

## TAX CREDIT AGREEMENT

### (City of Lee's Summit – Downtown Market Project)

**THIS TAX CREDIT AGREEMENT**, dated as of the \_\_\_\_ day of \_\_\_\_\_, 2025 (the "Agreement"), by and among the **MISSOURI DEVELOPMENT FINANCE BOARD**, a body corporate and politic of the State of Missouri (the "**Board**"), and the **CITY OF LEE'S SUMMIT, MISSOURI**, a constitutional home rule charter city and political subdivision organized and existing under the laws of the State of Missouri (the "**Public Entity**");

#### WITNESSETH:

**WHEREAS**, Section 100.286.6 of the Revised Statutes of Missouri (the "**Tax Credit Statute**") provides that any taxpayer shall be entitled to a tax credit against any tax otherwise due under the provisions of Chapter 143, RSMo, excluding withholding tax imposed by Sections 143.191 to 143.261, RSMo, Chapter 147, RSMo, or Chapter 148, RSMo, in the amount of fifty percent of any amount contributed in money or property by the taxpayer to the development and reserve fund, the infrastructure development fund or the export finance fund during the taxpayer's tax year; and

**WHEREAS**, the Public Entity has requested that the Board accept contributions from donors and make the proceeds of such contributions available to the Public Entity for the purpose of paying a portion of the cost of financing the project described on **Exhibit A** hereto (the "**Project**"), all as more fully described in the application documentation for assistance submitted to the Board (all as attached hereto as **Exhibit B**, collectively, the "**Project Application**"); and

**WHEREAS**, at meetings of the Board held on February 21, 2023 and August 20, 2024, the Public Entity made written and/or oral presentations to the Board concerning the Project and the Project Application; and

**WHEREAS**, at the meeting of the Board held on October 15, 2024, the Board adopted a Resolution approving the Project Application and the award of Tax Credits (defined below) in an amount up to \$3,000,000; and

**WHEREAS**, the Project will significantly benefit the Public Entity and the State of Missouri by: (i) increasing tourism and visitors to the Public Entity which will have a positive economic impact for the Public Entity, (ii) providing public space for events to foster a sense of community, (iii) providing a catalyst for revitalization and investment in a downtown core to spur additional economic activity, and (iv) providing future, long-term jobs, as well as temporary construction jobs; and

**WHEREAS**, the Board and the Public Entity desire to enter into this Agreement for the purpose of setting forth the terms and conditions pursuant to which the Board will accept contributions with respect to the Tax Credits described herein and deposit such contributions into the Infrastructure Development Fund (defined herein) for the purposes set forth herein, all subject to the terms of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein set forth, the Board and the Public Entity hereby covenant and agree as follows:

## ARTICLE I

### DEFINITIONS

In addition to the terms defined in the Recitals to this Agreement and elsewhere herein, as used in this Agreement the following terms shall have the following meanings:

**“Application”** means the request for assistance submitted to the Board by the Public Entity attached hereto as **Exhibit B**.

**“Completion Date”** means the date established by the Public Entity as the completion date pursuant to notice filed pursuant to **Section 5.2(d)** hereof.

**“Compliance Period”** means the period commencing upon the execution of this Agreement and ending on the last day of the third full fiscal year following the latest of these events to occur (i) the execution of this Agreement, (ii) the first issuance of Tax Credits pursuant to this Agreement or (iii) the Completion Date.

**“Contribution”** means any contribution received by the Board pursuant to and in accordance with this Agreement.

**“Disbursement Request”** means the Disbursement Request referred to in **Section 4.2** hereof and the form of which is attached hereto as **Exhibit C**.

**“Donor”** means any person making a contribution to the Board.

**“Infrastructure Development Fund”** means the fund by that name held by the Board.

**“Material”** means a standard for materiality pursuant to which any change or amendment would, when added to all such other changes or amendments, result in a prudent person considering such change or amendment material or would impact the Project Budget by 10% or more. Any change shall be deemed Material if the Board notifies the Public Entity, prior to the effective date of such change, that the Board considers such change to be Material.

**“Maximum Contributions”** shall have the meaning set forth in **Section 3.1** hereof.

**“Maximum Tax Credits”** shall have the meaning set forth in **Section 3.1** hereof.

**“MBE/WBE Policies”** shall mean the minority or woman business enterprise policies relating to construction contracts paid for with public funds of the Public Entity (as such policies were in effect at the time of execution of this Agreement and included as **Exhibit H** attached hereto) as identified to the Board by the Public Entity in the first Disbursement Request.

**“Project”** means the project described in **Exhibit A**, and any amendments, revision or additions thereto made in accordance with **Section 5.7(b)** hereof.

**“Project Abandonment”** means (i) the failure by the Public Entity to commence construction of the Project within three years of the execution of this Agreement, where no agreement exists between the Board and the Public Entity to extend such deadline, or (ii) any sale by the Public Entity of a material portion of the real estate or improvements thereon constituting the Project. For purposes of the prior

sentence, commence construction shall mean the entering into of a contract with a general contractor for the Project and commencement of work on the Project.

**“Project Budget”** means the aggregate Project Budget described in the Application, and any amendments, revisions or additions thereto made in accordance with **Section 5.7(a)** hereof.

**“Project Costs”** means all reasonable or necessary costs and expenses, relating to the Project, subject to the limitations contained in **Exhibit D**.

**“Tax Credits”** means tax credits issued by the Board in accordance with the Tax Credit Statute and this Agreement in consideration of the Contributions.

**“Tax Credit Statute”** shall have the meaning set forth in the Recitals.

## **ARTICLE II**

### **FINDINGS AND DETERMINATIONS; REPRESENTATIONS AND WARRANTIES**

**Section 2.1. Board’s Determination of Project Benefit.** The Board hereby finds and determines as follows:

(a) The Project will significantly benefit the Public Entity and the State of Missouri by: (i) increasing tourism and visitors to the Public Entity which will have a positive economic impact for the Public Entity, (ii) providing public space for events to foster a sense of community, (iii) providing a catalyst for revitalization and investment in a downtown core to spur additional economic activity, and (iv) providing future, long-term jobs, as well as temporary construction jobs;

(b) The benefits to be derived by the State of Missouri are expected to exceed the benefits provided by the Board by this Agreement; and

(c) The Board’s participation is a material precondition to the completion of the Project, and the Project would not proceed without the assistance provided by the Board.

**Section 2.2. Public Entity’s Determination of Project Benefit and Representations and Warranties.** The Public Entity hereby finds and determines as follows:

(a) The Project will significantly benefit the Public Entity and the State of Missouri by: (i) increasing tourism and visitors to the Public Entity which will have a positive economic impact for the Public Entity, (ii) providing public space for events to foster a sense of community, (iii) providing a catalyst for revitalization and investment in a downtown core to spur additional economic activity, and (iv) providing future, long-term jobs, as well as temporary construction jobs;

(b) The benefits to be derived by the State of Missouri and the Public Entity are expected to exceed the benefits provided by the Board by this Agreement;

(c) The Project would not proceed without the assistance provided by the Board;

(d) The Public Entity (1) is a constitutional home rule charter city and political subdivision organized and existing under the laws of the State, and (2) the Public Entity has lawfully executed and delivered this Agreement acting by and through the authority of the Public Entity's governing body; and

(e) The execution and delivery of this Agreement by the Public Entity will not result in a breach of any of the terms of, or constitute a default under, any indenture, mortgage, deed of trust, lease or other agreement or instrument to which the Public Entity is a party or by which it or any of its property is bound or its bylaws or any of the constitutional or statutory rules or regulations applicable to the Public Entity or its property.

**Section 2.4. No Private Benefit.** The Public Entity represents and warrants that no portion of the Project or the proceeds of the Contributions shall benefit any private person, except for such benefits as may be conferred to private persons through the ordinary course of business in the development, construction and operation of the Project.

## ARTICLE III

### CONTRIBUTIONS AND TAX CREDITS

**Section 3.1. Agreement to Accept Contributions and Issue Tax Credits.** Subject to the requirements set forth herein and so long as the Board is authorized under the Tax Credit Statute to issue Tax Credits, the Board hereby agrees to accept Contributions from Donors in a maximum aggregate amount of \$6,000,000 (the "**Maximum Contributions**"), resulting in the potential issuance of Tax Credits in the maximum amount of \$3,000,000 (the "**Maximum Tax Credits**"), and to deposit such Contributions into the Board's Infrastructure Development Fund, and to issue such Donors' Tax Credits in an amount not to exceed 50% of the amount of such Contribution.

The date of the award and authorization for the Tax Credits shall be October 15, 2024.

All Contributions must be received by December 31, 2025 unless the Board, in its sole and absolute discretion elects to extend the period for which Contributions may be received. This paragraph shall not restrict the owner of any Tax Credit from utilizing the benefits of the carry-forward provisions contained in the Tax Credit Statute.

**Section 3.2. Submission of Form 100.** The Board shall process each Contribution which is accompanied by a properly completed Form 100 (currently available at <https://mdfb.org/resources-forms/tax-credit-contribution-forms/>) and any other documents required by Missouri law. Any Contribution which is received for which the Board does not have a properly completed Form 100 and any other documents required by Missouri law shall be held by the Board until such documents are provided or, at the option of the Board, returned to the Donor with a written notation stating why such Contribution is being returned. A copy of each returned Contribution shall also be sent to the Public Entity. The Board reserves the right to require any additional information which the Board determines to be necessary to comply with the Board's statutes, as they may be amended from time to time.

**Section 3.3. Minimum Contribution.** The Board shall not accept any Contribution in an amount less than \$5,000. Unless the Board, in its sole and absolute discretion, elects to waive the foregoing limitation, any Contribution which is received for less than such minimum amount shall be returned to the Donor with a written notation stating that Contributions must be made in the minimum amount of \$5,000. A copy of each returned Contribution shall also be sent to the Public Entity.

**Section 3.4. Processing Contributions.** The Board shall promptly process all completed Contributions. The Board expects that once a properly completed Form 100 and all other required documents are received by the Board, together with the Contribution, the Board will issue and deliver or cause to be issued and delivered the Tax Credits within thirty (30) business days.

**Section 3.5. Determination of Amount of Contribution.** The amount (or value) of each Contribution shall be determined by the Board as follows:

Cash. The amount (or value) of cash Contributions shall be the face amount of such Contribution.

Marketable Securities. The amount (or value) of marketable securities shall be the proceeds received by the Board from the liquidation of such marketable securities in accordance with the Donor's instructions approved and accepted by the Board, less the Board's costs of selling such securities.

Unmarketable Securities and Other Property. No contributions of unmarketable securities or other property (other than as described above) shall be permitted under this Agreement.

All determinations by the Board of the amount (or value) of each Contribution shall, absent manifest error, be conclusive and binding upon the Donors and the Public Entity. The Board reserves the right to reject any Contribution.

**Section 3.6. Contributions in Excess of Maximum Contributions.** The Board and the Public Entity agree that in the event the Board receives Contributions in excess of the Maximum Contribution set forth in **Section 3.1** hereof (as the same may be modified by the Board in its sole and absolute discretion), the Board shall return such Contributions to the Donors thereof with a statement that Tax Credits are no longer available for such Contributions. A copy of each returned Contribution shall also be sent to the Public Entity.

## ARTICLE IV

### APPLICATION OF CONTRIBUTIONS

**Section 4.1. Board's Application of Contributions.** All Contributions received by the Board for the Project described herein shall be deposited in the same manner as other amounts received by the Board, and the amount of such Contributions shall be maintained by the Board on its books and records in a separate ledger account (the "**Board Project Account**"). All moneys on deposit in the Board Project Account shall be invested by the Board in accordance with its investment guidelines. All interest earnings on such amounts shall accrue to the Board and shall not be credited to the Board Project Account.

**Section 4.2. Disbursements from the Board Project Account.** The Board shall disburse amounts from the Board Project Account upon receipt of fully executed disbursement requests in the form attached hereto as **Exhibit C** (each a "**Disbursement Request**"). The Board shall be entitled to rely upon each Disbursement Request in disbursing amounts from the Board Project Account and it shall have no duty to conduct any investigation into the authenticity of the signatures on such Disbursement Request or the accuracy of the information set forth therein.

All disbursements from the Board Project Account shall satisfy the conditions set forth in **Exhibit D**.

**Section 4.3. Procedures and Conditions for Disbursements.** The Board and the Public Entity hereby agree to the following procedures in connection with disbursements from the Board Project Account:

(a) All Disbursement Requests shall be submitted to the Board for approval as provided in **Section 4.2** hereof. All payments from the Board Project Account shall be made payable to the Public Entity;

(b) In no event shall the Public Entity submit more than one Disbursement Request to the Board each month, unless approved by the Board's Executive Director;

(c) All disbursements of the Contributions shall be used only for costs described on **Exhibit A**; and

(d) The Board shall have the right to cease funding disbursement requests upon the occurrence of any of the following events:

(i) Project Abandonment has occurred; or

(ii) the Public Entity shall fail to perform any material covenant, condition or other provision of this Agreement.

The Board shall promptly notify the Public Entity of its election to cease funding disbursement requests and such notice shall contain a description of the basis upon which the Board has exercised such right to cease funding disbursement requests. If the Board and the Public Entity are unable to agree to a waiver, extension or modification of such conditions, the Board shall have the right to terminate this Agreement and shall cause all moneys remaining in the Board Project Account to be applied as provided in **Sections 4.6** and **6.1** hereof.

**Section 4.4. Processing of Disbursement Requests.** Within ten (10) business days after the submission of a fully completed Disbursement Request to the Board, the Controller shall process such request for payment or immediately notify the Public Entity of any information needed to process such Disbursement Request.

**Section 4.5. Deduction of Board Fees and Expenses.** Concurrently upon the receipt of each Contribution, the Board shall deduct an administrative fee in an amount equal to 4.0% of the amount of the Contribution, and shall furnish the Public Entity a detailed description of such deductions at least quarterly. Such fees shall be in addition to any interest earned for the account of the Board on moneys invested in the Board Project Account. If the Board grants an extension to the deadline for the Board's receipt of Contributions as set forth in **Section 3.1** hereof, the administrative fee on all Contributions made after the deadline contained in **Section 3.1** hereof shall increase to 5.0% of the amount of such Contributions. Nothing herein shall obligate the Board to grant any extension.

**Section 4.6. Return of Contributions.** In the event the Public Entity has been unable to satisfy the conditions set forth in **Section 4.3** hereof and in **Exhibit D** to the satisfaction of the Board, or in the event the Public Entity shall notify the Board of an event of Project Abandonment, or upon an event of default under **Section 6.1** hereof, then all Contributions held by the Board pursuant to **Section 4.1** hereof shall become the property of the Board and this Agreement shall be terminated. If the Board seeks to

declare an event of Project Abandonment, the Board shall provide the Public Entity with a notice of default in accordance with **Section 6.1** hereof stating its intent to deem the Contributions property of the Board and to terminate this Agreement in accordance with **Section 6.1** hereof. Notwithstanding the foregoing, if requested by a Donor in writing, a Contribution made by a Donor and still on deposit in the Board Project Account shall be returned to the Donor after reimbursement to the State for the cost of Tax Credits issued hereunder. In the event of a declaration of Project Abandonment or default, the Board agrees that it will provide a written notice to each Donor who would be entitled to any Contribution return. In determining the cost to the State of such Tax Credits the Board shall assess interest on such Tax Credits from the date of issuance of the Tax Credits through the date of the return of the Contribution, such interest to be calculated using an interest rate equal to *The Bond Buyer's* 20 Bond Index published in *The Bond Buyer* on the day such calculation is made. Notwithstanding any other provision of this Agreement, Contributions which are expended by the Public Entity in accordance with this Agreement shall not be subject to return nor shall such Tax Credits be subject to recapture.

**Section 4.7. Recapture of Credits Issued in the Event the Project is Abandoned.** If Project Abandonment occurs, any proceeds from the sale of a portion of the real estate on which the Project is constructed shall be applied in the following order of priority: (i) to repay any debt incurred to acquire the Project, (ii) to reimburse the State for the cost of Tax Credits issued hereunder, and (iii) in any manner the Public Entity shall elect free and clear of all restrictions in this Tax Credit Agreement.

**Section 4.8. Public Entity Assumes All Responsibility for the Project.** The Public Entity acknowledges and agrees that any and all costs and expenses incurred in connection with the acquisition, construction and equipping of the Project in excess of the amounts on deposit with the Board Project Account (including amounts which are ineligible for payment from the Board Project Account) shall be paid by the Public Entity and the Board shall not have any liability in connection therewith. The Public Entity recognizes that since the construction and equipping of the Project is being completed at the request of and under the direct supervision of the Public Entity and by contractors and suppliers selected by and under contract with the Public Entity in accordance with plans and specifications prepared on behalf of the Public Entity, the Board makes no representation or warranty, express or implied, with respect to the merchantability, condition or workmanship of any part of the Project or its suitability for the Public Entity's purposes or the extent to which funds in and expected to be deposited into the Board Project Account will pay the cost to be incurred in connection with the work.

**Section 4.9. Public Entity Responsible For Construction; Required Liability Insurance.** The Public Entity shall have the right and the obligation to hire, retain and employ all persons, including, but not limited to, contractors, to complete the acquisition, construction and equipping of the Project. The Public Entity shall be responsible to the Board for the acts and omissions of all said employees and contractors and their agents and employees, and all other persons performing any work in connection with the Project. The Public Entity shall, in connection with the construction and equipping of the Project, obtain public liability insurance in such amounts and in such coverages as shall be customary and reasonable for projects of similar size and scope. The Public Entity shall require the provider of such insurance policy to give at least 30 days prior written notice to the Board of any cancellation or material change in the terms of such insurance. The Public Entity shall obtain all necessary endorsements to fulfill the foregoing requirements and shall provide certificates of insurance to demonstrate such compliance upon request. The construction and equipping of the Project shall be performed in good and workmanlike manner.

**Section 4.10. Compliance With Laws.** The Public Entity agrees to comply in all material respects with the provisions of all applicable federal, state and local statutes and regulations, including, but not limited to, the Fair Labor Standards Act, Fair Employment Practices Act, Equal Opportunity Act, Missouri Prevailing Wage Law, Contract Work Hours and Safety Standards Act, Copeland Anti-Kick Back Act and the provisions of any other applicable federal, state or local statutes and regulations and

amendments thereto pertaining to employment, labor relations and equal employment opportunity and applicable to the construction and equipping of the Project, and pertaining to laws and regulations concerning environmental safety and remediation and applicable to the construction and equipping of the Project. The Public Entity agrees to take affirmative action to provide equal employment opportunity pursuant to the provisions of said laws, statutes and regulations as amended from time to time.

## ARTICLE V

### THE PROJECT; RECORDS AND REPORTS; COVENANTS

**Section 5.1. Access to the Project and Inspection; Operation of the Project.** The Board and the duly authorized agents of the Board shall have the right, at all reasonable times upon the furnishing of reasonable advance notice under the circumstances, to enter upon the Project and to examine and inspect the Project. The Board and the duly authorized agents of the Board shall also be permitted, at all reasonable times upon reasonable advance notice under the circumstances, to examine the books and records of the Public Entity with respect to the Project and the Contributions and the obligations of the Public Entity hereunder.

**Section 5.2. Reports and Financial Statements by the Public Entity.** The Public Entity shall cause the following reports to be furnished to the Board:

- (a) During the Compliance Period, the following items not later than the dates indicated:
  - (i) All audit and compliance reports of the Public Entity prepared for submission to any federal or state agency or authority as soon as practicable after they are available;
  - (ii) Any other reports and any and all financial statements prepared by employees or agents of the Public Entity (including the Public Entity's accountants) relating to the financial condition of the Public Entity and the status of the Project for distribution to the Public Entity or members of the Public Entity's governing board, as soon as practicable after they are available;
  - (iii) As soon as practicable after they are available but in no event more than **180** days after the last day of each fiscal year, the audit report and audited financial statements of the Public Entity for such fiscal year certified by an independent certified public accountant; and
  - (iv) Such additional information as the Board may reasonably request concerning the Public Entity, including such statistical and other operating information requested on a periodic basis;
- (b) Not later than each **June 30th** following the first issuance date of the Tax Credits, and continuing on each June 30<sup>th</sup> thereafter for a period of three (3) years following the first issuance date of the Tax Credits, the Annual Compliance Report substantially in the form attached hereto as **Exhibit E**, pursuant to subsections 3 and 10 of Section 135.805, RSMo;
- (c) Not later than **60** days following the completion of the construction of the Project, the certificate in the form attached hereto as **Exhibit F**; and
- (e) Prompt written notice of filing of any action, suit or proceeding by it or against it at law or in equity, or before any governmental instrumentality or agency, which, if adversely determined, would materially impair the right of the Public Entity to carry on the business which is contemplated in connection



with the Project, or would materially and adversely affect its business, operations, properties, assets or condition.

**Section 5.3. Reports by the Board to the Public Entity.** Upon the written request of the Public Entity, the Board shall furnish such information concerning the Board's receipt and disbursement of Contributions as the Public Entity may reasonably request, but not more frequently than monthly.

**Section 5.4. Reports by the Public Entity to the Board.** The Public Entity shall furnish the Board with any reports relating to the Project prepared by it for distribution to the members of the Public Entity's governing body.

**Section 5.5. Indemnification.** The Public Entity, to the extent permitted by law, releases the Board from, and agrees that the Board shall not be liable for any liabilities, losses, damages (including attorneys' fees), causes of action, suits, claims, costs and expenses, demands and judgments of any nature imposed upon or asserted against the Board (except to the extent that any of the foregoing arises as a result of the gross negligence or willful misconduct of the Board, as applicable, or any of their officials, commissioners, directors, officers, attorneys, accountants, employees or agents) on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquiring, constructing, demolishing, renovating, improving and operation of the Project; (ii) any breach or default on the part of the Public Entity in the performance of any covenant or agreement of the Public Entity under this Agreement or any related document, or any of its agents, contractors, servants, employees or licensees; (iii) violation of any law, ordinance or regulation affecting the ownership, occupancy or use of the Project; (iv) any loss suffered by any Donor as a result of the inability of the Donor to use any Tax Credit issued by the Board, other than as a result of the failure of the Board to issue such Tax Credit upon receipt by the Board of the necessary information, (v) any loss resulting from any environmental violation at the Project, and (vi) any claim or action or proceeding with respect to the matters set forth in subsections (i), (ii), (iii), (iv) and (v) above brought thereon.

**Section 5.6. Further Assurances and Corrective Instruments.** The Board and the Public Entity from time to time will execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project and for carrying out the intention or facilitating the performance of this Agreement. The City Council of the Public Entity hereby delegates authority to the City Manager and his or her delegates to execute and provide such further instruments as referenced in this Section and any documents that are needed to implement and carry out the duties and obligations of the Public Entity under this Agreement.

**Section 5.7. Affirmative Covenants of the Public Entity.** The Public Entity covenants and agrees that so long as this Agreement is in effect, the Public Entity will strictly comply with each of the following requirements:

(a) All Contributions shall be expended strictly in accordance with the Project Budget. The Project Budget may be amended from time to time by the Public Entity; provided, however, that changes to the Project Budget which are Material will be made only with the prior written consent of the Board. The Public Entity will notify the Board at least quarterly of any non-Material changes to the Project Budget;

(b) Changes to the Project which are Material may only be made with the prior written approval of the Board's Executive Director or designee;

(c) The Public Entity shall not transfer, pledge, lease or permit any assignment or lien to exist or in any other manner dispose of the Public Entity's ownership interest in the Project without the prior written consent of the Board, provided that the Public Entity may, without the prior written consent of the Board, enter into routine temporary rental agreements and temporary lease agreements, including but not limited to single events less than one day, single day events, periodic weekly farmers market events (such as routine Wednesday and Saturday morning farmers market sales times during four seasons of the year), and authorized temporary events such as weekend concerts, with farmers and other vendors and authorized users within the farmers market pavilion and related public spaces in the Project for the purpose of operating the Project as intended for public use and public benefit; and

(d) The Public Entity shall be in compliance with the Public Entity's MBE/WBE Policies as attached hereto.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

**Section 6.1. Default.** If the Public Entity fails to perform any material covenant, condition or other provision of this Agreement and such failure shall continue for 30 days after written notice thereof by the Board (or if such failure is correctable but is such that it cannot be corrected within such 30-day period, such failure shall not constitute a failure within the meaning of this **Section 6.1** if the Public Entity is diligently pursuing such corrective action and such failure is corrected within 120 days), the Board shall be entitled to (1) retain all Contributions in the Board Project Account, or (2) exercise its remedies at law or in equity to enforce this Agreement and recover its damages as a result of such default. Amounts retained by the Board pursuant to this Section shall be applied in accordance with **Section 4.6**.

**Section 6.2. Transfer of Tax Credits.** Any transfers of Tax Credits under this Agreement shall be made in accordance with Section 100.286.7 of the Revised Statutes of Missouri, as from time to time amended or supplemented.

**Section 6.3. Notices.** Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Agreement shall be in writing and shall be deemed duly given or filed if the same shall be (i) given by facsimile or e-mail, receipt confirmed by telephone, or in writing, or (ii) delivered by courier or nationally-recognized overnight delivery service or duly mailed by first-class mail, postage prepaid, addressed as follows:

(a) To the Board:

Missouri Development Finance Board  
221 Bolivar Street, Suite 300  
Jefferson City, Missouri 65201  
Attention: Finance Programs Manager and Compliance Officer  
Telephone No. (573) 751-8479  
E-mail: Katie.long.mdfb@ded.mo.gov  
E-mail: Cheryl.kerr.mdfb@ded.mo.gov

(b) To the Public Entity:

City of Lee's Summit, Missouri

220 SE Green Street  
Lee's Summit, Missouri 64063  
Attention: Chief Counsel of Economic Development and Planning  
Telephone No. (816) 969-1403  
E-mail: David.Bushek@cityofls.net

The Board and the Public Entity may from time to time designate, by notice given hereunder to the others of such parties, such other address to which subsequent notices, certificates or other communications shall be sent.

**Section 6.4. Limited Obligations.** The obligations of the Board to disburse funds hereunder are limited obligations of the Board, payable solely out of the amounts on deposit in the Board Project Account, and such obligations shall not constitute a debt or liability of the Board within the meaning of any State of Missouri constitutional provision or statutory limitation or Charter provision, and shall not constitute a pledge of the full faith and credit of the Board. The execution of this Agreement shall not, directly, indirectly or contingently, obligate the Board to levy any form of taxation therefore or to make an appropriation of any payment hereunder.

**Section 6.5. Immunity of Officers and Employees of the Board and the Public Entity.** No recourse shall be had for any payment hereunder against any past, present or future officials, commissioners, directors, members, council members, officers, attorneys, accountants, employees or agents of the Board or the Public Entity, and all such liability of any such persons shall be expressly waived and released as a condition of and consideration for the execution of this Agreement.

**Section 6.6. Relationship of Board to Public Entity and Donors.** The parties hereto acknowledge and agree that: (i) the only obligations the Board with respect to the transaction contemplated hereby expressly are set forth in this Agreement; (ii) the Public Entity shall advise each potential donor to consult its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it deems appropriate, including with respect to tax consequences of Contributions and application of Tax Credits; (iii) the Board is not acting as a financial advisor or fiduciary and has not assumed any advisory or fiduciary responsibility to the Public Entity and any Donor or successor or assignee of the same with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto.

**Section 6.7. Severability.** If any provision of this Agreement shall be held or deemed to be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever.

**Section 6.8. Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 6.9. Electronic Storage of Documents.** The Board and the Public Entity agree that the transaction described herein may be conducted and related documents may be sent, received, and stored by electronic means.

**Section 6.10. Governing Law.** This Agreement shall be governed exclusively by and be construed in accordance with the applicable laws of the State of Missouri. Venue shall be appropriate only in the Circuit Court of Green County, Missouri.

**Section 6.11. Term of the Agreement.** This Agreement shall terminate on the last day of the Compliance Period; provided, the indemnifications in **Section 5.5** of shall survive the termination of this Agreement.

**IN WITNESS WHEREOF**, each of the parties hereto has caused this Agreement to be signed in its respective name and behalf and its official seal to be hereunto affixed and attested by its duly authorized officers, all as of the date first above written.

**MISSOURI DEVELOPMENT FINANCE BOARD**

By: \_\_\_\_\_  
Mark Stombaugh, Executive Director

**CITY OF LEE'S SUMMIT, MISSOURI**

By: \_\_\_\_\_  
Mark Dunning, City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney or designee

## **EXHIBIT A**

### **DESCRIPTION OF THE PROJECT**

The Project consists of the improvements described in the Application.

**EXHIBIT B**

**APPLICATION TO THE BOARD**

## EXHIBIT C

### FORM OF DISBURSEMENT REQUEST

Disbursement Request No. \_\_\_\_\_

To: Missouri Development Finance Board  
221 Bolivar Street, Suite 300  
Jefferson City, Missouri 65201  
Attention: Compliance Officer  
Telephone No. (573) 751-8479  
E-mail: Katie.Long.mdfb@ded.mo.gov

Re: City of Lee's Summit – Downtown Market Project - Disbursement Request from the Board  
Project Account

You are hereby requested pursuant to **Section 4.2** of the Tax Credit Agreement dated as of \_\_\_\_\_, 2024 (the "Agreement"), to electronically transfer to the City of Lee's Summit (the "Public Entity") to permit the Public Entity to pay the following named payee[s] to provide for the payment or reimbursement of the following Project Costs (as defined in the Agreement):

*[Note: The Public Entity must provide wire instructions to the Board to complete this transfer].*

<u>Payee/Address/Tax ID No.</u>	<u>Amount</u>	<u>Description of Project Costs</u>
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The undersigned hereby states and certifies that:

1. Each item listed above is a proper Project Cost (as defined in the Agreement). Attached hereto are invoices, statements, bills or other documents evidencing the fact that such payment is due.
2. These Project Costs have been incurred and are presently due and payable or have been paid by the Public Entity in connection with the Project and are eligible for payment or reimbursement in accordance with the requirements of the Agreement.
3. No item listed above has previously been included in any other Disbursement Request previously approved by the Board under the provisions of the Agreement.
4. All necessary permits and approvals required for the portion of the work on the Project for which this withdrawal is to be made have been issued and are in full force and effect.
5. The payment of this Disbursement Request is in compliance with all of the restrictions contained in **Exhibit D** to the Agreement.



6. [No material change in the Project Budget is necessary as a result of the payment of this request.] [As a result of this request we are hereby requesting that the Board approve a modification of the Project Budget as follows: \_\_\_\_\_.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CITY OF LEE'S SUMMIT, MISSOURI**

By: \_\_\_\_\_  
Authorized Representative

Approved for Payment on \_\_\_\_\_, 20\_\_\_\_:

**MISSOURI DEVELOPMENT FINANCE BOARD**

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

## **EXHIBIT D**

### **CONDITIONS RELATING TO DISBURSEMENTS FROM THE BOARD PROJECT ACCOUNT**

Capitalized terms shall have the meanings set forth in Article I of the Tax Credit Agreement.

All Disbursement Requests must satisfy the following restrictions:

1. Moneys in the Board Project Account shall only be used to pay or reimburse actual hard costs (costs of constructing, equipping and furnishing the Project), costs for materials and labor, architectural and engineering costs, costs for appraisals, title insurance and environmental assessments.
2. Moneys in the Board Project Account shall only be used to pay or reimburse costs incurred after October 15, 2024.
3. Moneys in the Board Project Account may not be pledged or assigned to secure any loan or the performance of any obligation, without the consent of the Board
4. Moneys in the Board Project Account shall not be used to pay or reimburse operating expenses of the Public Entity.

EXHIBIT E

**TAX CREDIT ACCOUNTABILITY ACT REPORTING FORM**

ANNUAL COMPLIANCE REPORT  
(pursuant to RSMo Section 135.802.2, as amended)

Reporting period Ended December 31, 20\_\_

Organization Name:
Property use is: <input type="checkbox"/> residential <input type="checkbox"/> commercial/ industrial <input type="checkbox"/> 501(c)(3) nonprofit <input type="checkbox"/> governmental
Describe current use of project:
Projected or actual project cost:
Total labor costs:
Projected or actual date of Completion:
To the best of my knowledge, the information above and below are true and correct as of _____ Date  Authorized Representative _____  Printed Name _____  Title _____

Return this form via e-mail or to the address below  
by JUNE 30, 20\_\_:

Missouri Development Finance Board  
P.O. Box 567  
Jefferson City, MO 65102  
-or-  
Fax No. (573) 526-4418



## TAX CREDIT ACCOUNTABILITY ACT REPORTING FORM ATTACHMENT

<b>BUSINESS/ORGANIZATION NAME:</b>		
<b>NUMBER OF JOBS CREATED AT PROJECT LOCATION EACH MONTH AS A RESULT OF THE ISSUED TAX CREDIT</b>		
MONTHS	FULL-TIME PERMANENT JOBS	PART-TIME PERMANENT JOBS
JANUARY 20__		
FEBRUARY 20__		
MARCH 20__		
APRIL 20__		
MAY 20__		
JUNE 20__		
JULY 20__		
AUGUST 20__		
SEPTEMBER 20__		
OCTOBER 20__		
NOVEMBER 20__		
DECEMBER 20__		
<b>TOTALS:</b>		
<b>Total jobs created since project inception:</b>		
<b>Total construction jobs created:</b>		

## EXHIBIT F

### FORM OF COMPLETION CERTIFICATE

Missouri Development Finance Board  
221 Bolivar Street, Suite 300  
Jefferson City, Missouri 65201  
Attention: Compliance Officer  
Telephone No. (573) 751-8479  
E-mail: Cheryl.kerr.mdfb@ded.mo.gov

Re: City of Lee's Summit – Downtown Market Project – Notice of Final Completion

The undersigned hereby certifies pursuant to the Tax Credit Agreement dated as of \_\_\_\_\_, 2024 (the "Agreement"), that:

- (a) The Project was completed on \_\_\_\_\_, 20\_\_;
- (b) The Project has been fully completed substantially in accordance with the Application, as modified by any changes permitted by the Agreement;
- (c) The Public Entity commenced operations in the Project on \_\_\_\_\_, 20\_\_.
- (d) All costs of the Project have been fully paid for and no claim or claims exist against the Project out of which a lien based on furnishing labor or material exists or might ripen. [Note: There may be excerpted from the foregoing statement any claim or claims out of which a lien exists or might ripen in the event that the Public Entity intends to contest provided a brief description of the claim is provided to the Board.]
- (e) The undersigned has complied with the applicable MBE/WBE Policies throughout the construction of the Project.
- (f) The undersigned has utilized the following contractors in the construction of the project for the period beginning upon the construction of the project and ending on the date of this Certificate

MBE or WBE	Name of Vendor	Description of Work or Service/Dates of Work	Contract Amount
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Signed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY OF LEE'S SUMMIT**

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

Name:

Title: