

**PUBLIC SERVICE AGREEMENT
BETWEEN THE CITY OF LEE’S SUMMIT, MISSOURI AND
LEE’S SUMMIT ECONOMIC DEVELOPMENT COUNCIL, INC.**

THIS PUBLIC SERVICE AGREEMENT (hereinafter “Agreement”) is entered into by and between the City of Lee’s Summit, Missouri, a Missouri municipal corporation (hereinafter “City,”) and the Lee’s Summit Economic Development Council, Inc., a Missouri not-for-profit corporation (hereinafter “LSEDC.”) The City and LSEDC may be referred to individually as “the Party” and collectively as “the Parties.”

RECITALS

WHEREAS, the LSEDC was established, in part, to assist the City in expanding and diversifying the economic base of Lee’s Summit through the attraction and retention of business and industry; and

WHEREAS, the LSEDC makes a positive contribution to the City’s economic environment through organizational leadership and structure, participation in development discussions, community asset advocacy, and development and implementation of economic strategies; and,

WHEREAS, the City, by adoption of Ordinance No. 4611, imposes an occupational license tax on certain gross receipts of hotels, motels, and similar places of business, the resulting revenue of which is earmarked for the promotion of the general economic welfare of the City, including, but not limited to, the attraction and retention of business and industry to the community and/or the promotion and provision of facilities for tourism, conventions, and visitors; and,

WHEREAS, the City has determined that it is in the best interests of the City, and important to the promotion of the general economic welfare of the City, to contract with LSEDC for the performance of economic development services as outlined in this Agreement.

NOW, THEREFORE, the Parties, in consideration of the above recitals and following mutual covenants and stipulations, agree as follows:

I. LSEDC SCOPE OF SERVICES

- a. Complete Phase 2 Elements of Letter Agreement.** LSEDC will complete the requirements of Phase 2 of the Letter Agreement dated April 23, 2024. Specifically, the LSEDC will establish a vision statement, mission statement, and statement of core values to support the mission and vision statement, taking into consideration the 8 common success factors as referenced in subsection (c,) below. *Targeted to be Complete: December 15, 2024.*
- b. Operational Tasks**
 - i. Establish Short Term Continuity of Operations Plan.** LSEDC will formalize a short term continuity of operations plan that will consider 1) the immediate day to day needs of the organization for continued operations; 2) support needed by the Board of Directors for implementation of objectives

outlined in Phase 2 of the Letter Agreement; 3) support needed to engage in search for and employment of a permanent President; 4) support needed by the Board of Directors in its efforts to begin establishing a strategic plan for the organization (until such time as the permanent President is selected;) and 5) assistance in the transition of operations for the permanent President. *Targeted to be Complete: December 31, 2024.*

ii. Establish Conflict of Interest Policy and Code of Ethics for Board of Directors. The Board of Directors will work to ensure that a comprehensive and appropriate conflict of interest policy is in place and applicable to all Board members serving. In addition, the Board of Directors will work to establish a Code of Ethics applicable to the conduct of the Board of Directors in their dealings on behalf of the organization, with the intention of creating a high level of professionalism, trust and confidence. *Targeted to be Complete: December 31, 2024.*

iii. Hire President. LSEDC, through its Board of Directors, will establish a scope of work/job description for the President role, determine the appropriate process to recruit candidates for the position, undertake the selected process, engage stakeholders as appropriate in the interview process, select the candidate, and engage the candidate in negotiation for acceptance of the position. *Targeted to be Complete: No later than June 30, 2025.*

c. Establish and Implement Strategic Plan. LSEDC, through its Board of Directors and with support of the President and an outside consultant if required, will establish and implement a strategic plan that will complement and support the City of Lee's Summit's Ignite! Strategic Plan, based upon the following foundational principles, derived from the Common Success Factors identified in the Thomas P. Miller and Associates "Best Practices for Economic Development Organizations" study (May 2023), attached hereto as "Exhibit A." **Targeted to be Complete:** *Establishment of Plan: No later than December 31, 2025; Implementation of Plan: Ongoing.*

d. Accounting and Financial Obligations

i. LSEDC will, on or before July 1 of each year this Agreement is in effect, provide the City with its approved budget for the upcoming fiscal year (the "Budget,") as well as the names and addresses of the officers/directors of the LSEDC, a copy of the LSEDC By-Laws in effect, and the Articles of Incorporation as well as any amendments thereto.

In the event of any change to an officer/director, the By-Laws, or the Articles of Incorporation throughout the term or extensions of this Agreement, LSEDC shall promptly, and no later than thirty (30) days after such change is in effect, provide written notice of the same to the City.

ii. LSEDC commits to the appropriate and responsible expenditure of Funds received as a result of this Agreement, and commits to ensuring expenditures are made in alignment with the Budget approved by the Board of Directors and submitted to the City annually as required by this

Agreement. LSEDC agrees to provide City access to its financial statements upon request in order for City to confirm conformance with the Budget.

- iii. LSEDC will maintain an accounting system which complies with generally accepted accounting principles, and with the American Institute of Certified Public Accountants Audit Guide for Non-Profit Corporations.
- iv. LSEDC will, each year this Agreement is in effect, submit biannual program status reports to the City Manager, documenting activities from July 1 to December 31 (“First Report”) and January 1 to June 30 (“Second Report.”) The reports described herein shall document the revenue and disbursements of monies received from the City with a level of detail, which may include individual transaction information, to be determined by the City Manager as necessary for his financial review, and shall contain analytical memoranda, which:
 - 1. Describes the results of activities and expected achievements in line with this Agreement, the Ignite! Strategic Plan, and other relevant plans and studies;
 - 2. Describes program effectiveness; and
 - 3. Lists capital expenditures, if applicable.

The First Report shall be submitted to the City Manager on or before January 31 of each year this Agreement is in effect. The Second Report shall be submitted to the City Manager on or before July 31 of each year this Agreement is in effect. The City Manager shall review these reports, validate compliance with this Agreement, and, if necessary, recommend changes to this Agreement to the City Council.

The City Manager may also require the LSEDC to periodically provide a brief statement or status report to the City regarding the services under this Agreement in a form most amenable to the subject matter of the report.

LSEDC shall provide an annual in-person presentation to the City Council. This presentation shall be scheduled for the City Council’s first regular meeting in February of each year unless the Mayor determines a different meeting date in February is necessary for agenda management or other circumstances.

The LSEDC Board of Directors and/or staff will communicate and coordinate with other community partners, including, but not limited to Downtown Lee’s Summit, Lee’s Summit Chamber of Commerce, Lee’s Summit Economic Development Corporation, Cultural Commission, Lee’s Summit Visitor’s Bureau, and others in order to foster cooperation and encourage partnerships that will benefit the community.

II. FINANCIAL SUPPORT AND TERM OF AGREEMENT

- a. The initial term of this Agreement shall run from the date of execution of this Agreement until June 30, 2025 (“Initial Term.”) Upon expiration of the Initial Term, this Agreement shall automatically renew for a one-year period unless notification

is given of intent not to renew by either party in writing, no less than thirty (30) days prior to the date of the automatic renewal. Upon expiration of the first renewal term, the Agreement shall renew for a second on-year period on the same conditions. This Agreement is subject to annual appropriation by the City Council as contemplated herein, or otherwise terminated as set forth herein.

Further, this Agreement shall be subject to review and revision upon the hiring and onboarding of a President of LSEDC, to afford the Parties the opportunity to evaluate the priorities and objectives of the organization after permanent leadership is in place.

- b.** City agrees to pay to LSEDC the total amount of TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00) for the Initial Term; TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) for the first renewal term, and THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00) for the second renewal term, as long as this Agreement is in effect. During the Initial Term and any renewal terms, the City shall distribute the Funds in one annual installment, with the initial payment to issue within fifteen (15) days of the Effective Date of this Agreement; and subsequent payments on or before July 15 of each applicable year. Notwithstanding anything to the contrary in this Agreement, the Funds are subject to annual appropriation by the City Council; to the extent the Funds are not appropriated or are only partially appropriated, LSEDC agrees the City shall not be required or liable to provide the unappropriated amount.
- c.** Nothing in this Agreement shall preclude the City from contracting separately with LSEDC for services upon terms and conditions agreed to by the City and LSEDC.

III. TERMINATION

- a.** The City may terminate this Agreement immediately if no funds are appropriated for the services described herein. The City shall have the right to terminate this Agreement in the event LSEDC is in default or violation of the terms or provision of this Agreement and fails to cure such default or violation in the manner specified in subsection b., below.
- b.** In the event of a default or violation by LSEDC, the City shall send to LSEDC a notice demand to cure default, explaining the specific nature and extent of the default or violation. LSEDC shall cure or remedy said violation or default within twenty (20) working days after receipt of said notice, unless a longer time is agreed upon by both parties, in writing. In the case the default or violation is not cured or remedied within twenty (20) working days or a longer period of time if agreed upon, the City may exercise its option to terminate this Agreement upon five (5) days written notice thereafter. LSEDC shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by LSEDC.
- c.** In the event of termination, LSEDC shall refund to the City a pro-rated portion of the compensation paid pursuant to Section II, above. The pro-rated amount shall be determined by dividing the annual payment recited in Section II by 365 (“Daily Amount,”) and multiplying the daily amount by the number of days remaining in the fiscal year from and after the effective date of termination. LSEDC shall refund

the pro-rated amount to the City within thirty (30) days of the effective date of termination.

IV. INDEMNIFICATION

To the fullest extent permitted by law, LSEDC shall defend, indemnify and hold harmless the City, and the City's council members, Mayor, officers, directors, employees or agents thereof, (the City and any such person herein referred to as an "Indemnified Party") for, from, and against all claims, liabilities, demands, damages, losses, fines, penalties, injuries to property or persons (including death,) and expenses (including attorney's fees and litigation expenses, and the cost of appellate proceedings,) (herein collectively referred to as "Claims") to the extent that the Claims relate to, result from, and/or arise out of LSEDC's acts, errors, directives, or omissions, in performance of this Agreement. The obligations of this Section include the acts, errors, mistakes or directives, or omissions, of LSEDC's employees, agents, advertisers, contractors, subcontractors or any other person for which LSEDC may be legally liable, in the performance of this Agreement, provided that this obligation shall not apply to the City's negligence in the performance of this Agreement. The amount and type of insurance coverage requirements set forth in this Agreement shall in no way be construed as limiting the scope of the indemnity in this Section. The indemnity requirements set forth in this Agreement will in no way be construed as limiting the insurance required in this Agreement or waiving the City's sovereign immunity.

V. INSURANCE

a. General.

- i. **Insurer Qualifications.** Without limiting any obligations or liabilities of LSEDC, LSEDC shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance coverage with insurance companies authorized to do business in the State of Missouri with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.
- ii. **No Representation of Coverage Adequacy.** The City shall have the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve LSEDC from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
- iii. **Coverage Term.** All required insurance shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.
- iv. **Primary Insurance.** LSEDC's insurance shall be, or endorsed to be, primary, non-contributory insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

- v. **Claims Made.** The parties agree that no policies required under this Section shall be made on a claims made basis.
- vi. **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. LSEDC shall be solely responsible for any such deductible or self-insured retention amount.
- vii. **Use of Subcontractors.** If any of the services under this Agreement is subcontracted in any way, LSEDC shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and LSEDC. LSEDC shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
- viii. **Evidence of Insurance.** Prior to receiving any Funds, or commencing any work or services under this Agreement, LSEDC will provide City with suitable evidence of insurance in the form of a Certificate of Insurance, endorsements, and a copy of the declaration pages of the insurance policies as required by this Agreement, issued by LSEDC's insurance carriers as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits, of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. The City may reasonably rely upon the Certificates of Insurance, endorsements, and declarations pages 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 this Agreement. If any of the policies required by this Agreement during the life of this Agreement, LSEDC shall forward renewal certificates and declarations pages to the City within thirty (30) days of the expiration date. All Certificates of Insurance and declarations required by this Agreement shall be identified by referencing the title or this Agreement. Certificates of Insurance and declarations pages shall specifically include the following provisions:
 - 1. The City of Lee's Summit, Missouri, its agents, representatives, officers, directors, officials and employees are Additional Insureds for commercial general liability under Insurance Services Office, Inc. (ISO) Form CG 20 10 03 97 or equivalent.
 - 2. LSEDC's insurance shall be primary, non-contributory insurance with respect to the performance of the Agreement.
 - 3. All policies, except for Professional Liability, including Worker's Compensation, waive rights of recovery (subrogation) against the City of Lee's Summit, Missouri, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by LSEDC under this Agreement.

All Certificates of Insurance shall name the City of Lee's Summit, Missouri as the Certificate Holder, and shall send the certificate and any endorsements to:

City of Lee's Summit
Attn: City Administrator
220 SE Green Street
Lee's Summit, Missouri 64063

- ix. Endorsements.** LSEDC shall provide the City with the necessary endorsements to ensure City is provided the insurance coverage set forth in this section.
- b. Required Insurance Coverage.** If necessary, LSEDC shall procure "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence; \$2,000,000 Products and Completed Operations Annual Aggregate; and \$2,000,000 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. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97 or equivalent. The policy shall contain an endorsement waiving rights of recovery (subrogation) against the City, its agents, representatives, officers, officials and employees. 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.
- c. Cancellation and Expiration Notice.** Insurance required herein shall not expire, be cancelled, or be materially changed without thirty (30) days' prior written notice to the City.

VI. GENERAL CONDITIONS

- a. Non-Discrimination Laws.** LSEDC shall not discriminate against any person on the basis of race, religion, color, age, sex, disability, or national origin in the performance of this Agreement, and shall comply with the terms and intent of Title VII of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental disability, and with the Americans with Disabilities Act of 1990. In addition, LSEDC shall include similar requirements of subcontractors in any written contracts entered into for performance of LSEDC's obligations under this Agreement.
- b. Financial Review.** LSEDC shall make all of its financial records available for inspection by the City, or its designee, upon reasonable notice during normal business hours of the City. If the City desires a financial audit by an independent certified public accountant of the LSEDC's financial records to verify use of the Funds according to the terms and conditions of this Agreement, LSEDC shall

cooperate fully in the performance of such audit. If the audit reveals that LSEDC misappropriated the Funds received from the City, the City may require LSEDC to cover the cost of such an audit. LSEDC is entitled to a copy of any resulting reports that are received by the City.

- c. **Compliance with Laws.** LSEDC shall comply with all federal, state, and local laws and ordinances applicable to its performance under this Agreement. In addition, LSEDC shall include similar requirements of its contractors in any written contracts entered into for performance of LSEDC obligations under this Agreement.
- d. **Successors and Assigns.** This Agreement is not assignable unless both Parties mutually consent otherwise in writing and signed by both Parties. The requirements of this Agreement are binding upon the successors, and assigns of both Parties.
- e. **Laws Governing/Venue.** This Agreement shall be governed by the laws of the State of Missouri, as to validity, interpretation and performance. Any and all suits for any and every breach of this Agreement, or other judicial proceeding for the enforcement or interpretation of this Agreement shall be instituted and maintained in State Court in eastern Jackson County, Missouri.
- f. **Non-Waiver.** The failure or delay of either Party to insist upon strict performance of any of the provisions of this Agreement, or to exercise any of the rights or remedies provided by this Agreement, shall not release either Party from any of the responsibilities or obligations imposed by law or by this Agreement, and shall not be deemed a waiver of any right of either Party to insist upon strict performance of this Agreement.
- g. **Severability.** If any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Missouri, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- h. **Entire Agreement and Amendments.** This instrument contains the entire Agreement between the Parties, and no oral or written statement, promises, or inducements made by either Party or agent of either Party that is not contained in this written Agreement, or specifically referred to in this written Agreement shall be valid or binding; and this Agreement may not be enlarged, modified, or altered except in writing signed by both Parties.
- i. **Relationship of Parties.** The Parties understand and expressly agree that LSEDC is an independent contractor and is not an employee of the City. Nothing in this Agreement constitutes a partnership or joint venture between the Parties and neither Party is the principal or agent of the other.
- j. **Rights/Obligations of Parties Only.** The terms of this Agreement are intended only to define the respective rights and obligations of the Parties. Nothing in this Agreement shall create any rights or duties in favor of any potential third-party beneficiary or other person, agency or organization.
- k. **Time of the Essence.** Time is of the essence in this Agreement. Unless otherwise specifically provided in this Agreement, any consent to delay in the performance of LSEDC of any obligation shall be applicable only to the particular transaction to which it relates, and it shall not be applicable to any other obligation or transaction.

- l. Work Authorization/E-Verify.** Pursuant § 285.530, RSMo., if this Agreement exceeds five thousand dollars (\$5,000.00), LSEDC warrants and affirms to the City that (i) LSEDC is enrolled and participates in a federal work authorization program with respect to the employees working in connection with the contracted services and (ii) LSEDC does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

LSEDC shall swear to and sign an affidavit declaring such affirmation, and provide the City with supporting documentation of its enrollment and participation in a federal work authorization program with respect to the employees working in connection with this Agreement.

- m. Political Activities.** LSEDC shall not use the compensation paid through this Agreement for political activities. For the purpose of this Agreement, the term “political activities” shall have the meaning ascribed to it by the Internal Revenue Service.
- n. Anti-Discrimination Against Israel Act.** Pursuant to Section 34.600, RSMo and to the fullest extent permitted by law, if this Agreement has a total potential value of \$100,000 or more and LSEDC has 10 or more employees, LSEDC certifies that LSEDC is not engaged in a boycott of Israel as of the Effective Date of this Agreement, and agrees for the duration of this Agreement to not engage in a boycott of Israel as defined in Section 34.600, RSMo.
- o. Notices.** Unless otherwise provided in this Agreement, all notices, demands, requests, consents, approvals and other communications (collectively “Notices”) required or permitted hereunder shall be in writing and delivered by registered or certified U.S. mail, postage prepaid, or personally delivered, at the address shown below. Notices shall be deemed received at the time of actual receipt, which shall be evidenced by a copy of receipt (in the case of notices that are personally delivered), or as evidenced by the United States Postal Service receipt; or five (5) calendar days after mailing, whichever comes first, in the case of notices that are mailed:

To City:
City of Lee’s Summit
Attn: City Manager
220 SE Green Street
Lee’s Summit, Missouri 64063

To LSEDC:
LS Economic Development Council
Attn: President
218 SE Main Street
Lee’s Summit, Missouri 64063

- p. Provisions Required by Law.** Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, this Agreement will promptly be physically amended to make such insertion or correction.
- q. E-Signature and Counterparts.** The Parties agree that this Agreement may be signed in two or more counterparts and/or signed electronically, and all such counterparts together shall constitute one and the same contract; such signatures

shall bind the signing party in the same manner as if a handwritten signature had been delivered.

IN WITNESS WHEREOF, the Parties have executed this Agreement this _____ day of _____, 2024 (“Effective Date.”)

City of Lee’s Summit

Lee’s Summit Economic Development Council

Mark Dunning
City Manager

Michael L. VanBuskirk
Chairman of the Board

ATTEST:

Trisha Fowler-Arcuri
City Clerk

Jon Ellis
Secretary

APPROVED AS TO FORM:

Brian W. Head
City Attorney