

**LANDSCAPING AGREEMENT**  
**Highway 95 Corridor**  
**Riverview Auto**

THIS LANDSCAPING AGREEMENT ("Agreement") by and between Lake Havasu City, an Arizona municipal corporation ("City") and Bradley Investments, Inc., d/b/a Riverview Auto ("Lessee"), is entered into on \_\_\_\_\_, 2021, the parties agree as follows:

RECITALS, There exists certain real property described as the ADOT Right-of-Way between Industrial Boulevard and West Acoma Boulevard on the West side of Highway 95, Lake Havasu City, Arizona, and further identified and described in Exhibit "A" attached hereto and incorporated herein by this reference ("Parcel"). LESSEE desires to landscape the Parcel, which is located directly in front of a business owned and operated by Lessee. City desires and has identified the landscaping of the Highway 95 Corridor as an important and beneficial beautification project of the City. City and Lessee have negotiated this Agreement in good faith to provide for the landscaping of Parcel for the mutual benefit of the parties.

**1. PURPOSE**

The purpose of this Agreement is to provide for the landscaping of Parcel for the benefit of each party.

**2. LANDSCAPING**

Lessee agrees to landscape Parcel in accordance with the Landscaping Plan, attached hereto as Exhibit "B" and incorporated herein by this reference. An ADOT permit will be required for landscaping of Parcel and will be acquired by City. In exchange for landscaping Parcel, City shall reimburse Lessee the actual cost of landscaping, not to exceed \$31,533.00, as set forth in Section 3 of this Agreement. See Exhibit "C" attached hereto and incorporated herein by this reference, containing the landscaping estimate of Parcel.

**3. REIMBURSEMENT**

Lessee shall be reimbursed the actual cost of landscaping Parcel, not to exceed \$31,533.00, in equal monthly credits of at least \$647.67, which represents the current rental rate for property leased to Lessee by City, which will be adjusted from time to time. City will begin reimbursement to Lessee's account upon the submission of the first receipt of work completed in connection with the landscaping of the Parcel to the City. Lessee must submit all receipts for reimbursement within sixty (60) days from the issuance of the receipt.

**4. TERM**

This Agreement shall continue until such time as the total reimbursement amount credited to Lessee by City is paid in full, but shall not exceed five (5) years.

## 5. TERMINATION

City may terminate this Agreement by paying the balance of the total reimbursement amount to Lessee at any time without penalty.

## 6. MAINTENANCE

Lessee agrees to maintain the Parcel.

## 7. INDEMNIFICATION

A. City shall not at any time be liable for injury or damage occurring to any person or Parcel from any cause whatsoever arising out of landscaping work on Parcel by Lessee, unless such claim was caused by City's sole negligence or willful misconduct.

B. Lessee shall indemnify, defend, save and hold harmless the City, its departments, agencies, boards, commissions, officers, officials, agents, volunteers, and employees (hereinafter referred to as "Indemnitees") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible Parcel caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Lessee or any of its owners, officers, directors, agents, employees or contractors, arising out of or related to Lessee's landscaping of the Parcel. It is the specific intention of the parties that the City shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the City, be indemnified by Lessee from and against any and all claims. It is agreed that Lessee will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

## 8. INSURANCE

A. Lessee shall provide to City a copy of the General Liability certificate. City must be listed as an additional insured, with no other conditions or restrictions, on the insurance certificates. The standard General Liability insurance shall be for a minimum amount of \$1,000,000. Lessee shall provide proof of renewal of insurance no less than fifteen (15) days prior to expiration date. Lessee shall provide Parcel insurance against "all risks" at least as broad as the current ISO Special Form policy, including earthquake and flood, for loss to any improvements or betterments (constructed by or on behalf of Lessee).

B. The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Lessee from liabilities that might arise out of this Agreement. Lessee is free to purchase such additional insurance as Lessee deems necessary.

C. Additional Insurance Requirements: The policies shall include, or be endorsed to include, the following provisions:

- i. Lake Havasu City, Arizona, its departments, agencies, boards, commissions, officers, officials,

agents, and employees, wherever additional insured status is required, such additional insured shall be covered to the full limits of liability purchased by the Lessee, even if those limits of liability are in excess of those required by this Agreement.

- ii. The Lessee's insurance coverage shall be primary insurance with respect to all other available sources.
- iii. Coverage provided by the Lessee shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

D. Notice of Cancellation: Each insurance policy required by the insurance provisions of this Agreement shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City. Such notice shall be sent directly to the address listed in Section 10 "Notice" of this Agreement and shall be sent by certified mail, return receipt requested.

E. Acceptability of Insurers: Insurance is to be placed with duly licensed or approved non-admitted insurers in the State of Arizona with an "A.M. Best" rating of not less than A- VII. The City in no way warrants that the above-required minimum insurer rating is sufficient to protect the Lessee from potential insurer insolvency.

#### 9. ASSIGNMENT

Lessee may not assign its rights in this Agreement without the written consent of the City; and it shall extend to and be binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.

#### 10. NOTICE

Notices hereunder shall be made in writing and shall be deemed to have been duly given when personally delivered or when deposited in the mail, first class postage prepaid, or delivered to an express carrier, charges prepaid, or sent by facsimile with electronic confirmation, addressed to each party at its address below:

To CITY: Lake Havasu City  
Attn: Office of the City Attorney  
2330 McCulloch Blvd. N.  
Lake Havasu City, AZ 86403

To LESSEE: c/o Michael Bradley  
711 North Lake Havasu Avenue  
Lake Havasu City, AZ 86403

The parties may change their designees by providing written notice to the addressees above.

11. PARTIAL INVALIDITY

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

12. INTEGRATION

This Agreement and any attachments referenced herein represent the entire agreement between the parties hereto and supersede any and all prior negotiations or representations, either written or oral. Amendments or modifications to the Agreement shall be in writing, signed by both parties.

13. GOVERNING LAW

The laws of the State of Arizona shall be applied in interpreting and construing this Agreement.

14. WAIVER OF PERFORMANCE

No failure by City or Lessee to insist upon the strict performance of any term or condition hereof or to exercise any right, power or remedy consequent upon a breach thereof and no submission by Lessee or acceptance by City of full or partial rent during the continuance of any such breach shall constitute a waiver of any such breach or of any such term. No waiver of any breach shall affect or alter this Agreement, which shall constitute in full force and effect, nor the respective rights of Lessee or City with respect to any other then existing or subsequent breach.

15. NO PARTNERSHIP; NO THIRD PARTY RIGHTS

Nothing contained in this Agreement shall create any partnership, joint venture or other arrangement between City and Lessee. Except as expressly provided herein, no term or provision of this Agreement is intended to or shall be for the benefit of any person not a party

16. SECTION HEADINGS

The section headings contained in this Agreement are for purposes of convenience and reference only and shall not limit, describe or define the meaning, scope or intent of any of the terms or provisions hereof. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular, plural as the contract may require.

Landscaping Agreement  
Riverview Auto  
2021  
Page 5 of 7

**Exhibit A**  
**“Parcel”**  
**[attached]**

**Exhibit B**  
**Landscaping Plan**  
[attached]