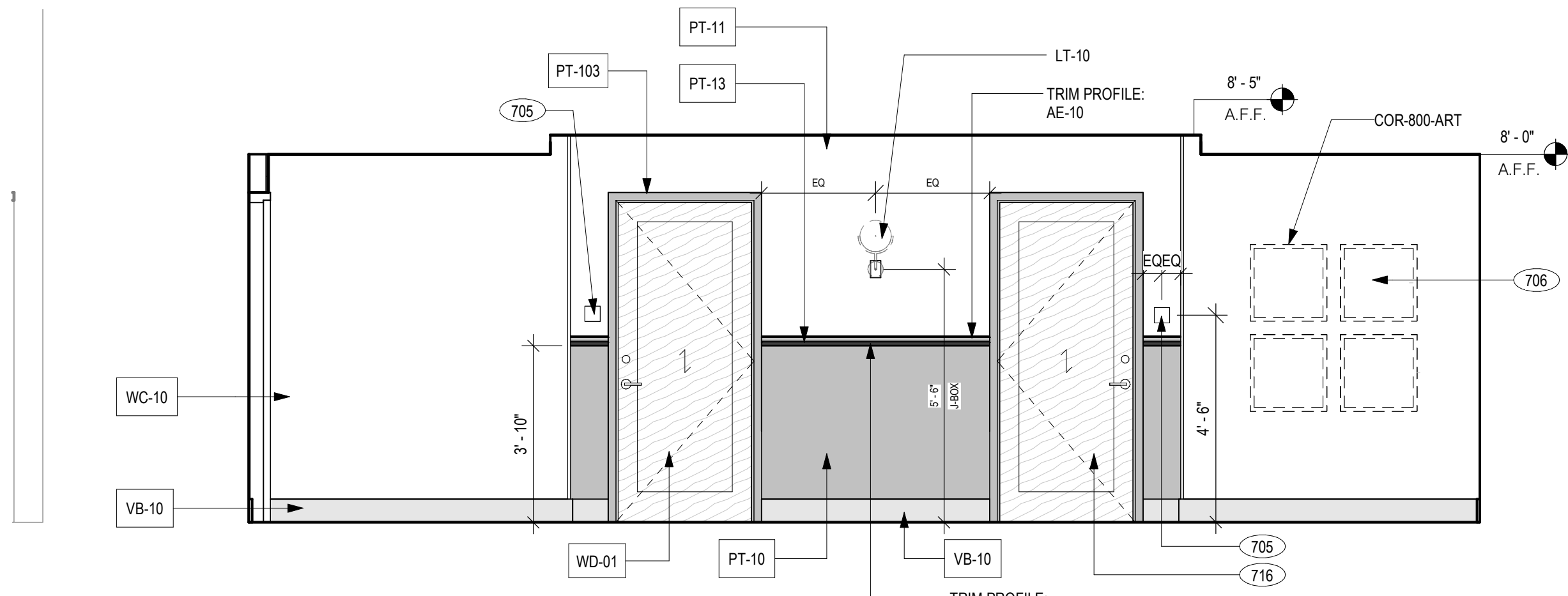
**1 ENLG CONST PLAN - MODEL ROOM CORRIDOR**  
3/8" = 1'-0"



**6 ELEV - MODEL ROOM CORRIDOR - END WALL**  
3/8" = 1'-0"

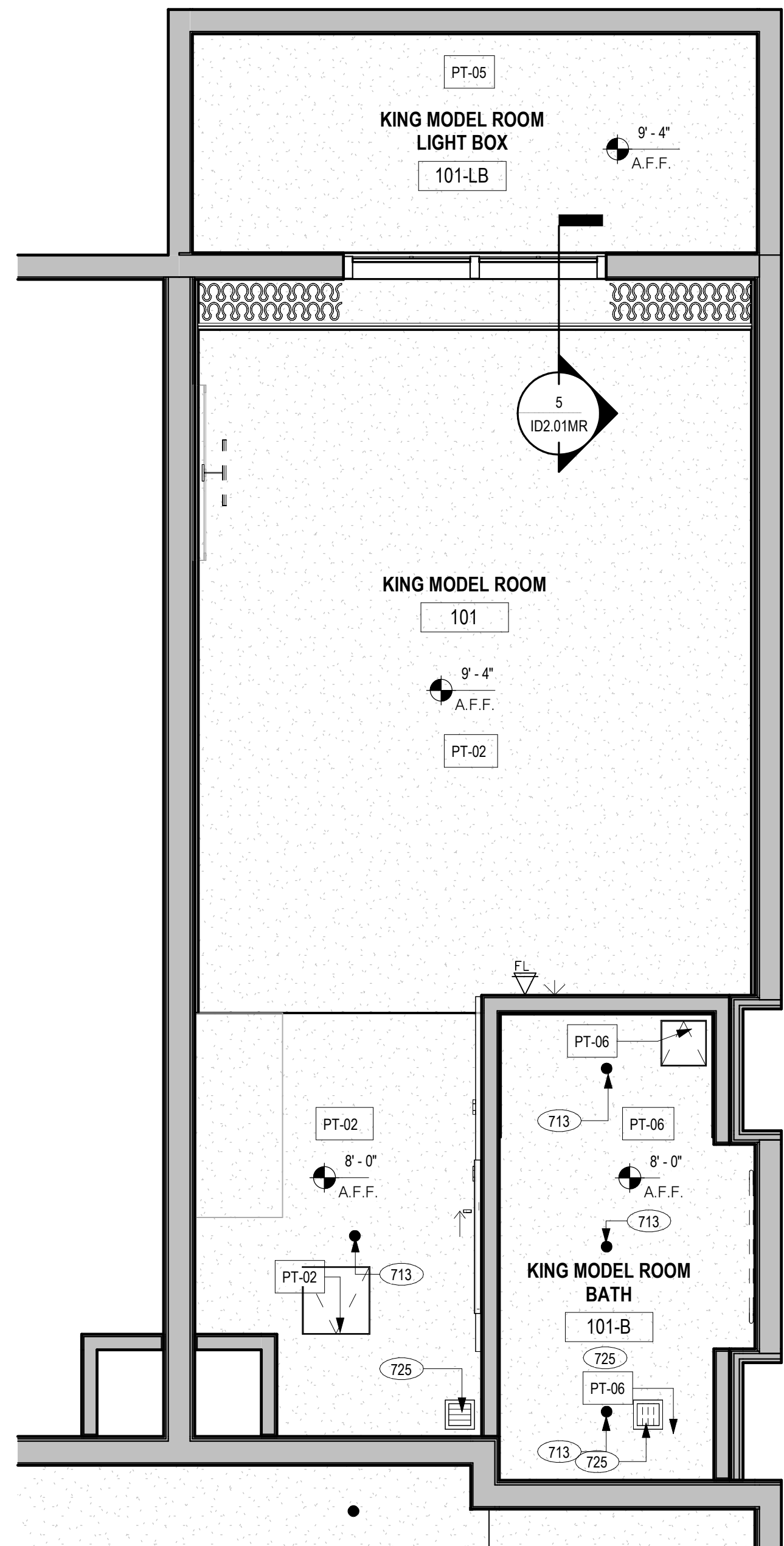


**5 ELEV - MODEL ROOM CORRIDOR - ENTRY B**  
3/8" = 1'-0"

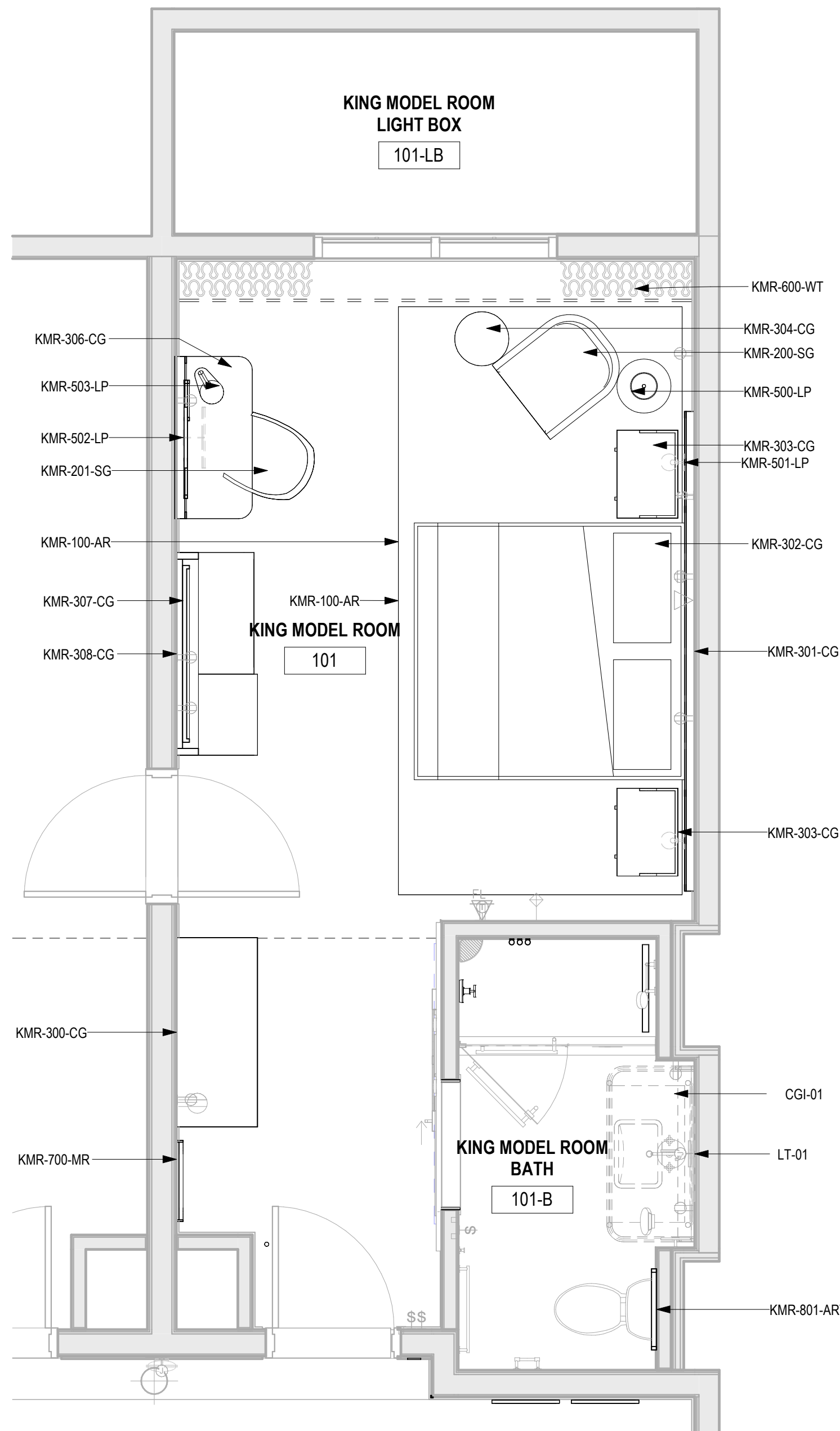


#### 4 ELEV - MODEL ROOM CORRIDOR - ENTRY A

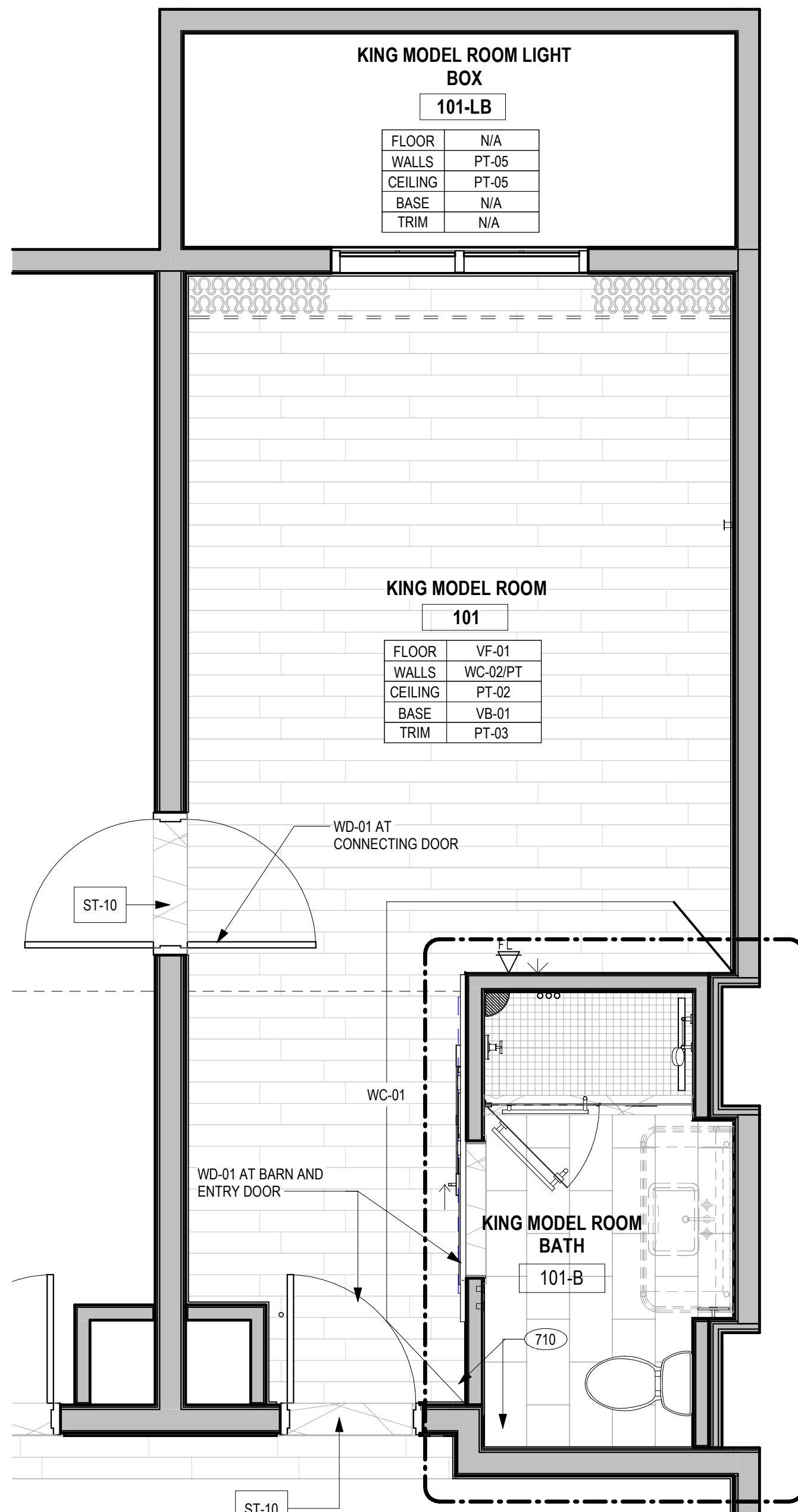




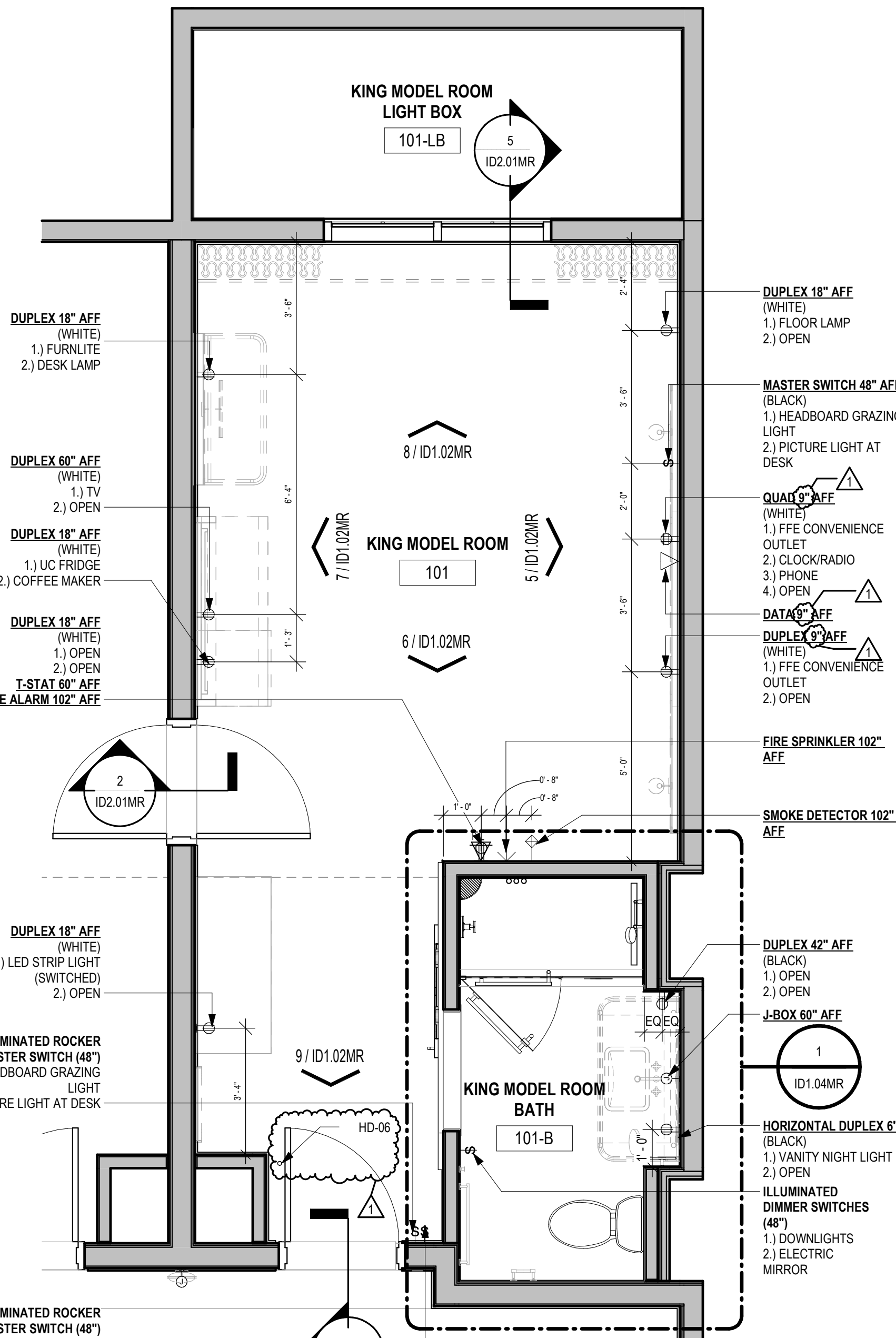
4 ENLG RCP - KING MODEL ROOM  
3/8" = 1'-0"



3 ENLG FFE PLAN - KING MODEL ROOM  
3/8" = 1'-0"



2 ENLG FINISH PLAN - KING MODEL ROOM  
3/8" = 1'-0"



1 ENLG CONST PLAN - KING MODEL ROOM  
3/8" = 1'-0"

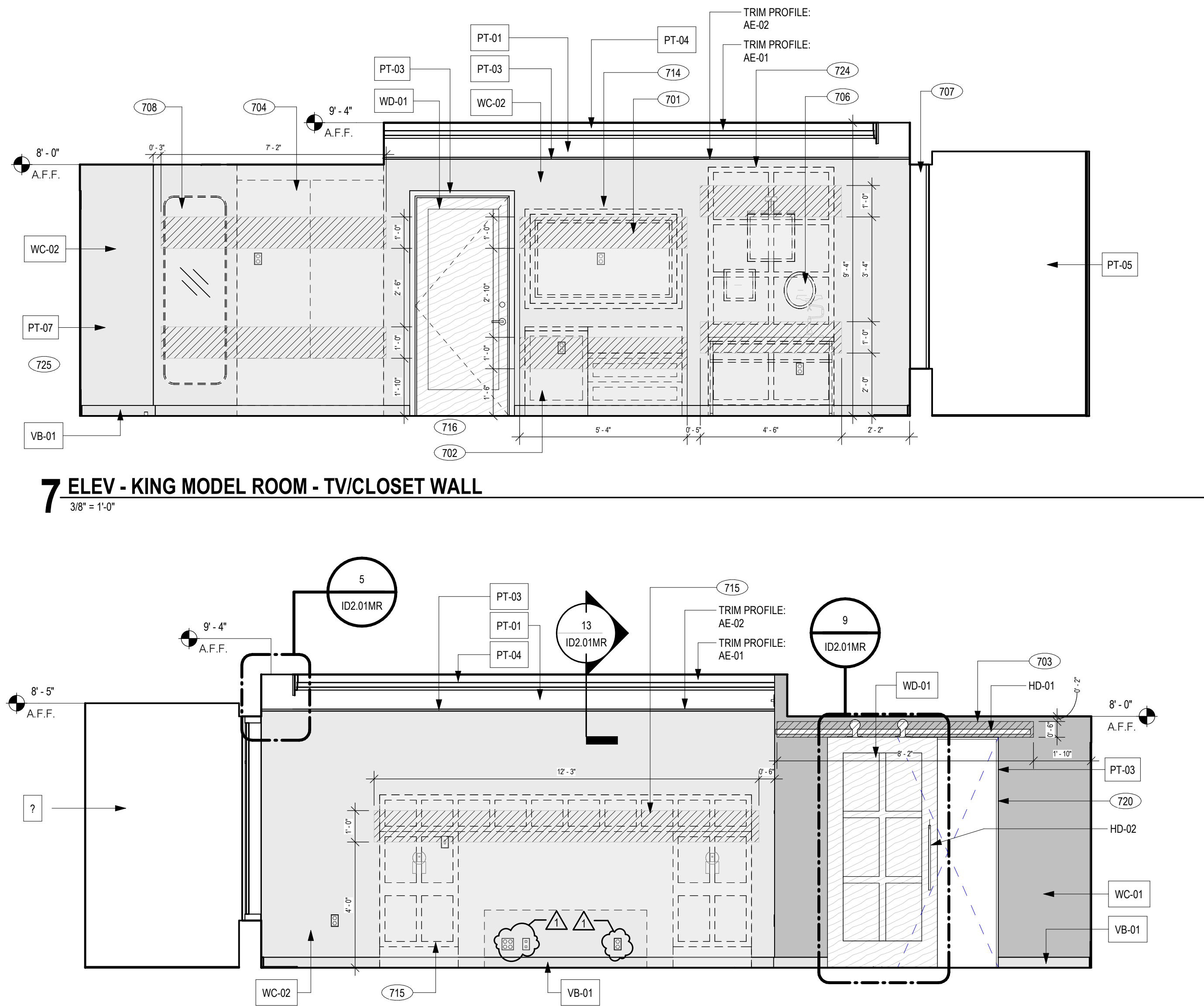
9 ELEV - KING MODEL ROOM - ENTRY WALL  
3/8" = 1'-0"

8 ELEV - KING MODEL ROOM - WINDOW WALL  
3/8" = 1'-0"

7 ELEV - KING MODEL ROOM - TV/CLOSET WALL  
3/8" = 1'-0"

6 ELEV - KING MODEL ROOM - SIDE WALL  
3/8" = 1'-0"

5 ELEV - KING MODEL ROOM - HEADBOARD WALL  
3/8" = 1'-0"



| LA KEYNOTE LEGEND |                                                                                                                    |
|-------------------|--------------------------------------------------------------------------------------------------------------------|
| NO.               | DESCRIPTION                                                                                                        |
| 701               | TV BY OTHERS. GC TO PROVIDE ADEQUATE BLOCKING/POWER/DATA. REFER TO CONSULTANT DRAWINGS FOR ADDITIONAL INFORMATION. |
| 702               | COFFEE, FRIDGE, AND SAFE BY OSSE.                                                                                  |
| 703               | BARN DOOR VALANCE. GC TO PROVIDE ADEQUATE BLOCKING. REFER TO DETAILS.                                              |
| 704               | CLOSET/ENTRY BAR BY FFE. GC TO PROVIDE BLOCKING AS REQUIRED.                                                       |
| 706               | ART BY FFE. GC TO PROVIDE BLOCKING AS REQUIRED.                                                                    |
| 707               | EXTERIOR WINDOW SYSTEM. REFER TO ARCHITECT DRAWINGS.                                                               |
| 708               | DECORATIVE MIRROR BY FFE. GC TO PROVIDE ADEQUATE BLOCKING.                                                         |
| 710               | START FULL TILE HERE. ALIGN ALL FLOOR AND WALL TILE GROUT LINES.                                                   |
| 711               | VALANCE BY GC. PROVIDE ADEQUATE BLOCKING.                                                                          |
| 712               | DRAPERY BY FFE.                                                                                                    |
| 713               | DOWNLIGHTS BY OTHERS. REFER TO CONSULTANT DRAWINGS FOR ADDITIONAL INFORMATION.                                     |
| 714               | TV PANEL BY FFE. GC TO PROVIDE ADEQUATE BLOCKING.                                                                  |
| 715               | HEADBOARD BY FFE. GC TO PROVIDE ADEQUATE BLOCKING.                                                                 |
| 716               | DOOR AND DOOR HARDWARE. REFER TO ARCHITECT DRAWINGS/SCHEDULES FOR FINISHES.                                        |
| 720               | MILLWORK CASSED OPENING.                                                                                           |
| 724               | DESK PANEL BY FFE. GC TO PROVIDE BLOCKING AS REQUIRED.                                                             |
| 725               | PAINTED FACTORY FINISH GRILLE/PANEL AS SCHED.                                                                      |



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MODEL ROOM CD PACKAGE 01/16/2026

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KING - MODEL ROOM

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ID1.02MR



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| LA KEYNOTE LEGEND |                                                    |
|-------------------|----------------------------------------------------|
| NO.               | DESCRIPTION                                        |
| 715               | HEADBOARD BY FFE. GO TO PROVIDE ADEQUATE BLOCKING. |



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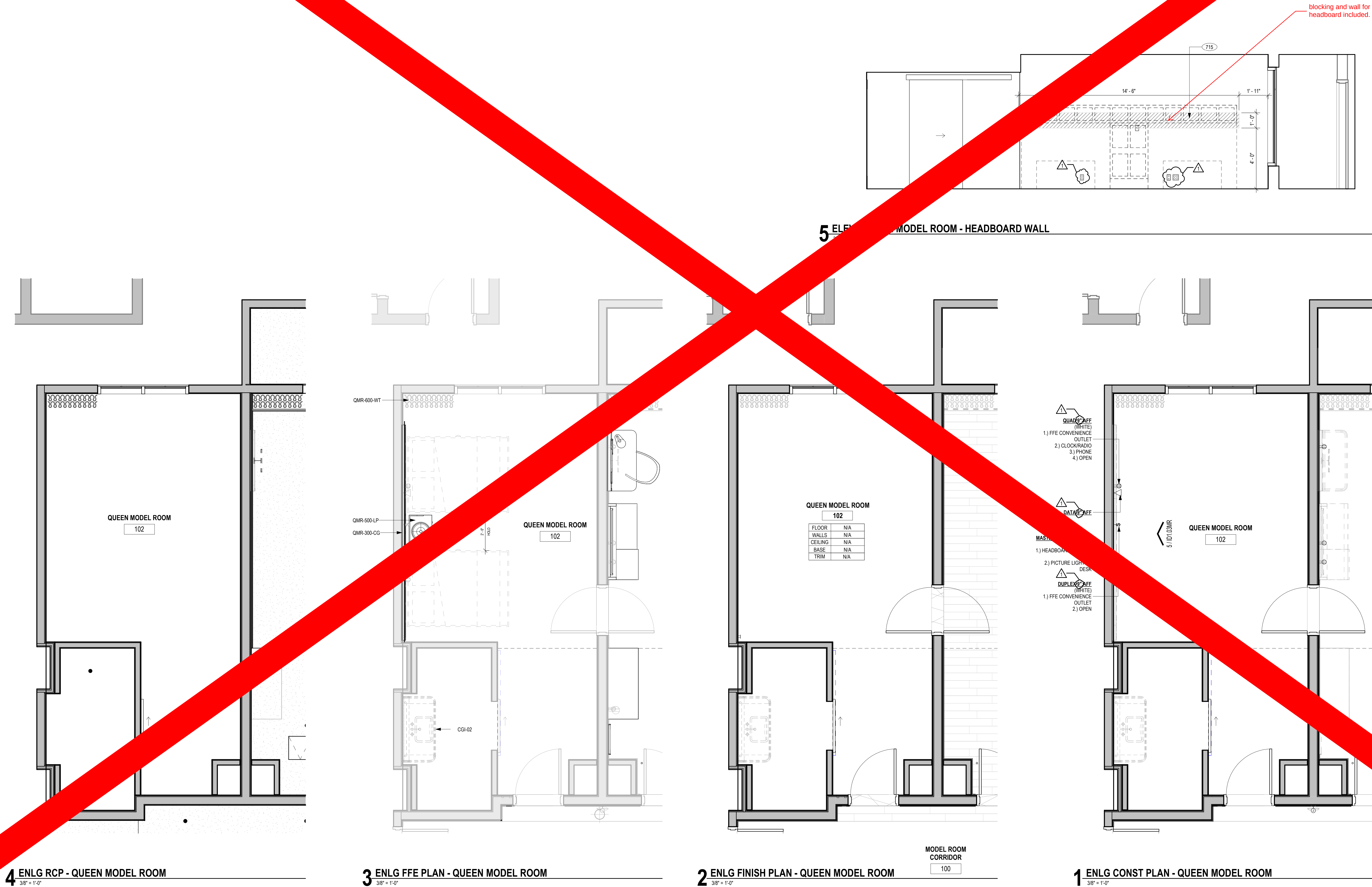
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QUEEN - MODEL ROOM

proj 1835.04

date 01/16/2026

sheet

ID1.0311R







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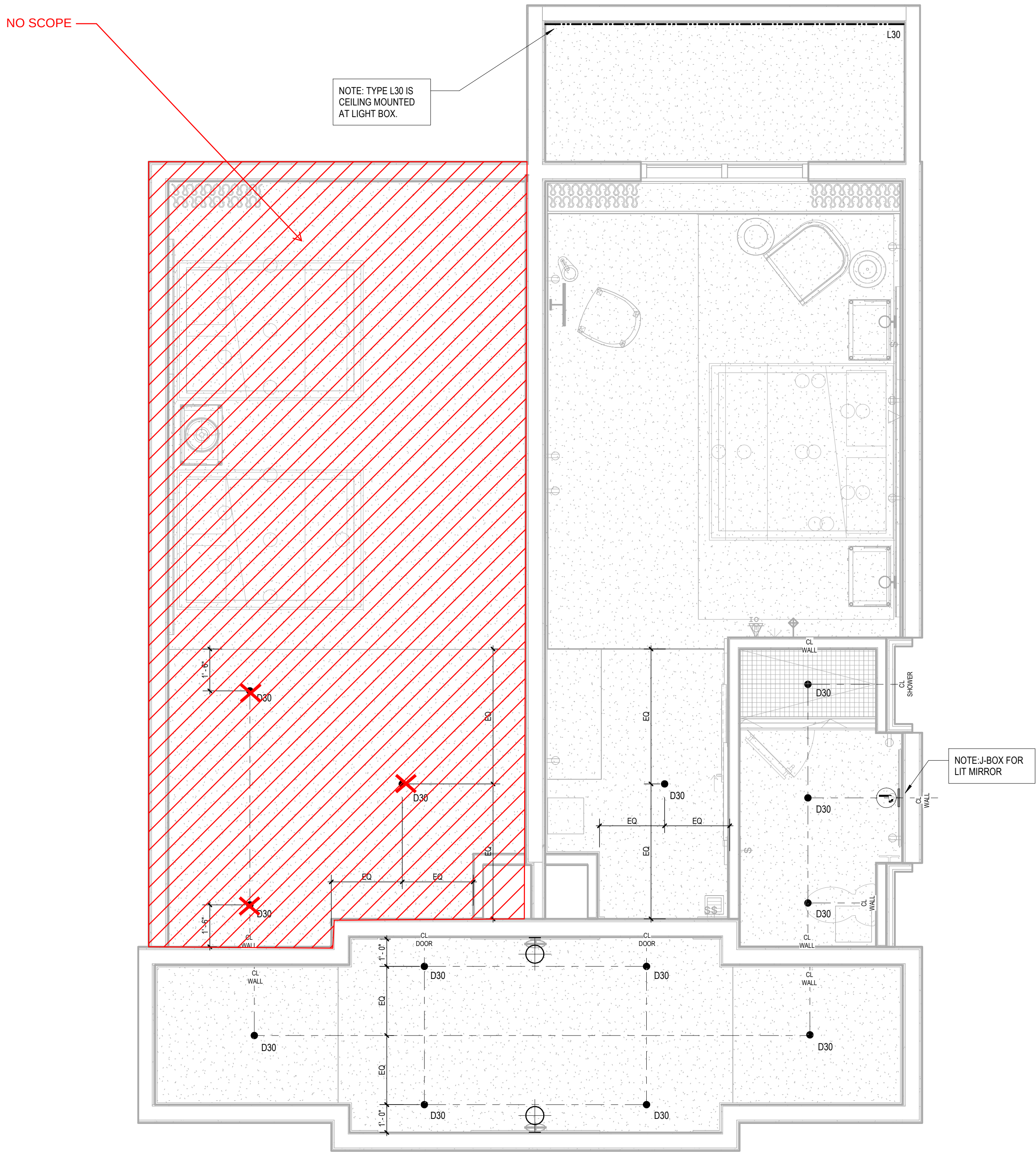
Page 253 of 306











1 LIGHTING PLAN - LEVEL 1 MODEL ROOM  
3/8" = 1'-0"

| LIGHTING LEGEND                                |                                             |
|------------------------------------------------|---------------------------------------------|
| SYMBOL                                         | DESCRIPTION                                 |
| ●                                              | WALL MOUNTED ADJUSTABLE                     |
| ●                                              | CEILING OR TRACK MOUNTED ADJUSTABLE         |
| ●                                              | RECESSED ADJUSTABLE                         |
| ●                                              | RECESSED DOWNLIGHT                          |
| ●                                              | RECESSED WALL WASHER                        |
| ●                                              | WALL MOUNTED FIXTURE                        |
| ●                                              | SURFACE MOUNTED FIXTURE OR BOLLARD          |
| ⊕                                              | WALL SCONCE                                 |
| ⊕                                              | PENDANT OR CHANDELIER                       |
| ⊕                                              | LINEAR LIGHTING (HORIZONTAL)                |
| ⊕                                              | LINEAR LIGHTING (VERTICAL)                  |
| ⊕                                              | 2x2 DIRECT/INDIRECT                         |
| ⊕                                              | 2x4 DIRECT/INDIRECT                         |
| ○                                              | UPLIGHT FIXTURE                             |
| ■                                              | DIRECTIONAL POLE MOUNTED LUMINAIRE          |
| ○                                              | FLOOR RECEPTACLE                            |
| ○                                              | WALL RECEPTACLE                             |
| ⊕                                              | PICTURE LIGHT                               |
| ■                                              | WALL BOX DIMMER                             |
| ●                                              | REMOTE CONTROL STATION (FOR DIMMING SYSTEM) |
| ⊕                                              | WALL MOUNTED SWITCH                         |
| ⊕                                              | DOOR SWITCH                                 |
| ALL SYMBOLS MAY NOT BE USED / SYMBOLS MAY VARY |                                             |



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LIGHTING PLAN - MODEL  
ROOM

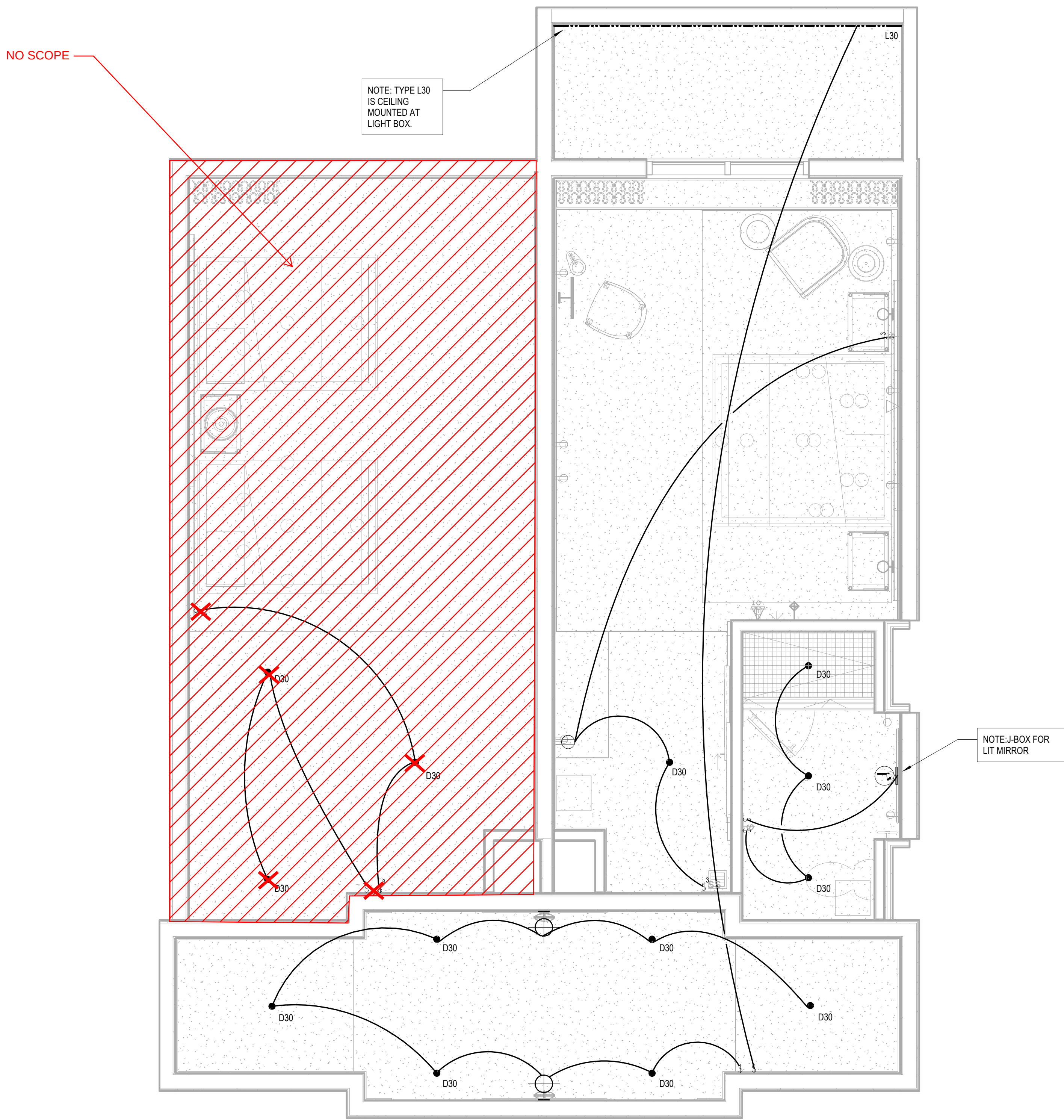
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1 LIGHTING CONTROL PLAN - LEVEL 1 MODEL ROOM  
3/8" = 1'-0"

| LIGHTING LEGEND                                |                                             |
|------------------------------------------------|---------------------------------------------|
| SYMBOL                                         | DESCRIPTION                                 |
| ●                                              | WALL MOUNTED ADJUSTABLE                     |
| ●                                              | CEILING OR TRACK MOUNTED ADJUSTABLE         |
| ●                                              | RECESSED ADJUSTABLE                         |
| ●                                              | RECESSED DOWNLIGHT                          |
| ●                                              | RECESSED WALL WASHER                        |
| ●                                              | WALL MOUNTED FIXTURE                        |
| ●                                              | SURFACE MOUNTED FIXTURE OR BOLLARD          |
| ⊕                                              | WALL SCONCE                                 |
| ⊕                                              | PENDANT OR CHANDELIER                       |
| ⊕                                              | LINEAR LIGHTING (HORIZONTAL)                |
| ⊕                                              | LINEAR LIGHTING (VERTICAL)                  |
| ⊕                                              | 2x2 DIRECT/INDIRECT                         |
| ⊕                                              | 2x4 DIRECT/INDIRECT                         |
| ○                                              | UPLIGHT FIXTURE                             |
| ■                                              | DIRECTIONAL POLE MOUNTED LUMINAIRE          |
| ○                                              | FLOOR RECEPTACLE                            |
| ○                                              | WALL RECEPTACLE                             |
| ⊕                                              | PICTURE LIGHT                               |
| ■                                              | WALL BOX DIMMER                             |
| ●                                              | REMOTE CONTROL STATION (FOR DIMMING SYSTEM) |
| ⊕                                              | WALL MOUNTED SWITCH                         |
| ⊕                                              | DOOR SWITCH                                 |
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LIGHTING CONTROL PLAN -  
MODEL ROOM

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| GENERAL NOTES: |                                                                             |
|----------------|-----------------------------------------------------------------------------|
| 1              | PROVIDE 1" UNDERCUT TO ALL INTERIOR GUESTROOM DOORS TO ALLOW FOR RETURN AIR |
| 2              | OPPOSED BLADE DAMPERS NOT REQUIRED FOR GUESTROOM DIFFUSERS                  |

| KEYED NOTES:                         |                                                                                                                                                                                                                             |
|--------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NOT ALL ITEMS ARE FOUND ON THIS PAGE |                                                                                                                                                                                                                             |
| 1                                    | EDGE OF VERTICAL SOFFIT - REFER TO ARCHITECTURAL DRAWINGS                                                                                                                                                                   |
| 2                                    | 50 CFM TOILET EXHAUST FAN (TEF-1) INTERLOCKED W/ BATHROOM OCCUPANCY SENSOR                                                                                                                                                  |
| 3                                    | SMART THERMOSTAT W/ LOCAL ENERGY MANAGEMENT SYSTEM TO CONTROL OPERATION OF FAN COIL UNIT. THERMOSTAT SHALL BE WIRELESSLY INTERLOCKED W/ GUESTROOM FRONT DOOR HARDWARE AND LIGHTING CONTROL RELAY PER IECC SECTION C403.7.6. |
| 4                                    | 30"x6" SIDEWALL SUPPLY AIR GRILLE SIMILAR TO PRICE Z2DAL, WITH DISCHARGE PLENUM. PROVIDE SHEET METAL BAFFLE SEPARATING OUTSIDE AIR AND SUPPLY AIR PLENUMS                                                                   |
| 5                                    | 2" RETURN AIR SLOT (RAS) LOCATED IN CEILING                                                                                                                                                                                 |
| 6                                    | 12"x12" ACCESS PANEL                                                                                                                                                                                                        |
| 7                                    | 18"x18" ACCESS PANEL                                                                                                                                                                                                        |

#### VARIABLE REFRIGERANT VOLUME - INDOOR UNITS (HORIZONTAL)

| Designation                | HVVRV-0.75      |  |  |  |  |
|----------------------------|-----------------|--|--|--|--|
| Supply Air CFM (Hi Spd)    | 300             |  |  |  |  |
| Fan:                       |                 |  |  |  |  |
| Ext. S.P. (*wg)            | 0.25            |  |  |  |  |
| Cooling:                   |                 |  |  |  |  |
| EAT (F.) Db/Wb             | N/A             |  |  |  |  |
| LAT (F.) Db/Wb             |                 |  |  |  |  |
| Sens. Capacity (MBH)       |                 |  |  |  |  |
| Total Capacity (MBH)       |                 |  |  |  |  |
| Max. Face Vel. (fpm)       |                 |  |  |  |  |
| Heating:                   |                 |  |  |  |  |
| Capacity (MBH)             | N/A             |  |  |  |  |
| EAT (deg F)                |                 |  |  |  |  |
| LAT (deg F)                |                 |  |  |  |  |
| Electric Service For Unit: |                 |  |  |  |  |
| Min. Circuit Amps (MCA)    | 0.8             |  |  |  |  |
| Voltage/Phase/Hz           | 120/1/60        |  |  |  |  |
| Disconnect Furnished By    | Elec Contractor |  |  |  |  |
| Emergency Power            | No              |  |  |  |  |
| Filter Type                | 1" TA           |  |  |  |  |
| Approx. Dimensions:        |                 |  |  |  |  |
| Height (in)                | 10              |  |  |  |  |
| Width (in)                 | 22              |  |  |  |  |
| Length (in)                | 32              |  |  |  |  |
| Weight (lbs)               | 55              |  |  |  |  |
| Based On Daikin:           | FXSQ09TAVJU     |  |  |  |  |

- Notes:
1. Provide secondary drain pans for suspended units.
  3. External pressure drop includes ductwork, dampers, and allowance for filter dirt loading.
  2. Sensible and total capabilities do not include fan heat.
  4. Provide area smoke detection system where total sum of VRV evaporator return air plenum exceeds 2,000 CFM.

#### GUESTROOM FANS

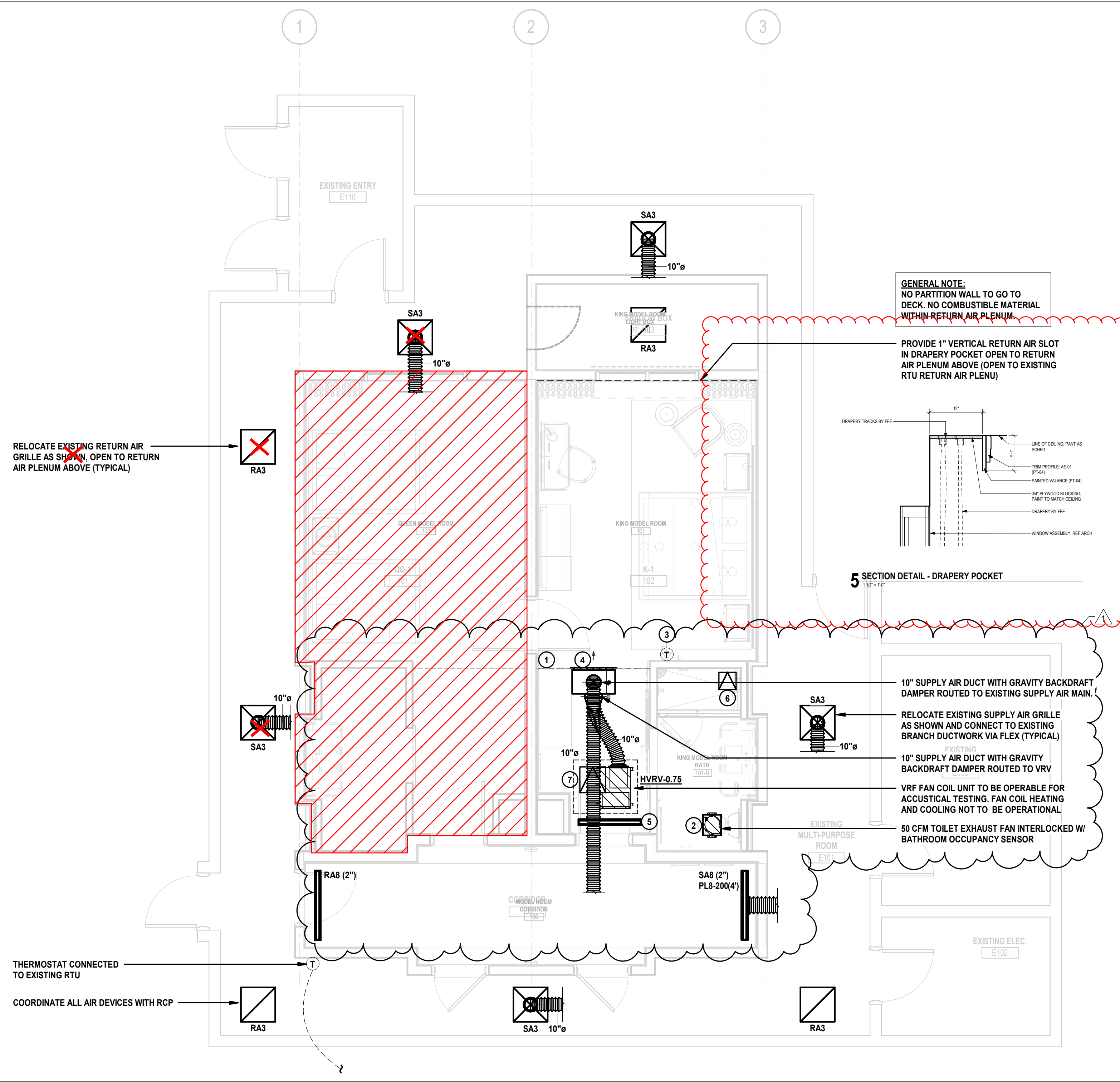
| Designation             | TEF-1               |  |  |  |  |
|-------------------------|---------------------|--|--|--|--|
| Location                | Guestroom           |  |  |  |  |
| Serves                  | Bathrooms           |  |  |  |  |
| Fan Type                | Centrifugal Ceiling |  |  |  |  |
| Wheel Type              | Air Foil            |  |  |  |  |
| Duty                    | Exhaust             |  |  |  |  |
| Installation            | Ceiling             |  |  |  |  |
| Discharge               | Horizontal          |  |  |  |  |
| Air Temp. (Deg.F)       | 75                  |  |  |  |  |
| CFM                     | 50                  |  |  |  |  |
| Static Press. (*WG)     | 0.25                |  |  |  |  |
| Wheel Diameter (in.)    | -                   |  |  |  |  |
| Max. Tip Speed          | -                   |  |  |  |  |
| Type Of Drive           | Direct              |  |  |  |  |
| Max Sones @ 5'          | 0.4                 |  |  |  |  |
| Max Discharge (LwA)     |                     |  |  |  |  |
| Motor Hp                | 3.1 Watts           |  |  |  |  |
| Voltage/Phase/Hz        | 120/1/60            |  |  |  |  |
| Volume Control          | None                |  |  |  |  |
| Starter Furnished By    | Manufacturer        |  |  |  |  |
| Disconnect Furnished By | Manufacturer        |  |  |  |  |
| Emergency Power         | No                  |  |  |  |  |
| Other Requirements:     |                     |  |  |  |  |
| Birdscreen              | Inlet               |  |  |  |  |
| Backdraft Damper        | Gravity             |  |  |  |  |
| Spark Proof             | No                  |  |  |  |  |
| Acid Proof              | No                  |  |  |  |  |
| Fan Guard(s)            | No                  |  |  |  |  |
| Belt Guard              | No                  |  |  |  |  |
| Filter                  | No                  |  |  |  |  |
| Weight (lbs)            | 15                  |  |  |  |  |
| Based on Panasonic:     | FV-0511VK3          |  |  |  |  |

- Notes:
1. Refer to specifications for further requirements.

#### AIR DEVICE LEGEND

|                                                                                     |           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |               |                      |                    |                   |                                             |                  |
|-------------------------------------------------------------------------------------|-----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|----------------------|--------------------|-------------------|---------------------------------------------|------------------|
| Designation                                                                         |           | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |               |                      |                    |                   |                                             |                  |
|    | SA3       | 24"x24" louvered face high capacity aluminum ceiling supply diffuser with movable vanes and accessible face to adjust discharge pattern. Equivalent to Price model AMDA. Duct runout and inlet neck size as follows unless indicated on drawings:                                                                                                                                                                                                                                                                                    |               |                      |                    |                   |                                             |                  |
|                                                                                     | CFM Range |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Neck Diameter | Runout Diameter      | Core Size          | Max NC            | Max Total Pressure                          |                  |
|                                                                                     | 0-75      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 6"            | 6"                   | 18"x18"            | 30                | 0.1                                         |                  |
|                                                                                     | 80-235    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 8"            | 8"                   | 18"x18"            | 30                | 0.1                                         |                  |
|                                                                                     | 240-330   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 10"           | 10"                  | 18"x18"            | 30                | 0.1                                         |                  |
|                                                                                     | 335-520   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 12"           | 12"                  | 18"x18"            | 30                | 0.1                                         |                  |
|                                                                                     | 525-700   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 14"           | 14"                  | 18"x18"            | 30                | 0.1                                         |                  |
|                                                                                     | 705-975   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 16"           | 16"                  | 18"x18"            | 30                | 0.1                                         |                  |
| 980-1125                                                                            |           | 18"x18"                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 18"x18"       | 18"x18"              | 30                 | 0.1               |                                             |                  |
| EX3 / RA3                                                                           |           | 24"x24" louvered face aluminum high capacity ceiling volume return grille/exhaust register. Equivalent to Price model AMD. Exhaust registers shall have a key operated opposed blade ceiling damper. Duct runout and grille/register neck size as follows unless indicated on drawings.                                                                                                                                                                                                                                              |               |                      |                    |                   |                                             |                  |
|    | CFM Range |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Neck Diameter | Runout Diameter      | Core Size          | Max NC            | Max Total Pressure                          |                  |
|                                                                                     | 0-200     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 8"            | 8"                   | 12"x12"            | 30                | 0.1                                         |                  |
|                                                                                     | 205-330   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 10"           | 10"                  | 12"x12"            | 30                | 0.1                                         |                  |
|                                                                                     | 335-430   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 12"           | 12"                  | 12"x12"            | 30                | 0.1                                         |                  |
|                                                                                     | 435-550   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 12"           | 12"                  | 15"x15"            | 30                | 0.1                                         |                  |
|                                                                                     | 555-640   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 14"           | 14"                  | 15"x15"            | 30                | 0.1                                         |                  |
|                                                                                     | 645-975   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 16"           | 16"                  | 18"x18"            | 30                | 0.1                                         |                  |
|                                                                                     | 975-1125  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 18"x18"       | 18"x18"              | 18"x18"            | 30                | 0.1                                         |                  |
| All transfer grilles to the ceiling plenum shall have 22"x22" neck.                 |           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |               |                      |                    |                   |                                             |                  |
| SA5                                                                                 |           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |               |                      |                    |                   |                                             |                  |
| Louvered sidewall supply air diffuser. Size and air quantity indicated on drawings. |           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |               |                      |                    |                   |                                             |                  |
| Designation                                                                         |           | Application                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Similar to    | Diffuser Material    | Deflection Pattern | Louver Spacing    | Notes                                       |                  |
| SA5                                                                                 |           | Standard                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Price 620DAL  | Aluminum             | Double             | 3/4"              | Aluminum OBD.                               |                  |
| SA5-Q                                                                               |           | Quiet                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Price 22DAL   | Aluminum             | Double             | 3/4"              | Aluminum OBD. Hidden fasteners.             |                  |
| SA5-SS                                                                              |           | Corrosive Environment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Price/20DSS   | Stainless Steel      | Double             | 3/4"              | 304 SS OBD.                                 |                  |
| SA5-HD                                                                              |           | Heavy Duty                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Price 920D    | Steel                | Double             | 1/2"              | Steel OBD.                                  |                  |
| SA5-R                                                                               |           | Residential                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Price 640     | Aluminum             | Single             | 2/3"              | Stamped face grille w/ multi-shutter damper |                  |
| SA5 / PLS                                                                           |           | • Extruded aluminum continuous linear single slot diffuser with integral pattern controllers designed for horizontal throw. Equivalent to Price series AS with hidden flange border for gyp board ceilings or sidewall applications.<br>• Air quantity and slot width indicated on drawings.<br>• Provide continuous architectural slot in ceiling as indicated on the drawings with supply air plenum at active sections. Coordinate ceiling framing and provide light shield to accommodate return air at inactive sections U.N.O. |               |                      |                    |                   |                                             |                  |
|    |           | Slot Diffuser (SA)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |               |                      |                    |                   |                                             |                  |
|                                                                                     |           | Lined Sheet Metal Supply Plenum (PL)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |               |                      |                    |                   |                                             |                  |
|                                                                                     |           | Slot Width (in)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |               | CFM Range Per Length |                    | Plenum Width x Ht | Inlet Size (in)                             | Runout Size (in) |
|                                                                                     |           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |               |                      |                    |                   |                                             |                  |
|                                                                                     |           | 2'                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |               | 4'                   |                    | 5'                |                                             |                  |
|                                                                                     |           | 1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 100           | 160                  | 200                | 2.75" x 10"       | 8" dia                                      | 10"              |
|                                                                                     |           | 1.5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 110           | 200                  | 230                | 3.75" x 10"       | 8" dia                                      | 10"              |
|                                                                                     |           | 2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 130           | 270                  | 330                | 4.75" x 10"       | 12" oval                                    | 10"              |
| 2.5                                                                                 | 170       | 320                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 375           | 5.75" x 10"          | 12" oval           | 12"               |                                             |                  |
| 3                                                                                   | 190       | 350                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 400           | 6.75" x 10"          | 12" oval           | 12"               |                                             |                  |

- Notes:
1. Not all designations or sizes are necessarily used on this project.
  2. Provide border suitable for the installation location as required.
  3. Refer to manufacturer for standard finish. Coordinate with Architect for color and final painting.
  4. Coordinate exact locations of all air devices with Architectural Reflected Ceiling Plans.
  5. Diffusers indicated on drawings supersede schedule.

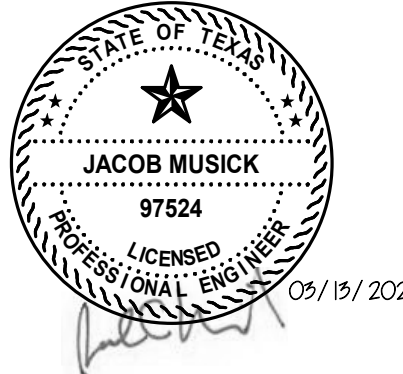


01 LEVEL 1 FLOOR PLAN - MECHANICAL  
SCALE: 1/4" = 1'-0"

**BLUM CONSULTING ENGINEERS,**  
12790 Merit Drive, Suite 700  
Dallas, Texas 75251-1243  
www.blumeng.com  
JOB 25-050.00  
(214) 373-8222  
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architecture | interiors | planning | graphics  
8080 Park Lane, Ste. 800 | Dallas, Texas 75231  
Tel 972.701.9000 | Fax 972.991.3008  
www.bokapowell.com



client  
CITY OF ROANOKE  
500 S. OAK STREET  
ROANOKE, TX 76262  
817.491.2411

developer  
GARFIELD PUBLIC PRIVATE  
14911 QUORUM DRIVE STE 380  
DALLAS, TX 75254  
214.289.7820

design / builder  
COMPANY NAME  
STREET ADDRESS  
CITY, STATE, ZIP  
CONTACT #

interior designer  
LOONEY & ASSOCIATES  
3131 MCKINNEY AVE. STE 310  
DALLAS, TX 75204  
214.720.4477

structural engineer  
THORNTON TOMASETTI  
8750 N. CENTRAL EXPRESSWAY, STE 700  
DALLAS, TX 75231  
972.387.8393

mep engineer  
BLUM ENGINEERS  
12790 MERIT DR. STE 700  
DALLAS, TX 75251  
214.373.8222

civil engineer  
MCADAMS COMPANY  
4400 STATE HIGHWAY 121, SUITE 800  
LEWISVILLE, TX 75056  
972.436.9712

landscape design  
WORD + CARR DESIGN GROUP  
2201 N. LAMAR BLVD.  
AUSTIN, TX 78705  
512.440.0013

food service consultant  
WORRELL DESIGN  
10705 BRIAR FOREST DRIVE  
HOUSTON, TX 77042  
713.784.0290

project  
Project Name  
Enter address here

original issue  
MODEL ROOM CD PACKAGE 01/16/2026  
revisions

1 PERMIT UPDATES 03/13/2026

title  
FLOOR PLANS

project number XXXXX.100

date 01/16/2026

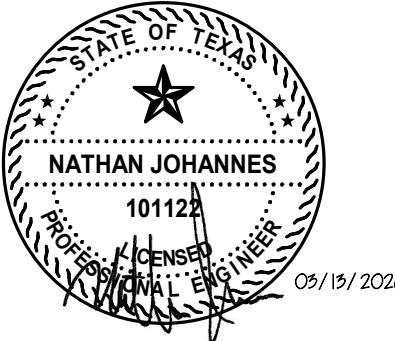
sheet

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architecture | interiors | planning | graphics  
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project  
Project Name  
Enter address here

original issue  
MODEL ROOM CD PACKAGE 01/16/2026  
revisions

1 PERMIT UPDATES 03/13/2026

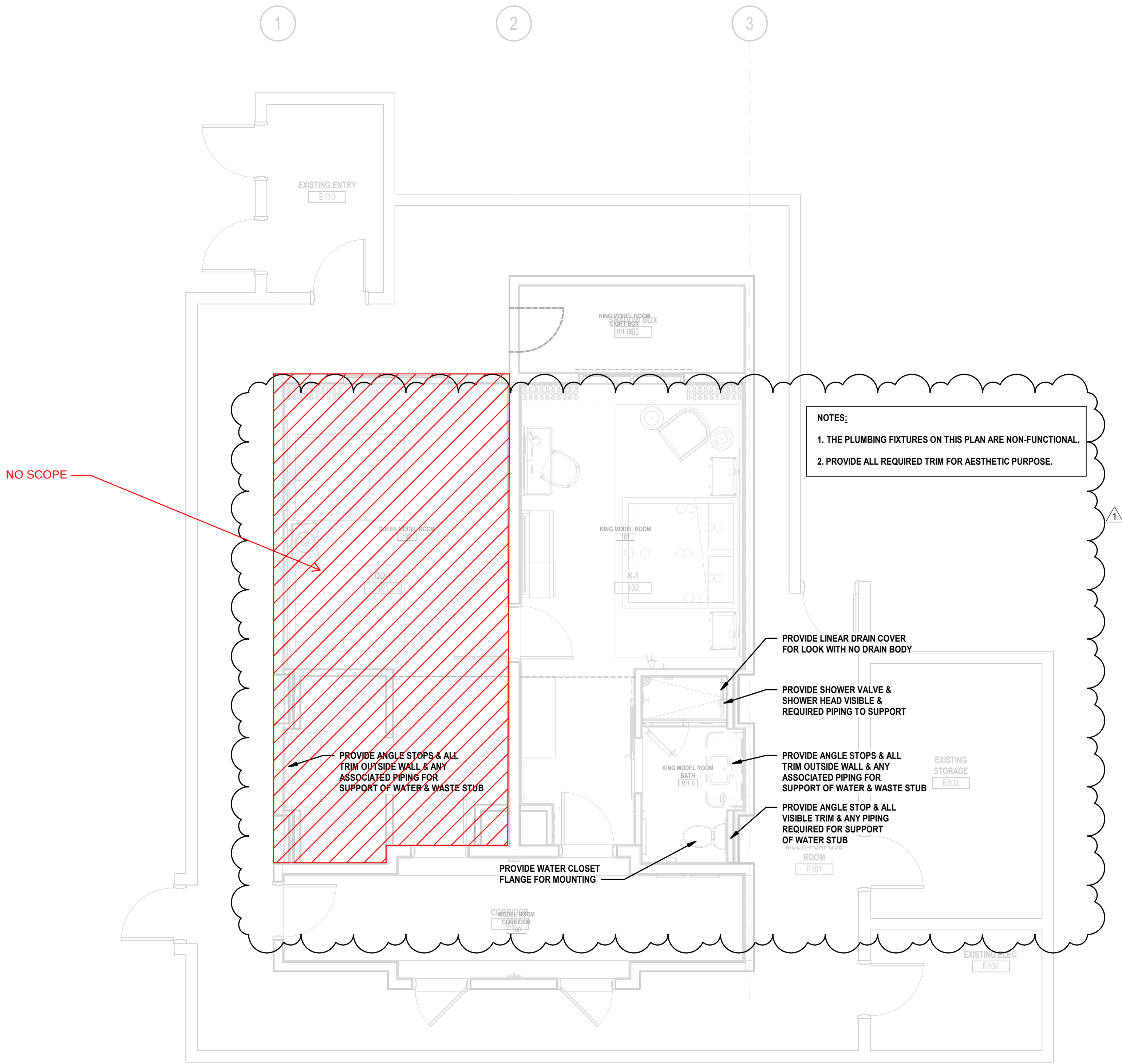
title  
FLOOR PLANS

project number XXXXX.100

date 01/16/2026

sheet

PF2.01



01 LEVEL 1 FLOOR PLAN - PLUMBING  
SCALE: 1/4" = 1'-0"







## AGENDA ITEM

TO: Mayor and City Council

SUBJECT: Construction Monitor Agreement

MEETING DATE: April 28, 2026

DEPARTMENT: City Manager

---

### ITEM SUMMARY:

Construction Monitor Agreement

### INFORMATION:

**Construction Monitor Agreement (\$320,676)** – This agreement is to bring on the Construction Monitor to act on behalf of the bondholders. We need to get this approved on 4/28 so that Cronin Construction can provide a 3rd party review the GMP once it's provided by Brasfield & Gorrie on May 4.

### STAFF RECOMMENDATION:

### SPECIAL CONSIDERATION:

### FINANCIAL CONSIDERATION:

### ATTACHMENTS:

1. Construction Monitor Agreement r1 w Exhibit



## **PROFESSIONAL SERVICES CONSULTING AGREEMENT CONSTRUCTION MONITORING**

THIS PROFESSIONAL SERVICES CONSULTING AGREEMENT ("Agreement") is made and entered into as of the Effective Date, as hereinafter defined, by and between Cronin Construction Management ("Consultant"), and the ROANOKE CONVENTION CENTER HOTEL LOCAL GOVERNMENT CORPORATION ("Owner"), for provision of Project Management services for the City of Roanoke Hotel and Convention Center project ("Project").

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged and the receipt of which shall be acknowledged by endorsement thereof, the parties do hereby agree as follows:

**1. Services to be Performed by Consultant** - Consultant agrees to provide the services described in proposal dated 11 MAR 2026 ("Exhibit A"), attached hereto and made a part hereof, in exchange for the compensation described in Section 2. Consultant shall perform the Scope of Services with the professional skill and care ordinarily provided by competent construction professionals practicing under the same or similar circumstances.

**2. Compensation** - In consideration of the services performed by Consultant under this Agreement, Owner shall pay to Consultant the sum of \$320,676 as set forth in Exhibit A. Additional services and expenses beyond the Scope of Services established in this Agreement will require additional compensation and will be submitted for approval to the Owner prior to commencing these services.

**3. Term** - Consultant shall be engaged in compliance with schedules established for the Project and outlined in the staffing plan in Exhibit A. Changes to the scope or schedule may affect the term of this Agreement.

**4. Relationship of the Parties** - It is understood and agreed that Consultant is an independent contractor and neither Consultant nor any employees, volunteers, or agents contracted by Consultant shall be deemed for any purposes to be employees, volunteers or agents of Owner. Consultant shall assume full responsibility for the action of such employees, volunteers, or agents while performing any services incident to this Agreement, and shall remain solely responsible for their supervision, daily direction and control, payment of salary (including withholding of income taxes and social security), workers' compensation, disability benefits and like requirements and obligations.

**5. No Waiver of Immunity** - Owner does not waive or relinquish any immunity or defense on behalf of itself, its trustees, officers, employees, and agents as a result of its execution of this Agreement and performance of the functions or obligations described herein.

**6. Insurance** - Consultant agrees to procure and maintain insurance coverage in accordance with the professional standards of care associated with the Scope of Services. Consultant shall provide the Owner a certificate of insurance evidencing the coverage provisions identified herein and maintain such coverage for the duration of the Term.

**7. Indemnity** - Consultant agrees to indemnify and hold harmless Owner, its trustees and employees against any and all losses, costs, expenses and liabilities, including but not limited to reasonable attorneys' fees and court costs, to the extent they arise out of Consultant's acts or omissions.

Owner agrees to indemnify and hold harmless Consultant and its direct employees against any and all losses, costs, expenses and liabilities, including but not limited to reasonable attorneys' fees and court costs, to the extent they arise out of Owner's acts or omissions.

Consultant shall not be responsible for the acts or omissions of any Designer or Contractor, or any of the Designer or Contractor's employees, subcontractors, or related parties furnishing or performing any of the Designer or Contractor's work. Consultant shall not supervise, direct, or have control over a Contractor's work, nor have responsibility for the means, methods or procedures of construction selected or used by the Contractor. Consultant is not responsible for safety or security at the location of the project, nor for safety programs.

**8. Compliance with Laws** - Consultant shall maintain any and all applicable license(s) and certification(s) necessary to perform any services contemplated by this Agreement. Consultant shall observe and comply with all Federal, State, County and local laws, and Owner's Policies that in any manner affect the provision of services and performance of all obligations undertaken pursuant to this Agreement.

**9. Authorization of Agreement** - Each party represents and warrants to the other that execution of this Agreement has been duly authorized, and that this Agreement constitutes a valid and enforceable obligation of such party according to its terms.

**10. No Waiver** - No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision. No delay in acting with regard to any breach of any provision shall be construed to be a waiver of such breach.

**11. Notices** - Any notice required or permitted to be given under this Agreement shall be in writing, and shall be deemed to have been given when delivered by hand delivery, or when

deposited in the United States Post Office, by registered or certified mail, postage prepaid, return receipt requested, if mailed. Notices shall be addressed as follows:

**If to Consultant:**

Hugh Cronin  
Owner / Cronin Construction Management  
2929 Wesleyan St, Suite 1907  
Houston, TX 77027

**If to Owner:**

Cody Petree, City Manager  
City of Roanoke  
500 S. Oak St  
Roanoke, TX 76262

Any party may designate a different address by giving the other party ten (10) days written notice in the manner provided above.

**12. No Assignment** - No assignment of this Agreement, or any duty or obligation of performance hereunder, shall be made in whole or in part by either party without the prior written consent of the other party.

**13. Amendments** - This Agreement may be amended or modified by, and only by, a written instrument approved by the Owner in accordance with Owner's Board Policy.

**14. Termination** - Owner may terminate this Agreement with or without cause upon seven (7) days written notice to Consultant. Consultant shall be entitled to compensation for all services provided up to the effective date of termination.

**15. Section Headings** - The headings of sections contained in this Agreement are for convenience only, and they shall not, expressly or by implication, limit, define, extend or construe the terms or provisions of the sections of this Agreement.

**16. Governing Law** - This Agreement is made in Texas and shall be construed, interpreted, and governed by Texas law. The parties shall consent to the jurisdiction and venue of the courts of Denton County, Texas, for any action under this Agreement.

**17. Duplicate Originals** - This Agreement is executed in two (2) counterparts, each of which shall have the full force and effect of the original Agreement, and each of which shall constitute but one and the same instrument.

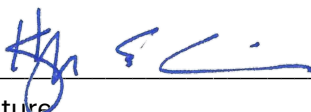
**18. Complete Understanding** - This Agreement and all Exhibits, Supplements and Amendments thereto shall constitute the complete understanding of Consultant and Owner. This Agreement constitutes the sole and only agreement of the parties to it and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this Agreement. Any terms, conditions or limitations of warranty/liability contained in Consultant's Proposal are hereby expressly excluded from this Agreement unless such terms, conditions or limitations are restated in the main body of this Agreement. The appearance of such matters in any Exhibit to this Agreement is ineffective, as the inclusion of Consultant's proposal is intended to only provide information relating to the scope, deliverables, deadlines and fees relating to Consultant's services.

**19. Non-Solicitation** - Both parties agree not to solicit or recruit current employees of the other party for employment opportunities during the term of this Agreement.

**20. Effective Date** - The "Effective Date" of this Agreement shall be 01 MAY 2026.

Executed and acknowledged by the undersigned, as the duly authorized representatives of the parties hereto, as of the Effective Date.

**CONSULTANT**

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

Hugh E. Cronin  
Owner  
(Printed Name and Title)

**OWNER**

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

Cody Petree  
City Manager  
(Printed Name and Title)



## EXHIBIT A

Date: 11 MAR 2026

To: Mr. Cody Petree  
City of Roanoke  
City Manager  
[cpetree@roanoketexas.com](mailto:cpetree@roanoketexas.com)  
(817) 491-2411 phone

From: Hugh Cronin  
Cronin Construction Management  
[hugh@cronincm.com](mailto:hugh@cronincm.com)  
(720) 466-0790 mobile

RE: City of Roanoke – Construction Monitoring Support Services  
New Hotel and Convention Center

Mr. Petree,

Per our recent conversation, Cronin Construction Management is pleased to submit this proposal for our services to assist the City of Roanoke with Construction Monitoring support and oversight of the new hotel and convention center project. It is our understanding that the Design / Preconstruction phase is already underway with the Construction phase planned to begin on or around 03 AUG 2026.

We also understand that the City of Roanoke is looking to engage Cronin Construction Management in assisting with the following items during the Design / Preconstruction, Construction and Close-out Phases of the project, beginning 01 MAY 2026 and proceeding continuously until 04 AUG 2028:

- **DESIGN / PRECONSTRUCTION (PHASE 1)**
  - Review/comment on 100% DD Submittals and budgets
  - Review/comment of CD submittals and budgets (e.g. 50% CD and 100% CD)
  - Review/comment on detailed GMPs provided by D/B Contractor
  - Assist Owner in any necessary "VE" to guide project within budget
  - Attend design meetings virtually and on-site as necessary (2 per month @ 6 mos)
  - Final Plan & Cost Review

- **CONSTRUCTION (PHASE 2)**
  - Provide Construction Inspection services for City of Roanoke
  - Construction Monitor site observation visits (2 per month @ 24 mos)
  - Attend periodic progress/OAC meetings (2 per month @ 24 mos)
  - Review/approve monthly contractor pay apps (1 per month @ 24 months)
  - Review monthly developer reports (1 per month @ 24 months)
  - Review/approve Change Orders or other budget re-allocations
  - Assist in development of "punch list" and back check
  - Review/approve date for certificate of substantial completion
  - Review/approve date for final completion
- **PROJECT CLOSE-OUT (PHASE 3)**
  - Review close-out documents for completeness
  - Assist for three months (post Substantial Completion) with warranty resolutions

#### COST for SERVICES

|                                                        |                                          |
|--------------------------------------------------------|------------------------------------------|
| <b><u>PHASE 1</u></b> (includes Plan and Cost Reviews) | \$47,241                                 |
| <b><u>PHASE 2</u></b>                                  | \$12,065 / month @ 21 months = \$253,365 |
| <b><u>PHASE 3</u></b>                                  | \$6,690 / month @ 3 months = \$20,070    |
| Total Cost                                             | \$320,676                                |

These costs include all anticipated travel and per diem expenses in support of stated services.

Should you have further questions about this proposal, please don't hesitate to reach out. We thank you in advance for your time and consideration and are excited to work with you, your staff and the City of Roanoke on this marquee project.

Respectfully Submitted,



Hugh E. Cronin  
Owner



## **AGENDA ITEM**

TO: Mayor and City Council

SUBJECT: Lease Agreement Between City and LGC for Model Room & Construction Jobsite Office

MEETING DATE: April 28, 2026

DEPARTMENT: City Manager

---

### **ITEM SUMMARY:**

Lease Agreement

### **INFORMATION:**

Lease Agreement Between City and LGC for Model Room & Construction Jobsite Office – This lease agreement has the LDC leasing the space for the Model Room & jobsite office from the City, to allow Brasfield & Gorrie to have a place to start the work for DBA Amendment #01 (Model Room).

### **STAFF RECOMMENDATION:**

### **SPECIAL CONSIDERATION:**

### **FINANCIAL CONSIDERATION:**

### **ATTACHMENTS:**

1. Roanoke - Commercial Lease - LDC model room and office

## Lease Agreement

This Lease Agreement (hereinafter referred to as the “Lease”) is made and effective \_\_\_\_\_, 2026, (the “Effective Date”) by and between the **CITY OF ROANOKE, TEXAS**, a Texas home-rule municipality (hereinafter referred to as the “City”), whose address for the purposes of this Lease is 500 S. Oak Street, Roanoke, Texas 76262, and **ROANOKE CONVENTION CENTER HOTEL LOCAL DEVELOPMENT CORPORATION**, a Texas nonprofit corporation incorporated pursuant to and governed by Subchapter D of Chapter 431, Texas Transportation Code and to the extent required by the Act, Chapter 394, Texas Local Government Code, as amended, and the Texas Nonprofit Corporation Law, Chapter 22, Texas Business Organizations Code (the “Tenant”). City has agreed to and hereby leases, demises and lets to Tenant, and Tenant has agreed to and hereby leases and takes from City and the Leased Premises for the term hereinafter stated and subject to all of the provisions, covenants and conditions of this Lease.

### Section 1. Leased Premises.

1.1 City is the owner of land and improvements located at 108 S. Oak Street, City of Roanoke, Denton County, Texas. City desires to lease to Tenant certain portions of the improvements located at 108 S. Oak Street, City of Roanoke, Denton County, Texas; namely the space known as the old council chambers and the offices on the north side of the building, with access from the east side rear parking area (hereinafter referred to as “Leased Premises”). For avoidance of doubt, the Leased Premises do not include the approximately 650 square feet within the building that are subject to a separate lease to another tenant. Tenant desires to lease the Leased Premises from City for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

### Section 2. Use of Leased Premises.

2.1 The Leased Premises shall be used and occupied for any office uses on the Leased Premises. Tenant shall also use the Leased Premises to house the model room or rooms in connection with the development and financing of a convention center hotel owned by Tenant and to be located within 1,000 feet of the Roanoke Convention Center currently under development.

2.2 Tenant will maintain the Leased Premises in a clean and healthful condition, and shall comply with all laws, orders, ordinances, rules, and regulations (state, federal, municipal, and other agencies or bodies having any jurisdiction thereof) with reference to use, condition, or occupancy of the Leased Premises. Tenant agrees not to use or permit the use of the Leased Premises for any purpose which is illegal or which, in City’s opinion, creates a nuisance or which would increase the cost of insurance coverage with respect to the Leased Premises.

### Section 3. Term.

3.1 Subject to all of the terms and conditions set forth herein, or in any appendix hereto, the term of this Lease shall be for a period beginning from the Effective Date, and ending at 11:59 p.m. on **June 30, 2028** (the “Termination Date”) or on such earlier date as this Lease may terminate



as provided herein (the “Term”).

#### **Section 4. Rent.**

4.1 Tenant agrees to pay to City or whomever the City designates in writing at 500 S. Oak Street, Roanoke, Texas, for the account of City rent for said Leased Premises at the rate of:

**\$1.00 per month from Commencement Date and until Termination Date.**

One (1) such monthly installment shall be due and payable on or before the Commencement Date of this Lease as set forth in Section 3 of this Lease, and a like monthly installment shall be due and payable on the first (1<sup>st</sup>) day of each succeeding calendar month during the Term of this Lease. Rent may be prepaid with no penalty.

#### **Section 5. Possession of Leased Premises.**

5.1 Tenant acknowledges that Tenant has inspected the Leased Premises, and on the basis of such inspection Tenant accepts the Leased Premises, and the buildings and improvements situated thereon, as suitable for the purposes for which the same are leased, in their present condition.

5.2 During Tenant’s normal business hours City may enter the Leased Premises for any reasonable purpose. City may access the Leased Premises after Tenant’s normal business hours if: (1) entry is made with Tenant’s permission; or (2) entry is necessary to complete emergency repairs. City will not unreasonably interfere with Tenant’s business operations when accessing the Leased Premises.

#### **Section 6. Maintenance of Leased Premises.**

6.1 Tenant Accepts Leased Premises As Is. By taking possession of the Leased Premises, Tenant shall be deemed to have accepted the Leased Premises “AS IS”.

6.2 Tenant’s Maintenance of Leased Premises. During the Term, Tenant shall keep the Leased Premises in good, clean condition and shall at its sole cost and expense, make any needed repairs and replacements, including replacement and restoration as is required for that purpose, the Leased Premises and every part thereof and any and all appurtenances thereto. Tenant will maintain the grounds of the Leased Premises including mowing and hedge trimming of the Leased Premises.

#### **Section 7. Utilities.**

7.1 City covenants that the Leased Premises are served by water, sewer, electrical and gas utilities. Tenant covenants and agrees to pay all charges incurred for water, sewer, electricity and gas services used at the Leased Premises during the Term.

## **Section 8. Signage.**

8.1 Tenant shall have the right to erect signs on any portion of the Leased Premises subject to applicable laws, ordinances, and regulations.

## **Section 9. Alterations.**

9.1 Tenant may alter, improve, or add to the Leased Premises with City's written consent. City will not unreasonably withhold consent for the Tenant to make reasonable alterations, modifications, or improvements to the Leased Premises.

## **Section 10. Liabilities.**

10.1 City shall not be liable to Tenant or to Tenant's employees, agents, invitees or visitors, or to any other person, for any injury to persons or damage to property on or about the Leased Premises or any adjacent area owned by City caused by the negligence or misconduct of Tenant, Tenant's employees, subtenants, agents, invitees, licensees or concessionaires or any other person entering the Leased Premises under express or implied invitation of Tenant, or arising out of the use of the Leased Premises by Tenant, and the conduct of Tenant's business, or arising out of any breach or default by Tenant in the performance of Tenant's obligations under this Lease; and Tenant hereby agrees to indemnify and hold City harmless from any loss, expense or claims arising out of such damage or injury. Tenant shall not be liable for any injury or damage caused by the negligence or misconduct of City, or City's employees or agents, and City agrees to indemnify and hold Tenant harmless from any loss, expense or damage arising out of such damage or injury.

## **Section 11. Damage to Leased Premises.**

11.1 Any insurance which may be carried by City or Tenant against loss or damage to the Leased Premises shall be for the sole benefit of the party carrying such insurance under its sole control, and it is understood that City shall in no event be obligated to carry insurance of Tenant's contents.

## **Section 12. Late Fee.**

12.1 It is understood that the minimum rent is due on or before the first (1<sup>st</sup>) of the month without offset or deduction of any nature. In the event any rental is not received within ten (10) days it is agreed that Tenant will pay a late fee of five percent (5%) of the monthly rental amount plus \$10.00 per day. Tenant shall pay \$50.00 for each returned check. Any future rent increase shall be payable as additional rent hereunder and shall be payable immediately upon demand. It is not intended that the late fee or any portion be construed as interest in any way.

## **Section 13. Events of Default.**

13.1 The following events shall be deemed to be events of default by Tenant under this Lease:

- (a) Tenant shall fail to pay an installment of rent or any other obligation hereunder involving the payment of money on the date that same is due, and such failure shall continue for a period of ten (10) days.
- (b) Tenant shall fail to comply with any Term, provision, or covenant of this Lease other than as described in subsection (a) above, and shall not cure or make documented reasonable effort to cure in a form acceptable to the City, such failure within fifteen (15) days after written notice thereof to Tenant.
- (c) Tenant or any guarantor of Tenant's obligations under this Lease shall become insolvent, or shall make a transfer in fraud of creditors, or make an assignment for the benefit of creditors.
- (d) A receiver or Trustee shall be appointed for the Leased Premise or for all or substantially all of the assets of Tenant or any guarantor of Tenant's obligations under this Lease.

#### **Section 14. Effects of Event of Default.**

14.1 Upon the occurrence of any of the Events of Default listed in this Lease, the City shall have the option to pursue any one or more of the following remedies without any prior notice or demand.

- (a) Terminate this Lease, in which event Tenant shall immediately surrender the Leased Premises to City. If Tenant fails to surrender the Leased Premises, City may, without prejudice to any other remedy which it may have for possession of the Leased Premises or Rent in arrears, enter upon and take possession of the Leased Premises and expel or remove Tenant and any other person who may be occupying the Leased Premises or any part thereof, by force if necessary, without being liable for prosecution or any claim damages. Tenant shall pay to City on demand the amount of all loss and damage which City may suffer by reason of termination, whether through inability to re-let the Leased Premises on satisfactory terms or otherwise.
- (b) Enter upon and take possession of the Leased Premises, by force if necessary, without terminating this Lease and without being liable for prosecution or for any claim for damages, and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof. City may re-let the Leased Premises and receive the rent therefor. Tenant agrees to pay to City monthly or on demand from time to time any deficiency that may arise by reason of any such re-letting. In determining the amount of the deficiency, the professional service fees, attorneys' fees, court costs, remodeling expenses, and all other costs of re-letting shall be subtracted from the amount of rent received under the reletting.
- (c) Enter upon the Leased Premises, by force if necessary, without terminating this

Lease and without being liable for prosecution for any claim for damages, and do whatever Tenant is obligated to do under the terms of this Lease. City shall not be liable for any damages resulting to Tenant from such action, whether caused by negligence of City or otherwise.

- (d) In addition to the foregoing remedies, City shall have the right to change or modify the locks on the Leased Premises in the event Tenant fails to pay the monthly installment of Rent when due. City shall not be obligated to provide another key to Tenant or allow Tenant to regain entry to the Leased Premises unless and until Tenant pays City all Rent, which is delinquent. Tenant agrees that City shall not be liable for any damages resulting to the Tenant from the lockout.
- (e) No re-entry or taking possession of the Leased Premises by City shall be construed as an election to terminate this Lease unless a written notice of that intention is given to Tenant.

## **Section 15. Holding Over.**

15.1 Should Tenant or any of its successors in interest hold over the Leased Premises, or any part thereof, after the expiration of this Lease term, unless otherwise agreed in writing, such holding over shall constitute and be construed as a tenancy at will only, at a rental equal to the greater of the fair market value of such rental property or the rental paid for the last month of the Lease term (including any extensions thereto) plus fifty percent (50%) of such amount.

## **Section 16. Liability and Casualty Insurance.**

16.1 During the Lease Term, Tenant shall maintain a commercial general liability policy of insurance, at Tenant's expense, insuring City against liability arising out of the Tenant's use, occupancy, or maintenance of the Leased Premises. The initial amounts of the insurance must be at least: \$1,000,000 for Each Occurrence and \$1,000,000 Property Damage for the Leased Premises, and shall be subject to periodic increases based upon economic factors as City may determine, in City's discretion, exercised in good faith. However, the amounts of the insurance shall not limit Tenant's liability nor relieve Tenant of any obligation under this Lease. The policies must contain cross liability endorsements, if applicable, and must insure Tenant's performance of the indemnity provisions of this Lease. The policies must contain a provision, which prohibits cancellation or modification of the policy except upon thirty (30) days' prior written notice to City. The City shall be named as additional insured on the commercial general liability policy. If Tenant fails to maintain the policy, City may elect to maintain the insurance at Tenant's expense. Tenant may, at Tenant's expense, maintain other liability insurance as Tenant deems necessary.

## **Section 17. Condemnation.**

17.1 If the whole of the Leased Premises or access thereto should be taken under the power of eminent domain or condemnation, or a sale made under threat thereof, then this Lease shall cease

as of the date of the taking without further liability upon either City or Tenant. If only a portion of the Leased Premises or access thereto is taken under the power of eminent domain or condemnation, or sale made under the threat thereof, and the portion remaining will not in the reasonable opinion of the Tenant, be adequate for Tenant's continued use, Tenant shall have the option to terminate this Lease by giving City notice thereof within thirty (30) days after the date of the taking. If this Lease is not so terminated, City shall promptly restore the portion remaining to an integral unit resembling as much as possible the Leased Premises prior to the taking. Any and all proceeds resulting from a taking in whole or part of the Leased Premises under the power of eminent domain or condemnation, or sale under threat thereof, shall be paid directly to City and shall be City's property.

## **Section 18. Taxes.**

18.1 Tenant shall be liable for any taxes levied or assessed against real property, personal property, furniture or fixtures placed by Tenant in the Leased Premises.

18.2 If any such taxes for which Tenant is liable are levied or assessed against City or City's property and if City elects to pay the same, or if the assessed value of City's property is increased by inclusion of personal property, furniture or fixtures placed by Tenant in the Leased Premises, City elects to pay the taxes based upon the increase, Tenant shall pay to City upon demand that part of such taxes for which Tenant is primarily liable hereunder.

## **Section 19. Special Provisions.**

- (1) The Lease shall be subject to approval of the City Council of the City of Roanoke, Texas.
- (2) The City and Tenant acknowledge and agree that nothing in this Lease is inconsistent with any law or ordinance including Chapters 253 and 272 of the Texas Local Government Code and the City of Roanoke Home-Rule Charter.

## **Section 20. Miscellaneous Provisions.**

20.1 **Amendments.** This Lease constitutes the entire understanding and agreement of the parties as to the matters set forth in this Lease. No alteration of or amendment to this Lease shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

20.2 **Applicable Law and Venue.** This Lease shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Denton County, Texas. Venue for any action arising under this Lease shall lie in the state district and county courts of Denton County, Texas.

20.3 **Assignment.** Tenant shall not assign this Lease or sublet the Leased Premises, or any part thereof without the consent of the City in writing.

20.4 **Attorney's Fees.** In the event either party defaults in the performance of any of the terms of this Lease the other party agrees to pay the prevailing party's reasonable attorneys' fees.

20.5 **Caption Headings.** Caption headings in this Lease are for convenience purposes only and are not to be used to interpret or define the provisions of the Lease.

20.6 **Counterparts.** This Lease may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same document.

20.7 **Force Majeure.** City shall not be liable to Tenant for any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition, or order of governmental body or authority or by any other cause beyond the reasonable control of City. Nor shall City be liable for any damage or inconvenience which may arise through repair or alteration of any part of the Leased Premises which is not attributable to City's negligence.

20.8 **Language.** Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular shall be held to include the plural, unless the context otherwise requires.

20.9 **Liability.** The liability of City to Tenant for any default by City under the terms of this Lease shall be limited by applicable law.

20.10 **Notices.** All notices required to be given under this Lease shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown in this Lease. Any party may change its address for notices under this Lease by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address.

20.11 **Right of Entry and Inspection.** Tenant agrees to permit City or its agents or representatives to enter into and upon any part of the Leased Premises at all reasonable hours (and in emergencies at all times) to inspect the same, or clean, or make repairs or alterations or additions, or to show the Leased Premises to prospective purchasers, mortgage lenders, tenants or insurers, and Tenant shall not be entitled to any abatement or reduction of rent by reason thereof.

20.12 **Severability.** If a court of competent jurisdiction finds any provision of this Lease to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Lease in all other respects shall remain valid and enforceable.

20.13 **Successors.** The terms, conditions and covenants contained in this Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective successors in

interest and legal representative except as otherwise herein expressly provided. All rights, powers, privileges, immunities, and duties of City under this Lease, including but not limited to any notices required to be delivered by City to Tenant hereunder may at City's option be exercised or performed by City's agent or attorney.

**20.14 Time is of the Essence.** Time is of the essence in the performance of this Lease.

**20.15 Waiver.** No waiver of any default of City or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by City or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

**[The Remainder of this Page Intentionally Left Blank]**

EXECUTED ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2026.

**CITY:**

**CITY OF ROANOKE, TEXAS,**  
a Texas home-rule municipality

\_\_\_\_\_  
Carl E. Gierisch, Jr., Mayor

**ATTEST:**

\_\_\_\_\_  
Lindsay Rawlinson, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jeff Moore, City Attorney

**TENANT:**

**ROANOKE CONVENTION CENTER HOTEL  
LOCAL DEVELOPMENT CORPORATION,**  
a Texas nonprofit corporation

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_





## **AGENDA ITEM**

TO: Mayor and City Council

SUBJECT: Directing Publication of Notice of Intention to Issue Combination Tax and Revenue Certificates of Obligation

MEETING DATE: April 28, 2026

DEPARTMENT: City Manager

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### **ITEM SUMMARY:**

### **INFORMATION:**

### **STAFF RECOMMENDATION:**

### **SPECIAL CONSIDERATION:**

### **FINANCIAL CONSIDERATION:**

### **ATTACHMENTS:**

1. RES NO 2026-109R CO Notice

CERTIFICATE REGARDING ADOPTION OF RESOLUTION

THE STATE OF TEXAS  
DENTON AND TARRANT COUNTIES  
CITY OF ROANOKE

We, the undersigned officers of the City of Roanoke (the "City"), hereby certify as follows:

1. The City Council of the City convened in regular meeting on April 28, 2026, at the designated meeting place, and the roll was called of the duly constituted officers and members of said City Council, to wit:

Scooter Gierisch, Mayor  
Brian Darby  
David Thompson  
VACANT

Holly Gray, Mayor Pro Tem  
David Brundage  
VACANT

and all of said persons were present, except \_\_\_\_\_, thus constituting a quorum. Whereupon, among other business, the following was transacted at said Meeting: a written

RESOLUTION DIRECTING PUBLICATION OF NOTICE OF INTENTION TO ISSUE  
COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION

was duly introduced for the consideration of said City Council. It was then duly moved and seconded that said Resolution be adopted and, after due discussion, said motion, carrying with it the adoption of said Resolution, prevailed and carried with all members present voting "AYE" except the following:

NAY: \_\_\_\_ ABSTAIN: \_\_\_\_

2. That a true, full and correct copy of the aforesaid Resolution adopted at the Meeting described in the above and foregoing paragraph is attached to and follows this Certificate; that said Resolution has been duly recorded in said City Council's minutes of said Meeting; that the above and foregoing paragraph is a true, full and correct excerpt from said City Council's minutes of said Meeting pertaining to the adoption of said Resolution; that the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of said City Council as indicated therein; that each of the officers and members of said City Council was duly and sufficiently notified officially and personally, in advance, of the time, place and purpose of the aforesaid Meeting, and that said Resolution would be introduced and considered for adoption at said Meeting, and each of said officers and members consented, in advance, to the holding of said Meeting for such purpose, and that said Meeting was open to the public and public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code.

3. That the Mayor of said City has approved and hereby approves the aforesaid Resolution; that the Mayor and the City Secretary of said City have duly signed said Resolution; and that the Mayor and the City Secretary of said City hereby declare that their signing of this Certificate shall constitute the signing of the attached and following copy of said Resolution for all purposes.

SIGNED AND SEALED ON APRIL 28, 2026.

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Lindsay Rawlinson; City Secretary  
City of Roanoke, Texas

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Carl E. Gierisch, Jr.; Mayor  
City of Roanoke, Texas

{SEAL}

**RESOLUTION NO. 2026-109R**

**DIRECTING PUBLICATION OF NOTICE OF INTENTION TO ISSUE  
COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION**

**THE STATE OF TEXAS  
DENTON AND TARRANT COUNTIES  
CITY OF ROANOKE**

**WHEREAS**, the City of Roanoke (the "City") deems it advisable to give notice of intention to issue one or more series of Certificates of Obligation in the maximum principal amount of \$25,000,000 for paying the City's contractual obligations incurred in connection with the design, acquisition, engineering, construction, and equipping of the following public projects: (i) constructing and/or acquiring structured parking for public use and (ii) legal, fiscal and engineering fees in connection with such projects.; and

**WHEREAS**, the City Council hereby finds, considers and declares that the reimbursement of the payment by the City of such expenditures will be appropriate and consistent with the lawful objectives of the City and, as such, chooses to declare its intention, in accordance with the provisions of Section 1.150-2 of the U.S. Treasury Regulations, to reimburse itself for such payments at such time as it issues the hereinafter described Certificates of Obligation; and

**WHEREAS**, it is hereby officially found and determined that the meeting at which this Resolution was passed was open to the public and public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code.

**THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROANOKE, TEXAS:**

**Section 1.** Attached hereto as **Exhibit A** is a form of the "Notice of Intention to Issue Combination Tax and Revenue Certificates of Obligation for the City of Roanoke, Texas" (the "Notice"), the form and substance of which is hereby adopted and approved. The following constitutes the outstanding debt obligations of the City which the City hereby designates as self-supporting debt for purposes of Texas Local Government Code, Subchapter C of Chapter 271, as amended: Combination Tax & Revenue Certificates of Obligation, Series 2017; General Obligation Refunding Bonds, Series 2018; Combination Tax & Revenue Certificates of Obligation, Series 2022A; Combination Tax & Revenue Certificates of Obligation, Series 2022B; Combination Tax & Revenue Certificates of Obligation, Series 2023A; Combination Tax & Revenue Certificates of Obligation, Series 2024A; Combination Tax & Revenue Certificates of Obligation, Series 2024B and Combination Tax & Revenue Certificates of Obligation, Series 2025.

**Section 2.** The City Secretary shall cause the Notice to be published in substantially the form attached hereto, in a newspaper of general circulation in the City of Roanoke, once a week for two consecutive weeks, the date of the first publication thereof to be at least forty-five days prior to June 23, 2026, which is the date set for the adoption of the ordinance authorizing the issuance of such Certificates of Obligation as shown in

the Notice. Additionally, such Notice shall be posted continuously on the City's website for at least forty-five days before the date tentatively set for the passage of the ordinance authorizing the issuance of the Certificates of Obligation.

**Section 3.** The facilities and improvements to be financed with proceeds from the proposed Certificates of Obligation are to be used for the purposes described in the Notice. All costs to be reimbursed pursuant to this Resolution will be capital expenditures and the proposed Certificates of Obligation shall be issued within eighteen months of the later of (i) the date the expenditures are paid or (ii) the date on which the property, with respect to which such expenditures were made, is placed in service; and the foregoing notwithstanding, the Certificates of Obligation will not be issued on a date that is more than three years after the date any expenditure which is to be reimbursed is paid.

**Section 4.** This Resolution shall become effective immediately upon adoption.

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## EXHIBIT A

### NOTICE OF INTENTION TO ISSUE COMBINATION TAX AND REVENUE CERTIFICATES OF OBLIGATION FOR THE CITY OF ROANOKE, TEXAS

The City Council of the City of Roanoke, Texas, shall convene a meeting at 7:00 P.M. on June 23, 2026, at its regular meeting place at 500 South Oak Street, Roanoke, Texas 76262 and during such meeting, the City Council will consider the passage of an ordinance or ordinances authorizing the issuance of one or more series of interest bearing certificates of obligation in the principal amount not to exceed \$25,000,000, for paying the City's contractual obligations incurred in connection with the design, acquisition, engineering, construction, and equipping of the following public projects: (i) constructing and/or acquiring structured parking for public use and (ii) legal, fiscal and engineering fees in connection with such projects. The ordinances may authorize an authorized officer of the City to effect the sale and delivery of the certificates of obligation on a date subsequent to the adoption of the ordinance. Such certificates are to be made payable from ad valorem taxes and a lien on and pledge of surplus revenues of the City's waterworks and sewer system. The certificates of obligation are to be issued, and this notice is given, under and pursuant to the provisions of Texas Local Government Code, Chapter 271, Subchapter C.

The following information is provided to comply with Tex. H.B. 477, 86 Leg., R.S. (2019). The current principal of all outstanding debt obligations of the City is \$47,705,000. The current combined principal and interest for all outstanding debt obligations of the City, paid on time and in full, is \$70,343,388. The maximum principal amount of the certificates of obligation to be authorized is \$25,000,000 and the estimated combined principal and interest required to pay the certificates of obligation to be authorized on time and in full is \$45,723,425. The maximum interest rate for the certificates of obligation may not exceed the maximum legal interest rate. The maximum maturity date of the certificates of obligation to be authorized is August 15, 2055. The above information excludes \$59,245,000 in principal amount of the outstanding debt obligations the City has designated as self-supporting and which the City reasonably expects to pay from revenue sources other than ad valorem taxes: Combination Tax & Revenue Certificates of Obligation, Series 2017; General Obligation Refunding Bonds, Series 2018; Combination Tax & Revenue Certificates of Obligation, Series 2022A; Combination Tax & Revenue Certificates of Obligation, Series 2022B; Combination Tax & Revenue Certificates of Obligation, Series 2023A; Combination Tax & Revenue Certificates of Obligation, Series 2024A; Combination Tax & Revenue Certificates of Obligation, Series 2024B and Combination Tax & Revenue Certificates of Obligation, Series 2025. In the event these self-supporting revenue sources are insufficient to pay debt service, the City is obligated to levy ad valorem taxes to pay such debt obligations. Information regarding the self-supporting debt and all other debt of the City may be obtained by contacting the City Manager at 500 South Oak Street, Roanoke, Texas 76262 and by phone at (817) 491-2411.



## AGENDA ITEM

TO: Mayor and City Council

SUBJECT: Ordinance No. 2026-112, repealing and replacing Chapter 7, Article 7.300, Sections 7.301 to 7.331 entitled "Smoking"

MEETING DATE: April 28, 2026

DEPARTMENT: Planning

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### ITEM SUMMARY:

Consideration and action on Ordinance No. 2026-112, repealing and replacing Chapter 7, Article 7.300, Sections 7.301 to 7.331 entitled "Smoking" of the Code of Ordinances, establishing regulations for smoking, prohibiting the smoking in certain prohibited public places, City buildings, or enclosed area of a workplace, designating restaurants as non-smoking areas, authorizing restaurants to designate smoking areas, defining and prohibiting restricted smoking material, and prohibiting the sale or possession of certain restricted smoking material.

### INFORMATION:

Ordinance 2026-112 repeals the current "Smoking" section located within Chapter 7 — Nuisances. The current ordinance does not address vape and CBD shops in a manner that reflects the current industry. City Council voted on April 14, 2026, to adopt updates to the Zoning Ordinance which regulate vape/tobacco/CBD shops. This ordinance works *with* that ordinance and provides clarification and needed updates to the nuisance code.

### STAFF RECOMMENDATION:

Staff recommends approval.

### SPECIAL CONSIDERATION:

### FINANCIAL CONSIDERATION:

### ATTACHMENTS:

1. Ordinance No. 2026-112 Article 7.300 - Smoking

## **ORDINANCE NO. 2026-112**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROANOKE, TEXAS, REPEALING IN ITS ENTIRETY CHAPTER 7, ARTICLE 7.300, SECTIONS 7.301 TO 7.331, OF THE CODE OF ORDINANCES, CITY OF ROANOKE, TEXAS, ENTITLED “SMOKING” AND REPLACING IT WITH A NEW CHAPTER 7, ARTICLE 7.300, SECTIONS 7.301 TO 7.331, OF THE CODE OF ORDINANCES, CITY OF ROANOKE, TEXAS, ENTITLED “SMOKING”; ESTABLISHING REGULATIONS FOR SMOKING; PROHIBITING THE SMOKING IN CERTAIN PROHIBITED PUBLIC PLACES, CITY BUILDINGS, OR ENCLOSED AREA OF A WORKPLACE; DESIGNATING RESTAURANTS AS NON-SMOKING AREAS; AUTHORIZING RESTAURANTS TO DESIGNATE SMOKING AREAS; PROVIDING EXCEPTIONS TO THE ORDINANCE; DEFINING AND PROHIBITING RESTRICTED SMOKING MATERIAL; PROHIBITING THE SALE OR POSSESSION OF CERTAIN RESTRICTED SMOKING MATERIAL; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY FOR VIOLATIONS; PROVIDING A REPEALER CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING FOR SAID ORDINANCE TO TAKE EFFECT FROM AND AFTER ITS DATE OF PUBLICATION.**

**WHEREAS**, the City Council of the City of Roanoke, Texas, finds and determines that the repealing of the current Chapter 7, Article 7.300, Sections 7.301 to 7.331, of the Code of Ordinances, City of Roanoke, Texas, entitled “Smoking” and the adoption of a new Chapter 7, Article 7.300, Sections 7.301 to 7.331, of the Code of Ordinances, City of Roanoke, Texas, entitled “Smoking” is necessary in order to protect public health, safety, and welfare of the citizens of the City of Roanoke, Texas.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROANOKE, TEXAS, THAT:**

### **SECTION 1. FINDINGS INCORPORATED**

The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

### **SECTION 2.**

Chapter 7, Article 7.300, Sections 7.301 to 7.331, of the Code of Ordinances, City of Roanoke, Texas, entitled “Smoking” is hereby repealed in its entirety and is replaced with a new Chapter 7, Article 7.300, Sections 7.301 to 7.331 of the Code of Ordinances, City of Roanoke, Texas, entitled “Smoking” which shall read as follows:



## **“ARTICLE 7.300    SMOKING**

### **DIVISION 1. SMOKING IN PUBLIC PLACE**

#### **Sec. 7.301. Definitions.**

In this article:

- (a) *Air Purification System* means an electrically powered hospital grade, hepa media filter that will clean all of the air in a designated smoking area every fifteen (15) minutes as follows: not less than ninety-five (95) percent of three-tenths (0.3) micron particulates efficiency including dust, smoke, pollen, mold spores, bacteria, tobacco smoke, viruses and allergens and not less than ninety-five (95) percent removal of gases, vapors, volatile organic compounds (V.O.C.) and odors and contains an air barrier system or other barrier system if required by a licensed professional engineer, to prevent air from the smoking area from being drawn across the nonsmoking area.
- (b) *Consumable Hemp Product (CHP)* means products related to or derived from CBD oil (cannabidiol) or hemp. This includes but is not limited to oils, vitamins, supplements, food, personal care items, and garments.
- (c) *Designated Smoking Area* means an area which shall not exceed fifty (50) percent of the net floor area; is equipped with an air purification system (defined herein) or has a separate ventilation system (defined herein); air from the smoking area is not drawn across the nonsmoking area; and if required by a licensed professional engineer, is equipped with an air barrier system or other barrier system such as a physical barrier to keep the air from the smoking area from being drawn across the nonsmoking area.
- (d) *Electronic cigarette and/or e-cigarette* means any device composed of a mouthpiece, heating element, battery and electronic circuits that provides, or is manufactured or intended to provide, a vapor of liquid nicotine and/or other substances mixed with propylene glycol and/ or other substances delivered or deliverable to the user that he/she can inhale in simulation of smoking. This term shall include every version and type of such devices whether they are manufactured or marketed as electronic cigarettes, e-cigarettes, electronic cigars, e-cigars, electronic pipes, e-pipes or under any other product name or description.
- (e) *Employee* means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
- (f) *Employer* means any person, partnership, entity, corporation, including a municipal corporation, or nonprofit entity, which employs the services of one or more individual persons or entities.

(g) *Enclosed Area* means a space that is enclosed on all sides by solid walls that extend from the floor to the ceiling, exclusive of windows and doors.

(h) *Fraternal Organization* means a non-profit organization that:

- 1) Is chartered by a national organization in existence since 1953;
- 2) Is tax exempt under Section 501(c)(8), (10), or (19) of the Internal Revenue Code;
- 3) Operates under a lodge system with a representative form of government; and
- 4) Is organized for the exclusive benefit of the members of the organization and their dependents.

(i) *Prohibited Public Place* means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, health care facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms. A private residence is not a "prohibited public place" unless it is used as a child care, adult day care, or health care facility.\

(j) *Retail sales of CHP, tobacco, e-cigarettes, or non-traditional smoking-related products* means an establishment primarily engaged in the selling of CHP, consumable hemp product, tobacco, e-cigarettes, and/or non-traditional smoking-related products to the general public for personal or household consumption or the onsite smoking of such.

(k) *Smoking* means inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, weed, plant, or other combustible substance in any manner or in any form.

(l) *Ventilation System* means a HVAC system designed by a licensed professional engineer to meet the requirements of this article and all other requirements of the City's building code. A ventilation system must provide an air change every fifteen (15) minutes; exhaust the air to the exterior of the building and the air from the smoking area cannot be drawn across the nonsmoking area; and has an air barrier system, if required by a licensed professional engineer, to prevent air from the smoking area from being drawn across the nonsmoking area. Workplace means an enclosed area in which employees work or have access during the course of their employment.

(m) *Workplace* means an enclosed area in which employees work or have access during the course of their employment.

### **Sec. 7.302. Purpose.**

The purposes of this article are to protect the public's health by eliminating smoking in Prohibited Public Places and the right of nonsmokers to breathe smoke-free air by

prohibiting smoking in Prohibited Public Places in the city, with certain exceptions, to reduce detrimental effects on not only smokers, but also others in close proximity to smokers and to further the health, safety and welfare of the city and its citizens.

**Sec. 7.303. Smoking Prohibited.**

- (a) A person commits an offense if the person smokes in a Prohibited Public Place.
- (b) A person commits an offense if the person smokes in an enclosed area in a building or facility owned, leased, or operated by the City.
- (c) A person commits an offense if the person smokes in an enclosed area of a workplace.

**Sec. 7.304. Restaurants.**

- (a) All restaurants shall be nonsmoking, however a Designated Smoking Area can be furnished provided the Designated Smoking Area complies with subsection (b).
- (b) A Designated Smoking Area in a restaurant must:
  - 1) Not exceed fifty percent (50%) of the net floor area;
  - 2) Be equipped with an Air Purification System or must have a separate Ventilation System; and
  - 3) Not allow the air from the smoking area to be drawn across the nonsmoking area.
- (c) A restaurant with a maximum occupancy of fifty (50) seats or less is exempt from the requirements in subsection (a) and (b) provided that the restaurant owner post a sign at the restaurant's entrance that states "A NONSMOKING SECTION IS NOT AVAILABLE." However, an owner of a restaurant with fifty (50) seats or less can choose to comply with the ordinance or designate the entire restaurant as nonsmoking.
- (d) All enclosed dining areas and break areas, regardless of maximum occupancy, in City buildings are nonsmoking.
- (e) A person commits an offense if he or she smokes or possesses a burning tobacco, weed, or other plant product in a nonsmoking area of a restaurant.

**Sec. 7.305. Exceptions.**

This article does not apply and smoking is not prohibited in the following:

- (a) A residential dwelling unit that is used exclusively for a residential use;
- (b) A hotel or motel room designated as a smoking room and rented to a person;
- (c) A retail store primarily engaged in the selling of CHP, consumable hemp product, tobacco, e-cigarettes, and/or non-traditional smoking-related products.
- (d) A private or semi-private room in a nursing home or long-term care facility that is occupied by individuals who smoke and have requested in writing to be placed in a room where smoking is permitted;
- (e) An outdoor area of a workplace that is not in the area described by Section 7.303(c);
- (f) A bingo facility operated under the Bingo Enabling Act, Chapter 2001 of the Occupations Code, if:
  - 1) An enclosed non-smoking area is provided;
  - 2) The smoking area is mechanically ventilated to prevent smoke from entering a non-smoking area; and
  - 3) No one under the age of eighteen (18) is admitted to the smoking area;
- (g) A facility operated by a fraternal organization for a charitable, benevolent, or educational function if the premises is controlled by the organization.

**Sec. 7.306. Posting of Signs.**

- (a) The owner, manager or other person having control of any public building or place, place of employment, or premise where smoking is prohibited by this article shall have a conspicuously posted sign clearly stating "No Smoking" at each entrance, whether for the public, employees or deliveries, and at all restroom entrances.
- (b) Such "No Smoking" signs shall have bold lettering of not less than one inch in height. The international "No Smoking" symbol may also be used (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with red bar across it).
- (c) Any owner, manager, or other person having control of any establishment regulated by this article shall be responsible for posting appropriate signage in accordance with paragraphs in subsections (a) and (b) of this section.

**Sec. 7.307. Operation of smoking rooms, smoking lounges and retail electronic cigarette stores.**

- (a) The building official may deny or order the cessation of the continued use of a smoking room, smoking lounge or retail electronic cigarette store if he determines that:
  - 1) Visible smoke, vapor or other objectionable nonvisible products of smoking is migrating from the smoking room, smoking lounge or retail electronic cigarette store into a space, establishment, occupancy or use where smoking is prohibited; or
  - 2) The smoking room, smoking lounge or retail electronic cigarette store has failed to meet any of the standards set forth in this article or tests prescribed by the building official.
- (b) Upon such a determination, the smoking room, smoking lounge or retail electronic cigarette store shall be prohibited from further use until compliance has been demonstrated to the building official through testing or other means.

**Sec.7.308 Sale or distribution of electronic vaping devices to minors prohibited.**

- (a) A person commits an offense if the person sells, gives or causes to be sold or given an electronic vaping device to a minor or to a person who intends to deliver it to a minor.
- (b) If the offense under this section occurs in connection with a sale of an electronic device at a business by an employee of the business, the employee who committed the offense is subject to prosecution.
- (c) It is a defense to prosecution under subsection (b) that at the time of the sale, the minor presented the person with an apparently valid proof of identification showing the minor was at least 18 years of age.
- (d) A proof of identification satisfies the requirements of subsection (c) if it contains the name of the minor, a photograph resembling the appearance of the minor and was issued by a state or federal government agency.
- (e) It is not a defense under this section that the minor purchased the electronic vaping device from a vending machine or other self-service merchandising mechanism if the machine or mechanism was located on the premises of the person.

### **Sec. 7.309. Violation and Penalty.**

Violation of any of the provisions of this Division 1 shall constitute an offense punishable by a fine as provided for in the general penalty provision found in Section 1.106 of this code. Each day of violation shall be a separate offense.

## **DIVISION 2. OTHER PROHIBITED SUBSTANCES**

### **Sec. 7.325. Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Restricted smoking material* shall mean any substance, however marketed, which can reasonably be converted for smoking purposes whether it is presented as incense, tobacco, herbs, spices or any blend thereof if it includes any of the following chemicals or a comparable chemical:

- 1) Salvia divinorum or salvinorin A; all parts of the plant presently classified botanically as salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds or extracts;
- 2) 2-[(1R,3S)-3-hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol (also known as CP47,497) and homologues;
- 3) (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol (also known as HU-211 or Dexanabinol);
- 4) 1-pentyl-3-(1-naphthoyl)indole (also known as JWH-018);
- 5) 1-butyl-3-(1-naphthoyl)indole (also known as JWH-073); or
- 6) 1-pentyl-3-(4-methoxynaphthoyl)indole (also known as JWH-081).

Products containing some or all of the above substances are currently being marketed under the following commercial names:

"K-2," "K-2 SUMMIT," "K-2 SEX," "GENIE," "DASCENTS," "ZOHAI," "SAGE," "SPICE," "KO KNOCK-OUT 2," "SPICE GOLD," "SPICE DIAMOND," "YUCATAN FIRE," "SOLAR FLARE," "PEP SPICE," "FIRE N' ICE," AND "SALVIA DIVINORUM."

Any product containing any of the chemical compounds set forth above shall be subject to the provisions of this division, regardless of whether they are marketed under alternative names.

*Restricted smoking material paraphernalia* shall mean any paraphernalia, equipment or utensil that is used or intended to be used in ingesting or inhaling illegal smoking materials and may include:

- 1) A metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe with or without a screen, permanent screen, hashish head, or punctured metal bowl;
- 2) A water pipe;
- 3) A carburetion tube or device;
- 4) A smoking or carburetion mask;
- 5) A chamber pipe;
- 6) A carburetor pipe;
- 7) An electric pipe;
- 8) An air-driven pipe;
- 9) A chillum;
- 10) A bong; or
- 11) An ice pipe or chiller.

**Sec. 7.326. Restricted Smoking Materials; Purpose.**

The purpose of this Division 2 is to prohibit the sale or delivery of restricted smoking materials within the City limits of the City of Roanoke, Texas, and to prohibit the possession of restricted smoking materials within the City limits of the City of Roanoke. Any form of delivery to include a simple gift constitutes a violation of this Division 2.

**Sec. 7.327. Sale, Delivery, Offer or Gift.**

It shall be unlawful for any person to sell, offer to sell, deliver to or to give any restricted smoking material to any person.

**Sec. 7.328. Use or Possession of Restricted Smoking Material.**

It shall be unlawful for any person to have in their possession or to use restricted smoking materials within the corporate limits of the City of Roanoke.

**Sec. 7.329. Use or Possession of Restricted Smoking Paraphernalia.**

It shall be unlawful for any person to have in their possession any restricted smoking paraphernalia with the intent to use it, to ingest, inhale or otherwise consume restricted smoking material. It is a violation of this section, if a person is found in possession of restricted smoking paraphernalia and appropriate forensic testing is done on the paraphernalia showing traces of restricted smoking material are present on the restricted smoking paraphernalia.

### **Sec. 7.330. Defenses to Prosecution.**

- (a) It shall be a defense to prosecution for a violation of this Division 2 if the use of the restricted smoking material is at the direction or under a prescription issued by a licensed physician or dentist authorized to prescribe controlled substances within the State of Texas.
- (b) It shall be a defense to prosecution under the terms of this Division 2 if an individual charged with a violation can provide proper and complete historic documentation that the use of such materials is a portion of a religious undertaking or activity of a religious denomination in which they have long standing historic membership supported by documentation from clergy or spiritual leader recognized by the State of Texas.

### **Sec. 7.331. Offenses and Penalties.**

- (a) Any person who violates any provision of this Division 2 shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500.00).
- (b) Every act in violation of this Division 2 shall constitute a separate offense.
- (c) Unless otherwise specifically set forth herein allegation and evidence of culpable mental state are not required for the proof of an offense of this Division 2."

### **SECTION 3. SEVERABILITY CLAUSE**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

### **SECTION 4. PENALTY CLAUSE**

Any person, firm, or corporation violating any of the provisions or terms of this Ordinance shall be guilty of a misdemeanor and upon conviction, shall be fined a sum not to exceed \$500.00 for each offense, and each and every violation or day such violation shall continue or exist, shall be deemed a separate offense.



**SECTION 5.  
REPEALER CLAUSE**

Any provision of any prior ordinance of the City whether codified or uncoded, which are in conflict with any provision of this Ordinance, are hereby repealed to the extent of the conflict, but all other provisions of the ordinances of the City whether codified or uncoded, which are not in conflict with the provisions of this Ordinance, shall remain in full force and effect.

**SECTION 6.  
PUBLICATION CLAUSE**

The City Secretary of the City is hereby directed to publish in the official newspaper of the City the caption, penalty clause, and effective date clause of this Ordinance as required by law.

**SECTION 7.  
EFFECTIVE DATE**

This Ordinance shall become effective immediately upon its passage and publication as required by law.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Roanoke, Texas, on this April 28, 2026.

**APPROVED:**

\_\_\_\_\_  
Carl E. Gierisch, Jr., Mayor

**ATTEST:**

\_\_\_\_\_  
Lindsay Rawlinson, City Secretary

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Jeff Moore, City Attorney



## AGENDA ITEM

TO: Mayor and City Council

SUBJECT: Roanoke Convention Center Hotel Local Development Corporation Bylaws

MEETING DATE: April 28, 2026

DEPARTMENT: Administration

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### ITEM SUMMARY:

Consideration and action on Resolution No. 2026-111R, approval of the Roanoke Convention Center Hotel Local Development Corporation Bylaws.

### INFORMATION:

The Roanoke Convention Center Hotel Local Development Corporation was created on December 9, 2025 (Resolution No. 2025-119R). The RCCHLDC has submitted its approved bylaws for City Council approval. The bylaws serve as a guide outlining the function and operating procedures of the Corporation.

### STAFF RECOMMENDATION:

City staff recommends approval of Resolution No. 2026-111R, approving the Roanoke Convention Center Hotel Local Development Corporation Bylaws.

### SPECIAL CONSIDERATION:

### FINANCIAL CONSIDERATION:

### ATTACHMENTS:

1. RES NO 2026-111R Approving Roanoke Convention Center Hotel LDC Bylaws

## **RESOLUTION NO. 2026-111R**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROANOKE, TEXAS, APPROVING BYLAWS FOR THE ROANOKE CONVENTION CENTER HOTEL LOCAL DEVELOPMENT CORPORATION; AND CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE SUBJECT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Subchapter D of Chapter 431, as amended, Texas Transportation Code (“Chapter 431”), authorizes the creation and organization of public, non-profit local government corporations to act as a duly constituted authority of a city to aid and assist the city in the performance of one or more governmental functions; and

**WHEREAS**, Chapter 431 requires a local government corporation to be created pursuant to the provisions of Chapter 394, as amended, Texas Local Government Code (“Chapter 394”), and requires a local government corporation’s Articles of Incorporation be in the form and be executed, approved, and filed in the manner prescribed by Chapter 394; and

**WHEREAS**, on April 28, 2026, the Board of Directors of the Roanoke Convention Center Hotel Local Development Corporation approved the Bylaws of the Roanoke Convention Center Hotel Local Development Corporation, a copy of which is attached hereto as **Exhibit A**; and

**WHEREAS**, Section 431.101 of the Texas Transportation Code provides the authority for the City Council of the City of Roanoke, Texas, to approve by resolution the Bylaws of the Roanoke Convention Center Hotel Local Development Corporation, a copy of which is attached hereto as Exhibit A; and

**WHEREAS**, the City Council of the City of Roanoke, Texas, finds and determines Bylaws of the Roanoke Convention Center Hotel Local Development Corporation, a copy of which is attached hereto as Exhibit A, will aid and act on behalf of the City of Roanoke, Texas, to accomplish governmental purposes of the City of Roanoke, Texas; and

**WHEREAS**, the City Council of the City of Roanoke, Texas, hereby finds and determines that the adoption of this Resolution is in the best interests of the citizens of the City.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROANOKE, TEXAS, THAT:**

### **SECTION 1.**

Each and every one of the recitals, findings, and determinations contained in the preamble to this Resolution are incorporated into the body of this Resolution as if fully set forth herein and are hereby found and declared to be true and correct legislative findings

and are adopted as part of this Resolution for all purposes.

## **SECTION 2.**

The City Council hereby approves the Bylaws of the Roanoke Convention Center Hotel Local Development Corporation, a copy of which is attached hereto as Exhibit A, and is incorporated herein for all purposes.

## **SECTION 3.**

If any section, article paragraph, sentence, clause, phrase or word in this Resolution, or application thereto to any persons or circumstances, is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Resolution; and the City Council hereby declares it would have passed such remaining portions of this Resolution despite such invalidity, which remaining portions shall remain in full force and effect.

## **SECTION 4.**

This Resolution shall become effective from and after its date of passage in accordance with law.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Roanoke, Texas, on this April 28, 2026.

### **APPROVED:**

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Carl E. Gierisch, Jr., Mayor

### **ATTEST:**

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Lindsay Rawlinson, City Secretary

### **APPROVED AS TO FORM:**

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Jeff Moore, City Attorney

**EXHIBIT A**

**BYLAWS**

**OF**

**ROANOKE CONVENTION CENTER HOTEL LOCAL  
DEVELOPMENT CORPORATION**

**A Texas Local Development Corporation**

**Date of Adoption: \_\_\_\_\_, 2026**

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**BYLAWS  
OF  
ROANOKE CONVENTION CENTER HOTEL  
LOCAL DEVELOPMENT CORPORATION**

**ARTICLE I**

**PURPOSES AND POWERS**

*Section 1. Purpose.* Roanoke Convention Center Hotel Local Development Corporation (the “**Corporation**”) is organized for the purposes set forth in Article IV of its Articles of Incorporation, as the same may be amended from time to time, with such purposes to be accomplished on behalf of the City of Roanoke, Texas (the “**City**”) as the City’s duly constituted authority and instrumentality in accordance with the Subchapter D of Chapter 431, Texas Transportation Code, as amended (the “**Act**”), and other applicable laws.

*Section 2. Formation.* The Corporation is formed pursuant to the provisions of the Act, and, to the extent provided by the Act, Chapter 394, Texas Local Government Code, as amended (the “**Local Government Code**”), and the Texas Nonprofit Corporation Law, Chapter 22, Texas Business Organizations Code, which authorizes the Corporation to assist and act on behalf of the City and to engage in activities in the furtherance of its authorized purposes.

*Section 3. Powers.* The Corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of the State to nonprofit corporations incorporated under the Act including, without limitation, all powers not in conflict with the Act granted to domestic nonprofit corporations by the Texas Nonprofit Corporation Law, as defined by Section 1.008 of the Texas Business Organizations Code, to the extent necessary to carry out its authorized purposes, including, but not limited to, the power to acquire land and enter into a sale, loan, lease, grant, transfer, trust, operating, or other agreement as authorized by the Act.

The Corporation shall have all other powers of a like or different nature not prohibited by law which are available to non-profit corporations in the State and which are necessary or useful to enable the Corporation to perform its authorized purposes, including the power to issue bonds, notes or other obligations, and otherwise exercise its borrowing power to accomplish its authorized purposes, provided that the Corporation shall not issue bonds or notes without the consent of the City Council of the City (the “**City Council**”).

The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of Section 101.001, as amended, Texas Civil Practice and Remedies Code. The operations of the Corporation are governmental and not proprietary functions for purposes of the Texas Tort Claims Act, as amended, Chapter 101, Texas Civil Practice and Remedies Code.

*Section 4. Nonprofit Corporation.* The Corporation shall be a public, nonprofit corporation, and no part of its net earnings remaining after payment of its bonds and expenses shall inure to the benefit of any person other than the City.



## ARTICLE II

### BOARD OF DIRECTORS

*Section 1. Appointment, Classes, Powers, Number, and Term of Office.* All powers of the Corporation shall be vested in the Board of Directors (the “**Board**”). The Board shall consist of seven (7) persons who shall have the qualifications contained in the Articles of Incorporation. Directors of the Corporation (“**Director**” or “**Directors**”) shall be appointed to the Board by the City Council. The term of service for a Director other than an initial Director, whose initial term is specified in Article XII the Corporation’s Articles of Incorporation. Thereafter, the term is three (3) years. Each Director shall serve for the term for which he or she is appointed and until his or her successor shall have been appointed or until his or her earlier death, resignation, retirement, disqualification, or removal. Any Director whose term shall have expired may be appointed to succeed himself/herself. The City Council may, by resolution, remove one or more Directors, with or without cause, and may appoint a new, qualified Director or Directors to fill the remainder of the term. The directors constituting the initial Board shall be those directors named in the Articles of Incorporation. Successor directors shall have the qualifications and shall be appointed to the terms set forth herein. In case of a vacancy in the Board through death, resignation, disqualification, or other cause or incapacity, a successor to hold office shall be appointed by the City Council.

In accordance with Section 431.102(c) of the Act, at all times a majority of the Directors on the Board shall reside within the City. The City Council may, by resolution, remove one or more of the Directors, with or without cause.

The Chairperson/President of the Board (the “**Chairperson**”) shall be appointed by the City Council.

*Section 2. Meetings of Directors.* The Directors may hold their meetings and may have an office and keep the books of the Corporation at such place or places within the City as the Board may from time to time determine; provided, however, in the absence of any such determination, such place shall be the registered office of the Corporation in the State.

The Board shall meet in accordance with and file notice of each meeting of the Board for the same length of time and in the same manner and location as is required of a City under Chapter 551, as amended, Texas Government Code (the “**Texas Open Meetings Act**”). The Corporation, the Board, and any committee of the Board exercising the powers of the Board are subject to Chapter 552, as amended, Texas Government Code (the “**Texas Public Information Act**”). The City Secretary has the primary responsibility for carrying out the duties required by the Texas Public Information Act, and is hereby designated the public information coordinator for purposes of the Texas Public Information Act.

*Section 3. Annual Meetings.* The annual meeting of the Board shall be held during the month of August of each year. The Board shall designate the time and the location of the annual meeting which shall be within the City.

*Section 4. Regular Meetings.* Regular meetings of the Board shall be held at such times and places as shall be designated, from time to time, by resolution of the Board.

*Section 5. Special and Emergency Meetings.* Consistent with the Texas Open Meetings Act, special and emergency meetings of the Board shall be held whenever called by the Chairperson, the Secretary of the Board, or by a majority of the Directors who are serving duly appointed terms of office at the time the meeting is called. The Secretary of the Board shall give notice of each special meeting to each Director in person, by telephone, telecopier, mail, electronic mail at least three (3) days before the meeting. Notice of each emergency meeting shall also be given in the manner required of the City under Section 551.045 of the Texas Open Meetings Act, as amended. Unless otherwise indicated in the notice thereof, any and all matters pertaining to the purposes of the Corporation may be considered and acted upon at a special or emergency meeting. At any meeting at which every Director shall be present, even though without any notice, any matter pertaining to the purposes of the Corporation may be considered and acted upon to the extent allowed by the Texas Open Meetings Act.

*Section 6. Quorum and Action of the Board.* A simple majority of the Board shall constitute a quorum for the consideration of matters pertaining to the purposes of the Corporation. If at any meeting of the Board there is less than a quorum present, a majority of those present may adjourn the meeting from time to time. The act of a majority of the Directors present and voting at a meeting at which a quorum is in attendance shall constitute the act of the Board, unless the act of a greater number is required by law, by the Articles of Incorporation, or by these Bylaws.

A Director who is present at a meeting of the Board at which any corporate action is taken shall be presumed to have assented to such action, unless his or her dissent shall be entered in the minutes of the meeting or unless he or she shall file his or her written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Board immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of the action.

*Section 7. Participation by Telephone Conference and Videoconference.* In accordance with the Texas Open Meetings Act, members of the Board or members of any committee designated by the Board may participate in and hold a meeting of the Board or such committee by means of telephone conference, video conference or similar communications equipment to the same extent as a governmental body consistent with the Texas Open Meetings Act.

*Section 8. Conduct of Business.* At the meetings of the Board, matters pertaining to the purposes of the Corporation shall be considered in such order as from time to time the Board may determine. At all meetings of the Board, the Chairperson shall preside, and in the absence of the Chairperson, the Vice Chairperson shall preside. In the absence of the Chairperson and the Vice Chairperson, a chairperson shall be chosen by the Board from among the Directors present. The Secretary of the Board shall act as secretary of all meetings of the Board, but in the absence of the Secretary, the presiding officer may appoint any person to act as secretary of the meeting.

*Section 9. Compensation of Directors.* Directors, as such, shall not receive any salary or compensation for their services as Directors. However, Directors shall be reimbursed for their actual expenses incurred in the performance of their official duties as Directors.

*Section 10. Director's Reliance on Consultant Information.* A Director shall not be liable if while acting in good faith and with ordinary care, he or she relies on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or another person, that were prepared or presented by:

- (a) one or more other officers or employees of the Corporation;
- (b) legal counsel, public accountants, the operator or the developer of the Project, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or
- (c) a committee of the Board of which the Director is not a member.

### ARTICLE III

#### OFFICERS

*Section 1. Titles and Term of Office.* The officers of the Corporation shall be a Chairperson/President, a Vice Chairperson/Vice President, a Secretary, a Treasurer, and such other officers as the Board may from time to time elect or appoint. One person may hold more than one office, except that the Chairperson shall not hold the office of Secretary. The Board, at its organizational meeting and annually thereafter, shall elect officers, excluding the Chairperson/President. All officers (other than the Chairperson) shall be subject to removal, with or without cause, at any time by a vote of a majority of the whole Board. A vacancy in the office of any officer (other than the Chairperson) shall be filled by the Board.

*Section 2. Powers and Duties of the Chairperson.* The Chairperson shall be a member of the Board and shall preside at all meetings of the Board. He or she shall have such duties as are assigned by the Board. The Chairperson may call special or emergency meetings of the Board.

*Section 3. Powers and Duties of the Vice Chairperson.* The Vice Chairperson shall be a member of the Board. The Vice Chairperson shall perform the duties and exercise the powers of the Chairperson upon the Chairperson's death, absence, disability, or resignation, or upon the Chairperson's inability to perform the duties of his or her office. Any action taken by the Vice Chairperson in the performance of the duties of the Chairperson shall be conclusive evidence of the absence or inability of the Chairperson to act at the time such action was taken.

*Section 4. Treasurer.* The Treasurer shall have custody of all the funds and securities of the Corporation which come into his or her hands. When necessary or proper, he or she may endorse, on behalf of the Corporation, for collection, checks, notes and other obligations and shall deposit the same to the credit of the Corporation in such bank or banks or depositories as shall be designated in the manner prescribed by the Board; he or she may sign all receipts and vouchers for payments made to the Corporation, either alone or jointly with such other officer as is designated by the Board; whenever required by the Board; he or she shall enter or cause to be entered regularly

in the books of the Corporation to be kept by him or her for that purpose full and accurate accounts of all moneys received and paid out on account of the Corporation; he or she shall perform all acts incident to the position of Treasurer subject to the control of the Board; and he or she shall, if required by the Board, give such bond for the faithful discharge of his or her duties in such form as the Board may require. The Treasurer of the Corporation need not be a member of the Board and may be an elected officer, an appointed officer, or an employee of the City.

*Section 5. Secretary.* The Secretary shall keep the minutes of all meetings of the Board in books provided for that purpose; he or she shall attend to the giving and serving of all notices; in furtherance of the purposes of the Corporation and subject to the limitations contained in the Articles of Incorporation, he or she may sign with the Chairperson in the name of the Corporation and/or attest the signatures thereof, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation; he or she shall have charge of the Corporation's books, records, documents and instruments, except the books of account and financial records and securities of which the Treasurer shall have custody and charge, and such other books and papers as the Board may direct, all of which shall at all reasonable times be open to the inspection of any Director upon application at the office of the Corporation during business hours; and, he or she shall in general perform all duties incident to the office of Secretary subject to the control of the Board.

*Section 6. Officer's Reliance on Consultant Information.* In the discharge of a duty imposed or power conferred on an officer of the Corporation, the officer may in good faith and with ordinary care rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or another person, that were prepared or presented by:

- (a) one or more other officers or employees of the Corporation, including members of the Board; or
- (b) legal counsel, public accountants, the operator or the developer of the Project, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

## ARTICLE IV

### MISCELLANEOUS PROVISIONS

*Section 1. Fiscal Year.* The fiscal year of the Corporation shall be the same as the fiscal year of the City.

*Section 2. Notice and Waiver of Notice.* Whenever any notice whatever is required to be given under the provisions of these Bylaws (other than a notice required by the Texas Open Meetings Act), such notice shall be deemed to be sufficient if given by depositing the same in a post office box in a sealed postpaid wrapper addressed to the person entitled thereto at his or her post office address, as it appears on the books of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. A waiver of notice, signed by the person or persons

entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

*Section 3. Resignations.* Any Director or officer may resign at any time. Such resignation shall be made in writing to any officer of the Board. Said resignation shall not become effective until a successor has been elected or appointed and duly qualified.

*Section 4. Gender.* References herein to the masculine gender shall also refer to the feminine in all appropriate cases, and vice versa.

*Section 5. Appropriations and Grants.* The Corporation shall have the power to request and accept any appropriation, grant, contribution, donation, or other form of aid from the federal government, the State, any political subdivision, or municipality in the State, or from any other source.

## ARTICLE V

### INDEMNIFICATION OF DIRECTORS AND OFFICERS

*Section 1. Right to Indemnification.* Subject to the limitations and conditions as provided in this Article V and the Articles of Incorporation, each person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative (hereinafter a “proceeding”), or any appeal in such a proceeding or any inquiry or investigation that could lead to such a proceeding, by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a Director or officer of the Corporation or while a Director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise shall be indemnified by the Corporation to the fullest extent permitted by applicable law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including, without limitation, attorneys' fees) actually incurred by such person in connection with such proceeding, and indemnification under Article V shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnity hereunder. The rights granted pursuant to this Article V shall be deemed contract rights, and no amendment, modification or repeal of this Article V shall have the effect of limiting or denying any such rights with respect to actions taken or proceedings arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article V could involve indemnification for negligence or under theories of strict liability.

*Section 2. Advance Payment.* The right to indemnification conferred in this Article V shall include the right to be paid in advance or reimbursed by the Corporation the reasonable expenses incurred by a person of the type entitled to be indemnified under Section 1 of this Article

V who was, is, or is threatened to be made a named defendant or respondent in a proceeding in advance of the final disposition of the proceeding and without any determination as to the person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such person in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of a written affirmation by such Director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article V and a written undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified person is not entitled to be indemnified under this Article V or otherwise.

*Section 3. Indemnification of Employees and Agents.* The Corporation, by adoption of a resolution of the Board or pursuant to an agreement approved by the Board, will indemnify and advance expenses to an employee or agent of the Corporation to the same extent and subject to the same conditions under which it may indemnify and advance expenses to Directors and officers under this Article V; and the Corporation may indemnify and advance expenses to persons who are not or were not Directors, officers, employees or agents of the Corporation but who are or were serving at the request of the Corporation as a Director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any liability asserted against him or her and incurred by him or her in such a capacity or arising out of his or her status as such a person to the same extent that it may indemnify and advance expenses to Directors under this Article V.

*Section 4. Appearance as a Witness.* Notwithstanding any other provision of this Article V, the Corporation may pay or reimburse expenses incurred by a Director or officer in connection with his or her appearance as a witness or other participation in a proceeding involving the Corporation or its business at a time when he or she is not a named defendant or respondent in the proceeding.

*Section 5. Non-exclusivity of Rights.* The right to indemnification and the advancement and payment of expenses conferred in this Article V shall not be exclusive of any other right which a Director or officer or other person indemnified pursuant to Section 3 of this Article V may have or hereafter acquire under any law (common or statutory), provision of the Articles of Incorporation of the Corporation or these Bylaws, agreement, vote of shareholders or disinterested Directors or otherwise.

*Section 6. Insurance.* The Corporation may purchase and maintain insurance, at its expense, to protect itself and any person who is or was serving as a Director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a Director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, proprietorship, employee benefit plan, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under this Article V.

*Section 7. Notification.* Any indemnification of or advance of expenses to a Director or officer in accordance with this Article V shall be reported in writing to the members of the

Board with or before the notice of the next regular meeting of the Board and, in any case, within the 12-month period immediately following the date of the indemnification or advance.

*Section 8. Savings Clause.* If this Article V or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and hold harmless each Director, officer or any other person indemnified pursuant to this Article V as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, to the full extent permitted by any applicable portion of this Article V that shall not have been invalidated and to the fullest extent permitted by applicable law.

## ARTICLE VI

### CODE OF CONDUCT

The members of the Board and the officers of the Corporation shall be subject to Chapter XI of the Charter of the City titled "Code of Conduct", as the same may now or hereafter be amended, which establishes the minimum standards that officers and employees of the City must meet to ethically fulfill the responsibilities of their positions.

## ARTICLE VII

### AMENDMENTS

A proposal to alter, amend, or repeal these Bylaws shall be made by the affirmative vote of a majority of the full Board at any annual or regular meeting, or at any special meeting where notice of the proposed amendment was contained in the notice of said special meeting. However, any proposed change or amendment to the Bylaws must be approved by the City Council to be effective.

## ARTICLE VIII

### CONFLICTS

In the event of a conflict between these Bylaws and the Articles of Incorporation, the Articles of Incorporation shall control.



## **AGENDA ITEM**

TO:

SUBJECT:

MEETING DATE: April 28, 2026

DEPARTMENT: Administration

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**ITEM SUMMARY:**

**INFORMATION:**

**STAFF RECOMMENDATION:**

**SPECIAL CONSIDERATION:**

**FINANCIAL CONSIDERATION:**

ATTACHMENTS:

None