

**DEVELOPMENT
SERVICES AGREEMENT**

between the

CITY OF LEE'S SUMMIT, MISSOURI

and

LANE4 PROPERTY GROUP, INC.

for the

DOWNTOWN MARKET PLAZA PROJECT

dated as of

September 13, 2022

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LIST OF EXHIBITS

- Exhibit A** Map and Legal Description of the Project Area
- Exhibit B** Public Improvements Description
- Exhibit C** Services Provided by Developer
- Exhibit D** Form of Disbursement Request
- Exhibit E** Standard Insurance and Indemnification Requirements

Final for Council Packets

DEVELOPMENT SERVICES AGREEMENT

THIS DEVELOPMENT SERVICES AGREEMENT ("Agreement") is entered into as of this 13th day of September, 2022, by and between the **CITY OF LEE'S SUMMIT, MISSOURI**, a charter city and political subdivision of the State of Missouri (the "**City**"), and **LANE4 DEVELOPMENT GROUP, INC.**, a Missouri corporation (the "**Developer**") for the Downtown Market Plaza Project (each a "**Party**" and collectively the "**Parties**").

WITNESSETH:

WHEREAS, the City Council of the City of Lee's Summit, Missouri (the "**City Council**"), did on January 4, 2022, pass Ordinance No. 9316 which approved the Amended and Restated Development Structure Agreement (the "**Development Structure Agreement**") which was executed on January 4, 2022 between the City, Developer and Biederman Redevelopment Ventures (the "**Manager**") providing for the preparation, design and planning for the Downtown Market Plaza Project;

WHEREAS, on September 13, 2022, the City Council approved the Redevelopment Plan for the Downtown Market Plaza Project, which sets forth the expected Public Improvements and private improvements that will be constructed in the Project;

WHEREAS, the City desires to enter in an agreement with Developer to establish the terms and conditions under which the Public Improvements (as defined below) for the Project will be designed, engineered, financed and constructed for the Project, with Developer providing certain management and development services during the design and construction phases of the Public Improvements of the Project; and

WHEREAS, the City and the Developer desire to enter into this Agreement.

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants herein contained, the City and Developer agree as follows:

Section 1. Definitions and Rules of Interpretation.

1.1. Incorporation of Definitions.

All terms not defined elsewhere in this Agreement shall, unless the context otherwise requires, have the following meanings:

"Applicable Law and Requirements" means any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, city or otherwise), whether now or hereafter in existence and specifically including but not limited to all ordinances, rules and regulations of the City, such as zoning ordinances, subdivision ordinances, building codes, property maintenance codes, and City's Design and Construction Manual.

"Architect" means GLMV Architecture, Inc. or any replacement architect retained by the City to provide professional services in the design and development of the Public Improvements.

“Available Funds” means the amount of funds that are appropriated by the City Council by ordinance for the Public Improvements of the Project, which shall be consistent with the Budget developed by the Parties. The City shall deliver written notice of the amount of Available Funds to Developer.

“Budget” means the budget for the Public Improvements which shall be developed by the Parties pursuant to Section 3.1.B.

“Capital Improvements Plan” means the Capital Improvements Plan (commonly called the “CIP”) that is managed by the City’s Public Works Department, including any updates to the plan, which is a planning document that outlines anticipated infrastructure improvements in the City for the next five years and contains information about the scope, location and funding for various municipal projects throughout the City, with the most recent version being the 2023-2027 CIP.

“City Authorities” shall have the meaning set forth in Section 15.1.

“City Payments” means the payments made by the City from the Available Funds according to the Budget using the process set forth in Section 4.

“City Council” shall have the meaning set forth in the recitals on page 1.

“Default” shall have the meaning set forth in Section 10.

“Development Structure Agreement” shall have the meaning set forth in the recitals on page 1.

“Effective Date” means the date of this Agreement on page 1 above.

“Environmental Laws” means any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, and all applicable judicial, administrative or regulatory decrees, judgments or orders relating to the protection of human health or the environment, including, without limitation, The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, as amended, the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2671, the Clean Air Act, 42 U.S.C. Sections 7401 *et seq.*, and the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251 to 1387, as the foregoing may be amended from time to time.

“Event of Default” shall have the meaning set forth in Section 10.

“Final Completion” shall have the meaning set forth in Section 6.2.

“Infrastructure” means the services, facilities, and systems to support the Project, including without limitation, utilities, electrical, roadways, pedestrian areas and sidewalks, water supply, fire protection, storm water, sanitary sewer.

“Manager” shall have the meaning set forth in the recitals on page 1.

“Plans” shall have the meaning set forth in Section 3.1.

“Private Improvements” shall mean those improvements which are constructed within the Redevelopment Area, which may include, but are not limited to, hotel and conference facilities; dining facilities, including, but not limited to, a food hall containing restaurants; mid and/or high-density multi-

family residential housing; retail shopping and services; and/or office uses, along with other uses that may be approved by the City within the Redevelopment Area.

“**Project**” shall mean the Public Improvements and the Private Improvements.

“**Project Fund**” means the fund maintained by the City which contains the Available Funds that are to be expended according to the Budget and this Agreement.

“**Property**” means the property that is depicted and legally described in **Exhibit A**. The Parties agree that the scope of the Project is subject to future legislative approvals of the City Council, and the scope of the Property and the Project may be revised based on those legislative approvals. The definition of Property may be amended by letter agreement between the Parties based upon the final scope of the Project as approved by the City Council.

“**Public Improvements**” means those improvements that are itemized in **Exhibit B**, including all Infrastructure required to support the Project; some of which are located outside the Redevelopment Area but are necessary and beneficial to the Redevelopment Area and the Redevelopment Plan.

“**Redevelopment Area**” shall have the meaning set forth in the Redevelopment Plan.

“**Redevelopment Plan**” means the Redevelopment Plan that was approved pursuant to Chapter 353 of the Revised Statutes of Missouri by the City Council on May ___, 2022 through the adoption of Ordinance No. ___.

1.3. Rules of Interpretation.

A. All capitalized words or terms used in this Agreement, but not defined in this Agreement but which are defined in the Redevelopment Plan, shall have the meaning ascribed to them in the Redevelopment Plan.

B. Unless the context clearly indicates to the contrary or unless otherwise provided herein, the following rules of interpretation shall apply to this Agreement:

(1) The terms defined in this Agreement which refer to a particular agreement, instrument or document also refer to and include all renewals, extensions, modifications, amendments and restatements of such agreement, instrument or document; provided, that nothing contained in this sentence shall be construed to authorize any such renewal, extension, modification, amendment or restatement other than in accordance with Section 15.4 below

(2) The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Section, subsection and exhibit references are to this Agreement unless otherwise specified. Whenever an item or items are listed after the word “including”, such listing is not intended to be a listing that excludes items not listed.

(3) Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing person shall include individuals, corporations, partnerships, joint ventures, associations, joint stock companies, trusts, unincorporated organizations and governments and any agency or political subdivision thereof.

(4) The table of contents, captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

(5) In the event of some ambiguity in this Agreement, the Parties shall be deemed to have jointly authored this Agreement and nothing shall be construed against or in favor of one Party based on it being deemed the sole author.

Section 2. Representations and Warranties.

2.1. Representations and Warranties of the City.

The City hereby represents and warrants to the Developer that: (i) the City is authorized to enter into and perform this Agreement and each agreement to be executed and performed by the City, pursuant to this Agreement; (ii) this Agreement was duly authorized by the City Council; and (iii) this Agreement is binding upon, and enforceable against the City, in accordance with its terms.

2.2. Representations and Warranties of the Developer.

The Developer hereby represents and warrants to the City that: (i) the Developer is a duly organized corporation existing under the laws of the State of Missouri and has full power and authority to perform its obligations under this Agreement; (ii) to its knowledge the Developer is not in default of its obligations under any other agreement related to the Redevelopment Plan, and the execution and performance of the Developer's obligations hereunder will not constitute a default under any agreement to which the Developer is a party; (iii) to its knowledge there is no pending litigation or administrative proceeding to which the Developer is a party, or which challenges the Developer's right to perform its obligations hereunder; and (iv) this Agreement is binding upon, and enforceable against, the Developer in accordance with its terms.

2.3. Warranty: Right to Make Agreement.

The City and the Developer each warrant to the other with respect to itself that neither the execution of the Agreement nor the finalization of the transactions contemplated hereby shall: (i) violate any provision of law or judgment, writ, injunction, order or decree of any court or governmental authority having jurisdiction over it; (ii) result in or constitute a breach or default under any indenture, contract, other commitment or restriction to which it is a party or by which it is bound; or (iii) require any consent, vote or approval which has not been taken, or at the time of the transaction involved shall not have been given or taken.

Section 3. Design and Construction of the Public Improvements.

3.1. City Review and Approval of Plans.

A. Design Phase. The Developer shall meet with City staff as needed regarding preliminary design of the Public Improvements and shall submit all preliminary design documents to the City for approval before proceeding with the construction of the Public Improvements. The Parties acknowledge that the Architect has prepared or will prepare certain documents that will be used by Developer to comply with the requirements of this Section, and references below to Developer's obligations may be performed in part with documents that are prepared by the Architect who is working with Developer on these tasks. On the basis of such approved preliminary design documents, the Developer shall:

(1) Prepare detailed drawings, plans, design data, estimates, and technical specifications to show the character and scope of the work to be performed by contractors for all Public Improvements ("**Plans**").

(2) Furnish the number of approval copies of the final Plans for the Public Improvements as the City may require.

B. Budgeting for Specific Public Improvements. The Parties will coordinate on the preparation of the Budget which shall itemize the costs associated with the Public Improvements and will mutually agree on the Budget. The Budget will be approved by the City Council by ordinance, and thereafter shall be the budget that is used for the construction of the Public Improvements. The Parties acknowledge that certain Improvements may be funded by the City from funds other than those set forth in the Budget, such as from appropriations resulting from the City's Capital Improvements Plan and other dedicated funding sources for public improvements in the vicinity of the Redevelopment Area.

3.2. Construction.

A. Public Improvements. The Developer will construct the Public Improvements according to the Plans which are approved by the City pursuant to Section 3.1 above. The Developer shall engineer, design and construct the Public Improvements, and shall design, engineer and construct the Private Improvements or cause the same to occur. All final Plans for the Public Improvements shall be presented to the City for approval and are deemed to be incorporated herein by reference. Incorporation of the final Plans may occur administratively, as approved by City staff, and no action of the City Council will be required to incorporate the final Plans.

B. Construction Management. Developer shall perform, or caused to be performed, the services set forth in **Exhibit C**. Except for the payment obligations set forth in this Agreement, the City shall have no liability, obligation or responsibility with respect to the construction of the Public Improvements under the responsibility of Developer. The City shall not be liable for the performance or default of the Developer, or any of its consultants or contractors. Nothing, including any inspection on behalf of the City, shall be construed as a warranty, expressed or implied to any party, by the City.

C. Periodic Review. The Developer shall cause the Public Improvements to be constructed with due diligence and continuity, in a good and workman like manner, and in accordance with sound building and engineering practices. The City shall have the right to review in a project team meeting, which shall occur at least monthly, the design and construction of the Public Improvements to determine that they are being performed and completed in accordance with this Agreement and all Applicable Law and Requirements.

D. Changes. No material change to the Plans shall be permitted without the prior written consent of the City. A material change is any change or modification that substantially or significantly alters the general appearance, design, area, use, maintenance, operation, or compliance with Applicable Laws and Requirements of the Public Improvements. De minimis changes to the Plans are permitted without the prior written consent of the City; provided, Developer shall notify promptly the City of all such changes. After the Budget is approved pursuant to this Agreement, Developer may, in the aggregate, shift up to 5% of each line-item expense for the Public Improvements to another line-item expense for the Public Improvements without consent from the City but with prior written notice to the City, provided that the total amount of reimbursement for the Public Improvements shall not exceed the total amount shown on the Budget. Shifts between line items in an amount greater than 5% may be approved by the City's City Manager (the "**City Manager**") following a request for same by Developer. The City Manager may seek the advice and consent of the City Council for such approval. In the event the City Manager denies said request Developer shall have thirty (30) days to appeal to the City Council for a final determination.

E. Inspections. The Developer agrees to permit the City, or its designees, to inspect, observe, and oversee the construction of the Public Improvements in order to ascertain and determine that the standards of the City have been met.

F. Utility Relocation. The Parties agree that all anticipated costs that are not paid by the appropriate utility company associated with relocating any existing utilities from any existing public or private easement, as a result of construction of the Public Improvements, shall be included in the Budget.

G. Warranty. The Developer agrees to require every contractor constructing the Public Improvements to provide no less than a two (2) year warranty against material defects and workmanship, in a form approved by the City Engineer.

H. Bonds. The Developer shall, or ensure that every contractor shall, for the construction of the Public Improvements:

(1) Prior to commencement of construction and ending upon acceptance by the City of the applicable Public Improvement, maintain a performance and payment bond in a form approved by the City Attorney, in an amount equal to the cost of the Public Improvement, as determined by the City Engineer, conditioned upon the faithful performance of the provisions, terms and conditions of this Agreement. The performance and payment bonds shall name the City and Developer, as obliges, and copies of certificates of such bonds shall be delivered to the City.

(2) Provide a maintenance bond for the Public Improvements in compliance with the City Code and the City's Design and Construction Manual.

The Developer shall indemnify and hold harmless the City and its officers and employees for any damage resulting to the City, its officers or employees from failure of the Developer to provide the bonds set forth in this Section.

I. Sales Tax. The construction of the Public Improvements is exempt from sales and use tax in accordance with Missouri law. The City shall provide Developer a sales tax exemption certificate for the Public Improvements.

J. Prevailing Wage. The Developer shall comply with and cause all contractors and subcontractors performing construction of the Public Improvements to comply with all applicable laws regarding the payment of prevailing wages by contractors or subcontractors. The Developer shall indemnify and hold harmless the City for any damage resulting to it from failure of either the Developer or any contractor or subcontractor to pay prevailing wages pursuant to applicable laws.

K. Insurance. The Developer shall procure and maintain all insurance policies for the Public Improvements in accordance with the City's Standard Insurance and Indemnification Requirements which are attached as **Exhibit E**.

L. Reports. Developer shall provide the City with monthly progress reports and updates on the status of the Public Improvements and all reports relating to the Public Improvements prepared for submission to the City, any federal or state agency or any other governmental authority as soon as practicable after they are available. Such reports should contain at a minimum the following: (i) a status report on the progress of development; (ii) a detailed update of the Budget showing disbursements to date and a summary of all change orders; (iii) a description of all construction issues, liens or potential liens, potential cost overruns or controversies; (iv) a review of whether the construction of the Public Improvements is on schedule, and (v) such other matters as the City and the Developer shall reasonably

agree. Developer shall promptly notify the City of the occurrence of an event, circumstance or condition which would cause a potential delay in any completion date or any failure of any contractor to miss a construction milestone contained in any contract.

M. Permits and Approvals. Developer shall obtain and comply with all necessary permits, licenses, consents, approvals, and other authorizations required from other governmental authorities, including those required by Environmental Laws. The City shall pay all fees, impositions, and other changes in connection therewith.

N. Records. Developer shall establish and maintain all books and records with respect to the acquisition, development, and construction of the Public Improvements, including the application of the disbursement of the City Payments and make such books and records available to the City for inspection and copying upon reasonable notice during business hours. Developer shall provide the City with copies of all material contracts executed by the Developer relating to the Public Improvements. A material contract is any contract to furnish professional, design, consulting, construction, or other services or supply material or equipment in the design, development, and construction of the Public Improvements with an aggregate value in excess of \$50,000.00. The Developer shall provide the City with such additional information as the City may reasonably request concerning the Developer, the Project, the design, development and construction of the Project, including such statistical information pertaining to the Project requested on a periodic basis.

3.3. Abandonment of Construction.

The City shall have the right to cease funding of the disbursements from the Project Fund if the Developer shall cease development and construction of the Public Improvements or abandon construction of the Public Improvements. For purposes of this paragraph, the Developer shall be deemed to have ceased development and construction of the Public Improvements or abandoned construction of the Public Improvements if the Developer performs no material design or construction work on any significant portion of the Public Improvements for a period of 90 consecutive days, subject to Section 14 hereof, or publicly announces that it is abandoning the development and construction of the Public Improvements. At the option of the City and subject to Section 14 hereof, the funding of draws from the Project Fund may be permanently terminated by the City if the Developer shall cease development and construction of the Public Improvements or abandon construction of the Public Improvements and such event shall have continued without cure or continued attempts to cure or rescission for an aggregate period of one hundred twenty (120) consecutive days (which period shall include the ninety (90) day period contained in the definition of ceasing or abandoning development and construction of the Public Improvements). The City shall promptly notify the Developer in writing of the exercise of its option to temporarily or permanently suspend the right to draw moneys from the Project Fund in accordance with this paragraph.

3.4 Solicitations.

Solicitations issued by the Developer and City staff for the contracts discussed in this Section shall be a fair and competitive process among candidates that are selected by Developer under Developer's commercially reasonable judgment, free of any local preferences. After said process, such contracts will be awarded by Developer under Developer's commercially reasonable judgement.

Section 4. City Payments for Public Improvements.

4.1. City Payments.

The City direct payments to the contractors for the Public Improvements based on such amounts set forth in the Budget. The total amount paid to contractors shall not exceed the Available Funds. All Available Funds disbursed by the City shall be expended strictly in accordance with the Budget, subject to changes in specific line items of the Budget pursuant to Section 3.2.D above. Developer shall be responsible for

implementing this Agreement in accordance with the Budget and the Available Funds, both as determined by the City Council with the agreement of the Developer.

4.2. Reimbursement Requests.

City Payments shall be made as set forth in this paragraph to reimburse the Developer for the actual costs incurred by the Developer to design, engineer, and construct the Public Improvements. City Payments from the Available Funds shall be disbursed by the City upon submission of the completed requisition by the Developer, in the form attached hereto as **Exhibit D**, detailing actual costs and expenses for engineering, designing and constructing the Public Improvements. The City shall review each request for disbursement and within ten (10) working days shall issue the appropriate City Payment from the Available Funds or shall notify the Developer in writing if all or a portion of the requested payment is not eligible for reimbursement under this Agreement. Developer shall be responsible for paying all invoices to the named payees on a timely basis. The City shall not issue any City Payment until the Developer provides adequate documentation indicating that all contractors, engineers or other parties that have provided goods or services for the Public Improvements for which the City Payment is being provided have been paid in full by the Developer, subject to the Developer's right to withhold retainage and other amounts allowed by the applicable contracts and in accordance with Applicable Laws and Requirements.

Section 5. Payments to Developer.

5.1 Retainer. The City shall pay to Developer a "Retainer" in the amount of ten thousand dollars (\$10,000.00) per month, due on the first day of each month, beginning the first day of the calendar month following the effective date of this Agreement. The final monthly payment under the prior Development Services Agreement shall be made for the calendar month during which this Agreement is executed. The Retainer is not refundable to the City for any reason. The Retainer shall terminate on the date the Development Fee as provided in this Section is due and payable by the City.

5.2 Development and Owner's Representation Fees. In exchange for Developer's performance of the development services identified in **Exhibit C** for the Public Improvements, the City will pay to Developer an amount equal to five percent (5%) of the total costs of the Public Improvements as set forth in the approved Budget, not including: land costs; commissions, marketing and advertising fees; permits, fees and assessments; legal fees; taxes and insurance; and development and management fees (the "**Development Fee**"). In exchange for Developer's performance of the owner's representation services identified in **Exhibit C** for the Public Improvements, the City will pay to Developer an amount equal to one percent (1%) of the total costs as set forth in the approved Budget, not including: land costs; commissions, marketing and advertising fees; permits, fees and assessments; legal fees; taxes and insurance; and development and management fees (the "**Owner's Representation Fee**"). The amount of the Farmer's Market Pavilion costs that are paid by the CID shall be included in the calculation of the Development Fee and the Owner's Representation Fee. The amounts that may be paid for infrastructure supporting the Public Improvements from outside the Budget pursuant to the Capital Improvements Plan, shall not be included in the calculation of the Development Fee and the Owner's Representation Fee. Notwithstanding the foregoing sentence, if Developer is required to perform the development services shown on Exhibit C pertaining to any infrastructure supporting the public improvements, then the amounts paid for said infrastructure will be included in the calculation of the Development Fee and the Owner's Representation Fee. The Development Fee and the Owner's Representation Fee will be paid to Developer as follows:

- A. twenty-five percent (25%) upon the earlier of (i) construction commencement and (ii) one year after approval of the schematic design;

B. fifty percent (50%) in equal monthly installments over the projected length of the construction period; and

C. twenty-five percent (25%) upon the issuance of a certificate of Final Completion for all of the Public Improvements.

If the Public Improvements are constructed in phases, then the City shall pay the Development Fee and the Owner's Representation Fee based on each phase of the Public Improvements in accordance with the payment terms set forth above.

If the construction of the Public Improvements (or a phase of the Public Improvements) is terminated for any reason by the City after completion of the schematic design, then Developer shall be entitled to the payment set forth in Section 5.2A.

5.3 Additional Services. The Parties agree that the roles and responsibilities set forth in **Exhibit C** are representative of the primary services that Developer will provide pursuant to this Agreement, but the list in **Exhibit C** should not be considered to be a complete and exhaustive list of all services that may be required. If additional roles and responsibilities are identified for Developer or any other changes to **Exhibit C** are desired by either Party, and if both Parties agree, **Exhibit C** may be modified by written amendment to this Agreement. Any such amendment will indicate whether the Development Fee will be adjusted in conjunction with the modification to **Exhibit C**.

5.4 Expense Reimbursement. Upon prior written approval by the City, certain expenses for the Public Improvements portion of the Project may be paid by Developer and reimbursed by the City. Developer shall itemize all such expenses when submitted to the City for reimbursement, and the request for payment shall be accompanied by adequate documentation as the City may reasonably require to prove that goods or services have been provided as approved by the City. Any payments made pursuant to this paragraph shall not be counted as part of the Development Fee or the Owner's Representation Fee that are set forth in Section 5.2.

Section 6. Final Acceptance of the Public Improvements.

6.1. Final Acceptance by City.

The City will accept the Public Improvements after final inspections and verification that the Public Improvements have been constructed in compliance with all Applicable Laws and Requirements. Such acceptance will be confirmed by the City in writing in a certificate of Final Completion and the City agrees to act reasonably and in good faith in giving of such acceptance. Upon the Final Completion, the Developer shall be released from any and all such duties or obligations hereunder, except for those that specifically survive Final Completion.

6.2. Deliveries.

"**Final Completion**" of the Public Improvements shall be achieved when the following occurs:

A. The City has made a final inspection and verification that the Public Improvements have been constructed in compliance with all Applicable Laws and Requirements.

B. Developer has delivered the following to the City:

(1) As-built construction drawings together with an updated as-built survey, showing the location of all Public Improvements, such survey to be in such form as may be necessary to obtain a standard endorsement to the Owner's Title Policy.

- (2) A certificate signed by the Developer:
 - (i) stating that the Public Improvements have been fully completed substantially in accordance with the Plans, as then amended;
 - (ii) stating that the person executing such certificate has made such investigation of such sources of information as is deemed by such person to be necessary;
- (3) Maintenance bonds, or other equivalent security in a form that is reasonably acceptable to the City Attorney, for the Public Improvements in compliance with the City Code and the City's Design and Construction Manual from all contractors; and
- (4) any and all warranties relating to the Project.

Section 7. Access to the Project and Inspection; Operation of the Project.

The City and the duly authorized agents of the City shall have the right, at all reasonable times, during the design and construction of the Public Improvements, upon the furnishing of reasonable advance notice under the circumstances, to enter upon the Project and to examine and inspect the Project. The City and the duly authorized agents of the City shall also be permitted, at all reasonable times upon reasonable advance notice under the circumstances, to examine the books and records of the Developer with respect to the Public Improvements and the obligations of the Developer hereunder.

Section 8. Control of Private Improvements.

A. Developer shall have the exclusive right (not the obligation) to acquire all, or certain portions, of City owned property located within the Redevelopment Area, excepting the property that is dedicated for public uses, to develop the Private Improvements. Notwithstanding the foregoing, Developer's right to acquire all, or certain portions, of City owned property located within the Redevelopment Area to develop the Private Improvements, shall commence upon the City's approval of the final plan for the Public Improvements and expire on that certain date which is the later of (i) three (3) years after the commencement date of construction of the Public Improvements or (i) one (1) year after Developer has acquired any other portion of the City owned property located within the Redevelopment Area. The parties anticipate Developer will acquire such property in a series of transfers, each for a separate component of the Private Improvements. Each lot shall be platted by the City prior to such transfers.

B. In the event Developer elects to acquire all, or certain portions, of City owned property located within the Redevelopment Area, such conveyance shall be subject to the following terms:

- (1) The City and Developer (or, at the discretion of Developer, another entity affiliated with the principals of Developer) will enter into one or more separate real estate agreements to memorialize land transactions that result pursuant to this Section, which must be approved by the City Council by ordinance.
- (2) Tax abatement may be provided for such property pursuant to one or more amendments to the Redevelopment Plan, which must be approved by the City Council by ordinance pursuant to Chapter 353 of the Revised Statutes of Missouri.
- (3) City will transfer "pad ready" parcels, which shall be rough graded with utilities to site, upon the closing of the real estate agreement to purchase the subject parcel, which shall occur one hundred eighty (180) days from the effective date of the real estate agreement to purchase the subject parcel.

- (4) Developer will break ground on development of the acquired parcel(s) within 36 months after acquiring such parcel(s).
- (5) The purchase price for such parcel(s) shall be as set forth in a separate real estate agreement between the Parties. Notwithstanding the foregoing, the Parties agree that said purchase price for such parcel(s) will not exceed the fair market value of such parcel(s), as determined in the commercially reasonable discretion of the Parties.

Section 9. Indemnification and Release.

The Developer agrees to indemnify, defend, and hold the City, its directors, officers, employees, and independent contractors and consultants harmless from and against any and all third-party suits, claims, costs of defense, damages, injuries, liabilities, and costs and/or expenses, including court costs and reasonable attorneys' fees and expenses, resulting from, arising out of, or in any way connected with: (i) the design, development and construction of the Project, or (ii) the gross negligence or willful misconduct of the Developer, its members, employees, or independent contractors in connection with the management, design, development, and construction of the Project. The Developer is not obligated to indemnify, defend, and hold harmless the indemnified parties for allegations or claims asserting the indemnified parties' negligence or fault.

The indemnifications set forth in this Section shall survive termination or expiration of this Agreement.

Section 10. Events of Default.

10.1. Each of the following shall constitute a “**Default**” under this Agreement, which shall each be deemed an Event of Default under Section 10.2:

A. The filing of a voluntary petition in bankruptcy or insolvency or a petition for reorganization under any bankruptcy law by either Party, or the admission by either Party that it is unable to pay its debts as they become due.

B. The consent to an involuntary petition in bankruptcy or the failure to vacate, within ninety (90) days from the date of entry thereof, any order approving an involuntary petition by either Party.

C. The entering of an order, judgment or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating either Party as bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee, or liquidator of all or a substantial part of such Party's assets, and such order, judgment or decree continuing unstayed and in effect for an aggregate of sixty (60) days (whether or not consecutive).

D. The failure of either the City or the Developer to make any payment required to be made in accordance with the terms of this Agreement, as of the due date as specified in this Agreement.

E. The failure of either Party to perform, keep or fulfill any of the material covenants, undertakings, obligations or conditions set forth in this Agreement, and the continuance of such default for a period of thirty (30) days after the defaulting Party's receipt of written notice from the non-defaulting Party of such failure.

10.2 Upon the occurrence of any Default by either Party, said Default shall be deemed an “**Event of Default**” under this Agreement if the defaulting Party fails to cure the Default within thirty (30) days after receipt of written notice from the non-defaulting Party demanding such cure, or, if the Default is such that it cannot reasonably be cured within said thirty (30) day period of time, if the defaulting Party fails to

commence the cure of such Default within said thirty (30) day period of time or thereafter fails to diligently pursue such efforts to completion.

Section 11. Remedies.

Upon the occurrence of an Event of Default, the non-defaulting Party shall have the right to pursue any one or more of the following courses of action: (i) to terminate this Agreement by written notice to the defaulting Party, which termination shall be effective as of the effective date which is set forth in said notice, provided that said effective date shall be at least thirty (30) days after the date of said notice; (ii) to institute forthwith any and all proceedings permitted by law or equity including, without limitation, actions for specific performance and/or damages; and/or (iii) to avail itself of the remedies described in Section 11.

Section 12. Additional Remedies.

The remedies granted under Section 11 and this Section 12 shall not be in substitution for, but shall be in addition to, any and all rights and remedies available to the non-defaulting Party (including, without limitation, injunctive relief and damages) by reason of applicable provisions of law or equity and shall survive termination of this Agreement. If the parties are unable to agree on the Budget as set forth in Section 3.1.B, then the Developer shall have the right to terminate this Agreement upon thirty (30) days written notice.

Section 13. Dispute Resolution Regarding Design.

13.1. The City and the Developer agree that in the event of a disagreement concerning the matters described in Section 3.2.A or elsewhere in this Agreement, they shall negotiate, in good faith, in an attempt to resolve such disagreement for a period of at least forty-five (45) days following receipt of notice from either Party setting forth the specifics of the disagreement and the relief requested.

13.2. Should the City and the Developer be unable to resolve such disagreement through good faith negotiation, the City and the Developer agree to attempt in good faith to resolve such disagreement through mediation administered by an organization or individual offering commercial mediation services. All mediation proceedings shall be conducted in Lee's Summit, Missouri.

13.3. Should the City and the Developer be unable to resolve such disagreement through mediation, the Parties hereto may seek an adjudication of the controversy the Circuit Court of the Jackson County, Missouri, and the prevailing Party therein shall be entitled to recover all costs and expenses, including reasonable attorneys' fees and expenses associated therewith.

Section 14. Force Majeure.

Neither the City nor the Developer shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended, in the event of any delay caused by events that are not within the control of the Parties, including, without limitation, damage or destruction by fire or other casualty, condemnation, labor disputes, strike, lockout, civil disorder, war, acts of God, health epidemics that result in local, state or national emergency declarations, unusual delays in delivery of materials for construction of the Project, unusually adverse weather or wet soil conditions, provided that the Developer and the City shall give notice, as promptly as possible after the occurrence, to the other of them of the occurrence of any event or condition that shall constitute force majeure hereunder, which notice shall identify the obligations which may be affected thereby and estimate the period of time over which the delay may run. No extension of time shall be provided, regardless of the existence of any such event or condition, if notice as aforesaid is not given, except as permitted under this Section 14.

Section 15. Miscellaneous Provisions.

15.1. Consents and Cooperation.

A. Wherever in this Agreement the consent, approval, or authorization of the City and the Developer is required, such consent, approval, or authorization shall not be unreasonably withheld, delayed or conditioned, shall be in writing and shall be executed by a duly authorized officer or agent of the Party granting such consent or approval. Further, the City and the Developer agree to take such reasonable actions as may be necessary to carry out the terms, provisions and intent of this Agreement, and to aid and assist each other in carrying out such terms, provisions and intent. This consent and cooperation shall include, but not be limited to, the City executing such licenses, concessions, equipment leases, service contracts and other agreements negotiated in good faith by the Developer and pertaining to the Project that, in the Developer's reasonable judgment, should be made in the name of the City, as owner, of the Project. The City Council hereby delegates authority to City staff and officials to execute such certificates, agreement and other documents as are necessary to carry out the provisions of this Agreement and which do not otherwise require legislative action of the City Council.

B. Unless specifically provided to the contrary herein, all approvals or consents of the City may be given by the City Manager or his or her designee without the necessity of any action by the City Council. The City Manager, in his/her discretion, may seek the advice, consent or approval of the City Council for any action that requires consent or approval by the City Manager pursuant to this Agreement.

C. As a provider of services for the Project, Developer will frequently rely on City feedback, approvals, and authorization to proceed with aspects of Developer's services hereunder. The Parties agree that Developer may rely on written feedback, approvals, and authorization from the City Manager, City Attorney and other City legal counsel, City Council, or any other person delegated such authority in writing by any of the aforementioned (the "**City Authorities**"). In no event will Developer have any liability under this Agreement for relying on the City Authorities or waiting to proceed with any given activity hereunder until written feedback, approvals, or authorization, as applicable, is received from one or more City Authorities.

15.2. Relationship.

In the performance of this Agreement, the Developer shall act solely as an independent contractor. Neither this Agreement nor any agreements, instruments, documents, or transactions contemplated hereby shall in any respect be interpreted, deemed or construed as making the Developer a partner or joint venturer with the City. The City and the Developer agree that neither Party will make any contrary assertion, claim or counterclaim in any action, suit, arbitration or other legal proceedings involving the City and the Developer.

15.3. Applicable Law.

This Agreement shall be taken and deemed to have been fully executed, made by the Parties in, and governed by, the laws of the State of Missouri.

15.4. Entire Agreement; Amendment.

This Agreement constitutes the entire agreement between the City and the Developer with respect to the matters herein and no other agreements or representations other than those contained in this Agreement have been made by the Parties. It supersedes all prior written or oral understandings with respect thereto. This Agreement supersedes the Development Structure Agreement, which shall be deemed null and void by the Parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the City and the Developer.

15.5. Counterparts.

This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instrument.

15.6. Severability.

In the event any section, term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect to the extent the remainder can be given effect without the invalid provision, unless the unenforceable or invalid section, term or provision is such that a court reasonably would find that the Parties, or either of them, would not have entered the Agreement without such term or provision, or would not have intended the remainder of the Agreement to be enforced without such term or provision.

15.7. Limit on Liability.

The Parties agree that:

A. No director, officer, agent, employee, representative, attorney or consultant of the City shall be personally or otherwise in any way liable to the Developer in the event of any default, breach or failure of performance by the City under this Agreement or for any amount which may become due to the Developer or with respect to any agreement, indemnity, or other obligation under this Agreement.

B. No member of Developer and no director, officer, agent, employee, shareholder, representative or consultant of the Developer or any such member of the Developer shall be personally or otherwise in any way liable to the City in the event of any default, breach or failure of performance by the Developer under this Agreement or for any amount which may become due to the City with respect to any agreement, indemnity or other obligation under this Agreement.

C. The City and Developer waive all consequential, indirect, special, or incidental damages, including but not limited to, home office overhead, lost profits on other projects, financing costs, or loss of use, as a result a breach of this Agreement, the termination of this Agreement, or the failure to complete the Public Improvements in a timely manner or whether arising out of breach of contract, tort (including negligence), or any other legal theory or claim.

15.8. Headings.

Headings of articles and sections are inserted only for convenience and are in no way to be construed as a limitation or expansion on the scope of the particular articles, sections or subsections to which they refer. Words in the singular shall include the plural, and vice versa, where appropriate.

15.9. Notices.

Any notice, demand, or other communication required by this Agreement to be given by either Party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States First Class Mail, postage prepaid, or delivered personally.

To the Developer:

Lane4 Development Group, Inc.
c/o Owen Buckley
4705 Central Street
Kansas City, Missouri 64112

To the City:

City Manager
City of Lee's Summit
220 SE Green Street
Lee's Summit, Missouri 64063

With copies to:

Charles Renner
Husch Blackwell LLP
4801 Main Street,
Suite 1000
Kansas City, Missouri 64112-2551

With copies to:

City Attorney
City of Lee's Summit
220 SE Green Street
Lee's Summit, Missouri 64063

or to such other address with respect to either Party as that Party may, from time to time, designate in writing and forward to the other as provided in this paragraph.

15.10. Waiver.

The failure of either Party to insist upon a strict performance of any of the terms or provisions of this Agreement, or to exercise any option, right or remedy contained in this Agreement, shall not be construed as a waiver or as a relinquishment for the future of such term, provision, option, right or remedy, but the same shall continue and remain in full force and effect. No waiver by either Party of any term or provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party.

15.11. Negotiation of Agreement.

The City and the Developer are governmental and business entities, respectively, each having been represented and advised by competent counsel, and each has fully participated in the negotiation and drafting of this Agreement and has had ample opportunity to review and comment on all previous drafts. Accordingly, this Agreement shall be construed without regard to the rule that ambiguities in a document are to be construed against the draftsman. No inferences shall be drawn from the fact that the final, duly executed Agreement differs in any respect from any previous draft hereof.

15.12. Additional Implementation Contracts.

The City Council authorizes the City Manager to negotiate and execute contracts which are in furtherance of the Project as set forth in this Agreement, each in an amount that does not exceed \$50,000 for any single contract, which is the limit applied by the City's Procurement Policy on the effective date of this Agreement. For any contracts that are \$50,000 or more, the City Council may approve such contracts by ordinance. Any change to the City's Procurement Policy which authorizes the City Manager to execute contracts in excess of \$50,000 shall be made applicable to this Agreement.

15.13. Assignments and Subcontracts.

The Developer shall not transfer, lease or permit any assignment or lien to exist or in any other manner dispose of the Developer's rights in this Agreement without the prior written consent of the City, such consents not to be unreasonably withheld. Developer may not subcontract or assign any of the services to be performed under this Agreement without first obtaining the written approval of the City. Any person or firm proposed for subcontracting services under this Agreement will maintain throughout the duration of the Agreement insurance as provided in Section 3.2.K or other insurance applicable to and appropriate for the service being provided and will provide City with certification thereof upon City's request.

15.14. Recordation of Memorandum.

At either Party's option, a short form memorandum of this Agreement shall be recorded or filed among the appropriate land records of Jackson County, Missouri, and Developer shall pay the recording costs and any fees or taxes associated therewith. In the event of a discrepancy between the provisions of this Agreement and such short form memorandum thereof, the provisions of this Agreement shall prevail.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals the day and year first above written.

CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Mark Dunning, City Manager

ATTEST:

Trisha Fowler Arcuri
City Clerk

Approved as to form:

David Bushek
Chief Counsel of
Economic Development & Planning

LANE4 PROPERTY GROUP, INC.
a Missouri corporation

By: _____
Owen Buckley, President

END OF DOCUMENT

EXHIBIT A

MAP AND LEGAL DESCRIPTION OF THE PROJECT AREA

All that part of Section 5, Township 47 North, Range 31 West in Lee's Summit, Jackson County, Missouri, being more particularly described as follows:

Beginning at the Northwesterly corner of parcel JA61-230-15-13-00-0-00-000 (this and all subsequent parcel numbers referenced herein are based on the parcel identification numbers used by the Jackson County, Missouri Assessment Department), also being a point located on the Easterly right-of-way line of SE Green Street, as now established, the POINT OF BEGINNING; thence Southeasterly along the Easterly right-of-way line of SE Green Street to Southwesterly corner of parcel JA61-230-15-05-00-0-00-000, also being a point located on the Northerly right-of-way line of SE 3rd Street, as now established; thence Southeasterly along the Easterly right-of-way line of SE Green Street to the Northwesterly corner of parcel JA61-230-19-03-00-0-00-000, also being a point located on the Southerly right-of-way line of SE 3rd Street, as now established; thence Southeasterly along the Westerly line of Parcel JA61-230-19-03-00-0-00-000 to the Southwesterly corner thereof; thence Northeasterly along the Southerly line of said parcel to the Southeasterly corner thereof; thence Northwesterly along the Easterly line of said parcel to the Northeasterly corner thereof, also being a point located on the Southerly right-of-way line of SE 3rd Street; thence Northeasterly along the Southerly right-of-way line to SE 3rd Street to the Northeasterly corner of parcel JA61-230-19-01-00-0-00-000, also being a point located on the Westerly right-of-way line of SE Johnson Street, as now established; thence Northwesterly along the Westerly right-of-way line of SE Johnson Street to the Southeasterly corner of parcel JA61-230-15-09-00-0-00-000, also being a point located on the Northerly right-of-way line of SE 3rd Street; thence Northwesterly along the Westerly right-of-way line of SE Johnson Street to the Northeasterly corner of parcel JA61-230-15-15-00-0-00-000, also being a point located on the Southerly right-of-way line of SE 2nd Street, as now established; thence Southwesterly along the Southerly right-of-way line of SE 2nd Street to the Northwesterly corner of parcel JA61-230-15-13-00-0-00-000, also being a point located on the Easterly right-of-way line of SE Green Street, the POINT OF BEGINNING.

[See attached Map]

Final for Council Packets

EXHIBIT B

DESCRIPTION OF PUBLIC IMPROVEMENTS

The Public Improvements are anticipated to include the following components, subject to final approval of the Budget by the City Council acting by ordinance in its legislative capacity:

- Civic Plaza
- Clock Tower
- Art Features
- Market Plaza
- Conservatory / Event Space
- Green & Johnson Streetscape Features
- Pedestrian Areas
- Interior Parking Stalls
- Performance Stage
- Water Feature
- Overhead Canopy
- Entry Arch & Signage
- Parking field and possible parking structure
- All Infrastructure

The Public Improvements that are finally selected by the City shall be itemized in the Budget pursuant to the provisions of this Agreement.

EXHIBIT C
SERVICES PROVIDED BY DEVELOPER

[Attached]

Lee's Summit Downtown Market Plaza Public Improvements Project

Development Services Agreement
September 13, 2020

Lead Role - X
 Participating Role - ●



DEVELOPMENT ACTIVITY: LANE4 Property Group City of Lee's Summit

Due Diligence:

1.	Coordinate with Due Diligence subs to integrate with design team	X	●
2.	Additional Property due diligence - obtain any additional required bids and manage geotechnical engineering reports, ALTA/Topo Surveys, environmental reports and other preliminary due diligence	X	●
3.	Review additional due diligence bids and pay direct or include in draws	●	X

Pre-Development Design:

4.	Obtain & manage preliminary site plans & project massing	X	●
5.	Finalization of Public Improvements size and scope	X	X
6.	Create & manage preliminary design schedule	X	●
7.	Obtain preliminary elevations and schematic plans for budgetary pricing	X	●
8.	Obtain finalized pricing for design services	X	●
9.	Prepare design services agreement and negotiate terms		X
10.	Execute contracts - to be held by City		X
11.	Manage communications with design professionals including- architectural, civil, structural, engineering and other services	X	●
12.	Host and maintain regular design meetings to complete work as required	X	●
13.	Compile meeting minutes and distribute	X	●

Pre-Development Construction:

14.	Obtain preliminary updated cost based on updated preliminary design documents	X	●
15.	Review preliminary scopes of work for completeness	X	●
16.	Identify and coordinate any fees or scopes not included in GC scope including - Special Tests & Inspections, FFE procurement process, utility provider coordination and tap fees, traffic studies, permits	X	X
17.	Coordinate additional sub contractors/design professionals for above scopes	X	●
18.	Execute contracts - to be held by City		X
19.	Prepare preliminary construction schedules for City review	X	●
20.	Prepare construction management services agreement and negotiate terms	●	X
21.	Execute contract - to be held by City		X

Pre-Development Other:

22.	Manage design teams for any off-site approvals necessary	X	X
23.	Manage 3rd party consultants for any off-site Public Improvements and neighborhood related activities regarding the project	X	X
24.	Public Communication and materials distribution	●	X
25.	Arrange and contract for environmental remediation in existing structures and demolition of structures		X
26.	Conduct soil analysis for any further environmental remediation (lead contamination in soil)		

Zoning & Entitlements:

27.	Manage all processes for necessary zoning for project	●	X
28.	Manage project's legal counsel for zoning & entitlements	●	X
29.	Work with Development Services Department for necessary entitlements & approvals for land, infrastructure & building construction	●	X
30.	Pay for all Entitlement fees		X
31.	Operate as public contact for Ownership including public relations in connection with obtaining project entitlements necessary	●	X

32.	Manage 3rd party consultants for any neighborhood related activities regarding the project	●	X
33.	Coordinate and manage public meetings/hearings	●	X
Financial Analysis & Budgeting:			
34.	Create project budgets including projected land, soft and hard costs	X	●
35.	Track project costs on monthly basis	X	●
36.	Manage project contingency and utilization of same	X	●
Marketing & Leasing:			
37.	Operate as public contact for ownership and manage public relations in connection with the project	●	X
38.	Create project logo and distribution materials if necessary	●	X
39.	Negotiate any advertising and sponsorship opportunities for Public Improvements	●	X
Project Financing:			
40.	Continue negotiations to acquire property for project	X	●
41.	Financing for design & construction of the Public Improvements including all hard and soft costs		X
Project Design & Construction Management:			
42.	Manage design professionals to complete design development and construction documents for project permitting	X	●
43.	Attend regular design development meetings to ensure project conforms to budget expectations	X	●
44.	Compile and send meeting minutes and updates (and/or by Architect)	X	
45.	Review & provide guidance to design team and manage selection of exterior materials, structural means & methods, and construction materials	X	X
46.	Review and approve applications for payment submitted by design professionals	X	●
47.	Process Payment applications made by design professionals		X
48.	Review design packages and proposed specifications for the project	X	X
49.	Review subcontractors bid list, bid results and proposed subcontractors	X	X
50.	Manage general contractor during design and pre-construction for updated pricing throughout design phase - continual cost estimating	X	●
51.	Manage general contractor and project sitework from commencement to completion of construction	X	●
52.	Attend bi-weekly construction meetings as owner's representative	X	●
53.	Compile and send meeting minutes and updates (and/or by general contractor)	X	
54.	Review and approve applications for payment submitted by general contractor	X	●
55.	Process payment applications made by contractor		X
56.	Obtain and ensure all lien waivers required by contractor are in order for each payment application	X	
57.	Review Approval Letters for construction scope changes	X	●
58.	Approve Approval Letters		X
59.	Approve all Change Orders		X
60.	Ensure architect and engineers are providing construction administration as required for project and is completed in accordance with plans and specifications - submittal approvals, RFI processing, required site walks, etc.	X	●
61.	Coordinate FFE planning and design with FFE designer/interior designer/Architect	X	●
62.	Coordinate with City Staff for Procurement of FFE package by City	X	X
63.	Manage delivery of FFE, installation, punch list	●	X
64.	Verify all requirements for Temporary Certificate of Occupancy and Final Certificate of Occupancy are met by general contractor and TCO and CO are obtained	X	●
65.	Manage Project Close out processes	X	●
66.	Complete punch walk and creation of punch list items alongside architects punch lists	X	●
67.	Manage general contractors completion of punch list items in timely manner	X	●
68.	Obtain final lien waivers from all contractors	X	

69.	Obtain final close out documents from general contractor including contacts list, warranties, manuals, as-builts	X	
70.	Coordinate owner training of equipment with contractors - City to dictate and coordinate specific City staff for training	X	•
71.	Warranty Management including 11 month final warranty walk	•	X
Project Commissioning			
72.	Solicit proposals for Commissioning Agents	X	•
73.	Coordination of Commissioning Process	X	X
74.	Obtain final commissioning report	X	•
Project Accounting:			
75.	Compile all invoices and pay applications in monthly package	X	•
76.	Process payment applications and send payments		X

EXHIBIT D
FORM OF DISBURSEMENT REQUEST

[Attached]

EXHIBIT D

FORM OF DISBURSEMENT REQUEST

TO: City of Lee's Summit, Missouri
Attention: Finance Director

Re: Downtown Market Plaza Public Improvements Project

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Development Services Agreement dated as of September 13, 2022 (the "Agreement") between the City of Lee's Summit, Missouri (the "City"), the LANE4 Property Group, Inc. (the "Developer"). In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on *Schedule 1* hereto is an eligible cost of the Project and was incurred in connection with the construction of the Project.
2. These costs have either been paid by Developer or are due to be paid and are payable by the City under the Agreement.
3. Each item listed on *Schedule 1* has not previously been paid or reimbursed from money derived from the Available Funds and no part thereof has been included in any other disbursement request previously filed with the City.
4. There has not been filed with or served upon the Developer any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
5. All necessary permits and approvals required for the work for which this application relates have been issued and are in full force and effect.
6. All work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.
7. The Developer is not in default or breach of any material term or condition of the Agreement, and no event has occurred and no condition exists which constitutes a Developer Event of Default under the Agreement.
8. All of the Developer's representations set forth in the Agreement remain true and correct as of the date hereof.

Dated this ____ day of _____, 20 ____.

LANE4 Property Group, Inc.,
a Missouri corporation

Name: _____

Title: _____

Approved for Payment this ____ day of _____, 20 ____:

CITY OF LEE'S SUMMIT, MISSOURI

By: _____

Name: _____

Title: _____

EXHIBIT E

STANDARD INSURANCE AND INDEMNIFICATION REQUIREMENTS

[Attached]



LEE'S SUMMIT

LAW DEPARTMENT
OFFICE OF THE CITY ATTORNEY

November 13, 2020

The attached Standard and Indemnification Requirements, Version 2020.2, are hereby approved pursuant to the authority delegated to me in Section 26-211 of the City Code, as approved by Ordinance No. 8895 on June 9, 2020.

A handwritten signature in black ink, appearing to read 'Brian Head', written over a horizontal line.

Brian Head, *City Attorney*

**STANDARD INSURANCE AND INDEMNIFICATION REQUIREMENTS
FOR THE CITY OF LEE'S SUMMIT, MISSOURI**
Version 2020.2

Approved by the City Attorney on November 13, 2020

*Section 26-211 of the City Code, as approved by Ordinance No. 8895 on June 9, 2020, provides that the insurance to be provided by a right-of-way user and other parties as referenced in Chapter 26 of the City Code shall be as set forth in the "Standard Insurance and Indemnification Requirements" as approved by the City Attorney, which may be updated and amended as needed from time to time. This document sets for those requirements as authorized by Section 26-211 (the "**Requirements**"). This document is also applicable to any contracts executed by the City which make reference to these Requirements, and all other City Code and Unified Development Ordinance (UDO) provisions which reference these Requirements including the provisions for Site Development Permits in Division IV of UDO Article 3 (UDO Section 3.415 – Site Development Permits), the provisions for Blasting Permits in Division XVI of UDO Article 3 (UDO Section 3.1630 – Blasting Permit Application), and UDO Chapter 15 (Definitions). The Law Department shall be consulted for all questions of interpretation or applicability, and no alterations of these requirements shall be applicable to any Contract or project until approved by the Law Department.*

1. Definitions

As used in these Requirements, the following words and term shall have the following meanings. All words and terms not defined in this Section shall have the meanings assigned to them in Section 26-101 of the City Code.

"Contract" means the contract into which any or all of these Requirements are incorporated by reference, or into which any or all of these Requirements are directly written in the text of the document.

"Contractor" and **"Developer"** shall have the same meaning as the term **"Right-of-way User"** as defined in Section 26-101 of the City Code, and shall also include all persons to which these Requirements are made applicable pursuant to any permit, contract, or other form of approval granted by the City.

2. Construction Insurance

The Contractor/Developer shall secure and maintain, throughout the duration of the project, insurance of such types and in at least amounts as are required herein set forth below. Contractor shall provide certificate(s) of insurance confirming the required protection on forms acceptable to the City. The City shall be notified by receipt of written notice from the insurer at

least 30 days prior to material modification or cancellation of any policy listed on the certificate(s).

A. Categories of Right-of-Way Users and Permittees

1. The insurance in this Requirements will be imposed based on the applicable category assigned to each Right-of-way User, Contractor or Developer, on a project by project basis, as set forth below. The determination of which category is applicable to each Right-of-way User, Contractor or Developer user for a particular project will be determined by City staff at the time that a permit or other form of permission is requested from the City, or at the time that a contract is negotiated, as applicable to each situation. The applicable category for each Contractor, Developer or user/permittee will be placed on the business license when issued by the City. A business license may contain more than one category based on the projects undertaken by such party.
2. Categories of Right-of-way Users, Contractors and Developers for the purpose of imposing these Requirements:
 - a. Category #1 – Driveway / Flatwork with minor excavation: A request for a permit or permission by a Right-of-way User to conduct work on a driveway, sidewalk or other similar area which involves only minor excavation and does not require the creation of open trenches or the issuance of a traffic control permit.
 - b. Category #2 – Other Minor Right-of-Way Work: A permit or other form of permission to conduct landscaping work in right-of-way on local or collector roads that does not involve the issuance of a traffic control permit. All landscaping on collector roads shall be treated as Category #3 – all other Right-of-way Users, as set forth below. City staff shall have the sole authority to determine what qualifies as Other Minor Right-of-Way Work.
 - c. Category #3 – All Other Right-of-Way Users: Permits and permissions for all other Right-of-way users, Contractors and Developers that are not in one of the two categories above (Driveway / Flatwork with minor excavation and Other Minor Right-of-Way Work).

B. General. The requirements in this subsection shall apply to all three categories of Right-of-way Users as set forth in part A of this Section.

1. Insurer Qualifications. Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Missouri, with an AM Best, Inc. rating of A or

above, and at least a Class X financial rating, with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of any applicable agreements for the project and revocation of any applicable permits for the project, at the City's option.

2. No Representation of Coverage Adequacy. The City reserves the right to review any and all of the insurance policies and/or endorsements required by these Requirements, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in these Requirements or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times when required by these Requirements.
3. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name and endorse, to the fullest extent permitted by law for claims arising out of the performance of the Work, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of these Requirements.
4. Coverage Term. All insurance required by these Requirements shall be maintained in full force and effect until all Work or Services required to be performed are satisfactorily performed, completed and formally accepted by the City.
5. Primary Insurance. Contractor's insurance shall be, or be endorsed to indicate, its primary, non-contributory insurance with respect to performance of the Work and in the protection of the City as an Additional Insured. Such coverage shall be at least as broad as ISO CG 20 01 04 13.
6. Waiver. All policies, except for Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the Work or Services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement.
7. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these Requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City and shall be paid

at the expense of the Contractor. Contractor shall be solely responsible for any such deductible or self-insured retention amount.

8. Use of Subcontractors. If any Work is subcontracted in any way, Contractor shall either cover all subcontractors in the Contractor's liability insurance policy or execute written agreements with its subcontractors containing the indemnification provisions set forth in these Requirements and insurance requirements set forth herein protecting the City and Contractor. Contractor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
9. Notice of Claim. The Contractor shall upon receipt of notice of any claim in connection with the Work promptly notify the City, providing full details thereof, including an estimate of the amount of loss or liability. If the City shall subsequently determine that the Contractor's aggregate limits of protection shall have been impaired or reduced to such extent that they are inadequate for the balance of the project, the Contractor shall, upon notice from the City, promptly reinstate the original limits of liability required by these Requirements and shall furnish evidence thereof to the City. All policies shall contain an endorsement providing that the coverage afforded under such policies shall provide thirty (30) days' prior written notice of cancellation, except for non-payment of premium, will be given to City. Contractor shall be responsible for ensuring that the City is notified within thirty (30) days of the occurrence of any reduction in the insurance coverage amounts, cancellation, or expiration of any of the policies as required by these Requirements that are not replaced.
10. Claim Reporting. Any failure of the Contractor to comply with the claim reporting provisions of the policies or any breach of a policy warranty shall not affect coverage afforded under the policy to protect the City. Contractor shall promptly furnish City's Risk Management Division with copies of any accident or incident report(s) sent to Contractor's insurance carriers covering accidents/incident occurring in connection with and/or as a result of use of the ROW.
11. Evidence of Insurance. Prior to commencing any Work or Services, Contractor will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by these Requirements, issued by Contractor's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in these Requirements and that such coverage and provisions are in full force and effect. The City may reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of

coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of these Requirements.

If any of the policies required by these Requirements expire during the performance of the applicable Work or Services, Contractor shall forward renewal certificates and declaration page(s) to the City thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by these Requirements shall be identified by referencing number and title of these Requirements. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without a reference to these Requirements, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

- a. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
 1. Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 and CG 20 37 07 04 or their equivalents.
 2. Auto Liability – Under ISO Form CA 20 48 or equivalent.
 3. Excess Liability – Follow Form to underlying insurance.
- b. Contractor’s insurance shall be primary, non-contributory insurance with respect to performance of the Work or Services.
- c. All policies, except for Workers’ Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of Work or Services performed by Contractor.
- d. ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.
- e. All Certificates of Insurance shall name the City of Lee’s Summit as the certificate holder and send the certificate and any endorsements to:

City of Lee's Summit
Attn: City Engineer
220 SE Green Street
Lee's Summit, MO 64063

C. Required Insurance Coverage. The requirements of this part C shall apply to the three categories of Right-of-way Users as set forth herein.

1. Commercial General Liability.

- a. Category #3 – All Other Right-of-Way Users: Contractor shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$3,000,000 for each occurrence, \$3,000,000 Products and Completed Operations Annual Aggregate and a \$3,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, bodily injury, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 01 93 or equivalent thereof, including but not limited to, separation of insured’s clause. For claims arising out of the performance of the applicable Work or Services, the City, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO forms CG 20 10 03 97 and CG 20 37 07 04, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
- b. Category #1 – Driveway / Flatwork and Category #2 – Other Minor Right-of-Way Work: The insurance requirements shall be the same as subpart a immediately above except that Contractor shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$2,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit.

2. Vehicle Liability.

- a. Category #3 – All Other Right-of-Way Users: Contractor shall maintain Business Automobile Liability insurance with a limit of \$3,000,000 each occurrence on Contractor’s owned, hired and non-owned vehicles

assigned to or used in the performance of the Contractor's Work or Services. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof, and, if necessary, contain, or be endorsed to contain Transportation Pollution Liability insurance covering materials to be transported by Contractor pursuant to this Agreement and such coverage shall be at least as broad as policy form CA 99 48 03 06. This coverage may also be provided on the Contractors Pollution Liability policy. To the fullest extent allowed by law, for claims arising out of the performance of the applicable Work or Services, the City, its agents, representatives, officers, directors, officials and employees shall be endorsed as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

b. Category #1 – Driveway / Flatwork and Category #2 – Other Minor Right-of-Way Work: The insurance requirements shall be the same as subpart a immediately above except that Contractor shall maintain "occurrence" form Commercial Automobile Liability insurance with an unimpaired limit of not less than \$2,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit.

3. Workers' Compensation Insurance. Unless prohibited by law, Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Contractor's employees engaged in the performance of the applicable Work or Services and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

D. Cancellation and Expiration Notice.

Insurance required by these Requirements shall not expire, be cancelled, or be materially changed without thirty (30) days' prior written notice to the City.

E. Policy Limit Escalation.

The provisions of this subsection apply to all contractors subject to Category #3 – All Other Right-of-Way Users. The limits of liability for each policy coverage amount stated in these Requirements shall automatically increase as necessary to remain, at all times, not less than the maximum amount of liability set forth in Section 537.610, RSMo

applicable to political subdivisions pursuant to Section 537.600, RSMo; provided that nothing herein or in any such policy shall be deemed to waive the City's sovereign immunity. The statutory waiver of sovereign immunity for 2020 is \$2,905,664 for all claims arising out of a single accident or occurrence.

F. Indemnification and Sovereign Immunity Unaffected.

1. Indemnification. Contractor shall indemnify, defend, and hold harmless the City and each Council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes, or omissions, in connection with the performance of the Contractor, its officers, employees, agents, or any tier of Subcontractor or person for which Vendor may be legally liable in the performance of this Contract. The amount and type of insurance coverage requirements set forth above will in no way be construed as limiting the scope of the indemnity in this Section.

2. Sovereign Immunity. Nothing contained in these Requirements shall be construed as limiting the extent of Contractor/Developer's obligation to indemnify, defend, and hold harmless the City as may be imposed by contract or the applicable of other laws and requirements. Nothing contained in these Requirements is to be construed to waive the City's sovereign or any other immunity or defense available to the City, its officers, employees, agents, or elected officials.

2. Professional Liability Insurance.

If the Contract is the subject of any professional Services or Work, or if the Contractor engages in any professional Services or Work in any way related to performing the Work under the Contract, the Vendor shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Vendor, or anyone employed by the Contractor, or anyone for whose negligent acts, mistakes, errors and omissions the Vendor is legally liable, with an unimpaired liability insurance limit of \$3,000,000 each claim and \$3,000,000 annual aggregate.

3. Cyber Liability Insurance.

If the Contract is the subject of any Services or Work involving the City's information technology structure, or if the Contractor engages in any Services or Work in any way related to performing work involving the City's information technology structure under this Contract, Contractor shall maintain Cyber Liability insurance with limits not less than \$3,000,000 per occurrence or claim, \$3,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by Contractor in the Contract and shall include, but not be limited to, claims involving infringement of intellectual property, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs, regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.

4. Vendor's Pollution & Environmental Liability Insurance

Contractor shall carry and maintain Pollution Liability and/or Asbestos Pollution Liability and/or Errors and Omissions insurance applicable to the Services and Work being performed, with an unimpaired limit of no less than \$3,000,000 per claim or occurrence and \$3,000,000 aggregate per policy period of one year.

5. Builders Risk Insurance.

Contractor shall purchase and maintain insurance to protect the Project from perils of physical loss. Such coverage shall name the City as a loss payee as its interest may appear. The insurance shall provide for the full cost of replacement for the entire Project at the time of any loss. The insurance shall include as named insureds the City, the Contractor, the Contractor's Subcontractors and sub-subcontractors and shall insure against loss from the perils of fire and all-risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, testing, resulting loss arising from defective design, negligent workmanship or defective material. The Contractor shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost.

6. Umbrella Insurance.

When an Umbrella/Excess Liability will apply to a Contract or project, the following language will be used as the base language for the document and the Law Department should be consulted for the appropriate amount to include in this provision along with any other changes to this language as may be necessary to conform this language to the Contract or project:

Contractor shall carry and maintain Umbrella/Excess Liability insurance with an unimpaired limited of not less than \$XX,000,000 per occurrence combined limit bodily injury and property damage, and applies in excess of the insurance policies required in this Contract.

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