

## INFRASTRUCTURE DEVELOPER AGREEMENT

**THIS INFRASTRUCTURE DEVELOPER AGREEMENT** (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the City of Republic, Missouri (“City”) and Wilson’s Valley, LLC (“Developer”). City and Developer are referred to together herein as the “Parties.”

### **WITNESSETH:**

**WHEREAS**, Developer is currently the owner of approximately 91.55 acres of real property located near the 6500 block of West U.S. Highway 60 in Republic, Missouri, more specifically identified in the legal description attached hereto and labeled **Exhibit A** (the “Property”); and

**WHEREAS**, on May 3, 2022, via Ordinance 22-24, Council approved of a change to the zoning classification for the Property (from Agricultural (AG) and Light Industrial (M-1) to Wilson’s Valley Planned Development District (PDD) (herein, “the Development”)) and approved of the corresponding Development Plan (attached hereto and labeled **Exhibit B**); and

**WHEREAS**, Developer is in the process of constructing phase one (1) of three (3) separate phases under the Development Plan; and

**WHEREAS**, as required by the Development Plan, applicable City Ordinances and the City’s adopted Transportation Plan, certain public improvements must be completed upon the Property; and

**WHEREAS**, the City wishes to obtain from the Developer the right-of-way for the Primary Arterial (Proposed MODOT Primary Arterial), as identified in the Development Plan, and in exchange, has agreed to defer Developer’s obligations under the Development Plan to design, permit, and construct the Primary Arterial; and

**WHEREAS**, the City’s agreement to defer the above-referenced infrastructure is intended to be subject to and governed by the terms contained in this Agreement and expressly conditioned upon approval by City Council.

**NOW, THEREFORE**, in consideration of the covenants and agreements hereinafter set forth, the City and Developer agree as follows:

**1. Ability to Contract:** Developer warrants that it has full ownership interest in the Property such that Developer has the legal authority and ability to enter into this Agreement and fulfill all obligations and other terms contained herein.

**2. Deferred Infrastructure:**

**2.1. Terms and Conditions of Deferment:** In exchange for Developer’s agreement to dedicate the unimproved right-of-way to the Primary Arterial, as more fully described herein below, the City agrees to defer, until construction of phase three (3) (“Phase 3”) infrastructure of the Development, the Developer’s obligations to design, permit and construct the Primary Arterial to the City, as shown on the Development Plan (the “Deferred Infrastructure”). See Ex. B.

**2.2. Developer’s Obligations as to Deferred Infrastructure:** As part of and during the construction of Phase 3, Developer is required to construct a City roadway (“City Street”) within the dedicated right-of-way for the Primary Arterial to the City, as shown on the Development Plan, in accord with the the specifications of the Development Plan and the following requirements:

- 2.2.1. The City Street shall be a two-lane roadway, constructed to meet the minimum requirements for a City Primary Arterial under the Republic City Code of Ordinances and all other Approved City Street Standard(s) in effect at the time of design.
  - 2.2.2. The City Street shall make the final connections to the East-West Collector Street, constructed during Phase 2 Development, in accord with the Development Plan and the terms of this Developer Agreement.
  - 2.2.3. Developer's engineer(s) shall fully design the City Street simultaneous to the design of the infrastructure associated with Phase 3 development.
  - 2.2.4. Upon completion of design of the Phase 3 infrastructure, including the City Street and any other Deferred Infrastructure under this Agreement, Developer shall submit all Infrastructure Plans to the City's BUILDS Department, who shall then have the right to review the same prior to the issuance of any infrastructure permits for Phase 3 or the commencement of any construction on Phase 3.
  - 2.2.5. Upon completion of construction of the City Street, the City's BUILDS Department will perform all necessary inspections prior to final platting of Phase 3.
  - 2.2.6. Developer may utilize the At-Grade Crossing for the Railroad Spur, and shall not be required to construct an overpass or other improvements to the BNSF/CU Railway Crossing located on the existing portion of South Farm Road 103 as part of its design, permitting or construction of the City Street.
- 2.3. In the event the Property or any portion of the Property or Development within the scope of this Developer Agreement should be sold to a third party prior to satisfaction of the Developer's obligations herein, the Developer shall disclose to the buyer(s) the terms of this Developer Agreement, including the requirements herein for the design, permitting and construction of the City Street, and provide a full and complete executed copy of this Developer Agreement to the buyer(s) at or prior to the time of sale. Proof of such disclosure shall be provided to the City at or prior to the time of sale.
- 2.4. In the event Phase 3 is not completed within the approval timeframe for development of the PDD or as otherwise specified in the Development Plan, Developer shall be required to execute a new Developer's Agreement with the City prior to the City's issuance of any additional Permits. This condition is in addition to the requirements of Ordinance 22-24, which may require additional approval of City Council.
- 2.5. Developer acknowledges that the Deferred Infrastructure is merely being deferred until the construction of Phase 3 and further that nothing in this Agreement shall be construed as a waiver of the requirement that Developer complete construction of the Deferred Infrastructure in accord with the terms of this Developer Agreement and the Development Plan.
- 2.6. Nothing in this Agreement shall be construed as requiring the City to construct or pay for any of the Deferred Infrastructure or any other infrastructure shown on the Development Plan or on the Property.
- 2.7. Developer acknowledges and agrees that construction of all required infrastructure for the Property, including all utility, stormwater, and road improvements, as shown on the Development Plan, the City's adopted Transportation Plan and all other Adopted Master Plans of City, and as otherwise required under applicable City

Ordinance(s), Rule(s) and Regulation(s), must be completed by Developer before City will issue or approve the final plat, unless otherwise expressly modified by way of this Agreement or subsequent, written agreement of all Parties, adopted by way of addendum to this Agreement. City accepts no ownership, liability, responsibility or otherwise for the installed utilities or infrastructure covered by this section.

**3. Dedication of Unimproved Right-of-Way to City.**

**3.1.** In exchange for City's agreement to defer Developer's obligations as to the Deferred Infrastructure, Developer shall, immediately upon full execution of this Agreement, dedicate the unimproved right-of-way to the Primary Arterial (Proposed MODOT Primary Arterial) (herein, the "Dedicated ROW"), as identified in the Development Plan (*see Ex B*) to the City, and in accord with the following terms:

**3.1.1.** The area of right-of-way required for the Primary Arterial (City Street, herein) shall be a minimum of 110 feet wide, as required by the City's Adopted Transportation Plan and Major Thoroughfare Plan.

**3.1.2.** The area of right-of-way required for the Primary Arterial (City Street, herein) shall meet all requirements shown in the Development Plan and shall otherwise be consistent with the Missouri Department of Transportation's proposed Primary Arterial as shown on the Development Plan.

**3.1.3.** Developer is required to provide to the City the official Legal Description of the Dedicated ROW along with the full computer-aided design (CAD) file and any other PDF format documents or exhibits thereto or otherwise pertaining to the Dedicated ROW, which shall be included as an Exhibit to this Agreement.

**3.1.4.** The Developer is required to obtain all rights-of-way from owners of properties adjacent to the Property to the extent such rights-of-way are necessary to meet the minimum requirements for a City Primary Arterial Street under the Republic City Code of Ordinances and all other Approved City Street Standard(s) in effect at the time of design.

**4. Easements:** Unless otherwise modified herein as it pertains to the Dedicated ROW, Developer agrees to execute any easements and/or rights-of-way reasonably required in order for City to perform any work it may be obligated to perform under this Agreement and in order for City to provide future maintenance on the Property after Developer has completed its work. Said easements will be provided by Developer to City at no cost to City. The Parties additionally acknowledge and agree that City may need further easements and/or rights-of-way that allow for the extension of any work performed under this Agreement. The Parties agree to negotiate in good faith to allow City to acquire such further easements as become necessary from Developer. Should any easements and/or rights-of-way under this Agreement not be in use or no longer be necessary for the Parties to complete the Development, City agrees to take the reasonably necessary steps to vacate said easements and/or rights-of-way within ninety (90) days of being notified by Developer of its desire to vacate the easements and/or rights-of-way executed pursuant to this Agreement. The Parties agree and understand such vacation requires multiple steps, including a public hearing, a hearing and recommendation before City's Planning and Zoning Commission, and approval by City Council through an Ordinance.

**5. Recording:** Developer acknowledges that this Agreement will be recorded with the County Clerk and all other appropriate recording offices upon full execution, and further agrees to execute and deliver such additional documentation as legal counsel for the City determines may be necessary in order to duly register and record this Agreement with the County Clerk and with all other appropriate

registration and recording offices such that all future purchasers or other parties obtaining an interest in the Property are put on notice that the Property is subject to and bound by the terms of this Agreement.

**6. Conflict of Interest:** No salaried director, officer or employee of City, and no member of City Council, shall have a financial interest, direct or indirect, in this Agreement. A violation of this provision renders this Agreement null and void. Any federal regulations and applicable provisions in Section 105.450 *et seq.*, RSMo. shall not be violated.

**7. Entire Agreement:** This Agreement contains the entire Agreement between the Parties and supersedes all prior and contemporaneous written or oral agreements unless excluded herein. This Agreement may not be modified or amended other than in writing as agreed to by the Parties.

**8. Default by Developer and Termination:** If through any cause, Developer shall fail to timely and satisfactorily fulfill its obligations under this Agreement, become insolvent, or violate any of the covenants, agreements or stipulations contained in this Agreement, City shall deliver written notice of the same to Developer and if such failure or violation is not cured within thirty days thereafter (or such longer period of time as is reasonably necessary so long as Developer begins to cure such failure or violation within such thirty-day period and thereafter diligently pursues the same to completion), City shall thereupon have the right to terminate this Agreement by giving at least five days prior written notice of such termination, specifying the effective date thereof. If City elects to terminate under this provision, City shall have the right to seek recovery of damages as a result of the default, including but not limited to, actual damages, compensatory damages and, if applicable or allowed by law, punitive damages.

**9. Default by City and Termination:** If through any cause, City shall fail to fulfill its obligations under this Agreement, become insolvent, or violate any of the covenants, agreements or stipulations contained in this Agreement, Developer shall deliver written notice of the same to City, and if such failure or violation is not cured within thirty (30) days thereafter (or such longer period of time as is reasonably necessary so long as City begins to cure such failure or violation within such thirty-day period and thereafter diligently pursues the same to completion), then Developer shall thereupon have the right to terminate this Agreement by giving at least five days prior written notice of such termination, specifying the effective date thereof. If Developer elects to terminate under this provision, Developer shall be responsible to reimburse City for all actual costs City incurs in completing any remaining work required under this Agreement. Termination of this Agreement shall be Developer' sole remedy for any default by City under this Agreement.

**10. Jurisdiction and Venue:** This Agreement shall be taken and deemed to have been fully executed and made by the Parties in the State of Missouri and thus is governed by the laws of the State of Missouri for all purposes and intents. Venue under this Agreement or any disputes that come from this Agreement shall be in the Circuit Court of Greene County, Missouri.

**11. Dispute:** In the event City is the prevailing party in any litigation arising out of or relating to this Agreement, City shall be entitled to recover from the Developer all reasonable attorneys' fees and expenses actually incurred by City in enforcing its rights under this Agreement.

**12. Liability:** Nothing in this Agreement shall be construed to create any liability on behalf of City for any direct, special, indirect, liquidated, or consequential damages. Developer agrees that the type of work to be performed under this Agreement will cause damage to the Property, and Developer agrees that City shall not be liable for any damages caused to the Property outside of that necessary to complete the Public Improvements contemplated by this Agreement.

**13. Independent Contractor:** The Parties to this Agreement are separate and independent from each other. This Agreement shall not be construed as creating any type of joint venture or partnership between the Parties.

**14. Execution:** The Parties agree that signatures transmitted by facsimile or scanned and emailed shall have the legal effect of original signatures. In addition to facsimile or scanned and email signatures, this Agreement may be executed by the Parties in accordance with the applicable version of the Uniform Electronic Transactions Act (“UETA”) and the Electronic Signatures in Global and National Commerce Act (“ESIGN”). The Parties hereto agree to conduct transactions by electronic means and hereby affirmatively consent to use electronic records to memorialize and execute this Agreement and any alterations thereto. At the request of any party, the Parties shall promptly exchange executed original counterparts of this Agreement or any amendment.

**15. Survival:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns as provided in this Agreement. The Parties acknowledge and agree that the rights and benefits afforded Developer under this Agreement shall run with the Property and shall be enforceable by and for the benefit of any and all successor owners of the Property without further consideration to or consent by City. The Parties acknowledge and agree that at the request of any Party, a memorandum of this Agreement shall be duly executed by the Parties and recorded in the real estate records of Greene County, Missouri; provided, however, this Agreement shall be binding and enforceable as between City and any current or future owner of the Property without recording thereof.

**16. Headings:** The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning thereof.

**17. Whereas Clauses:** The “Whereas” clauses stated above are incorporated herein by reference.

**18. Assignment:** This Agreement may not be assigned by any Party without the prior written consent of the other Parties.

**19. Sovereign Immunity:** In no event shall any language or requirement in this Agreement be construed as or constitute a waiver or limitation of City’s defenses regarding sovereign immunity, governmental immunity, or official immunity under federal or state constitutions, statutes, and/or laws.

**20. Severability Clause:** A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section, or part, of this Agreement shall not affect the validity of the remaining parts to this Agreement.

**21. Contingent Upon Funds and Approval:** This Agreement is contingent upon City having sufficient funds available to perform the Work covered by this Agreement. Developer shall have no right of action against City in the event City is unable to perform its obligations under this Agreement as the result of insufficient funds. Further, this Agreement is subject to and conditioned upon approval by ordinance by the City Council.

**22. Supplemental Agreements/Additional Action:** The Parties agree to cooperate fully, to execute any supplemental agreements, and to take all additional actions that may be reasonably necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

**23. Waiver:** The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

- 24. Contract Documents:** The Agreement shall consist of the following:
- a. This Agreement;
  - b. Exhibit A – Legal Description of Property;
  - c. Exhibit B – Approved Development Plan;
  - d. Exhibit C – Legal Description of Dedicated ROW, CAD File, and all other accompanying PDF documents
  - e. Any properly executed amendments or addendums.
- 25. Notices:** Any notice, request or demand provided for in this Agreement shall be deemed to have been given when the same shall have been personally delivered to the following offices or when notice is received after being deposited in the United States Mail, Registered or Certified, with postage thereon prepaid as follows: to City:

To City:                      City of Republic, Missouri  
   Attn: City Administrator  
   213 North Main Street  
   Republic, Missouri 65738

To Developer:              Wilson’s Valley, LLC  
   ***[Developer to provide desired notice address]***

**[SIGNATURES ON FOLLOWING PAGE, Page 7 of 7]**

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the day and year first above written.

**WILSON'S VALLEY, LLC:**

**CITY OF REPUBLIC, MISSOURI**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
David Cameron, City Administrator

\_\_\_\_\_  
(Printed Name)

**Approved as to Finance/Budget:**

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
Bob Ford, Finance Director

**Approved as to Form:**

\_\_\_\_\_  
Megan McCullough, City Attorney