

FUNDING AGREEMENT
FOR THE LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY
INCENTIVES REQUEST FOR THE STREETS OF WEST PRYOR PROJECT

THIS FUNDING AGREEMENT FOR THE LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY INCENTIVES REQUEST FOR THE STREETS OF WEST PRYOR PROJECT (“**Agreement**”) is entered into this ____ day of March, 2021 by CITY OF LEE'S SUMMIT, MISSOURI (the “**City**”), and STREETS OF WEST PRYOR, LLC, a Missouri limited liability company (the “**Company**”).

RECITALS

A. The City is a constitutional charter city incorporated and exercising governmental functions and powers pursuant to the Constitution and the Statutes of the State of Missouri. The principal office of the City is located at the City Hall, 220 SE Green St., Lee's Summit, Missouri 64063.

B. Pursuant to the Land Clearance for Redevelopment Authority Act at Sections 99.300 through 99.660 of the Revised Statutes of Missouri (the “**LCRA Act**”), the Company proposes that the City consider and approve incentives pursuant to the LCRA Act, in the form of sales tax exemption on construction materials and real property tax exemption, for the proposed Vanguard Villas residential development located that is generally located on the western side of the Streets of West Pryor project and north of Lowenstein Drive (the “**Project**”) (the Company’s request for LCRA incentives is referenced herein as the “**Application**”).

C. The City and the LCRA Board of LCRA Boarders (the “**LCRA Board**”) do not have a source of funds to finance costs incurred by them, in the form of additional City staff time, legal, fiscal, LCRA Planning, engineering consultants, direct out-of-pocket expenses and other costs, resulting from services rendered in connection with the review, evaluation, processing and consideration the Application.

AGREEMENT

1. Services to be Performed by the LCRA Board and/or the City. The City (or, if directed by the City, the LCRA Board) shall:

a. Prepare or consult with the Company on the preparation of and consider an LCRA Plan in accordance with the provisions of the LCRA Act, give all notices, make all publications and hold hearings as required by the LCRA Act on behalf of the City or the LCRA Board for the economic incentive tools that are proposed by the Company;

b. Provide necessary staff, legal, financial, engineering assistance to prepare and present the LCRA Plan to the LCRA Board and the City (including all staff reports, consultant reports and other third party reports, analysis and other information) and to permit consideration of the LCRA Plan by the LCRA Board and the City, to prepare any resolutions or motions and, if the LCRA Board recommends approval of the LCRA Plan, to prepare and present required ordinances to the City Council of the City.

c. Provide any other assistance requested by the Company and agreed to by the City

in connection with the LCRA Plan.

f. If the City Council approves the LCRA Plan, provide the necessary staff and legal assistance to prepare and negotiate definitive agreements between the Company and the City for implementation of the LCRA Plan and the approved economic incentive tools.

2. Initial Deposit. The City acknowledges receipt of an initial deposit of funds from the Company in an amount equal to (1) the Minimum Initial Deposit as specified in Table 1 from the City's Economic Development Incentive Policy and (2) the Prior Engineering Costs (as defined below), which together total \$29,865 (the "**Deposit**"). The Parties agree that the total amount of the incentives being requested is a gross amount of approximately \$4.6 million and a net present value amount of approximately \$2.9 million, which places the incentive request in the category of less than \$5 million in Table 1, resulting in an Minimum Initial Deposit of \$25,000 pursuant to Table 1.

The City has already engaged HDR Engineering, Inc. ("**HDR**"), pursuant to the Addendum #4 to On-Call Agreement for Professional Engineering Services No. 2020-30-1 which is attached hereto as **Exhibit A**, and the City has already incurred or is in the process of incurring engineering costs in the total initial amount of \$4,865 pursuant to the Addendum in **Exhibit A** (the "**Prior Engineering Costs**") to conduct the scope of work described therein. The Prior Engineering Costs will be funded as set forth in the paragraph above pursuant to the Deposit. The City anticipates that it will engage HDR for further services in connection with review and analysis of the undermined remediation work which will need to be conducted on an on-going basis as the Application is being considered by the City. All of HDR's work that is outside the scope of the Addendum set forth in Exhibit A will be billed as Additional Funding pursuant to Section 3 of this Agreement which this Agreement is in effect. The Parties further agree that, if the LCRA Plan is approved by the City, the remediation work will require ongoing evaluation and monitoring during the remediation period, during the surface development period and thereafter, and the scope of work to be performed by HDR and the costs associated with that work will be included in a Redevelopment Contract to be negotiated by the Parties to implement the approved LCRA Plan.

The City shall disburse the Deposit as set forth in Section 4 and shall bill the Company pursuant to Section 3 to re-establish the Deposit to the Minimum Initial Deposit amount of \$25,000. Further, prior to consideration or approval by the City Council of any ordinance, Company shall deposit with the City an amount equal to an amount determined by City staff to be sufficient to cover costs incurred during the City Council process from which additional disbursements may be made as required.

The Company will be billed for actual out-of-pocket or City authorized third party consultant costs for services as set forth in Section 1. The City shall bill the Company monthly, or at such other interval or times as City shall determine to be appropriate, pursuant to Section 3 to re-establish the Deposit. In addition, if the LCRA Plan sales tax exemption and/or real property tax abatement is approved by the City Council, the fees associated with the transaction to implement the approved tax abatements are not covered by this Agreement and such fees shall be paid according to the Schedule of Fees and Charges as approved by the City Council.

Table 1

Incentive Requested:	Less Than \$5,000,000	\$5,000,000 to \$25,000,000	More than \$25,000,000
Minimum Initial Deposit	\$25,000	\$50,000	\$75,000

3. Additional Funding. The City shall submit from time to time an itemized statement for administrative expenses, internal legal expenses, and actual out-of-pocket expenses necessary to perform its obligations hereunder or for any additional obligations or expenditures incurred by the City or LCRA Board. The account shall be replenished as provided below in this section to the full balance of \$25,000 until termination of this Agreement.

Subject to the remaining provisions of this Section 3, such statements may be submitted upon execution of consultant contracts relating to the LCRA Plan or as expenses are incurred by the City in connection with the City's and/or LCRA Board's review and consideration of the LCRA Plan. The Parties acknowledge that work performed by HDR which is beyond the scope of work set forth in the Addendum which is attached as Exhibit A shall be billed as additional engineering expenses which shall require Additional Funds as described below in this Section 3. The Company may be billed in advance for the full amount of third party consultant contracts expenses or internal expenses upon approval of the contract by the City Manager or the City Council.

The Company shall pay the City the amounts set forth on such statements (the “**Additional Funds**”) within ten (10) days of receipt thereof or before final consideration of the application. As to any amounts billed in advance for any contract or consultant fees, City shall have the right to elect not to execute any such contract or to engage or authorize such consultant, contractor or staff member to proceed until such advance billing amount is paid by the Company. Company has reviewed the internal legal expense rate and agrees it is reasonable, lawful and that the City is entitled to seek full reimbursement of said expenses based on the hours that internal legal Counsel spends on Company’s project.

If any such amounts are not so paid when due, the unpaid balance shall accrue interest at the rate of two percent (2%) per month from the date billed until paid, but in no event shall such interest rate exceed twenty-four percent (24%) per annum. Further the LCRA Board and City shall be relieved of any and all obligations hereunder (including without limitation any obligation to review or consider the LCRA Plan) until all such amounts (with interest) are paid, or the City may terminate this Agreement pursuant to Section 6.a.

In addition, if such funds (including any advance-billed costs) are not so received, all work by staff and third party consultants on the Application shall cease until full payment is made, including penalties, and the fund balance is restored to the Deposit amount as set forth in Section 2 or, prior to any consideration or approval by the City Council, an amount sufficient to cover anticipated costs incurred during final consideration process is deposited as provided herein. Company acknowledges and agrees that the City shall have the right to delay final consideration of the LCRA Plan, or consideration or approval by the City Council of any ordinances with respect to the LCRA Plan or the projects contemplated therein, until all outstanding expenses have been paid and the fund balance is sufficient to cover all remaining cost anticipated to be incurred by or on behalf of the City through the anticipated conclusion of such final consideration process, including but not limited to meeting expenses, court reporting, attorneys' fees and other third party consultant preparation and attendance.

4. Disbursement of Funds.

a. The City shall disburse that portion of the Deposit to cover the Prior Engineering Costs promptly after execution of this Agreement.

b. The City shall disburse the Deposit and Additional Funds for reimbursement for costs to the City on or before the thirty (30th) day of each month, which shall cover internal costs and external consulting fees and the payment of all out-of-pocket expenses incurred by the LCRA Board and/or the City in connection with the performance of its obligations under this Agreement

as payment for such expenses become due. Upon reasonable notice, the LCRA Board and/or City shall make its records available for inspection by Company with respect to such disbursements.

5. LCRA Plan Administration. In addition to the services set forth in Section 1, the LCRA Board and/or City will be required to provide services from time to time for the continuing administration of the LCRA Plan and management of the special engineering services that are required to implement the undermined remediation work. The LCRA Board and/or City may be reimbursed for meeting expenses at \$250 per meeting and, upon appropriate itemization, staff time and expenses.

6. Termination.

a. In the event the Company fails to perform any of its obligations herein, the City may terminate this Agreement, and any other agreement between the parties, at its sole discretion upon ten (10) days written notice to the Company. Termination by the City shall also terminate any duties and obligations of the LCRA Board and the City with respect to this Agreement, including, but not limited to, the LCRA Board's or City's processing of Company's Application and/or LCRA Plan. Upon such termination, the City shall retain the Deposit and Additional Funds, if any, necessary to reimburse all outstanding expenses incurred by the City and/or the LCRA Board pursuant to this Agreement and any monies due and owing to the City and/or the LCRA Board pursuant to any other agreement and shall pay all remaining refundable Deposit and Additional Funds, if any, to the Company within ninety (90) days of such termination.

b. The parties hereto acknowledge that the Company may determine to abandon the LCRA Plan. Upon notice of abandonment by the Company, this Agreement shall terminate and the City may terminate any other agreement between the parties and shall retain the Deposit and Additional Funds, if any, necessary to reimburse its staff time accumulated to the date of termination and outstanding expenses incurred pursuant to this Agreement and any monies due and owing to the LCRA Board or the City pursuant to any other agreement and shall pay all remaining refundable Deposit and Additional Funds, if any, to the Company within sixty (60) days of such termination.

c. In the event the Deposit and Additional Funds are insufficient to reimburse the City for the outstanding expenses of the City and/or the LCRA Board payable hereunder, the Company shall reimburse the City as set forth in Section 3.

7. Subsequent Redevelopers. In the event the Company elects to transfer processing of the Application to another party to carry out the LCRA Plan, the City shall require the subsequent redeveloper to assume all obligations of the Company under this Agreement as of the date it is designated as redeveloper and to reimburse the Company for its expenditures hereunder.

8. Notice. Any notice, approval, request or consent required by or asked to be given under this Agreement shall be deemed to be given if it is in writing and mailed by United States mail, postage prepaid, or delivered by hand, and addressed as follows:

To the City:

City Manager
City of Lee's Summit, Missouri
220 SE Green St.
Lee's Summit, MO 64063

With a copy to:

City Attorney
City of Lee's Summit, Missouri
220 SE Green St.
Lee's Summit, MO 64063

To the Company:

Streets of West Pryor, LLC
c/o Matt Pennington
Drake Development, LLC
12701 Metcalf Avenue, Suite 100
Overland Park, KS 66213

With a copy to:

Charles Miller, Esq.
Lewis, Rice & Fingersh, LLC
1010 Walnut, Suite 500
Kansas City, MO 64106

Each party may specify that notice be addressed to any other person or address by giving to the other party ten (10) days prior written notice thereof.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

CITY OF LEE'S SUMMIT, MISSOURI

By: _____
Stephen A. Arbo
City Manager

[SEAL]

ATTEST:

Trisha Fowler Arcuri
City Clerk

Approved as to form:

David Bushek
Chief Counsel of Economic Development & Planning

STREETS OF WEST PRYOR, LLC

By: _____

Name: _____

Title: _____

Exhibit A

**ADDENDUM NO. 4
TO ON-CALL AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES NO. 2020-30-1**

Development Review Assistance

THIS ADDENDUM NO. 4 TO ON-CALL AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES NO. 2020-30-1 is made and entered into this 17th day of November, 2020, by and between the City of Lee's Summit, Missouri (hereinafter "City"), and HDR Engineering, Inc. (hereinafter "Engineer").

WITNESSETH:

WHEREAS, City and Engineer entered into an Agreement dated December 10, 2019 (RFQ No. 2020-30-1) for professional engineering services for On-Call Professional Engineering Services (hereinafter "Base Agreement"); and,

WHEREAS, City desires to engage Engineer for a specific scope of engineering services which are covered by the Base Agreement; and,

WHEREAS, Engineer has submitted a proposal for the engineering services and an estimate of engineering costs to perform said services in compliance with the Base Agreement; and,

NOW, THEREFORE, in consideration of the mutual covenants and considerations herein contained, **IT IS HEREBY AGREED** by the parties hereto as follows:

ARTICLE I

SCOPE OF ON-CALL SERVICES TO BE PROVIDED BY THE ENGINEER

Pursuant to Article I of the Base Agreement, Engineer is hereby engaged to provide the following scope of services:

Additional services related to review of a development project and its supporting studies as described in Exhibit A of the Modification No. 4 attached hereto and incorporated herein by reference. All other provisions of the Base Agreement shall remain in full force and effect.

ARTICLE II

COMPENSATION FOR SCOPE OF SERVICES

Payment to the Engineer for the services identified herein shall not exceed \$4,865, pursuant to the rates set forth in Exhibit A to the Base Agreement.

ARTICLE III

**SCOPE OF SERVICES
REVIEW OF MINE FILLING AT PRYOR CROSSING
CITY OF LEE'S SUMMIT, MO**

SCOPE OF SERVICES

This scope of services describes the work to be performed by HDR on behalf of the City of Lee's Summit for the Mine Filling at Pryor Crossing.

TASK 1 – Mine Reclamation Development Review

Services Provided by HDR:

1. General project management and administration. This includes the preparation and review of monthly invoicing, internal progress/scheduling meetings, and updates to the Owner on progress.
2. Review geotechnical report.
3. Review mine filling plan.
4. Identify risks and concerns with geotechnical report and filling plan.
5. One meeting with the City of Lee's Summit (virtual).
6. Two meetings with City Staff and Developer (virtual).

Deliverables:

Letter of Findings

Meetings:

Virtual meeting with the City of Lee's Summit
(2) Virtual meetings with City Staff and Developer



**City of Lee's Summit - Review of Mine Filling at Pryor Crossing
Scope and Fee**

Rate Schedule Code	Young, Patrick R	LaFranz, Nick	Campbell, Joni L	Harkins, Jeremy	HDR Expenses	Subconsultants	Total
	Senior Technical Specialist	Senior Technical Specialist	Senior Support Staff	Senior Support Staff			
Billing Rate	\$275.00	\$290.00	\$95.00	\$95.00			
TASKS							
A. Task 1 -							
1 Project Management	1		1	2			\$560
2 Review Geotechnical Report		3					\$870
3 Review Mine Filling Plan		2					\$580
4 Identify Risks		4					\$1,160
5 Meet with City of Lee's Summit (1 virtual meeting)	1	1					\$565
6 Meet with City Staff and Developer (2 virtual meetings)	2	2					\$1,130
Subtotal Hours	4	12	1	2			
Subtotal Dollars	1100	3480	95	190	0	0	\$4,865
Total Task 1							\$4,865
Total Hours	4	12	1	2			19
Total Billing Amount	\$1,100	\$3,480	\$95	\$190	\$0	\$0	\$4,865

Estimated Project Fee \$4,865

TERMS OF BASE AGREEMENT TO APPLY

All terms of the Base Agreement shall remain in full force and effect and shall apply to this Addendum No. 4.

This Addendum No. 4 shall be binding on the parties thereto only after it has been duly executed and approved by City and Engineer.

IN WITNESS WHEREOF, the parties have caused this Modification to On-Call Agreement to be executed on the 17th day of November, 2020.

CITY OF LEE'S SUMMIT



[Signature]
STEPHEN A. ARBO, CITY MANAGER

APPROVED AS TO FORM:

[Signature]

~~NANCY YENDES~~ **Brian Head**

~~CHIEF COUNSEL OF INFRASTRUCTURE AND PLANNING~~ **City Attorney**

[Signature]
Trisha Fowler Arcue
LS City Clerk, Attest

ENGINEER: HDR ENGINEERING, INC.

[Signature]
Joseph Drimmel (Nov 5, 2020 08:16 CST)

BY: Joseph Drimmel

TITLE: Area Manager

Attest:

[Signature]

Laurie S. Vik (Nov 5, 2020 08:25 CST)