

TRANSIENT GUEST TAX REIMBURSEMENT AGREEMENT

**for
EAGLE'S WAY RIVERFRONT PARK**

**by and between
EAGLE'S WAY RIVERFRONT PARK, LLC
and
the CITY OF ST JOSEPH, MISSOURI**

This Agreement is hereby made this ____ day of _____, 2022, by and between EAGLE'S WAY RIVERFRONT PARK, LLC, a Missouri limited liability company (the "Developer") and the CITY OF ST. JOSEPH, MISSOURI, a constitutional charter city and municipal corporation, (the "City").

WHEREAS, the Developer has proposed to develop a commercial project known as EAGLE'S WAY RIVERFRONT PARK, which is anticipated to include approximately seventeen (17) acres located at or around 3604 Waterworks Road, St. Joseph, Missouri. The exact description of the project area is defined in Exhibit A, which is attached hereto and incorporated herein by reference. Developer intends to include a recreational vehicle park/camping spaces suitable for temporary lodging, with ancillary amenities such as a convenience store, pickleball courts, shower houses, shelters, pavilions/event center, urban trail, restrooms or other complimentary structures or amenities, as set forth herein (collectively, the "Project"); and

WHEREAS, the Developer anticipates incurring costs in excess of Three Million Dollars (\$3,000,000.00) related to the construction and maintenance of the Project; and

WHEREAS, the Developer has requested to be reimbursed for certain expenditures related to the Project from a portion of the Transient Guest Tax (hereinafter "TGT"), which is generated by hotels, motels, recreational vehicles and travel trailers in the City which is used by the City to support the construction of public and private infrastructure and facilities; and

WHEREAS, the City has agreed to reimburse the Developer in an amount not to exceed One Million Three Hundred Thousand Dollars (\$1,300,000.00) spent by the Developer on the Project (the "Reimbursement Maximum") as set forth herein through the TGT funds; and

WHEREAS, the City and the Developer desire to enter into this Transient Guest Tax Reimbursement Agreement (the "Agreement") in relation to the Project for purposes of providing the terms and conditions for payment and/or reimbursement of the costs set forth herein, as authorized by the language set out in Sections 70.210 et. seq., RSMo., and Article VI, Section 21 of the Missouri Constitution.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the City and the Developer do hereby covenant and agree upon the following terms and conditions:

1. **Improvements.** The Developer agrees to develop the Project and to construct and maintain the following improvements in compliance with the American Disabilities Act (collectively, the "Reimbursable Project Improvements"):

(a) **Project Improvements.** The Developer agrees to complete all improvements described in Exhibit B-1 and B-2 in a manner that achieves the objectives described in the recitals stated herein.

(b) **Urban Trail.** Upon the construction of the urban trail by the City or third-parties to the boarder of the Property, Developer agrees to construct an urban trail on the Project. The urban trail will be built with like specifications to the existing trial, and shall be consistent with the City's master riverfront plan.

(c) **Grading, Siltation and Erosion Control.** The Developer shall complete the grading, siltation, and erosion control required to complete the construction and the improvements described in Exhibit B-1 and B-2.

(d) **Street Improvements.** The Developer shall construct the roadways and parking areas on its private property to adequately serve the entire development.

(e) **Sanitary Sewer Improvements.** The Developer shall engineer and construct a sanitary sewer main extension from the existing main to the Project. The main shall be sufficient to provide sewer service to the entirety of the Project, and shall be constructed within City regulations.

(f) **Preliminary Site Plan and Cost Estimate.** A preliminary site plan for the Project and preliminary cost estimate related to the Reimbursable Project Improvements, Exhibit B-1, and other required improvements, Exhibit B-2, attached hereto and incorporated herein by reference, has been presented to the City and the Tourism Board with this Agreement.

(g) **Updated Site Plan and Cost Estimate.** A Preliminary Site Plan that will be substantially complied with, is attached hereto and incorporated herein by reference as Exhibit F. Prior to the commencement of physical construction of Project, Developer shall submit an updated site plan to the City for the City's approval prior to the issuance of building permits ("Updated Site Plan"). City staff shall review the submitted Updated Site Plan, and issue approval or non-approval based on the Updated Site Plan's compliance with this Agreement, the reasonableness of the final cost of construction, and its compliance with all City codes and regulations. With the Updated Site Plan, Developer will submit an updated and detailed construction cost estimate related to the Reimbursable Project Improvements ("Construction Cost Estimate").

2. **Reimbursement of Costs.** Upon the approval of the Updated Site Plan and Construction Cost Estimate by City staff, the Developer may request reimbursements of costs as follows.

(a) **Reimbursable Expenses.** The City shall reimburse the Developer for the costs associated with Reimbursable Project Improvements. This reimbursement shall not exceed the Reimbursement Maximum of \$1,300,000.00.

(b) **Request for Reimbursement.** The Developer will provide proof of payment for Reimbursable Project Improvements and lien waivers from all contractors performing work on said Reimbursable Project Improvements with each request for reimbursement it submits. All reimbursable expenses shall be submitted by the Developer on a form provided by the City, Exhibit D, which is attached hereto and incorporated herein by reference.

(c) **Amount of Reimbursement.** Upon receipt of a request for reimbursement for completed Projects or portions of completed Projects supported by the City contained in Exhibit B-1, the City shall reimburse the Developer an amount not to exceed Eighty Five Percent (85%) of the costs incurred by Developer for each reimbursement request submitted, to the extent that the City has funds available that were generated from the 2011 TGT and provided the City finds the completed Projects or portions thereof to be adequately completed.

(d) **Limitation on Reimbursable Construction Costs.** The Construction Costs sought to be reimbursed by Developer shall be limited to Reimbursable Project Improvements included in Exhibit B-1, up to a total amount of One Million Three Hundred Thousand Dollars (\$1,300,000.00). Costs for individual line items in Exhibit B-1 may exceed the estimates stated in Exhibit B-1, provided all items are fully completed and the total reimbursement by the City does not exceed One Million Three Hundred Thousand Dollars (\$1,300,000.00).

(e) **Proof of Funds.** Developer agrees to provide City with documentation reasonably required by the City to demonstrate Developer's financial ability to complete the Project. With the first request for reimbursement, the Developer agrees to provide proof of a construction loan available for the Developer's construction of the items on Exhibit B-1 and Exhibit B-2.

(f) **Payment to Developer.** The Developer shall present to the City, on a form attached as Exhibit D, details of the Construction Costs submitted for reimbursement and certification that said Construction Costs were incurred related to the Reimbursable Project Improvements ("Developer's Certification of Construction Costs"). The City shall review, verify and confirm the information included in said form. If it is approved, the City shall provide confirmation thereof and shall make disbursement to the Developer as described herein within forty-five (45) days of the request.

3. **Easement.** The Developer shall grant the City a twenty (20) year public access easement over the main road and entry into the Project.

4. **Project Schedule Subject to Excusable Delays.** Construction within and supporting the Reimbursable Project Improvements will commence no later than forty-five (45) days from the issuance of appropriate permits by the City and will commence consistent with the schedule attached as Exhibit E. The initial phase or initial retail tenant for the Project shall be operating and collecting sales taxes no later than one year from the issuance of the appropriate construction permit by the City, provided, however, if such construction is delayed by labor disputes or walkouts, fire or other casualties, unavailability of materials, natural disaster, acts of God, weather conditions or other causes not within the control of the Developer, the parties will cooperate in good faith to extend such deadlines.

5. **City Transient Guest Tax (TGT).** “Guest Tax” refers to the City transient guest tax *revenue* generated from the collection of TGT that was approved by the voters on June 7, 2011 increasing or creating a new TGT of Three Percent (3%), provided that the Three Percent (3%) Transient Guest Tax that was already in effect on June 7, 2011 and the City’s Administrative Fee of Two Percent (2%) shall not be included in Guest Taxes.

6. **Annual Appropriations for Payments.** The City is obligated to make the payments set forth in this Agreement as shall be lawfully made from funds to be budgeted and appropriated for that purpose during the City’s then current fiscal year. The City’s obligations hereunder shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of the City.

7. **Specific Events of Default.** Subject to any applicable cure periods, the following conditions, occurrences or actions will constitute a default by the Developer during the term of this Agreement:

(a) ***Developer Insolvency.*** The Developer’s insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy that is in any way related to the Developer; or

(b) ***Foreclosure.*** Foreclosure of any lien against all or a portion of the Project, or property upon which the Project is built, or assignment or conveyance of the site in lieu of foreclosure, which materially and adversely affects the Development prior to its completion; or

(c) ***Failure to Pay Taxes.*** Failure to timely pay all federal, state, county and local taxes, fees or permits related to the Development.

(d) ***Inaction on Exhibit B-1 and Exhibit B-2.*** Failure of Developer, as determined by the City, to inadequately begin, work on, and/or complete Project items contained in Exhibit B-1 and Exhibit B-2.

8. **General Events of Default.** In addition to specific provisions of this Agreement, failure or delay by either party to perform any term or provision of this Agreement, after receiving written notice and failing to cure as set forth below, constitutes a default under this Agreement. A party claiming default (claimant) shall give written notice of default to the other party, stating the specific nature of the default and the expected remedy thereto.

The claimant shall not institute proceedings against the other party, nor be entitled to damages if the other party, within fourteen (14) days from receipt of such written notice, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy within thirty (30) days from the date of receipt of such notice or if such cure, correction or remedy cannot reasonably be completed within thirty (30) days, it is diligently and continuously prosecuted until completion thereof.

9. **Compliance with Laws.** At all times during the term of this Agreement, but subject to the Developer’s rights to contest the same in any manner permitted by law, the

Developer, its officers, directors and principals, at its sole cost and expense, shall be the entity that is responsible for complying in every respect with all applicable laws, ordinances, rules and regulations of all federal, state, county and municipal governments, agencies, bureaus or instrumentalities thereof now in force, or that may be enacted hereafter, which pertain to the construction, ownership, occupancy, use and operation of the Project. The Developer shall be the entity that is responsible for complying with any applicable prevailing wage laws for any portion of the Project Improvements it constructs.

10. Coordination of Project Improvements. The Developer shall be the entity that is responsible for coordinating with the City and MoDOT, as applicable, on all aspects of construction of the Reimbursable Project Improvements for which the Developer is responsible for constructing, including lane closings, directing traffic, etc., and to ensure that safe and proper traffic control is maintained at all times during construction of the Project Improvements. All Reimbursable Project Improvements in the City's right-of-way shall be designed and constructed in accordance with APWA Standards.

11. Notices. Written notices, demands and communications between the City and the Developer shall be sufficiently given by personal service or by registered or certified mail, postage prepaid, return receipt requested, or overnight courier, to the addresses provided below for the City or the Developer. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may designate from time to time by mail as provided in this Paragraph 11. Notwithstanding anything to the contrary herein, notice personally served shall be deemed to have been received as of the date of such service or the date service is refused if written verification thereof is received from messenger service attempting such delivery.

CITY OF ST. JOSEPH, MISSOURI
Room 107, City Hall
1100 Frederick Avenue
St Joseph MO 64501
Attention: Director of Planning and Community Development

With a copy to:
City Attorney
Room 307, City Hall
1100 Frederick Avenue
St Joseph MO 64501

DEVELOPER
EAGLE'S WAY RIVERFRONT PARK, LLC
Attn: Kelly Horn
3025 Penn Street
St. Joseph, MO 64507
816-262-8030

With a copy to:
Murphy, Taylor, Siemens & Elliott, P.C.
Attn: Nancy Potter Lyle

3007 Frederick
St. Joseph, MO 64506
816-364-6677

12. **Right to Inspect Records.** The City has the right to inspect, at reasonable times, the books and records of the Developer pertaining to the share of the Construction Costs to be reimbursed by the City as pertinent to the purposes of this Agreement.

13. **Estoppel Letter.** The Developer may request from the City an Estoppel letter stating that Developer is not in default of any of its obligations under this Agreement. Within thirty (30) days of said request, the City shall either issue the Estoppel letter or provide a written description of how the Developer, as applicable, is in default hereunder.

14. **Legal Actions.** Any legal actions related to, or arising out of, this Agreement must be instituted in the Circuit Court of Buchanan County, Missouri and shall be construed in accordance with, and governed by, the laws of the State of Missouri.

15. **Rights and Remedies.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

16. **No Delay.** Any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any action or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

17. **Amendment.** The Developer and the City agree that this Agreement can be altered or amended by the City or the Developer if mutually agreed to, in writing, between the parties.

18. **No Liability to Third Parties.** The Developer is not an agent or employee of the City. Nothing in this Agreement shall create liability on the part of the Developer or the City to third parties, which liability did not or does not exist absent this Agreement.

19. **No Personal Rights.** No person or entity who is not a party to this Agreement will have any right of action under this Agreement.

20. **Assignment.** The City and the Developer do hereby agree that the Developer cannot assign or pledge any right under this Agreement whatsoever.

21. **Severability.** If any part, term or provision of this Agreement is held by a court to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term or provision, and the rights of the parties will be construed as if the part, term or provision was never part of this Agreement.

22. **Termination.** This Agreement shall terminate on the occurrence of an event of default after the expiration of all applicable cure periods.

23. Successors and Assigns. The provisions of this Agreement shall be covenants running with the land and shall be binding, to the fullest extent permitted by law and equity, for the benefit, and in favor of, and be enforceable by, the City and the Developer, and the respective successors and assigns of each.

24. Indemnification. The Developer shall indemnify and hold harmless the City and its officers, agents and employees from and against claims, damages, losses or expenses, including, but not limited to, reasonable attorneys' fees, arising out of or resulting from the negligent performance of the Developer hereunder, and the contributory negligence of the Developer and any third party regardless of whether or not such claim, damage, loss or expense is caused or is alleged to be caused in part by the negligence of a party indemnified hereunder. The above-said right of indemnity shall be in addition to other rights of indemnity that the City may possess. This indemnification obligation shall not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for the Developer under workers' or workmen's compensation acts, disability payment acts or other employee benefit acts.

25. Insurance. The Developer shall furnish the City the certificates of insurance for workers' compensation, professional and general liability, in the amounts not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000) aggregate. The policies of insurance shall be in such form and shall be issued by such company or companies as may be satisfactory to the City. The City shall be named as an additional insured with duty of defense on all insurance policies required hereunder. Nothing herein shall be deemed to permit a cause of action against the City for damages or be deemed a waiver of the City's sovereign immunity relative to any claim against the City. The Developer shall ensure that all contractors/subcontractors retained to work on the Project, will comply with the same requirements.

26. The Agreement. This Agreement is executed in triplicate originals, each of which is deemed to be an original. This Agreement includes pages 1-9 and Exhibits A, B-1, B-2, C, D, E and F which constitute the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties, or their predecessors in interest, with respect to all or part of the subject matter hereof.

(Signatures on following page)

In witness whereof, the parties have executed this Agreement this ____ day of _____, 2022.

ATTEST:

EAGLE’S WAY RIVERFRONT PARK,
LLC a Missouri limited liability company

, _____

By: Kelly S. Hoan
Name: Kelly S. Hoan
Title: Manager

ATTEST:

CITY OF ST. JOSEPH, MISSOURI

Paula Heyde, City Clerk

Bryan Carter, City Manager

APPROVED AS TO FORM

City Attorney

EXHIBIT A

Legal Description

EXHIBIT B-1

Preliminary Site Plan & Estimated Construction Costs for Reimbursable Project Improvements

Base Rock, Petromat, Road Rock	\$86,500.00
Sewer System Infrastructure	\$398,000.00
Water Retention/Drainage	\$40,000.00
Electrical/J-Boxes for Transformers	\$37,000.00
Urban Trail	\$167,500.00
Asphalt Parking – Main Entry Road	\$185,000.00
Dirt Work for Flood Stage Requirement	\$154,900.00
Internet	\$100,000.00
Up to 30% of costs of Land Purchase, Land clearing, and professional fees for architects/engineers (totaling \$437,000)	\$131,100.00

Reimbursements will not exceed \$1,300,000.00, the Reimbursement Maximum

EXHIBIT B-2

Pickleball Courts	\$300,000.00
Check-In Store (1600 sq. ft.)	\$215,000.00
RV Park (roads, utilities, pads)	\$841,000.00
Shower House w/Laundry	\$142,000.00
Architect/Engineering	\$75,000.00
Event Center	\$815,000.00
E-Bikes, Bikes & Scooters	\$35,000.00
Cooking Equipment, Laundry, Tables, Chairs, Booths, Display Cases, Accessories	\$65,000.00
Store Inventory	\$15,000.00
Overages	\$200,000.00
Gap Funding	\$150,000.00

Total = \$2,853,000.00

EXHIBIT C

Developer's Certification of Construction Costs

Developer: EAGLE'S WAY RIVERFRONT PARK, LLC

Property: EAGLE'S WAY

Draw Number:

Date:

<u>Check No.</u>	<u>Payable To</u>	<u>Work Performed</u>	<u>Amount</u>

EAGLE'S WAY RIVERFRONT PARK, LLC a Missouri limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT D

City's Confirmation of Developer's Certification of Construction Costs

Developer: EAGLE'S WAY RIVERFRONT PARK, LLC

Property: EAGLE'S WAY

Draw Number:

Date:

Amount:

APPROVED BY:

CITY OF ST. JOSEPH, MISSOURI

EXHIBIT E

Construction Schedule

Site Development

- 1.) Construction Documents complete and City Permitting – two months after City approval
- 2.) Mass Grading and Utility Construction – five months after City approval
- 3.) Road Construction– seven months after City approval
- 4.) Pad Site Development – nine months after City approval

Event Center

- 1.) Footings and Foundations – five months after City approval
- 2.) Framing – six months after City approval
- 3.) PME Systems installation – eight months after City approval
- 4.) Finishes and Finish Carpentry – nine months after City approval
- 5.) Exterior Paving and Site Amenities – eleven months after City approval

EXHIBIT F

Preliminary Site Plan