

COPY

DRAINAGE IMPROVEMENTS CONSTRUCTION AGREEMENT

This Drainage Improvements Construction Agreement is dated as of March 24, 2020 between the City of Peoria, Illinois (the "City") and Red Carpet Properties, Inc. ("Owner").

RECITALS

WHEREAS, Owner owns the property commonly known as 711 W. Glen Avenue, Peoria, Illinois (the "Property"); and

WHEREAS, the City and Owner have identified drainage improvements located on the Property and on public right of way adjacent to the Property which are in need of repair and replacement (the "Existing Improvements"); and

WHEREAS, the City and the Owner have agreed to undertake the repair and replacement of the Existing Improvements as set forth herein;

NOW, THEREFORE, the City and Owner agree as follows:

AGREEMENT

1. Construction of New Improvements. The City shall undertake the planning and construction of new stormwater drainage improvements on and adjacent to the Property as shown on Exhibit A attached hereto and made a part hereof, including, without limitation, the restoration of the Property upon completion of construction of the New Improvements to its condition prior to such construction (the "New Improvements"). The City and Owner acknowledge that it is urgent that the New Improvements be completed as soon as possible to ensure the flood carrying capacity of the waterway running through the Property, and the City agrees to proceed with the planning, bidding and construction of the New Improvements as quickly as possible. The cost of the New Improvements shall be paid as set forth in Section 3 below.

The City shall keep Owner updated with the progress of the planning and construction of the New Improvements and provide Owner with copies of all draft plans for construction of the New Improvements. The final plans for the construction of the New Improvements shall be subject to the approval of Owner, such approval to not be unreasonably withheld.

2. Bracing, Shoring and Retirement. Owner shall undertake the following work:

- all bracing and shoring of the Existing Improvements reasonably necessary to ensure the flood carrying capacity of the waterway running through the Existing Improvements until the New Improvements are completed; and
- all work reasonably necessary to retire the Existing Improvements after the New Improvements are completed.

The cost of all such bracing, shoring and retirement work shall be paid by Owner.

The City acknowledges and agrees that, upon completion of the New Improvements, retirement of the Existing Improvements and delivery to the City of an opinion from a structural engineer that the failure of the culvert under the building on the Property has been repaired in a manner that resolves any potential effect on the building and its operation, the City will permit occupancy of such building in accordance with all applicable codes and ordinances of the City.

The City further acknowledges that the Property has in the past been operated as a legal nonconforming use, and agrees that upon occupancy of the building on the Property as set forth in the previous paragraph, Owner's tenant, Red Carpet Car Wash, Inc., shall be permitted to reopen and operate its business on the Property as a legal nonconforming use in the manner done so prior to when the business was closed in December 2019.

3. Cost of the New Improvements. The parties agree that the cost of the New Improvements shall be paid as follows:

- the City shall pay 100% of the cost of construction of that portion of the New Improvements located on public right of way, which the parties agree is 35% of the total cost of the New Improvements but, together with all expenses of the City payable pursuant to this Agreement, not exceeding \$400,000; and
- the City shall pay 50% of the remaining cost of the New Improvements, but, together with all expenses of the City payable pursuant to this Agreement, not exceeding Four Hundred Thousand Dollars (\$400,000.00); and
- the parties acknowledge that the Cost of the New Improvements may include portions of the New Improvements located on public right of way or on the Owner's private property; and
- the parties agree that the contractor's invoices for the cost of construction of that portion of the Public Improvements not on public right of way will be divided equally between the parties, payable upon receipt, until the City reaches the \$400,000 maximum Cap (refer to Paragraph 5).

4. Professional Fees. Each party shall pay all professional fees, including without limitation legal and engineering fees, incurred with respect to their respective obligations hereunder.

5. Cap. Notwithstanding anything to the contrary contained in this Agreement, the City's obligation to pay costs pursuant to this Agreement shall not exceed Four Hundred Thousand Dollars (\$400,000.00).

6. Easements. Owner agrees to grant to the City the following easements, on terms and conditions mutually acceptable to the parties:

- concurrently with the execution of this Agreement, a temporary construction easement for the work to be performed by the City pursuant to this Agreement; and
- Upon completion of the New Improvements, a permanent easement for the New Improvements and the flow of stormwater drainage across the Property and through the New Improvements pursuant to which the City shall own and be responsible for all future maintenance of the New Improvements.

7. **Prevailing Wage.** The parties acknowledge that the construction of the New Improvements falls within the definition of a fixed work construction project and all contractors and subcontractors must comply with the Illinois Prevailing Wage Act, 820 ILCS 130.

8. **Miscellaneous.** It is further understood and agreed as follows:

Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, and such counterparts together shall constitute one and the same instrument. The exchange of executed signature pages by facsimile or Portable Document Format (PDF) transmission shall constitute effective delivery of such signature pages and may be used in lieu of the original signature pages for all purposes.

Severability. If any provision of this Agreement shall be held to be void or unenforceable for any reason, the remaining terms and provisions hereof shall not be affected thereby.

Time. Time is of the essence of this Agreement.

Binding Effect. The provisions of this Agreement shall inure to the benefit of and bind the successors and assigns of the parties hereto.

Amendment and Waiver. This Agreement may be amended at any time in any respect only by an instrument in writing executed by the parties. Either party may waive any requirement to be performed by the other hereunder, provided that said waiver shall be in writing and executed by the party waiving the requirement.

Integrated Agreement. This Agreement constitutes the entire agreement between the City and Owner relating to the subject matter hereof, and there are no agreements, understandings, restrictions, warranties or representations between the parties other than those set forth herein.

Choice of Law. It is the intention of the parties that the laws of Illinois shall govern the validity of this Agreement, the construction of its terms and interpretation of the rights and duties of the parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

CITY OF PEORIA, ILLINOIS

RED CARPET PROPERTIES, INC.

By: *Patricia A. [Signature]*

By: _____

Its: *City Manager*

Its: _____

320-469.d3

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

CITY OF PEORIA, ILLINOIS

RED CARPET PROPERTIES, INC.

By: _____

By: David Smith

Its: _____

Its: Vice President

520-469.d3

EXHIBIT A

NEW IMPROVEMENTS

