

Office Use Only

MASTER CONTRACT NUMBER:

C2024-0224

DEVELOPERS AGREEMENT

This Agreement is entered into between developer Capstone Fastrack, LLC ("Developer") and the City of Branson, Missouri (the "City") (collectively "Parties"). This Agreement becomes effective on the day all the Parties execute it.

WHEREAS, construction of an 8-inch sewer main ("Improvements") is required (as approved by the City of Branson) for Developer to complete the Sunset Ridge development ("Development"); and

WHEREAS, the City will contribute no more than Twenty Thousand Dollars and Zero Cents (\$20,000.00) towards the purchase of 8-inch sewer pipe ("Materials") for the Developer to install.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. **SCOPE. Sewer Main Construction.** The Developer shall design, permit, and install the Improvements to serve the Development with the following requirements:
 - a. The Improvements shall be designed, permitted, and installed by the Developer to serve the Development.
 - b. The Developer shall obtain all Federal, State, County, and City permits required for the Improvements.
 - c. The Improvements shall have a minimum pipe diameter of 8-inches.
 - d. The City shall provide funding for no more than Twenty Thousand Dollars and Zero Cents (\$20,000.00), or the actual costs, whichever is lower, towards the purchase of the Material for the Developer to install.
2. **PAYMENT FROM CITY.** The City shall contribute Twenty Thousand Dollars and Zero Cents (\$20,000.00) or the actual costs, whichever is less, for the purchase of the Materials. The City shall disburse the funds after the following requirements have been met:
 - a. The Developer has completed all work on the Improvements.
 - b. The City has approved all work on the Improvements.
 - c. The Developer has provided the City proof of all costs for the Materials
 - d. The Developer has provided the City all lien waivers for the work completed on the Improvements.
3. **APPROVAL AND PERMITS.** The Developer shall obtain all permits and approvals required by the City for the Improvements, including, but not limited to approval through the public plan review process.

4. **PREVAILING WAGE.** If applicable, pursuant to Sections 290.210 to 292.340 RSMo, Developer shall pay not less than the prevailing hourly rate of wage as found by the Department of Labor and Industrial Relations of the State of Missouri and listed on the current Wage Order for Taney County, a copy of which is located at City Hall, or determined by the Court of Appeals shall be paid to all workers performing work under this Agreement. Applicable wage rates to the City's locality are attached hereto as Exhibit A and incorporated herein.
5. **SAFETY TRAINING.** Developer shall provide a ten (10) hour Occupational Safety and Health Administration (OSHA) construction safety program for all on-site employees employed by the Developer or its subcontractors who will be on-site as part of this Agreement for the Improvements. The construction safety program shall include a course in construction safety and health that is approved by OSHA, or a similar program approved by the Missouri Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program as required by Section 292.675, RSMo.
 - a. Developer shall require all on-site employees employed by Developer or its subcontractors to complete a construction safety program within sixty (60) days after the date work as part of this Agreement for Improvements commences.
 - b. Developer acknowledges and agrees that any of Developer's employees or subcontractors found on the project site without documentation of the successful completion of a construction safety program shall be required to produce such documentation within twenty (20) days or will be subject to removal from the project.
 - c. Developer shall require all its subcontractors to comply with the requirements of this paragraph and Section 292.675, RSMo.
6. **PENALTIES FOR FAILURE TO PROVIDE SAFETY TRAINING.** Pursuant to Section 292.675, RSMo, Developer shall forfeit to City as a penalty Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00), plus One Hundred Dollars and Zero Cents (\$100.00) for each on-site employee employed by Developer or its subcontractor, for each calendar day, or portion thereof, such on-site employee is employed without the construction safety training required in Paragraph 5 of this contract. This penalty shall not begin to accrue until the time periods described in Paragraph 5 above have lapsed.
7. **COMPLAINE WITH APPLICABLE LAWS**
 - a. The Developer shall comply with applicable laws, rules, and ordinances of the United States, or any state, municipality or any other governmental authority or agency covered by this Agreement, including but not limited to all provisions of the Fair Labor Standard Act of 1938, as amended.
 - b. Developer agrees to comply with all applicable federal, state, and local laws or rules, codes, and regulations applicable. Developer affirmatively states that

payment of all local, state, and federal taxes and assessments owed by Developer is current.

- c. Developer shall comply with all appropriate specifications, including any general conditions provided.
- d. Developer shall permit reasonable inspection of all work by authorized inspectors.

8. LIABILITY AND INDEMNITY

- a. In no event shall the City be liable to the Developer for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the Developer under this Agreement.
- b. The Developer shall defend, indemnify, and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays, and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this Agreement or any work completed on the Improvements, or the work or any contractor thereunder (the Developer hereby assuming full responsibility for relations with all contractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this Agreement to Developer, notwithstanding any possible negligence, whether sole or concurrent, on the part of the City, its officials, agents, and employees.
- c. The Developer agrees to defend, indemnify, and save the City harmless from and against all claims, suits and actions of every description, brought against the City and from all damage and costs by reason or on account of any injuries or damages received or sustained by any person or persons, or their property, by Developer, its servants, agents or contractors in the construction of said Improvements, or by any negligence or carelessness in the performance of same, or on account of any act or omission if Developer, its servants, agents, or contractors, arising out of the award of this Agreement to Developer.
- d. The Developer shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this Agreement or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law or any other federal or state law.
- e. The indemnification obligations of Developer hereunder shall not be limited by any limitations as to the amount or type of damages, compensation, or benefits payable by or for the Developer, under any federal or state law, to any person asserting the

claim against City, its elected or appointed officials, agents, and employees, for which indemnification is sought.

- f. The indemnification obligations herein shall not negate, abridge, or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents, and employees, which are otherwise available under statute, or in law or equity.

- 9. **INSURANCE.** Developer shall have a licensed, insured, and bonded contractor design and install the Improvements.

10. GENERAL PROVISION

- a. **Conflict of Interest.** In accepting this Agreement, Developer certifies that no member or officer is an officer or employee of the City, or any of its boards or agencies, and further that no officer or employee of the City has any financial interest, direct or indirect, in this contract. All applicable federal regulations and provisions of Section 105.450, RSMo, et seq. shall not be violated.
- b. **Partnership.** The Parties agree that this Agreement does not create a partnership or joint venture or shared employee relationship. All personnel shall remain the employees of their respective entities, and neither shall be responsible for the employees of the other.
- c. **Assignment.** The Developer shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto. Provided, however, that claims for money due or to become due to the Developer from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City. Any such assignment is expressly subject to all rights and remedies of the City under this Agreement, including the right to change or delete activities from the Agreement or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this Agreement, though City will attempt to so notify any such assignee.
- d. **Notice.** Any notice required or permitted by this Agreement shall be in writing and will be deemed effective when personally delivered in writing (with receipt for delivery) or three (3) days after notice is deposited with the United States Postal Service, postage prepaid, certified and return receipt requested, addressed as follows:

Developer:

Capstone Fastrack, LLC
Attn: Gregory Loeffler
4605 Lindell Boulevard, Apartment 1206
St. Louis, Missouri 63108

City:

314-308-6081

GLefty11@gmail.com

City of Branson, Missouri

Attn: Contract Management

110 W Maddux Street, Suite 205

Branson, Missouri 65616

417-337-8522

cityclerk@bransonmo.gov

- e. **Jointly Drafted.** The Parties hereto agree that this Agreement has been jointly drafted and shall not be construed more strongly against either Party.
- f. **Interpretation of Agreement.** This Agreement shall be construed according to the laws of the State of Missouri without regard to its conflict of laws principles.
- g. **Sovereign Immunity.** All the provisions in the agreement are subject to the terms of Missouri Sovereign Immunity as set forth in section 537.610.2 and 537.610.5 of the Missouri Revised Statutes.
- h. **Governing Law.** This Agreement shall be governed by the laws of the State of Missouri. The City and Developer agree that the performance of this Agreement will be deemed to have occurred in the State of Missouri. Jurisdiction and venue for any claim or cause of action arising under this Agreement shall be exclusively in the Circuit Court of Taney County, Missouri, or the Federal District Court for the Western District of Missouri, as appropriate. The Parties submit to the personal jurisdiction of and waives any personal jurisdiction or inconvenient forum objection to those courts.
- i. **Missouri Immigration Law Affidavit.** After January 1, 2009, the Developer takes note that Section 285.530.2 of the Missouri Revised Statutes requires a political subdivision as a condition of a contract or grant in excess of \$5,000 awarded after January 1, 2009, to require the business entity to affirm by sworn affidavit and provision of documentation the business entity has enrolled and participated in a federal work authorization program with respect to its employees who work in connection with the contracted services. To that end, the services provider will provide a signed affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contract. The Developer will provide specifications and bonding information a statement that the Developer has such a program, documentation for the program, and that it will not employ unauthorized aliens in connection with the work.
- j. **Non-discrimination in Employment.** In connection with the performance of or any work considered under this contract, the Developer shall comply with the Fair Labor Standard Act, Fair Employment Practices, Equal Opportunity Employment Act, and all other applicable federal and state laws, and further agrees to insert the foregoing provision in all subcontracts awarded hereunder. The Developer agrees in the performance of this Agreement not to discriminate on the ground or because

of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Developer or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.

- k. **No Oral Modifications.** This Agreement represents the full agreement between the Parties with respect to the subject matter set forth herein and supersedes all prior negotiations and understandings between them. Neither this Agreement nor any provisions of it may be modified, amended, waived, discharged, or terminated, in whole or in part, except in writing signed by the Party against whom enforcement of any change, modification, waiver, extension or discharge is sought.
- l. **Waiver.** The waiver of a breach of any term or condition of this Agreement shall not be deemed to constitute the waiver of any other or subsequent breach of the same or any other term or condition, nor shall it constitute a continuing waiver.
- m. **Severability.** Any provision of this Agreement which is not enforceable according to law will be severed, and the remaining provisions shall be enforced to the fullest extent permitted by law.
- n. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall be deemed to be one and the same instrument.
- o. **Authority.** The undersigned represent that they each have the authority and capacity from the respective Parties to execute this Agreement.
- p. **Entire Agreement.** This Agreement and the acts provided for herein is the entire Agreement between the Parties with respect to the subject matter hereof, the terms and provisions of this Agreement are contractual and not mere recitals, and no alterations, amendment, modification, or interpretation hereof shall be binding unless in writing and signed by all Parties. The underlined paragraph headings are for the convenience of the reader, and are not intended to modify, expand, or limit the material terms of each section or subsection in this Agreement. All Exhibits referenced in this Agreement are incorporated into this Agreement by such reference as if set forth in full in the text of this Agreement.

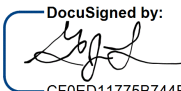
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In witness whereof, the Parties have executed this Agreement, having read, and fully understanding the provisions hereof on this _____ day of _____, 2024.

The City of Branson, Missouri

By: _____
Larry D. Milton

Capstone Fastrack, LLC

By:  _____ 8/26/2024
CF0ED11775B744E...
Gregory Loeffler, Member

By:  _____ 8/26/2024
EE4550EADB604DA...
William Luchini, Member

Attest:

By: _____
Hillary Briand, City Clerk

Approved as to form:

By:  _____ 8/26/2024
261AD63D59A4441...
Holly Dodge, City Attorney

EXHIBIT A

Applicable wage rates for Taney County, Missouri – Missouri Department of Labor

Missouri

Division of Labor Standards

WAGE AND HOUR SECTION



MICHAEL L. PARSON, Governor

Annual Wage Order No. 31

Section 110
TANEY COUNTY

In accordance with Section 290.262 RSMo 2000, within thirty (30) days after a certified copy of this Annual Wage Order has been filed with the Secretary of State as indicated below, any person who may be affected by this Annual Wage Order may object by filing an objection in triplicate with the Labor and Industrial Relations Commission, P.O. Box 599, Jefferson City, MO 65102-0599. Such objections must set forth in writing the specific grounds of objection. Each objection shall certify that a copy has been furnished to the Division of Labor Standards, P.O. Box 449, Jefferson City, MO 65102-0449 pursuant to 8 CSR 20-5.010(1). A certified copy of the Annual Wage Order has been filed with the Secretary of State of Missouri.

Original Signed by

Todd Smith, Director
Division of Labor Standards

Filed With Secretary of State: March 8, 2024

Last Date Objections May Be Filed: April 8, 2024

Prepared by Missouri Department of Labor and Industrial Relations

Building Construction Rates for
TANEY County

Section 110

OCCUPATIONAL TITLE	**Prevailing Hourly Rate
Asbestos Worker	\$30.43
Boilermaker	\$23.46*
Bricklayer-Stone Mason	\$23.46*
Carpenter	\$49.28
Lather	
Linoleum Layer	
Millwright	
Pile Driver	
Cement Mason	\$39.70
Plasterer	
Communication Technician	\$23.46*
Electrician (Inside Wireman)	\$43.31
Electrician Outside Lineman	\$23.46*
Lineman Operator	
Lineman - Tree Trimmer	
Groundman	
Groundman - Tree Trimmer	
Elevator Constructor	\$23.46*
Glazier	\$23.46*
Ironworker	\$66.68
Laborer	\$39.56
General Laborer	
First Semi-Skilled	
Second Semi-Skilled	
Mason	\$23.46*
Marble Mason	
Marble Finisher	
Terrazzo Worker	
Terrazzo Finisher	
Tile Setter	
Tile Finisher	
Operating Engineer	\$52.35
Group I	
Group II	
Group III	
Group III-A	
Group IV	
Group V	
Painter	\$23.46*
Plumber	\$55.03
Pipe Fitter	
Roofer	\$23.46*
Sheet Metal Worker	\$50.07
Sprinkler Fitter	\$66.72
Truck Driver	\$23.46*
Truck Control Service Driver	
Group I	
Group II	
Group III	
Group IV	

*The Division of Labor Standards received fewer than 1,000 reportable hours for this occupational title. The public works contracting minimum wage is established for this occupational title using data provided by Missouri Economic Research and Information Center.

**The Prevailing Hourly Rate includes any applicable fringe benefit amounts for each occupational title as defined in RSMo Section 290.210.

Heavy Construction Rates for
TANEY County

Section 110

OCCUPATIONAL TITLE	**Prevailing Hourly Rate
Carpenter	\$53.25
Millwright	
Pile Driver	
Electrician (Outside Lineman)	\$23.46*
Lineman Operator	
Lineman - Tree Trimmer	
Groundman	
Groundman - Tree Trimmer	
Laborer	\$43.88
General Laborer	
Skilled Laborer	
Operating Engineer	\$52.25
Group I	
Group II	
Group III	
Group IV	
Truck Driver	\$23.46*
Truck Control Service Driver	
Group I	
Group II	
Group III	
Group IV	

Use Heavy Construction Rates on Highway and Heavy construction in accordance with the classifications of construction work established in 8 CSR 30-3.040(3).

Use Building Construction Rates on Building construction in accordance with the classifications of construction work established in 8 CSR 30-3.040(2).

If a worker is performing work on a heavy construction project within an occupational title that is not listed on the Heavy Construction Rate Sheet, use the rate for that occupational title as shown on the Building Construction Rate Sheet.

*The Division of Labor Standards received fewer than 1,000 reportable hours for this occupational title. Public works contracting minimum wage is established for this occupational title using data provided by Missouri Economic Research and Information Center.

**The Prevailing Hourly Rate includes any applicable fringe benefit amounts for each occupational title.

OVERTIME and HOLIDAYS

OVERTIME

For all work performed on a Sunday or a holiday, not less than twice (2x) the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed or the public works contracting minimum wage, whichever is applicable, shall be paid to all workers employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work.

For all overtime work performed, not less than one and one-half (1½) the prevailing hourly rate of wages for work of a similar character in the locality in which the work is performed or the public works contracting minimum wage, whichever is applicable, shall be paid to all workers employed by or on behalf of any public body engaged in the construction of public works, exclusive of maintenance work or contractual obligation. For purposes of this subdivision, "**overtime work**" shall include work that exceeds ten hours in one day and work in excess of forty hours in one calendar week; and

A thirty-minute lunch period on each calendar day shall be allowed for each worker on a public works project, provided that such time shall not be considered as time worked.

HOLIDAYS

January first;
The last Monday in May;
July fourth;
The first Monday in September;
November eleventh;
The fourth Thursday in November; and
December twenty-fifth;

If any holiday falls on a Sunday, the following Monday shall be considered a holiday.