

**REDEVELOPMENT AGREEMENT**

**BETWEEN**

**THE TAX INCREMENT FINANCING COMMISSION  
OF KANSAS CITY, MISSOURI,**

**AND**

**THE CITY OF KANSAS CITY, MISSOURI,**

**FOR THE CONSTRUCTION OF SIDEWALKS ALONG NORTH HOLMES STREET,  
BEGINNING AT GREENFIELD ROAD AND  
CONTINUING APPROXIMATELY 1,100 LINEAR FEET TO NE 42<sup>ND</sup> STREET,  
AS PROVIDED FOR BY THE NORTH OAK INCREMENT FINANCING PLAN**

**Dated: June \_\_, 2018**

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## **EXHIBITS**

- Exhibit A Construction of the Sidewalk Project – Scope of Services
- Exhibit B Construction of the Sidewalk Project – Project Costs
- Exhibit C Development Schedule for the Sidewalk Project
- Exhibit D Affirmative Action Policy
- Exhibit E Certification of Costs and Reimbursement Policy
- Exhibit F Payment of Prevailing Wages Policy
- Exhibit G Work Force Policy

## REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (this “**Agreement**”) is made as of June \_\_\_\_, 2018, by and between the TAX INCREMENT FINANCING COMMISSION OF KANSAS CITY, MISSOURI (the “**Commission**”) and THE CITY OF KANSAS CITY, MISSOURI, (“**City**”) with respect to the following facts and objectives:

A. Pursuant to the Real Property Tax Increment Financing Allocation Act, Section 99.100 RSMo. 1988, et seq., as amended (“**Act**”), on February 24, 2005, the City Council of Kansas City, Missouri (the “**Council**”), by way of Ordinance No. 050104, approved the North Oak Tax Increment Financing Plan and designated the area described therein as a redevelopment area (the “**Redevelopment Area**”).

B. The North Oak Tax Increment Financing Plan was subsequently amended several times by the Council’s passage of a series of Ordinances (the North Oak Tax Increment Financing Plan, as amended, is hereafter referred to as the “**Plan**”).

C. The Plan provides, among other things, for the design and construction of roadways and other public infrastructure within and adjacent to the Redevelopment Area, including the construction of sidewalks along North Holmes Street, beginning at Greenfield Road and continuing approximately 1,100 linear feet to NE 42<sup>nd</sup> Street (“**Sidewalk Project**”), as more specifically described on **Exhibit A**.

D. The Commission, pursuant to that certain Financing Agreement, dated November 25, 2014, between the City and the Commission (the “**Financing Agreement**”), is obligated to expend the “**Additional City EATS**” (as defined in the Financing Agreement) for costs related to public infrastructure improvements, including certain costs related to the Sidewalk Project, as specifically identified on **Exhibit B**, attached hereto.

E. The City has agreed to implement the Sidewalk Project pursuant to the Plan, subject to the City’s reimbursement by the Commission from Additional EATS the Commission receives, pursuant to the Financing Agreement, for certain costs related thereto in accordance with the terms and conditions of this Agreement.

F. The City and the Commission desire to enter into this Agreement to set forth their mutual understanding relative to the implementation of the Sidewalk Project.

**NOW, THEREFORE**, for and in consideration of the mutual covenants herein contained, the Commission and the City agree as follows:

1. **Sidewalk Project**. The City shall implement or cause to be implemented the Sidewalk Project in accordance with the Scope of Services attached hereto as **Exhibit A**. The final design and construction plans for the Sidewalk Project shall be approved by the City, through the Director of the Public Works Department of the City of Kansas City, Missouri, and all City approvals of the same shall be communicated in writing to the Commission by the City, prior to the City submitting to the Commission for certification any costs related to the Sidewalk Project. All projected costs associated with the Sidewalk Project, which are approximately

\$517,000, are set forth on **Exhibit B**, attached hereto, of which \$250,000 shall be reimbursed to the City, subject to the terms and conditions of this Agreement.

2. Date of Completion. Subject to the other provisions of this Agreement including, without limitation, **Section 18**, the City shall cause the Sidewalk Project to be implemented pursuant to the development schedule attached hereto as **Exhibit C**.

3. Reimbursement to City. To the extent the City and its contractors have completed the Sidewalk Project and, in doing so, have complied with:

a. the City Code of General Ordinances, Chapter 3, Article IV, Divisions 1-3, Sections 3-401 through 3-525 (the Affirmative Action and MBE/WBE Ordinances). The MBE/WBE Ordinance is intended to provide an equal opportunity for minority owned business enterprises, women-owned business enterprises, minorities and women to participate in the development of TIF-assisted redevelopment projects (“Minority Participants”). The MBE/WBE Goals for the Sidewalk Project shall be established in accordance with the MBE/WBE Ordinance and the Commission’s Affirmative Action Policy, attached hereto as **Exhibit D**. The City will adhere to all such reasonable rules, regulations, reporting procedures and forms which the Commission may from time to time promulgate for the purpose of facilitating uniform, orderly and efficient compliance with this Section,

b. the City Code of General Ordinances, Chapter 3, Article IV, Division 2, Sections 3-501 through 3-525 (Construction Workforce Ordinance),

c. Section B of the Commission’s Certification of Costs and Reimbursement Policy, attached hereto as **Exhibit E** (For purposes of the Certification of Costs and Reimbursement Policy, City shall be deemed the “Developer” under such Policy),

d. the City shall be paid up to \$250,000 of all Sidewalk Project Costs (as defined in **Section 4**) from funds the Commission receives from the City, pursuant to the Financing Agreement.

4. Certification of Redevelopment Costs. The Commission may independently verify any request for payments or reimbursement of any Sidewalk Project Costs, utilizing the services of employees of the Commission or other qualified individuals and such costs, which have been certified by the Commission pursuant to its Certification of Costs and Reimbursement Policy shall be deemed “**Sidewalk Project Certified Costs**” and, subject to the terms and conditions of this Agreement, Sidewalk Project Certified Costs shall be paid from funds the Commission receives pursuant to the Financing Agreement. The City or its contractors shall provide such information as is reasonably necessary to facilitate such verification and shall require the same of all its designated contractors and subcontractors. The Commission shall make a good faith effort to complete its verification of payment requests prior to the meeting at which a request is to be considered.

5. Bids Required. The City agrees to solicit bids from qualified contractors for the construction of the Sidewalk Project and select the lowest qualified and best bidder for the construction of the Sidewalk Project, which shall include compliance with the Commission’s

Affirmative Action Policy, attached hereto as Exhibit D, as required by Chapter 3, Article IV, Division 2, Section 3-425(b). The City, through the Director of Parks and Recreation Department of the City of Kansas City, Missouri, shall communicate in writing to the Commission the amount of such bids and the name of the party selected by the City to construct the Sidewalk Project.

6. Control of Redevelopment Area. The City, through the Director of the Public Works Department of the City of Kansas City, Missouri, shall have complete and exclusive control over the construction of the Sidewalk Project, subject, however, to all applicable laws, rules and regulations, including, but not limited to, all ordinances, rules and regulations of the City, such as zoning ordinances. The Commission, its agents or employees seeking to access and inspect the Sidewalk Project shall provide notice to the City of not less than two (2) business days prior to being provided with access to the Sidewalk Project so that the City can coordinate such entry with its project manager.

7. Compliance with Laws. At all times during the term of this Agreement, but subject to the City's rights to contest the same in any manner permitted by law, the City, at its sole cost and expense, shall comply 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 which may be enacted hereafter which pertain to the implementation of the Sidewalk Project.

8. Payment of Prevailing Wages. The City shall cause its contractors and subcontractors involved in the construction of the Sidewalk Project to (a) pay prevailing wage rates as established under RSMo. §290-210 through §290-340, inclusive, (b) comply with the procedures set forth on Exhibit F, attached hereto, and (c) cause its contractors and subcontractors to indemnify, protect and defend the Commission and its officers, members, agents and employees against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed, of whatever kind or character (including consequential and punitive damages) occurring or allegedly occurring as a result of such contractor's or subcontractor's failure to comply with this Section.

9. Payment Bond. The City shall cause each of its contractors engaged to construct the Sidewalk Project (a) to furnish a payment bond, with good and sufficient sureties, which among other conditions, shall be conditioned for the payment of any and all materials, incorporated, consumed or used in connection with the construction of the Sidewalk Project and all insurance premiums, both for compensation and for all other kinds of insurance required by the construction contract, and for all labor performed in such work whether by subcontractor or otherwise, and (b) cause its contractors and subcontractors to indemnify, protect and defend the Commission and its officers, members, agents and employees against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed, of whatever kind or character (including consequential and punitive damages) occurring or allegedly occurring as a result of such contractor's or subcontractor's failure to comply with this Section. The payment bond shall remain in effect for a period consistent with standards established by the Public Works Department of the City of

Kansas City, Missouri (“**Public Works**”) and until the date the Sidewalk Project receives a Certificate of Completion and Compliance from the Commission.

10. Performance and Maintenance Bond. The City (a) shall cause its designated contractor engaged to implement the Sidewalk Project to furnish, or cause to be furnished, a performance and maintenance bond in the full amount of each contract relating to the Sidewalk Project with good and sufficient sureties, and (b) cause its contractors and subcontractors to indemnify, protect and defend the Commission and its officers, members, agents and employees against any and all claims, demands, liabilities and costs, including reasonable attorneys’ fees, costs and expenses, arising from damage or injury, actual or claimed, of whatever kind or character (including consequential and punitive damages) occurring or allegedly occurring as a result of such contractor’s or subcontractor’s failure to comply with this Section. The performance and maintenance bond shall remain in effect for a period consistent with Public Works’ standards and until the date the Sidewalk Project receives a Certificate of Completion and Compliance from the Commission.

11. Certificate of Completion and Compliance. Within sixty (60) days of the completion of the Sidewalk Project, the City shall submit to the Commission a report certifying that the Sidewalk Project has been completed in accordance with Exhibit A and that the City is in compliance with all provisions of this Agreement and that it has provided to the Commission, or its independent cost certifier, all documentation required by the Commission’s Certification of Costs and Reimbursement Policy, attached hereto as Exhibit E. The City shall, as part of its report, (a) certify the total cost of completing the Sidewalk Project, and (b) include such supporting documentation necessary for the Commission, or its independent certifier, to substantiate all the eligible Sidewalk Project Costs, as described in the Plan, incurred by the City and presented to the Commission for certification. The Commission shall forward the City’s report and request for reimbursement to the Commission’s cost certifier and the Commission shall exert reasonable best efforts to cause the cost certifier to render a recommendation to the Commission as to whether costs referenced therein should be certified. The Commission may conduct an investigation, and if the Commission determines that the Sidewalk Project has been completed in accordance with the provisions of the Plan and this Agreement, including, but not limited to, the following policies and procedures incorporated herein: the Commission’s Affirmative Action Policy, Procedures for the Payment of Prevailing Wages, and other required governmental approvals and that all costs related to the Sidewalk Project have been certified pursuant to the Commission’s Certification of Costs and Reimbursement Policy, the Commission shall issue a Certificate of Completion and Compliance and certify such costs (the “**Certified Costs**”). If the Commission determines that the Sidewalk Project, or any phase or portion of the Sidewalk Project, has not been completed in accordance with the provisions of this Section, or that any Sidewalk Project Costs have not been certified, pursuant to the Commission’s Certification of Costs and Reimbursement Policy, then the Commission may, in its sole discretion, (x) not issue a Certificate of Completion and Compliance, (y) withhold reimbursement of Sidewalk Project Costs and (z) specify in writing the reason or reasons for withholding its certification. Upon the request of the City, the Commission shall hold a hearing at which the City may present new and/or additional evidence.

a. The issuance of a Certificate of Completion and Compliance by the Commission shall be a conclusive determination of the satisfaction and termination of the



covenants in this Agreement, with respect to the obligations of the City to complete the Sidewalk Project within the dates for the beginning and completion thereof and in accordance with the criteria applicable thereto as herein set forth.

b. Each such Certificate of Completion and Compliance issued by the Commission shall contain a description of the real property affected thereby and shall be in such form as will enable such certificate to be accepted for recording in the Office of the Recorder of Deeds in the county in which such property is located.

12. Payment of Certified Costs.

a. Subject to the conditions and obligations of the City under this Agreement, including **Section 3**, and the availability of funds received by the Commission, pursuant to the Financing Agreement, the Commission, subject to the terms of the Financing Agreement, shall reimburse the City up to \$250,000 of the Sidewalk Project Certified Costs as provided in this Section.

b. Requests for reimbursement shall be in writing and include adequate documentation as to the expenditure of funds and the quantity of work completed. Only requests for reimbursement presented to the Commission in a manner consistent with the Certification of Costs and Reimbursement Policy shall be considered by the Commission. If the Commission does not approve all or part of a requested progress payment, it shall, if requested to do so by the City, specify in writing the reason or reasons for withholding its approval. Upon request of the City, the Commission shall promptly hold a hearing at which the City may present new and/or additional evidence.

c. The Commission may independently verify any request for progress payments, utilizing the services of employees of the City or other qualified individuals. The City shall provide such information as is reasonably necessary to facilitate such verification and shall require the same of all its designated contractors and subcontractors. The Commission shall make a good faith effort to complete its verification of progress payment requests prior to the meeting at which a request is to be considered.

13. Assignment. The City agrees that this Agreement and the rights, duties and obligations hereunder may not and shall not be assigned by the City except upon terms and conditions agreeable to the Commission. In the event this Agreement is assigned in whole or part, the City shall not be relieved from any obligations set forth herein unless and until the Commission specifically agrees in writing to release the City.

14. Affirmative Action Policy. With respect to the Sidewalk Project, the City, as required by City Code of General Ordinances Chapter 3, Article IV, Division 2, Section 3-425(b), and acting through its Human Relations Department, will comply with the Commission's Affirmative Action Policy, as amended from time to time and attached hereto as **Exhibit D** (the "**Affirmative Action Policy**") and incorporated herein by this reference, contractually require its contractors and subcontractors to comply with the terms and provisions of the Affirmative Action Policy, exert best efforts to enforce such provisions to the maximum extent permitted by

law and further provide that the Commission shall be a third-party beneficiary with respect to the compliance and enforcement of such provisions. The Affirmative Action Policy supports and implements the affirmative action policy of the City, as set forth in the City Code of General Ordinances, Chapter 3, Article IV, Divisions 1-3, Sections 3-401 through 3-525 by (a) establishing affirmative action goals with respect to the aggregate amount of all costs incurred in connection with the implementation of the Sidewalk Project, (b) requiring the City and its contractors to exert good faith efforts to meet such goals, (c) requiring the City and its contractors to deliver a professional services utilization plan and a construction services utilization plan to the Human Relations Department of the City for its approval and (d) requiring the City and its contractors to exert good faith efforts, as determined by the Commission, to comply with such utilization plans during the implementation of the Sidewalk Project. The Affirmative Action Policy is intended to provide an equal opportunity for minority owned business enterprises, women-owned business enterprises, minorities and women to participate in the development of TIF-assisted redevelopment projects ("**Minority Participants**"). Prior to or simultaneously with the certification and reimbursement of any Project Costs incurred by the City in connection with the implementation of the Sidewalk Project, the City shall report to the Commission the progress of the City's utilization of Minority Participants in the implementation of the Sidewalk Project and, within sixty (60) days of the completion of the Sidewalk Project, the City shall provide a final report, which shall describe the utilization of Minority Participants in connection with the implementation of the Sidewalk Project. The parties hereto and their successors and assigns expressly agree that the Minority Participants, who shall have demonstrated to the Commission's satisfaction, financial harm or injury as a result of the City's failure to comply with the Affirmative Action Policy, shall be third-party beneficiaries with respect to the enforcement and performance of this **Section 13**. The City will adhere to such reasonable rules, regulations, reporting procedures and forms which the Commission may from time to time promulgate for the purpose of facilitating uniform, orderly and efficient compliance with the Affirmative Action Policy and which do not alter the goals established by the Human Relations Department of the City and incorporated within utilization plans for professional services and construction services ("**Utilization Plans**"). Prior to any costs being incurred with respect to the Sidewalk Project, Utilization Plans for the Sidewalk Project will be submitted to and approved by the Human Relations Department of the City.

15. Work Force. With respect to the implementation of the Sidewalk Project, the City, as required by City Code of General Ordinances Chapter 3, Article IV, Division 3, Section 3-401 through 3-525, and acting through its Human Relations Department, shall comply with the Commission's Workforce Policy, as amended from time to time and attached hereto as **Exhibit G** (the "**Workforce Policy**") and incorporated herein by this reference, and cause its contractors and subcontractors to comply with the terms and provisions of the Workforce Policy, exert best efforts to enforce such provisions to the maximum extent permitted by law and further provide that the Commission shall be a third party beneficiary with respect to the compliance and enforcement of such provisions. The Workforce Policy supports and implements City Code of General Ordinances, Chapter 3, Article IV, Division 3, Sections 3-501 through 3-525 (the "**Workforce Ordinance**") and creates a construction employment program ("**Construction Employment Program**") that establishes goals for the employment of minority, women and resident workers for certain construction contractors engaged by the City, its departments and agencies, including the Commission.

16. Breach; Compliance.

a. If the City does not comply with provisions of this Agreement, within the time limits and in the manner for the completion of the Sidewalk Project as herein stated, except for Excusable Delays, in that the City shall do, permit to be done, or fail or omit to do, or shall be about do, or fail or omit to have done, anything contrary to or required of it by this Agreement or the Act, and if, within thirty (30) days after written notice of such default by the Commission to the City, and the City shall not have cured such default or commenced such cure or be diligently pursuing the same if such cure would reasonably take longer than said thirty (30) day period, then the Commission may institute such proceedings as may be necessary in its opinion to cure the default, including, but not limited to, proceedings to compel specific performance by the City of its obligations and the Commission is granted the specific right to terminate this Agreement, the specific right to withhold or apply funds claimed by the City from the Special Allocation Fund to such extent as is necessary to protect the Commission from loss or to ensure that the Sidewalk Project is fully and successfully implemented in a timely fashion and the specific right to withhold issuance of a Certificate of Completion and Compliance.

b. If the Commission fails to comply with the provisions of this Agreement, and within thirty (30) days after written notice of such default by the City to the Commission, the Commission shall not have cured such default or commenced such cure or be diligently pursuing the same if such cure would reasonably take longer than said thirty (30) day period, then the City may institute such proceedings in law or in equity to cure the default.

c. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by either party shall apply to obligations beyond those expressly waived.

d. Any delay by any party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this **Section 15** shall not operate as a waiver of such rights or limit them in any way. No waiver made by any party of any specific default by any other party shall be considered or treated as a waiver of the rights of any party with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

17. Mediation. NOTWITHSTANDING ANYTHING HEREIN STATED IN THIS AGREEMENT TO THE CONTRARY, ANY UNRESOLVED DISPUTE WITH RESPECT TO THIS AGREEMENT SHALL BE SUBMITTED TO MEDIATION BY A SINGLE MEDIATOR. The mediator shall be a person located in the Kansas City metropolitan area agreed to by the parties. If the parties cannot agree to a mediator, the selection shall be made by the Presiding Judge of the Circuit Court of Jackson County, Missouri, on the application of either party. All expenses and fees of the mediator and the mediation shall be assessed by the mediator as he or she finds equitable and just based on his or her findings with respect to the dispute; provided, however, that each party shall bear the expenses and fees of any attorneys,

accountants, expert witnesses or others appearing or submitting any materials on such party's behalf.

18. Modification. The terms, conditions and provisions of this Agreement can be neither modified nor eliminated except by written agreement between the Commission and the City. Any such modification to this Agreement as approved shall include an attachment of this Agreement, as approved and executed, for reference.

19. Effective Date. This Agreement shall become effective on the date set forth herein, and shall remain in full force and effect until the completion of the Sidewalk Project called for in the Plan and this Agreement, and so long thereafter as (a) obligations remain outstanding under this Agreement, or (b) there are any remaining Sidewalk Project Certified Costs which have not been reimbursed to the City in accordance with this Agreement. At such time as all of the obligations and costs set forth in the preceding sentence have been satisfied and reimbursed, this Agreement shall terminate, provided that in any event, the obligations of the City and Commission arising under the terms and conditions of this Agreement, with respect to the Sidewalk Project, including, but not limited to, the reimbursement of Sidewalk Project Certified Costs, shall cease no later than July 29, 2032.

20. Excusable Delays. The parties understand and agree that the City shall not be deemed to be in default or breach of this Agreement because of delays or temporary inability to proceed due in whole or in part to causes beyond the reasonable control or without the material fault of the City or its contractors, including without limitation strikes, lockouts, the unavailability of necessary materials or labor, delays in the city inspection process and inclement weather (collectively "**Excusable Delays**"). The time of performance hereunder shall be extended for the period of any Excusable Delays caused or resulting from any of the foregoing causes, it being understood that the City is entitled to such extensions upon presentation of reasonable evidence and/or documentation of the periods of such Excusable Delays to the Commission.

21. Notice. All notices required by this Agreement shall be in writing and shall be served either personally or by certified mail, or by any other delivery service which obtains a receipt for delivery unless any such notice is required by law and such law provides a different form of delivery or service. Any such notice or demand served personally shall be delivered to the party being served (provided that such notice may be delivered to the receptionist or any other person apparently in charge of such party's office at its address hereinafter set forth), and shall be deemed complete upon the day of actual delivery or attempted delivery, as shown by an affidavit of the person so delivering such notice. Any notice so served by certified mail shall be deposited in the United States Mail with postage thereon fully prepaid and addressed to the party or parties so to be served at its address hereinafter stated, and service of any such notice by certified mail shall be deemed complete on the date of actual delivery as shown by the certified mail receipt. Service of any such notice by another delivery service shall be deemed complete upon the date of delivery as shown on the receipt obtained by such delivery service.

Notices to the Commission shall be addressed to:

Executive Director  
Tax Increment Financing Commission  
1100 Walnut, Suite 1700  
Kansas City, Missouri 64106

with a copy to:

Bryan Cave LLP  
3800 One Kansas City Place  
1200 Main Street  
Kansas City, Missouri 64105  
Attn: Wesley O. Fields

Notices to City shall be addressed to:

Department of Public Works of Kansas City, Missouri  
20th Floor, City Hall  
414 E. 12th Street  
Kansas City, Missouri 64106  
Attn: Director

with a copy to:

Law Department  
28th Floor, City Hall  
414 E. 12<sup>th</sup> Street  
Kansas City, Missouri 64106  
Attn: City Attorney

Each party shall have the right to specify that notice be addressed to any other address by giving to the other party ten (10) days' written notice thereof.

22. Headings. The headings or captions of this Agreement are for convenience and reference only, and in no way define, limit, or describe the scope or intent of the contract or any provisions hereof.

23. Validity and Severability. It is the intention of the parties hereto that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of Missouri, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement, other than the City's obligation to implement or cause the implementation of the Sidewalk Project in accordance with **Section 1** of this Agreement, the Commission's obligation to reimburse the City for certain costs in accordance with **Section 3** of this Agreement and any other provision containing material benefits bargained for under the Agreement, the exclusion of which or deemed unenforceability of which would constitute a failure of consideration for a party to go forward with its obligations, shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

If this Agreement contains any unlawful provisions not an essential part of this Agreement and which shall not appear to have a controlling or material inducement to the making thereof, such provisions shall be deemed of no effect and shall be deemed stricken from this Agreement without affecting the binding force of the remainder. In the event any provision of this Agreement is capable of more than one interpretation, one which would render the provision invalid and one which would render the provision valid, the provision shall be interpreted so as to render it valid.

24. Time is of the Essence. Time and exact performance are of the essence of this Agreement.

25. Sole Agreement. This Agreement, including all exhibits, riders or addenda attached hereto, constitutes the sole agreement between the parties and supersedes any prior understandings or written or oral agreements between the parties.

26. Technical Amendments. In the event that there are minor inaccuracies contained herein or any Exhibit attached hereto or any other agreement contemplated hereby, or the parties agree that changes are required due to unforeseen events or circumstances, or technical matters arising during the term of this Agreement, which changes do not alter the substance of this Agreement, the respective presiding officers of the Commission, and the officers of the City, are authorized to approve such changes, and are authorized to execute any required instruments, to make and incorporate such amendment or change to this Agreement or any Exhibit attached hereto or any other agreement contemplated hereby.

27. Representations and Warranties. City hereby represents and warrants to the Commission the following:

a. City has all requisite power and authority to enter into, execute and deliver this Agreement, and to consummate the transactions contemplated hereby and to perform the obligations hereunder.

b. This Agreement has been duly executed and delivered by City, assuming the due execution and delivery hereof by the Commission and other parties thereto, constitute a legal, valid and binding obligation, of City, enforceable against City in accordance with their respective terms and conditions.

28. Choice of Law. The interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Missouri. Venue for any cause of action arising out of or in connection with this Agreement shall be in Jackson County, Missouri.

29. Multiple Counterparts. This Agreement may be executed in multiple counterpart copies, each of which will be considered an original and all of which constitute but one and the same instrument, binding on all parties hereto, even though all the parties are not signatories to the same counterpart. Any counterpart of this Agreement which has attached to it separate signature pages which together contain the signatures of all parties hereto shall be deemed for all purposes a fully executed original.

30. Continued Cooperation of Parties. Each party agrees that, upon the request of the other, it will provide such other information, documents or instruments and/or undertake such further actions as may be reasonably requested in order to give full force and effect to the intent of the provisions, terms and covenants of this Agreement.

*[The remainder of this page intentionally left blank. Signature pages to follow.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed pursuant to due authority as of the date first above set forth.

**TAX INCREMENT FINANCING  
COMMISSION OF KANSAS CITY,  
MISSOURI**

ATTEST:

By: \_\_\_\_\_  
Heather A. Brown, Secretary

By: \_\_\_\_\_  
Cynthia M. Circo, Chair

Approved as to form:

By: \_\_\_\_\_  
Wesley O. Fields, Counsel to the Commission

STATE OF MISSOURI     )  
  ) ss.  
COUNTY OF JACKSON    )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, the undersigned a Notary Public in and for the County and State aforesaid, came Cynthia M. Circo, the Chair of the Tax Increment Financing Commission of Kansas City, Missouri, a commission duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of said commission, and such person duly acknowledged the execution of the same to be the act and deed of said commission.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

\_\_\_\_\_  
Signature of Notary Public

My Commission Expires:

\_\_\_\_\_



**CITY OF KANSAS CITY, MISSOURI, THROUGH  
THE PUBLIC WORKS DEPARTMENT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney

STATE OF MISSOURI     )  
  ) ss.  
COUNTY OF JACKSON    )

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me, a Notary Public in and for the state and county aforesaid, appeared \_\_\_\_\_, to me personally known, and who being by me duly sworn, did say that he/she is the \_\_\_\_\_ of the Public Works Department of the City of Kansas City, Missouri, and, as such official, executed the within instrument on behalf of said Public Works Department of the City of Kansas City, Missouri, and such person duly acknowledged the execution of the same to be the act and deed of said Public Works Department of the City of Kansas City, Missouri.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal in my office the day and year last above written.

\_\_\_\_\_  
Signature of Notary Public

My Commission Expires:

\_\_\_\_\_

## **Exhibit A**

### **Sidewalk Project – Scope of Services**

Construction of curbs, sidewalks, driveways and ADA ramps along the east side of North Holmes Street, beginning at Greenfield Road and continuing approximately 1,100 linear feet to NE 42<sup>nd</sup> Street. Work includes demolition, installation of storm sewers and storm inlets, street restoration, site restoration and traffic control.

**Exhibit B**

**Sidewalk Project Redevelopment Project Costs**

Mobilization/Design	45,000
Demolition/Grading	25,000
Curbs	45,000
Sidewalks	75,000
Handicap Ramps	9,000
Driveways	28,000
Curb Inlets	12,000
Storm water pipe	85,000
Modular Retaining Walls	35,000
Incidental Construction	15,000
Signing and Striping	8,000
Street Restoration	8,000
Site Restoration	10,000
Traffic Control	12,000
Project Management, Inspection, Testing	55,000
Contingency	50,000
<b>Total Cost</b>	<b>\$517,000*</b>

\*The Commission shall not be obligated to pay or reimburse more than \$250,000 of this amount.

**Exhibit C**

**Sidewalk Project Development Schedule**

<b><u>Schedule</u></b>	<b><u>Dates</u></b>
Construction Drawings Complete	January, 2019
ROW Acquired	March, 2019
Bid Opening	April 2019
Notice to Proceed Construction	July 2019
Construction and Inspection	August – November 2019
Construction Completion	December 2019

**Exhibit D**

Affirmative Action Policy

**TAX INCREMENT FINANCING COMMISSION OF  
KANSAS CITY, MISSOURI  
AFFIRMATIVE ACTION POLICY**

WHEREAS, the Kansas City, Missouri Disparity Study, dated October 1, 1994, determined that women and certain minority groups were being underutilized in the Kansas City, Missouri Metropolitan Area. As a result, the City of Kansas City, Missouri (the "City") has adopted City-wide affirmative action goals applicable to firms doing business with the City, through its departments and agencies. In accordance with City Code of General Ordinances, Chapter 3, Article IV, Divisions 1-3, Sections 3-401 through 3-525, the Tax Increment Financing Commission of Kansas City, Missouri ("TIFC") has adopted this Policy, which is intended to secure equal opportunities and maximize the participation of certified Minority Business Enterprises ("MBE") and certified Women's Business Enterprises ("WBE") in providing professional and construction services contracted for by the TIFC and its Redevelopers, and an equal opportunity for minorities and women to be employed in the workforces of all contractors, subcontractors and assignees of TIFC and its Redevelopers. The City has since commissioned a new Disparity Study that was published in October 2006.

THEREFORE, TIFC shall adhere to the requirements set forth herein and shall contractually require its Redevelopers to do the following:

- (1) meet or exert good faith efforts to meet the goals established by the Human Relations Department of the City and, if necessary, any adjustments required by the Fairness in Construction Board,
- (2) comply or exert good faith efforts to comply with the Utilization Plans approved by the Human Relations Department of the City and TIFC,
- (3) comply with all reporting requirements set forth in this Policy, and
- (4) contractually require each contractor, subcontractor and assignee to comply with this Policy and to enforce such contractual provisions.

**I. DEFINITIONS**

Commercially Useful Function - Real and actual services that are a distinct and verifiable element of the contracted work based upon private sector trade or industry standards. Determination that an enterprise performs a Commercially Useful Function will be made based on the following considerations:

- a. An MBE or WBE performs a Commercially Useful Function when it is responsible for execution of the ordinary and necessary work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a Commercially Useful Function, the MBE or WBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining the quality and quantity, ordering the material, installing (where applicable) and paying for the material itself. To

determine whether an MBE or WBE is performing a Commercially Useful Function, one must evaluate the following:

1. The amount of work subcontracted; and
2. Industry practices; and
3. Whether the amount the enterprise is to be paid under the contract is commensurate with the work it is actually performing; and
4. Whether the MBE or WBE has the skill and expertise to perform work for which it is being utilized; and
5. The credit claimed for its performance of the work; and
6. Other relevant factors.

b. An MBE or WBE does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of MBE or WBE participation. In determining whether an MBE or WBE is such an extra participant, one must examine similar transactions, particularly those in which MBEs or WBEs do not participate.

c. An MBE or WBE firm is not performing a Commercially Useful Function if the MBE or WBE subcontracts a greater portion of the work on a contract or purchases a greater amount of material than would be expected on the basis of normal industry practice for the type of work involved.

d. Whether the MBE or WBE is participating in the contract as a middle person or broker in the normal course of that business or trade by purchasing the goods and/or services from another business, thereby qualifying expenditures for such goods and/or services to be counted toward utilization requirements for MBEs and WBEs.

e. Whether the MBE or WBE is responsible for the purchase and quality of, and payment for, materials used to perform its work under the contract.

There shall be a rebuttable presumption that, when the MBE or WBE subcontracts a greater portion of the contract work than normal industry practice, the MBE or WBE is not performing a Commercially Useful Function.

Construction Services - Activities undertaken to complete the construction, reconstruction, improvement, enlargement or alteration of any fixed work that relates to the implementation of a Redevelopment Plan, Project or Public Improvement, including environmental remediation and demolition, but excluding Professional Services.

Disparity Study - An undertaking dated October 1, 1994, commissioned by the City of Kansas City, Missouri, the Kansas City Area Transportation Authority, and the Kansas

City, Missouri School District to determine whether or not defined minority groups or women were underutilized in the Kansas City Metropolitan Area. An updated disparity study, which was commissioned by the City, was published in October 2006.

Kansas City Metropolitan Area - The Missouri counties of Cass, Clay, Jackson and Platte and the Kansas counties of Johnson, Leavenworth and Wyandotte.

Minorities - Persons who are citizens or lawful permanent residents of the United States and who:

- a. Have origins in any of the Black racial groups of Africa, and who has historically and consistently identified himself or herself as being such a person (“Black Americans”);
- b. Have origins in any of the peoples of Mexico, Puerto Rico, Cuba, Central or South America, or any of the Spanish speaking islands of the Caribbean, regardless of race and who has historically and consistently identified himself or herself as being such a person (“Hispanic Americans”);
- c. Have origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent or the Islands of the Pacific or the Northern Marianas, and who has historically and consistently identified himself or herself as being such a person (“Asian Americans”); and
- d. Maintain cultural identification through tribal affiliation or community recognition with any of the original peoples of the North American continent; or those who demonstrate at least one-quarter descent from such groups, and who has historically and consistently identified himself or herself as being such a person. (“Native Americans”).

Minority Business Enterprise (“MBE”) - A business or professional entity that (a) is at least 51% owned and independently controlled by one or more Minorities and is certified as such by the Human Relations Department of the City of Kansas City, Missouri prior to a Redeveloper submitting a Utilization Plan to the Commission and the Human Relations Department of the City of Kansas City, Missouri, and prior to submitting a bid, a request for qualifications or proposal to or entering into negotiations with such entity for Construction Services or Professional Services to be utilized in connection with implementing a Redevelopment Plan or Redevelopment Project, (b) either has its principal place of business in the Kansas City Metropolitan Area or has made substantial efforts to become a market participant in Kansas City, Missouri, (c) meets the size standards imposed by 13 CFR 121.201, (d) possesses the professional qualifications necessary to perform the work contemplated by a Redevelopment Agreement or contract between TIFC, a Redeveloper, or a Redeveloper’s contractors, subcontractors or assignees in furtherance of a Redevelopment Agreement or Redevelopment Plan, and performs a Commercially Useful Function, and (e) is capable of providing the necessary equipment and labor force independent of any other contractor, subcontractor or assignee and can



perform the work itself without subcontracting. The Kansas City Human Relations Department maintains a list of certified MBEs, which is available at any time upon request, but shall be submitted to the TIFC on an annual basis.

Professional Services - Advisory or consulting activities including, but not limited to, architectural, engineering, legal, accounting, marketing, environmental studies, and financial services contracted for by any Redeveloper necessary to complete Project Improvements, but excluding Construction Services.

Project Improvements - Those activities undertaken and facilities constructed in order to implement the provisions of a Redevelopment Plan pursuant to a Redevelopment Agreement.

Redeveloper - Any person or entity which enters into a Redevelopment Agreement.

Redevelopment Agreement - Any agreement between TIFC and a Redeveloper for the implementation of a Redevelopment Plan, Project or Public Improvement .

TIFC - The Tax Increment Financing Commission of Kansas City, Missouri, created pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri, 1986, as amended (the "Act"), and by Ordinance No. 54556 of the City Council of Kansas City, Missouri, adopted on November 24, 1982, amended by Ordinance No. 911076 adopted on August 29, 1991, by Ordinance No. 100089, as amended on January 28, 2010 and by Ordinance 130986, on December 19, 2013, for the purpose of holding hearings and making recommendations to the City Council of Kansas City, Missouri, with respect to proposed tax increment financing plans, and carrying out the responsibilities delegated to it by the City Council, among which, are entering into agreements with redevelopers to implement said plans when approved, and monitoring compliance therewith.

TIFC Representative - A representative designated by the TIFC, who shall make regular reports at TIFC meetings regarding Redevelopers' compliance with this Policy.

Utilization Goals – The goals described in Section II of this Affirmative Action Policy.

Women's Business Enterprise ("WBE")<sup>1/</sup> - A business or professional entity that (a) is at least 51% owned and independently controlled by one or more women and is certified as such by the Human Relations Department of the City of Kansas City, Missouri prior to a Redeveloper submitting a Utilization Plan to the Commission and the Human Relations Department of the City of Kansas City, Missouri and prior to submitting a bid, a request for qualifications or proposal to or entering into negotiations with such entity for Construction Services or Professional Services to be utilized in connection with implementing a Redevelopment Plan or Redevelopment Project, (b) either has its principal

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<sup>1/</sup> The Disparity Study included minority women as part of the minority population and goals and, therefore, minority women should be included in MBE statistical categories furnished to the TIFC. As a result, the WBE category includes only those firms owned or controlled by white women.

place of business in the Kansas City Metropolitan Area or has made substantial efforts to become a market participant in Kansas City, Missouri, (c) meets the size requirements imposed by 13 CFR 121.201, (d) possesses the professional qualifications necessary to perform the work contemplated by a Redevelopment Agreement or contract between TIFC, a Redeveloper, or a Redeveloper's contractors, subcontractors or assignees in furtherance of a Redevelopment Agreement, and performs a Commercially Useful Function, and (e) is capable of providing the necessary equipment and labor force independent or any other contractor, subcontractor or assignee, and can perform the work itself without subcontracting. The Kansas City Human Relations Department maintains a list of WBEs, which is available at any time upon request, but shall be submitted to the TIFC on an annual basis.

All terms not otherwise defined herein, shall have the meaning set forth in the Redevelopment Agreement.

## II. TIFC COMPLIANCE

A. The TIFC, pursuant to City Code of General Ordinances, Chapter 3, Article IV, Divisions 1-3, Sections 3-401 through 3-525, shall prepare and deliver to the Director of the Human Relations Department by April 1 an annual MBE/WBE Utilization Plan for each upcoming fiscal year of the City. Each MBE/WBE Utilization Plan shall include the TIFC's goals for participation by qualified, certified MBEs and WBEs as prime contractors and subcontractors in the procurement of goods and professional and construction services for the upcoming year. The goals should be expressed as a percentage of the total redevelopment project costs.

B. The TIFC, pursuant to City Code of General Ordinances, Chapter 3, Article IV, Divisions 1-3, Sections 3-401 through 3-525, shall make reasonable efforts to:

1. advertise contract opportunities in general circulation media, trade and professional publications, small business media and publications of minority and women's business organizations;
2. send written notice of specific contract opportunities to minority and women's business organizations and those MBEs/WBEs listed on the TIFC's approved professional service provider list;
3. with the assistance of the Director of Human Relations Department of the City, shape the scope, specifications and size of a contract to enhance participation opportunities for qualified, certified MBEs and WBEs;
4. include certified, qualified MBEs/WBEs on the TIFC's approved professional service provider list, which shall be updated, if necessary, no less frequently than annually; and
5. add a provision within all RFQ's and advertisements to bid a provision that encourages MBEs/WBEs to become certified with the City, the Kansas Department of Transportation and the Missouri Department of Transportation.

### III UTILIZATION GOALS FOR REDEVELOPMENT PROJECTS AND PUBLIC IMPROVEMENTS

Unless the Director of the Human Relations Department of the City establishes separate goals for a specific Redevelopment Agreement (the "Utilization Goals"), the goals listed in Section III.A. through C. (the "Default Goals") for the participation of MBEs and WBEs (in the case of Professional Services and Construction Services), and minority and female individuals (in the case of Workforces), which are identical to the city-wide goals of the City, shall apply and be incorporated as a part of each Redevelopment Agreement. The Utilization Goals or Default Goals for participation of such MBEs and WBEs are expressed as a percentage of the totals of (a) the dollar amount spent for professional services (b) the dollar amount spent for Construction Services, and (c) hours worked by individuals employed in the Workforce. The Default Goals are as follows:

A.	<u>Professional Services</u>	<u>Percentages</u>
	1. Minority Business Enterprises	
	Black-American	8
	Hispanic American	3
	Native American/Asian American	<u>2</u>
		13
	2. Women's Business Enterprises	8
	B.	
	<u>Construction Services</u>	
	1. Minority Business Enterprises	
	Black-American	9
	Hispanic American	5
	Native American/Asian American	<u>1</u>
		15
	2. Women's Business Enterprises	7

C. Identification. The following codes will be used to identify the appropriate reporting classification assigned to each MBE or WBE firm:

- 01 MBE Certified Black Male Ownership
- 02 Non-MBE/WBE (Minority Business Enterprise/Women owned Business Enterprise) Ownership
- 03 MBE Certified Hispanic Male Ownership
- 04 MBE Certified American Indian Male Ownership
- 05 MBE Certified Asian American Male Ownership
- 06 MBE Certified Black Female Ownership
- 07 WBE Certified White Female Ownership
- 08 MBE Certified Hispanic Female Ownership

- 09 MBE Certified American Indian Female Ownership
- 10 MBE Certified American Asian Female Ownership

Staff to the TIFC shall notify Redevelopers verbally and in writing, within each Redeveloper's Application for the implementation of a Redevelopment Plan, Redevelopment Project or Public Improvement, of the requirement that Redevelopers obtain Utilization Goals from the Human Relations Department of the City for each such Redevelopment Plan, Redevelopment Project or Public Improvement, prior to a hearing at which time the TIFC shall consider approving and recommending such Redevelopment Plan, Redevelopment Project or Public Improvement to the City Council for approval. At least seven (7) days prior to the date of the public hearing at which time such Redevelopment Plan, Redevelopment Project or Public Improvement is to be considered for approval by the TIFC, the Redeveloper shall communicate, in writing, to the TIFC Representative either (1) the specific scopes of work for the Redevelopment Plan, Redevelopment Project or Public Improvement in sufficient detail, as determined by the Human Relations Department, so that specific Utilization Goals can be established or (2) that specific scopes of work for such Redevelopment Plan, Redevelopment Project or Public Improvement have not been established, and in which case, the Default Goals shall apply; provided however, such Default Goals may be modified by the Human Relations Department at such time as the specific scopes of work for such Redevelopment Plan, Redevelopment Project or Public Improvement are presented by the Redeveloper to the Human Relations Department.

#### IV. RECORDS AND REPORTS

A. Records. The Redeveloper shall maintain such records as reasonably may be required in order to demonstrate Policy compliance including, but not limited to, (1) a copy of the Utilization Goals established by the Director of the Human Relations Department for each Redevelopment Plan, Project or Public Improvement, (2) Utilization Plans approved by the Human Relations Department, (3) teaming agreements or other documentation that evidences the Redeveloper's intent to enter into agreements with MBEs and WBEs for the implementation of a Redevelopment Plan, Project or Public Improvement, (4) documentation that evidences the good faith requirements set forth in Sections V.A.1.b. and V.B.1.b. to meet the Utilization Goals. Such records shall be made available for audit by the TIFC Representative from time to time upon reasonable notice.

B. Reports. The Redeveloper shall provide to the TIFC Representative by the 15<sup>th</sup> day of each month, commencing on the month after the Redeveloper incurs any costs or expenses related to construction or professional services utilized in connection with the implementation of a Redevelopment Plan, Redevelopment Project or Public Improvement. Such monthly reports shall be in a format provided by the TIFC Representative. In addition to the monthly reports, the Redeveloper shall provide such additional information requested by the TIFC Representative, including but not limited to, checks, invoices and receipts, in order to verify that the percentages submitted on the reports are accurate. As a condition to the reimbursement of eligible Redevelopment Project Costs, the Redeveloper shall have delivered all monthly reports on a timely basis to the TIFC Representative. A copy of each monthly report, together with a copy of all checks, invoices, receipts and all other documentation evidencing payments to MBEs and WBEs, shall be submitted simultaneously to the TIFC's independent cost certifier, who has been

designated by the TIFC to certify costs for the Redevelopment Plan, Project or Public Improvement to be implemented by the Redeveloper. In the sole discretion of TIFC, for good cause shown, waivers of the monthly reports may be granted. Each monthly report, which shall be in a form substantially similar to Exhibit A, attached hereto, shall summarize the data in the following three (3) categories:

1. Professional Services: Total dollars spent in connection with the Redevelopment Project(s) and/or Public Improvement(s) and dollars spent with MBE and WBE firms, respectively, for professional services.
2. Construction Services: Total dollars spent in connection with the Redevelopment Project(s) and/or Public Improvement(s) and dollars spent with MBE and WBE firms, respectively, for construction services.

## V. REDEVELOPER COMPLIANCE

### A. Professional Services and Construction Services

1. The Redeveloper shall be presumed conclusively to be in compliance with this Policy as it relates to good faith efforts to meet the Utilization Goals or Default Goals, as applicable, with respect to Professional and Construction Services if:

a. the Redeveloper can demonstrate, to the satisfaction of the TIFC, that each of the Utilization Goals or Default Goals set forth in Section III have been met for each Redevelopment Project and Public Improvement in which Construction or Professional Services have been utilized;<sup>2/</sup>

b. in the event, any of the Utilization Goals or Default Goals have not been met, the Redeveloper has taken the following actions:

(1) requested in writing the assistance of the TIFC Representative with respect to efforts to promote the utilization of MBE/WBE and acted upon the TIFC's recommendations;

(2) solicited in writing proposals from certified MBE/WBE in sufficient time to allow MBE and WBE firms to participate effectively (in any event no later than 15 calendar days prior to the bid date or the date a request for qualifications or proposal is distributed in connection with any Professional or Construction Services contemplated for each Redevelopment Project or Project Improvement), setting forth in sufficient detail a description of the Plan and Redevelopment Project, identification of the Redeveloper or contractor, the amount and scope of work to be performed, the time frame of performance so that meaningful proposals may be

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<sup>2/</sup> It is sufficient if the overall goal for MBE has been met without regard to the specific "mix" of MBEs.

submitted sufficiently in advance to be considered prior to awarding of contracts.

(3) advertised in Minority/Women's Trade Association Newsletters and/or minority owned media in sufficient time to allow MBE and WBE firms to participate effectively (in any event no later than 15 calendar days prior to the bid date or the date a request for qualifications or proposal is distributed in connection with any Professional or Construction Services contemplated for each Redevelopment Project or Project Improvement), identifying specific opportunities at least equal to the Utilization Goal (but not a reserved set-aside) for MBE/WBE utilization specified for the contract and maintained a log or copies of such ads showing the date of publication and identifying the publication.

(4) adequately segmented the work in request for proposal documents or any other communication or publication intended to solicit Professional or Construction Services for the Redevelopment Project or Redevelopment Plan to be subcontracted to the extent consistent with the size and capability of MBE/WBE so that reasonable subcontracting opportunities exist.

(5) notified in writing Minority/Women Contractor Associations at least 15 calendar days prior to the bid date or the date a request for qualifications or proposal is distributed in connection with any Professional or Construction Services contemplated for each Redevelopment Project or Project Improvement of the availability of specific opportunities at least equal to the Utilization Goal given for MBE/WBE specified in this Policy.

(6) conferred with qualified, certified MBEs and WBEs and explained the work for which their bids or proposals were solicited;

(7) made telephone calls to MBE/WBE contractors and made a log thereof, including date, time, name of person talked to, and subject of discussion.

(8) conducted good faith negotiations, as determined by TIFC, with those MBE/WBE from whom proposals were received in an effort to reach a mutually acceptable agreement. Documentation in support thereof must include:

- (a) copies of solicitation letters
- (b) bid price of MBE/WBE
- (c) bid price of the non-MBE/WBE bidder

(d) reason for non-selection of the MBE/WBE bidder.

(9) sent certified letters, verifiable e-mails or proof of facsimiles to qualified MBE/WBEs listed on the M/W/DBE Kansas City Mo. Online Directory within 5 business days after drawing the bid specifications.

2. Business arrangements with MBE/WBE must be in the form of a written agreement which may be a contract to perform services or formation of a partnership or joint venture.

3. Prior to the TIFC approving and recommending a Redeveloper Plan or Project to the City Council for approval, the Redeveloper and staff to the TIFC shall meet with the Director of the Human Relations Department of the City, who shall establish Utilization Goals or apply the Default Goals for the Redevelopment Project or Public Improvement and the Redeveloper shall submit to TIFC, (i) written evidence that the Human Relations Department has established Utilization Goals or applied the Default Goals for the Redevelopment Plan, Project or Public Improvement, and (ii) an Officer's Certificate, in a form substantially similar to Exhibit B attached hereto. During the public meeting, at which time TIFC reviews and considers the approval of any Redevelopment Project initiated by a Redeveloper, the TIFC Representative shall certify to TIFC that the Redeveloper has complied with this Section V.A.3.

4. As soon as reasonably practicable after the TIFC approval and recommendation of a Redevelopment Plan or Project to the City Council for approval, but in any event, unless provided otherwise below, prior to the TIFC's consideration of a Redevelopment Agreement, the Redeveloper must deliver to the TIFC Representative:

(i) A project budget identifying all construction and professional services costs for the Redevelopment Project and/or Project Improvements and including the specific scopes of work, the value of those scopes of work, and anticipated areas where MBE/WBE participation can be obtained,

(ii) A Utilization Plan for Professional Services, in a form substantially similar to Exhibit C, attached hereto (the "Utilization Plan"), that has been approved by the Human Relations Department, which if not submitted prior to the TIFC's consideration of a Redevelopment Agreement, then no later than thirty (30) days after contracting for Professional Services,

(iii) A Utilization Plan for Construction Services, in a form substantially similar to Exhibit C, attached hereto (the "Utilization Plan") that has been approved by the Human Relations Department, which if not submitted prior to the TIFC's consideration of a Redevelopment Agreement, then no later than thirty (30) days after contracting for Construction Services, and

(iii) verification letters from MBEs and WBEs listed on the Professional Services Utilization Plan and Construction Services Utilization Plan or a Letter of Intent, in a form substantially similar to Exhibit D, attached hereto.

As a condition to the reimbursement of any costs, (a) the TIFC Representative shall certify to the TIFC the continued compliance or adherence to this Policy and the Utilization Plans submitted by the Redeveloper; and (b) the TIFC's independent cost certifier, who has been designated to certify costs related to such Redevelopment Plan or Project, shall certify to the TIFC all payments made to MBEs and WBEs that are referenced in monthly reports. If such certification has not been made in a timely manner, the Redeveloper may request a hearing by TIFC, which shall be held within thirty-five (35) days. At such hearing, Redeveloper and the TIFC Representative, or their respective counsel, shall present evidence relevant to Redeveloper's compliance with this Policy. TIFC shall act within thirty-five (35) days of the close of such hearing and may make such ruling as the evidence may justify in its reasonable discretion. TIFC may certify compliance, specify actions that may be taken to gain certification or avail itself of any of the remedies set forth in Section VI hereof.

5. In the event that after an MBE/WBE is selected, such MBE/WBE's certification is withdrawn, or should an MBE/WBE be unable to perform, the Redeveloper shall promptly notify the Director of Human Relations Department of the City and the TIFC Representative in writing and, where reasonably possible, exert good faith efforts, as determined by the TIFC and the Director of the Human Relations Department, to find a replacement in accordance with the standards and procedures set forth in this Affirmative Action Policy. In the event no replacement MBE/WBEs are qualified and available to perform the same services, the Redeveloper shall, to the extent possible, as an alternative to substitution, adjust the MBE/WBE involvement in another area of the contract in order to meet the Utilization Goals established or the Default Goals applied by the Human Relations Department.

B. Records and Reports. Redeveloper shall be conclusively presumed to be in compliance with this Policy as it relates to records and reports if all records have been kept and reports have been timely made as set forth in Section IV.

C. Contractors, Subcontractors and Assignees. Redeveloper shall incorporate in all agreements with contractors, subcontractors and assignees contain a provision requiring compliance with this Policy, as it may be amended from time to time, and appropriate measures, as determined by the TIFC, have been taken to enforce such provisions.

D. Waiver. For good cause shown, the requirements of this Section V may be waived or modified by TIFC.

E. Burden of Proof. It is the responsibility of Redeveloper to demonstrate compliance with this Policy. The TIFC Representative will monitor Redeveloper's compliance



and make periodic reports to TIFC relative thereto. It is not the responsibility of TIFC or its Representative to conduct any investigation or take any other action to verify Redeveloper's compliance.

## VI. PARTICIPATION CREDIT

Whether or not the participation of MBEs, WBEs, minorities and women satisfies the Utilization Goals set forth in Section III shall be determined as set forth herein.

### A. Professional and Construction Services

1. The total dollars paid to an MBE/WBE which contracts to provide goods or services directly to the Redeveloper, or contractor or consultant of Redeveloper.

2. Additional Credit - Suppliers. A sub-contract with an MBE/WBE certified supplier may be credited toward the MBE/WBE requirement for construction contracts only if the MBE/WBE is involved in the manufacture or distribution of the supplies or materials, or otherwise warehouses and ships the supplies or materials. The following rules apply to the use of MBE/WBE suppliers:

a. Manufacturers. If the MBE/WBE business supplier is the manufacturer of part or all of the supplies or materials, up to one hundred percent (100%) of the dollar amount paid to such supplier may be counted towards meeting the MBE/WBE goal.

b. Non-Manufacturers. If the MBE/WBE supplier is not a manufacturer, twenty-five percent (25%) of the total dollar amount paid or to be paid by a prime contractor to obtain supplies or goods from a construction MBE/WBE supplier may be counted toward the MBE/WBE goal. Ten percent (10%) of the total dollar amount paid or to be paid by a prime contractor to obtain supplies or goods from a supply broker who is a qualified MBE or WBE may be counted toward the MBE/WBE goal. One Hundred Percent (100%) of the total dollar amount paid or to be paid by a prime contractor to an MBE and WBE to obtain supplies or goods not related to construction may be counted toward the MBE/WBE goals.

3. Additional Credit - Administrative Functions. If the MBE/WBE performs administrative functions with respect to contracts awarded to non-minority enterprises, then up to 10% of the dollar value of these non-minority contracts may be counted toward the MBE/WBE goals. In order to be considered as performing these administrative functions, the MBE/WBE must demonstrate that it, she or he is in control of the complete sub-contract. Proof of such control will include the following:

- a. The MBE/WBE has provided to the Redeveloper or its general contractor (if the MBE/WBE contractor is himself a sub-contractor), a performance and/or payment bond for the job (if required by the contract).
  - b. The MBE/WBE has finances/resources in a sufficient amount to perform the sub-contract (i.e. is financially capable of handling a contract of that size without undue reliance on the payments of the redeveloper/general contractor).
  - c. Payment is made to the MBE/WBE for the percentage of work completed on the project (and not in advance for the purpose of funding the MBE/WBE).
  - d. MBE/WBE has the expertise to perform such administrative functions.
4. No Credit. No credit toward achieving the goals on an individual contract shall be given for:
- a. Participation in a contract by any qualified MBE or WBE that does not perform a Commercially Useful Function.
  - b. Any portion of the value of the contract that an MBE or WBE subcontractor subcontracts back to the prime contractor or any other contractor who is not a qualified MBE/WBE.
  - c. An MBE or WBE prime contractor's own participation in its contract.
  - d. Materials and supplies used on the contract unless the MBE/WBE is responsible for negotiating price, determining quality and quantity, ordering the materials and installing (where applicable) and paying for material itself.
  - e. Work performed by an MBE or WBE in a scope of work other than that in which the MBE or WBE is currently certified.

## VII. REMEDIES

In addition to remedies set forth in the Redevelopment Agreement, if TIFC finds, after due notice and hearing, the Redeveloper has not made a good faith effort to comply with the Utilization Goals set forth herein or has otherwise not complied with this Policy, TIFC may take such action as it deems appropriate, including but not limited to the temporary suspension of development rights, ordering a cessation of development activity, or may note such non-compliance in any future application by the Redeveloper to implement any future Redevelopment Plans. In addition, TIFC may take into account the past compliance record of any Redeveloper's

proposed contractors and subcontractors in evaluating such Redeveloper's applications to implement a Redevelopment Plan.

The Redeveloper and TIFC acknowledge that MBEs and WBEs are third party beneficiaries to the Redevelopment Agreement with respect to compliance with this Policy. Because the amount of harm caused to MBEs and WBEs by the Redeveloper not exerting good faith efforts to meet the Utilization Goals set forth herein is uncertain, if not impossible, to determine, the Redeveloper agrees to pay to TIFC liquidated damages in an amount not to exceed the fees and expenses incurred by TIFC in investigating and determining that the Redeveloper has not complied with this Policy; plus an amount equal to the percentage of the total amount of dollars spent in the Kansas City Metropolitan Area for Professional and/or Construction services that MBEs or WBEs would have otherwise received or money that otherwise would have been spent to employ minorities and women in the Workforce had the respective Utilization Goals set forth herein, been attained by the Redeveloper. The liquidated damages shall not be a reimbursable Redevelopment Cost. To illustrate the application of this liquidated damages provision, please refer the example below:

**Example**

1. Pursuant to the implementation of Redevelopment Project A ("Project A"), a Redeveloper spends a total of \$100,000 for construction services. Such amount is paid exclusively to contractors, subcontractors and assignees, located within the Kansas City Metropolitan Area.
2. A Redeveloper utilized MBEs at a rate of 2% and WBEs at a rate of 1% for construction services in the development of Project A. Thus, the Redeveloper paid \$2,000 to MBEs and \$1,000 to WBEs for such construction services.
3. The Utilization Goals established for Project A for the utilization of MBEs and WBEs in construction services is 9% and 7%, respectively and such Utilization Goals were set forth in a Utilization Plan approved by the Human Relations Department.
4. TIFC finds that the Redeveloper did not exercise good faith efforts to meet the Utilization Goals for the utilization of MBEs and WBEs in construction services for the development of Project A. The cost associated with determination is \$25,000.
5. The additional amount that MBEs would have otherwise received had the Utilization Goals been met would be an amount equal to: the Utilization Goal of 9% minus the 2% actually attained of the total amount of \$100,000 spent. Thus, the Redeveloper would have spent an additional \$7,000 with MBEs. The additional amount WBEs would have otherwise received had the Utilization Goals been met would be an amount equal to: the Utilization Goal of 7% minus the 1% actually attained of the total amount of \$100,000 spent. Thus, the Redeveloper would have spent an additional \$6000 with WBEs.
6. Pursuant to the liquidated damages provision of this Policy, the Redeveloper may be obligated to pay to TIFC liquidated damages in an amount up to \$25,000 (the cost associated

with TIFC finding); plus \$7,000 (the amount MBEs would have otherwise received had the Utilization Goals been met); plus \$6,000 (the amount WBEs would have otherwise received had the Utilization Goals been met) for an aggregate amount of \$38,000 in liquidated damages.

#### VIII. COMPLIANCE EXPENSE

To the extent the Redeveloper is in compliance with this Policy, the reasonable and necessary administrative expenses associated with determining compliance may be reimbursed as Redevelopment Project Costs.

#### **HUMAN RELATIONS DEPARTMENT ACKNOWLEDGEMENT & APPROVAL**

The Director of the Human Relations Department of the City of Kansas City, Missouri (the "City"), pursuant to City Code of General Ordinances, Chapter 3, Article IV, Divisions 1-3, Sections 3-401 through 3-525 has reviewed this Affirmative Action Policy and hereby determines that it is consistent with the City's affirmative action program and minority and women's business enterprise program.

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Director, Human Relations Department

**Exhibit A**  
**Monthly Reports**

**Exhibit B**

**OFFICER'S CERTIFICATE**

I, \_\_\_\_\_, president of \_\_\_\_\_, a \_\_\_\_\_ (the "Developer"), in connection with the Developer's Proposal (the "Proposal") to develop \_\_\_\_\_ of the \_\_\_\_\_ Tax Increment Financing Plan, as amended (the "Plan") hereby certify that:

1. The Developer has received a copy and reviewed the terms of the Affirmative Action Policy (the "Policy") of the Tax Increment Financing Commission of Kansas City, Missouri (the "Commission") and has had an opportunity to discuss and ask questions of the staff of the Commission and the Human Relations Department of the City of Kansas City, Missouri (the "Department") with respect to the Policy.

2. All capitalized terms within this Certificate that are not defined shall have the meanings ascribed to them in the Policy.

3. The Developer acknowledges that the Policy, a copy of which is attached hereto as **Exhibit A**, is intended to implement the goals established by the Department (the "Utilization Goals") with respect to the utilization of Minority Business Enterprises ("MBEs") and Women Business Enterprises ("WBEs"), which have been certified by the Department, in providing (i) Professional Services and Construction Services and (ii) an equal opportunity for minorities and women to be employed in the workforces of all contractors, subcontractors and assignees of the Developer in connection with the implementation of the \_\_\_\_\_.

4. The Developer agrees to (i) comply with all record keeping and reporting requirements referenced in the Policy, as such requirements may change from time to time, (ii) contractually require each contractor, subcontractor and assignee of the Developer to comply with the Policy and (iii) enforce such contractual provisions.

5. The Developer acknowledges that although the Utilization Goals established by the Department, which may change from time to time, are not "set-asides" nor requirements, the Developer agrees to (i) exert a good faith effort, as determined by the Commission, to meet such Utilization Goals, (ii) contractually require each contractor, subcontractor and assignee of the Developer to exert a good faith effort to meet the Utilization Goals and (iii) enforce such contractual provisions.

6. The Developer acknowledges and agrees that a good faith effort to meet the Utilization Goals requires, at least, the following:

i. Request in writing the assistance of the Department with respect to efforts to promote the utilization of MBE/WBE's.

ii. Solicit in writing proposals from known MBE/WBE's, at least 15 calendar days prior to the utilization of any Professional or Construction Services in furtherance of each Redevelopment Project, setting forth in

sufficient detail a description of the \_\_\_\_\_, identification of the Developer or contractor, the amount and scope of work to be performed, the time frame of the performance so that meaningful proposals may be submitted sufficiently in advance to be considered prior to awarding of contracts.

iii. Advertise in Minority/Women's Trade Association Newsletters and/or minority owned media, at least 15 calendar days prior to the utilization of any Professional or Construction Services in furtherance of the \_\_\_\_\_, identifying specific opportunities, at least equal to the Utilization Goals (but not a reserved set-aside) and maintain a log or copies of such ads showing the date of publication and identifying the publication.

iv. Adequately segment the work request for proposal documents or any other communication or publication intended to solicit Professional or Construction Services in furtherance of the \_\_\_\_\_ to be subcontracted to the extent consistent with the size and capability of MBE/WBEs in order to provide reasonable subcontracting opportunities.

v. Notify in writing Minority/Women Contractor Associations, at least 15 calendar days prior to the utilization of Professional or Construction Services in furtherance of the \_\_\_\_\_, of the availability of specific opportunities, at least equal to the percentage set forth in the Utilization Goals.

vi. Make telephone calls to MBE/WBE contractors and make a log thereof, including date, time, name of the person talked to and subject of discussion.

vii. Conduct good faith negotiations with those MBE/WBE's from whom proposals were received in an effort to reach a mutually acceptable agreement. Documentation in support thereof must include (a) copies of solicitation letters, (b) bid price of MBE/WBE, (c) bid price of the non-MBE/WBE bidder and (d) reason for non-selection of the MBE/WBE bidder.

7. The Developer acknowledges and agrees that if the Commission finds, after due notice and hearing, that the Developer has not made a good faith effort to meet the goals set forth in the Policy, the Commission may take such action as it deems appropriate, including but not limited to the temporary suspension of development rights, ordering a cessation of development activity, noting such non-compliance in any future applications by Developer to implement any future redevelopment plans or projects or any such other remedy for a breach under a Redevelopment Agreement between the Commission and the Developer for the implementation of the \_\_\_\_\_. Additionally, the Developer acknowledges and agrees to the amount of liquidated damages, as set forth in the Policy, that the Developer may be obligated to pay, if the Commission finds the Developer has not complied with the Policy.

8. The Developer acknowledges and agrees that prior to reimbursement of any eligible redevelopment project costs identified in the Plan, as amended, that the Developer shall have (i) entered into a Letter of Intent, in a form substantially similar to **Exhibit B**, attached hereto, with an MBE or WBE, which shall provide, inter alia, that such MBE or WBE shall provide Professional Services, on behalf of the Developer, in connection with the implementation of the \_\_\_\_\_ or delivered to the Commission letters from MBEs and WBEs evidencing their participation in the \_\_\_\_\_ and (ii) delivered to the Commission written evidence that the Department has approved the Utilization Plans for Construction Services, Professional Services and Workforce in connection with the implementation of the \_\_\_\_\_.

9. The Developer acknowledges and agrees that prior to reimbursement of any eligible redevelopment costs identified in the Plan, as amended, that (i) the Department has certified compliance with the Policy and (ii) the Commission's independent cost certifier has certified all expenditures paid to MBEs and WBEs.

10. The undersigned has delivered this Officer's Certificate to the Commission in consideration of the Commission's review and approval of the Proposal. The undersigned acknowledges and agrees that this Certificate is being materially relied upon by the Commission in connection with the approval of the Proposal and a redevelopment agreement to the implement the same and, to the extent any statement or representation made herein is not true and correct in all material respects, the Commission may withdraw the Developer's development rights with respect to the implementation of the Proposal and terminate any agreement entered into between the Developer and the Commission regarding the implementation of the \_\_\_\_\_.

**IN WITNESS WHEREOF**, the undersigned has executed this Certificate as of \_\_\_\_\_, 200\_\_.

**DEVELOPER:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



Exhibit C

**CONTRACTOR UTILIZATION PLAN/REQUEST FOR WAIVER**

Project Number \_\_\_\_\_

Project Title \_\_\_\_\_

\_\_\_\_\_

(Project Name)

Department/Agency

\_\_\_\_\_

(Bidder/Proposer/Redeveloper)

STATE OF \_\_\_\_\_ )

) ss

COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, of lawful age and upon my oath state as follows:

1. This Affidavit is made for the purpose of complying with the provisions of the MBE/WBE submittal requirements on the above project and the MBE/WBE Program and is given on behalf of the Bidder/Proposer/Redeveloper listed below. It sets out the Bidder/Proposer/Redeveloper's plan to utilize MBE and/or WBE contractors on the project.
2. The project goals are \_\_\_\_\_ % **MBE** and \_\_\_\_\_ % **WBE**. Bidder/Proposer/Redeveloper assures that it will utilize a minimum of the following percentages of MBE/WBE participation in the above project:

**BIDDER/PROPOSER/REDEVELOPER PARTICIPATION:** \_\_\_\_\_ % **MBE**  
\_\_\_\_\_ % **WBE**

3. The following are the M/WBE subcontractors whose utilization Bidder/Proposer/Redeveloper warrants will meet or exceed the above-listed Bidder/Proposer/Redeveloper Participation. Bidder/Proposer/Redeveloper warrants that it will utilize the M/WBE subcontractors to provide the goods/services described in the applicable Letter(s) of Intent to Subcontract, copies of which shall collectively be deemed incorporated herein). (*All firms must currently be certified by Kansas City, Missouri*)

- a. Name of M/WBE Firm \_\_\_\_\_  
Address \_\_\_\_\_

Telephone No. \_\_\_\_\_

I.R.S. No. \_\_\_\_\_

b. Name of M/WBE Firm \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone No. \_\_\_\_\_  
I.R.S. No. \_\_\_\_\_

c. Name of M/WBE Firm \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone No. \_\_\_\_\_  
I.R.S. No. \_\_\_\_\_

d. Name of M/WBE Firm \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone No. \_\_\_\_\_  
I.R.S. No. \_\_\_\_\_

e. Name of M/WBE Firm \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone No. \_\_\_\_\_  
I.R.S. No. \_\_\_\_\_

f. Name of M/WBE Firm \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone No. \_\_\_\_\_  
I.R.S. No. \_\_\_\_\_

*(List additional M/WBEs, if any, on additional page and attach to this form)*

4. The following is a breakdown of the percentage of the total contract amount that Bidder/Proposer/Redeveloper agrees to pay to each listed M/WBE:

**MBE/WBE BREAKDOWN SHEET**

**MBE FIRMS:**

Total		Subcontract	Weighted	% of
Name of MBE Firm	Supplier/Broker/Contractor	Amount*	Value**	Contract



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\* *Subcontract Amount* refers to the dollar amount that the Bidder/Proposer/Redeveloper has agreed to pay each M/WBE subcontractor as of the date of contracting and is indicated here for the sole purpose of calculating the percentage that this sum represents in proportion to the total contract amount. Any contract amendments and/or change orders changing the total contract amount may alter the amount due an M/WBE under their subcontract for purposes of meeting or exceeding the Bidder/Proposer/Redeveloper participation.

\*\* *Weighted Value* means the portion of the subcontract amount that is to be credited towards meeting the Bidder/Proposer/Redeveloper M/WBE participation goals. See KCMO Code of Ordinances, Ch. 3, § 3-435 for allowable credit and special instructions.

5. Bidder/Proposer/Redeveloper acknowledges that the monetary amount to be paid each listed M/WBE for their work, and which is approved herein, is an amount corresponding to the percentage of the total contract amount allocable to each listed M/WBE as calculated in the MBE/WBE Breakdown Sheet. Bidder/Proposer/Redeveloper further acknowledges that this amount may be higher than the subcontract amount listed therein as change orders and/or amendments changing the total contract amount may correspondingly increase the amount of compensation due an M/WBE for purposes of meeting or exceeding the Bidder/Proposer/Redeveloper participation
6. Bidder/Proposer/Redeveloper acknowledges that it is responsible for considering the effect that any change orders and/or amendments changing the total contract amount may have on its ability to meet or exceed the Bidder/Proposer/Redeveloper participation. Bidder/Proposer/Redeveloper further acknowledges that it is responsible for submitting a Request for Modification or Substitution if it will be unable to meet or exceed the Bidder/Proposer/Redeveloper participation set forth herein.
7. If Bidder/Proposer/Redeveloper has not achieved both the M/WBE goal(s) set for this Project, Bidder/Proposer/Redeveloper hereby requests a waiver of the MBE and/or WBE goal(s) that Bidder/Proposer/Redeveloper has failed to achieve
8. Bidder/Proposer/Redeveloper will present documentation of its good faith efforts, a narrative summary detailing its efforts and the reasons its efforts were unsuccessful when requested by the City.
9. I hereby certify that I am authorized to make this Affidavit on behalf of the Bidder/Proposer/Redeveloper named below and who shall abide by the terms set forth herein:

Bidder/Proposer/Redeveloper primary contact: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Facsimile number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(Attach corporate seal if applicable)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**Exhibit D**

CITY OF KANSAS  
BOARD OF COMMISSIONERS



KANSAS CITY  
MISSOURI

**LETTER OF INTENT TO SUBCONTRACT**

Project Name/Title \_\_\_\_\_

Project Location/Number \_\_\_\_\_

\_\_\_\_\_ ("Prime Contractor") agrees to enter into a contractual agreement with \_\_\_\_\_ ("M/W/DBE Subcontractor"), who will provide the following goods/services in connection with the above-referenced contract:

(Insert a brief narrative describing the goods/services to be provided. Broad categorizations (e.g., "electrical," "plumbing," etc.) or the listing of the NAICS Codes in which M/W/DBE Subcontractor is certified are insufficient and may result in this Letter of Intent to Subcontract not being accepted.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

for an estimated amount of \$ \_\_\_\_\_ or \_\_\_\_\_ % of the total estimated contract value.

M/W/DBE Subcontractor is, to the best of Prime Contractor's knowledge, currently certified with the City of Kansas City's Human Relations Department to perform in the capacities indicated herein. Prime Contractor agrees to utilize M/W/DBE Subcontractor in the capacities indicated herein, and M/W/DBE Subcontractor agrees to work on the above-referenced contract in the capacities indicated herein, **contingent upon award of the contract to Prime Contractor.**

Company Name: \_\_\_\_\_

1. I have entered into a subcontract agreement with \_\_\_\_\_ for the above project. Yes / No

2. Date of the contractual agreement (if applicable) \_\_\_\_\_

3. I will be performing the following scope of work: \_\_\_\_\_

4. The dollar value of the agreement is: \_\_\_\_\_

5. I intend to subcontract the following work (if none, please state "none." Otherwise, please state scope of work, dollar amount, the name and address of the subcontractor(s)): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature: Prime Contractor

\_\_\_\_\_  
Signature: M/W/DBE Subcontractor

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

State of \_\_\_\_\_ )

County of \_\_\_\_\_ )

SS.

I, \_\_\_\_\_, state that the above and foregoing is based on my best knowledge and belief.

\_\_\_\_\_  
Name & Title

Subscribed and sworn to before me, a notary public, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My Commission Expires:

\_\_\_\_\_  
Notary Public

**Exhibit E**

Certification of Costs and Reimbursement Policy



**Policy Name:** Certification of Costs and Reimbursement Policy

**Date Approved:** January 14, 2004; Revised September 8, 2004, March 9, 2005, November 9, 2005, January 11, 2006 , September 12, 2007, May 13, 2009 and October 14, 2009

**Resolution Number:** 1-1-04, 9-2-04, 3-4-05, 11-3-05, 1-4-06 , 9-28-07, 5-22-09 and 10-15-09

**Policy Statement:** The purpose of this Certification of Costs and Reimbursement Policy is to outline the procedure and set forth all such requirements and obligations that redevelopers of Redevelopment Plans (“Redeveloper(s)”), the Tax Increment Financing Commission (the “TIF Commission”) and the TIF Commission’s independent cost certifier (the “Cost Certifier”) must observe and comply with such that Redevelopers may be reimbursed for eligible Redevelopment Costs incurred in connection with the implementation of a Redevelopment Plan, Redevelopment Project or public improvement. (All capitalized terms not defined herein shall have the respective meanings ascribed to them in the Real Property Tax Increment Financing Allocation Act, Sections 99.800 to 99.865, inclusive, of the Revised Statutes of Missouri, as amended, the “Act”).

**Actions Required Prior to Certification**

1. The TIF Commission and the City Council of Kansas City, Missouri (the “City”) must (a) make all such findings required by Section 99.810 of the Act with respect to any Redevelopment Plan or Redevelopment Project, (b) approve a budget of eligible Redevelopment Costs (the “Budget”), which shall be incorporated as an exhibit to the Redevelopment Plan and a redevelopment agreement, (c) approve such Redevelopment Project, by separate ordinance, pursuant to which costs have been incurred and are eligible for reimbursement and (d) activate the Redevelopment Area or Redevelopment Project in which TIF Revenue will be generated and utilized to reimburse Redevelopment Costs.
2. The TIF Commission and Redeveloper must properly execute a funding agreement and the Redeveloper must deliver to the TIF Commission all such amounts due and owing thereunder from time to time. Redevelopment Costs shall not be reimbursed if any amounts owing under the funding agreement are in dispute or the Redeveloper is otherwise in breach of the funding agreement.
3. The TIF Commission and the Redeveloper must properly execute a redevelopment agreement, which shall provide, inter alia, for the implementation of such improvements identified within a Redevelopment Plan and for which the Redeveloper will incur costs and seek reimbursement. Redevelopment Costs shall not be certified or reimbursed if the Redeveloper is in breach of a redevelopment agreement. In no event shall a Redeveloper be reimbursed for (a) any fee imposed upon a Redeveloper, as a result of such Redeveloper’s request of the TIF Commission to delay its consideration of a Redevelopment Plan, Project or amendment thereto or (b) any penalty fees, interest charges or any additional

costs related thereto, which are imposed as a result of the Redeveloper's noncompliance with the terms of any agreement that relates to the implementation of a Redevelopment Plan, Redevelopment Project or public improvement.

4. The TIF Commission and the City must properly execute an agreement, which provides, inter alia, for the establishment of a Special Allocation Fund from which the TIF Commission will utilize to reimburse the Redeveloper for Redevelopment Costs.
5. In the event the actual Redevelopment Costs submitted for reimbursement by the Redeveloper, which are attributed to a single line item within the Budget, exceed the budget for such single line item by more than the lesser of 10% or an amount in excess of \$1 million, the Redevelopment Plan must be amended to reflect the increased Redevelopment Costs prior to reimbursement. To the extent there is a dispute between the Cost Certifier and the Redeveloper as to whether the excess costs should be attributed to a particular line item within the Budget, the Commission shall accept the interpretation of the Cost Certifier.
6. In the event the actual aggregate amount of Redevelopment Costs submitted for reimbursement by the Redeveloper exceed the aggregate amount of Redevelopment Costs set forth in the Budget by more than the lesser of 10% or an amount in excess of \$1 million, the Redevelopment Plan must be amended to reflect the increased Redevelopment Costs prior to reimbursement.

#### **Obligation of Redeveloper Prior to Reimbursement**

1. Prior to the TIF Commission's reimbursement of any Redevelopment Costs, the Redeveloper must certify to the TIF Commission, on a form substantially similar to Schedule I, that to its knowledge, there exists no Hazardous Substances, at levels above applicable clean-up standards on any real property within the Redevelopment Area. In the event such Hazardous Substances exist, the Redeveloper shall state, in writing, what measures it intends to undertake to clean-up such Hazardous Substances to standards consistent with federal, state and local laws. For purposes of this section, Hazardous Substance means any substance that is (i) oil or other petroleum products, (ii) "hazardous waste," as defined by the Resource Conservation and Recovery Act, as amended (RCRA), 42 U.S.C. §6901 *et. seq.*, or similar state or local law, ordinance, regulation or order (iii) "hazardous substances" as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §9601 *et. seq.*, or similar state or local law, ordinance, regulation or order (iv) "hazardous materials as defined by the Hazardous Materials Transportation Act, as amended (HMTA), 49 U.S.C. §1802, or similar state or local law, ordinance, regulation or order (v) "radioactive materials" subject to the Atomic Energy Act, as amended (AEA) 42 U.S.C. §2014 *et. seq.*, or similar state or local law, ordinance, regulation or order, and (vi) any other pollutant, contaminant, chemical, or substance whose presence creates or could create a hazard to health or the environment or violation of any federal, state, or local law.

2. Prior to the TIF Commission's reimbursement of any eligible reimbursable Redevelopment Costs, the Redeveloper, upon incurring any eligible reimbursable Redevelopment Project Costs and thereafter until the earlier of (a) all eligible reimbursable Redevelopment Project Costs having been reimbursed or (b) the Redevelopment Agreement having been terminated, shall submit to the Commission no less frequently than semi-annually two (2) copies of all documentation, as reasonably requested by the TIF Commission or the Cost Certifier, to substantiate that such Redevelopment Costs were incurred, including, but not limited to, an itemized report, certified by an officer of the Redeveloper, which shall identify and detail any Redevelopment Costs related to time spent by the Redeveloper's staff in connection with the implementation of a Redevelopment Project or Redevelopment Plan, payments made to Minority Owned Businesses ("MBE's") and Women Owned Businesses ("WBE's"), which have been certified by the City of Kansas City, Missouri and who are listed on the Redeveloper's construction services utilization plan or professional services utilization plan (the "Utilization Plans"), invoices supporting the actual expenditure requested for certification; a list of disbursements to date, check number, payee, amount and purpose of disbursement; and support for any interest calculation.
3. Prior to the TIF Commission's reimbursement of any eligible Redevelopment Costs, the Redeveloper shall submit an affidavit to the TIF Commission certifying (a) the sources of funds to pay all Redevelopment Costs and (b) that the Redevelopment Costs that shall be reimbursed with Payments in Lieu of Taxes (PILOTs), Economic Activity Taxes (EATs) and such other funds within the Special Allocation Fund shall not be reimbursed or otherwise paid from any other source.
4. Within ten (10) business days after each March 31, June 30, September 30 and December 31 (each a "MBE/WBE Certification Date"), beginning March 31, 2006, the Redeveloper shall identify and document to the Commission's and Cost Certifier's satisfaction all costs and expenses incurred by the Redeveloper in connection with its utilization of MBE's and WBE's listed on its Utilization Plans in the implementation of a Redevelopment Plan, or a Redevelopment Project or Public Improvement identified by a Redevelopment Plan, for the three (3) months preceding such MBE/WBE Certification Date.
5. Prior to reimbursement of eligible Redevelopment Costs, the Redeveloper shall cause its contractors and subcontractors to file with the TIF Commission an affidavit stating that it has complied with the Missouri Prevailing Wage Act, RSMo. §§ 290.210 to 290.340.
6. All closing costs and expenses related to the issuance of bonds, which are to be financed by Economic Activity Taxes (EATs) and/or Payments in Lieu of Taxes (PILOTs), must be incorporated into a budget and submitted to the TIF Commission for approval prior to the TIF Commission declaring its intent to proceed with issuing or consenting to the issuance of bonds to pay for

Redevelopment Costs (see TIF Commission's Bond Disbursement Policy – Resolution #5-6-04).

7. The Redeveloper will be requested to be present during the TIF Commission meeting to address questions or concerns that may arise concerning a certification request.

#### **Obligation of TIF Commission Staff During Certification Process**

1. Staff to the Commission (“TIFC Staff”) will forward to the Cost Certifier a cover letter detailing the following: (a) the certification request as stated by the Redeveloper, (b) a list of all MBE’s and WBE’s identified in a certification request, (c) any special issues related to the certification request or the Redevelopment Project (i.e. environmental concerns and cost overruns), (d) a contact person for the Redeveloper, (e) the date the TIFC Staff would like to receive a completed report from the Cost Certifier and (f) the date TIFC Staff would like to present the certification request and the Cost Certifier’s report to the TIF Commission.
2. TIFC Staff will forward original documentation submitted by the Redeveloper to the Cost Certifier along with the following, if necessary: a copy of the Redevelopment Plan and necessary amendments; a copy of the current redevelopment agreement; a copy of governing Redevelopment Project resolutions and ordinances; a copy of any other internal documentation that may assist in the process of certifying Redevelopment Costs such as other agreements or contracts; and any other information requested by the Cost Certifier.
3. In the event questions or requests for additional documentation arise during the review process, TIFC Staff will maintain a copy of all additional documentation provided to the Cost Certifier.
4. The Commission shall not consider requests for reimbursement of eligible Redevelopment Project Costs from the Redeveloper (a) that are not submitted by the Redeveloper pursuant to this policy (unless such requests for reimbursement are made pursuant to the TIF Commission’s Bond Disbursement Policy) and (b) that are not submitted to the Commission within eighteen (18) months from the date such eligible reimbursable Redevelopment Project Costs were incurred by the Redeveloper.

#### **Cost Certifier’s Review and Report**

1. Upon the Cost Certifier’s receipt of a request for certification, the Cost Certifier shall review all documentation provided with such request.
2. The Cost Certifier will issue a report notating the amount recommended for certification by the TIF Commission, any disallowed or questioned costs and what costs are considered to be associated with infrastructure. The Cost Certifier will

give a complete breakout of all costs, including those costs related to MBE and WBE participation, for accounting purposes.

3. TIFC Staff will notify the Redeveloper of disallowed or questioned costs and the reason for the questioned costs included in the recommendation from Cost Certifier. In the event the Redeveloper is able to address the disallowed or questioned costs, TIFC Staff will assist in gathering any additional documentation to complete the report and work to assist the Redeveloper and Cost Certifier to answer the questions and complete the report.
4. The Cost Certifier will be requested to be present at the TIF Commission meeting to discuss any special issues related to the report and recommendation for certification. TIFC Staff will present any outstanding disallowed or questioned costs to the TIF Commission during the presentation.

#### **Presentation to TIF Commission**

1. Prior to each monthly TIF Commission meeting, TIFC Staff will notify each Redeveloper of the amount to be recommended for certification.
2. TIFC Staff will present to the TIF Commission the following: the total request for certification as presented by each Redeveloper; the total amount paid to MBE's and WBE's; the Cost Certifier reviewing the request; any disallowed or questioned costs related to the request; any outstanding issues needing to be addressed prior to TIF Commission approval and amount recommended for certification.
3. TIFC Staff shall present to the TIF Commission a separate certified cost overrun report, which shall reflect all Certified Redevelopment Costs requested for reimbursement that are attributed to a single line item within any Budget of any Plan that exceed the amount set forth in the Budget by less than 10%.

#### **Following the TIF Commission Meeting**

1. Following the TIF Commission's certification of Redevelopment Costs, TIFC Staff will notify the EDC's Accounting Department of the certified amount and the EDC's Accounting Department, to the extent there are sufficient funds within the designated Special Allocation, shall reimburse the Redeveloper for such certified amount within thirty (30) days after certification.
2. All originals and reports will be maintained in the EDC's central filing system.

**The TIF Commission must approve in writing any exception to the Certification of Costs and Reimbursement Policy.**

**OFFICER'S CERTIFICATE**

I, \_\_\_\_\_ [name] \_\_\_\_\_ [title]  
of \_\_\_\_\_ [company] \_\_\_\_\_, a \_\_\_\_\_ corporation (the "Developer"),  
in connection with the implementation of Projects \_\_\_\_\_ (the "Redevelopment Projects")  
of the \_\_\_\_\_ Tax Increment Financing Plan (the "Plan") dated  
\_\_\_\_\_, 200\_\_ hereby certify that:

1. The Developer has received a copy and reviewed the terms of the Certification of Costs and Reimbursement Policy (the "Policy") of the Tax Increment Financing Commission of Kansas City, Missouri (the "Commission") and has had an opportunity to discuss and ask questions of the staff to the Commission with respect to the Policy.
2. All capitalized terms within this Certificate that are not defined shall have the meanings ascribed to them in the Policy.
3. The Developer acknowledges that the Policy, a copy of which is attached hereto as Exhibit A, is intended to outline the procedure and set forth all such requirements and obligations that redevelopers of Redevelopment Plans must observe and comply in order for redevelopers to be reimbursed for eligible Redevelopment Costs incurred in connection with the implementation of a Redevelopment Plan, Redevelopment Project or public improvement.
4. The Developer hereby certifies that, to its knowledge, except as set forth on Exhibit B, there exists no Hazardous Substances, at levels above applicable clean-up standards on any real property within the redevelopment area of the Redevelopment Projects.
5. The Developer hereby certifies that in the event Hazardous Substances exist, prior to the reimbursement of any eligible Redevelopment Costs, the Developer shall state, in writing, to the Commission what measures the Developer intends to undertake to clean-up such Hazardous Substances to standards consistent with federal, state and local laws.
6. The undersigned has delivered this Officer's Certificate to the Commission prior to the reimbursement of any eligible Redevelopment Costs. The undersigned acknowledges and agrees that this Certificate is being materially relied upon by the Commission and, to the extent any statement or representation made herein is not true and correct in all material respects, the Commission may withhold the reimbursement of any eligible Redevelopment Costs, with respect to the implementation of the Redevelopment Projects.

**IN WITNESS WHEREOF**, the undersigned has executed this Certificate as of \_\_\_\_\_, 200\_\_.

**DEVELOPER:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit F**

Payment of Prevailing Wages Policy

### Payment of Prevailing Wages Procedure

The Redeveloper shall comply with the following procedures:

1. Determine the prevailing wages applicable to all construction work to be performed in connection with the Redevelopment Projects before awarding any contracts or disbursing any funds;
2. Abstain from contracting with contractors or subcontractors on the Missouri Secretary of State's list of Prevailing Wage Act violators;
3. Keep full and accurate records clearly indicating the names, occupations and crafts of every workman employed in connection with the Redevelopment Projects;
4. Post a clearly legible statement of Prevailing Wage Rates at all sites of construction within the Redevelopment Project Areas;
5. Prepare a copy of all payrolls made on a weekly basis for all construction work related to the Redevelopment Projects;
6. Cause the general contractor and all subcontractors to maintain a daily record of all Redevelopment Projects activities;
7. Maintain and verify Daily Labor Force Records submitted by the general contractors and subcontractors for all construction work related to the Redevelopment Projects;
8. Conduct weekly interviews with construction workers on the Redevelopment Project sites to verify prevailing wage compliance;
9. Require that contractors and subcontractors certify that the payrolls are in compliance with the Annual Wage Order;
10. Review contractor/subcontractor payrolls for all construction work relating to the Redevelopment Projects;
11. Cause all contractors and subcontractors to file with the TIF Commission an affidavit stating that it has complied with RSMO §290-210 through §290-340 (the "Prevailing Wage Law");
12. Prior to commencing construction in connection with the Redevelopment Project, notify the Commission and the Missouri Department of Labor, on a form attached hereto as Schedule I, of the scope of the work to be done, the various types of craftsmen who will be needed and the date work will commence.



**SCHEDULE I**



**DIVISION OF  
LABOR  
STANDARDS**

MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
**PREVAILING WAGE  
PROJECT NOTIFICATION – CONTRACTOR INFORMATION**

The information below is requested pursuant to Sections 290.210 through 290.340 and 290.550 through 290.580, RSMo. During a time of excessive unemployment, only Missouri laborers and laborers from non-restrictive states shall be employed on public works projects. Sec 290.550 through 290.580, RSMo.

1. Date of Notification		2. Annual Wage Order Number Included in Bid Specifications	
3. Popular or Descriptive Name of Project			
4. Estimated Project Cost of Completion <i>(total construction contracts to be awarded)</i>		5. Estimated Project Cost of Completion <i>(total construction contracts to be awarded)</i> \$	
5. Exact Location of Project			
<u>County</u>		<u>City</u>	<u>Township</u>
6. Official Name of Public Body or Agency			
7. Name of Contact Person		8. Phone Number <i>(include area code)</i>	
9. Address			
10. E-mail Address		10. Website	
11. Anticipated Date for Soliciting or Advertising for Bids		12. Contract Award Date	
13. Estimated Start Date of Work	14. Estimated Date of Project Completion	15. Will There Be Any Federal Funds Used in this Contract? <input type="checkbox"/> Yes <input type="checkbox"/> No	
16. Contractor Information Notification			
General Contractor:			
Name	_____		
Address	_____		
City	State	ZIP	
Phone Number	E-mail Address		
Type of Craftsmen Needed by Project	_____		
Scope of Work	_____		
List all Subcontractors:			
Name	_____		
Address	_____		
City	State	ZIP	
Phone Number	E-mail Address		
Type of Craftsmen Needed by Project	_____		
Scope of Work	_____		
Name	_____		
Address	_____		
City	State	ZIP	
Phone Number	E-mail Address		
Type of Craftsmen Needed by Project	_____		
Scope of Work	_____		

The state of Missouri requires workers on public works projects be paid the prevailing wage. Public bodies have duties as required under this law (Section 290.210 - 290.340, RSMo).

Mail, Fax or E-mail completed form to:

DIVISION OF LABOR STANDARDS

Attn: Prevailing Wage Section

P.O. Box 449 Jefferson City, MO 65102-0449

Phone: 573-751-3403

Fax: 573-751-3721

E-mail: [prevailingwage@labor.mo.gov](mailto:prevailingwage@labor.mo.gov)

Website: [www.labor.mo.gov/DLS](http://www.labor.mo.gov/DLS)

**Exhibit G**

Work Force Policy

**Policy Name:** Workforce Policy

**Date Approved:** July 27, 2009 and June 11, 2014

**Resolution Numbers:** 7-5-09 and 6-2-14

**Policy Statement:** WHEREAS, the City, pursuant to City Code of General Ordinances, Chapter 3, Article IV, Division 2, Sections 3-501 through 3-525 (“City Construction Employment Program”) established goals for the employment of minority, women and resident workers for certain construction contractors engaged by the City, its departments and agencies, including the TIFC; and

WHEREAS, in accordance with the City’s mandate set forth in the Workforce Ordinance, the TIFC hereby adopts, in substantial form, the terms and conditions of the City Construction Employment Program.

THEREFORE, in order to comply with the Workforce Ordinance and the City Construction Employment Program, the TIFC shall adhere to the following requirements:

- (1) comply or exert good faith efforts to comply with the Employment Construction Program established by the Workforce Ordinance, as it may be amended from time to time,
- (2) contractually require Redeveloper(s) to cause Construction Contractors and their subcontractors to achieve or exert good faith efforts to achieve the Construction Employment Goals established by the Workforce Ordinance, as it may be amended from time to time,
- (3) comply with all reporting requirements set forth in this Workforce Policy, and
- (4) contractually require Redeveloper(s) to cause Construction Contractors and their subcontractors to comply with all reporting requirements set forth in this Workforce Policy.

## **I. DEFINITIONS**

Apprentice – A person of legal working age who has entered into a program for training and employment to learn a skilled construction trade.

Apprenticeship Program - A program approved by the Bureau of Apprenticeship Training providing for no less than 2,000 hours of reasonably continuous employment and for participation in an approved schedule of work experience through employment, which shall be supplemented by a minimum of 144 hours per year of related instruction.

City – The City of Kansas City, Missouri.

City Construction Employment Program - The program established by the City by the Workforce Ordinance regarding the recruitment, training, mentoring and retention of employees, including apprentices and journeymen, on Construction Projects.

City Council – The governing body of the City.

Construction Contract – A contract estimated by the TIFC prior to solicitation by Redeveloper as requiring more than 800 construction labor hours and with an estimated cost that exceeds \$300,000.00 for the construction, reconstruction, improvement, enlargement or alteration of any Project Improvements contemplated by a Redevelopment Agreement in connection with the implementation of a tax increment financing plan.

Construction Contractor – An individual, partnership, corporation, association or other entity, or any combination of such entities, who or which enters into a Construction Contract with the TIFC or a Redeveloper, regardless of the number of employees.

Construction Employment Goals - The percentages of construction labor hours to be performed by minorities and women workers for a Construction Contractor on all construction projects of that Construction Contractor throughout the Kansas City Metropolitan Statistical Area, during the construction time period of a Construction Contract unless otherwise waived by the TIFC, upon the recommendation of the Director.

Construction Hours Affidavit – A statement by a Construction Contractor, verified under oath, setting forth the Construction Contractor’s intent to meet or exceed, and to cause the subcontractors of every tier to meet or exceed, the Construction Employment Goals while performing a Construction Contract.

Construction Labor Hour - A sixty minute period of time devoted by a worker, employed by a Construction Contractor, performing labor on a construction project job site; or, preparing, fabricating or painting materials or equipment to be used or incorporated on a construction project job site.

Construction Project - Any project performed by a Construction Contractor in the Kansas City Metropolitan Statistical Area.

Construction Services - Activities undertaken to complete the construction, reconstruction, improvement, enlargement or alteration of any fixed work that relates to the implementation of a Redevelopment Plan, Project or Project Improvement, including environmental remediation and demolition, but excluding Professional Services.

Construction Workforce Board - A board created by the City in accordance with the City Workforce Ordinance.

Director – The director of the Human Relations Department of the City or his/her designee, or the person within the City Manager’s Office that is assigned to perform the tasks delegated to the director of the Human Relations Department of the City.

Equal Opportunity Clause - A statement prohibiting discrimination on construction projects based on race, color, sex, sexual orientation, gender, identity, age, national origin or ancestry, religion, or physical disability as proscribed in the Kansas City Code of Ordinances, Chapter 38, Article III, Section 38-103.

Fixed Work - Any permanent building or structure to be reconstructed, improved, enlarged or altered under a Construction Contract.

Good Faith Waiver - A waiver that, upon the recommendation of the Director, is granted by the TIFC and is based upon a showing by a Redeveloper that despite undertaking in good faith the actions outlined in this Workforce Policy, the Redeveloper, the Construction Contractor, the subcontractors of any tier, or both, were unable to achieve the Construction Employment Goals.

Kansas City Metropolitan Statistical Area or (MSA)- The Missouri counties of Cass, Clay, Jackson and Platte and the Kansas counties of Johnson, Leavenworth and Wyandotte.

Incentive Construction Employment Goal - An aspirational goal for company-wide employment of minorities and women intended to encourage Construction Contractors to invest additional money and resources to hire and retain minorities and women on their workforce in order to achieve participation percentages well in excess of the Minimum Employment goals and the percentage of minorities and women generally available in the workforce by providing public recognition upon the completion of a Construction Contract, to the Construction Contractor who achieves such goal.

Journeyman - One who has completed an apprenticeship in a trade or craft and is recognized in the particular trade or craft as a journeyman.

Labor Union - Any organization which exists, in whole or in part, for the purpose of collective bargaining; for dealing with employers concerning grievances, terms or conditions of employment; or, for other mutual aid or protection of workers in relation to employment.

Minorities - Persons who are citizens or lawful permanent residents of the United States and who:

- a. Have origins in any of the Black racial groups of Africa, and who has historically and consistently identified himself or herself as being such a person ("African Americans");
- b. Have origins in any of the peoples of Mexico, Puerto Rico, Cuba, Central or South America, or any of the Spanish speaking islands of the Caribbean, regardless of race and who has historically and consistently identified himself or herself as being such a person ("Hispanic Americans");

c. Have origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent or the islands of the Pacific or the Northern Marianas, or the Indian subcontinent and who has historically and consistently identified himself or herself as being such a person (“Asian Americans”); and

d. Maintain cultural identification through tribal affiliation or community recognition with any of the original peoples of the North American continent; or those who demonstrate at least one-quarter descent from such groups, and who has historically and consistently identified himself or herself as being such a person. (“Native Americans”).

Project Improvements - Those activities undertaken and facilities constructed in order to implement the provisions of a Redevelopment Plan pursuant to a Redevelopment Agreement.

Redeveloper – An individual, partnership, corporation, association or other entity, or any combination of such entities, who or which enters into a Redevelopment Agreement.

Redevelopment Agreement - Any agreement between TIFC and a Redeveloper for the implementation of a Redevelopment Plan, Project or Project Improvement .

Resident – An individual residing or domiciled within the City.

TIFC - The Tax Increment Financing Commission of Kansas City, Missouri, created pursuant to the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri, 1986, as amended (the “Act”), and by Ordinance No. 54556 of the City Council of Kansas City, Missouri, adopted on November 24, 1982, and amended by Ordinance No. 911076 adopted on August 29, 1991, by Ordinance No. 100089 on January 28, 2010 and by Ordinance No. 130986 on December 19, 2013, for the purpose of holding hearings and making recommendations to the City Council of Kansas City, Missouri, with respect to proposed tax increment financing plans, and carrying out the responsibilities delegated to it by the City Council, among which, are entering into agreements with redevelopers to implement said plans when approved, and monitoring compliance therewith.

TIFC Representative - A representative designated by the TIFC, who shall make regular reports at TIFC meetings regarding Redevelopers’ compliance with this Workforce Policy.

Woman – An individual who is a citizen or lawful permanent resident not the United States and who is a female.

Workforce - Those persons employed to perform Construction Services.

All terms not otherwise defined herein shall have the meaning set forth in the Redevelopment Agreement.

## **II. CONSTRUCTION EMPLOYMENT GOALS**

The Construction Employment Goals consist of the Incentive Construction Employment Goals and the Minimum Construction Employment Goals and are expressed as a percentage of total Construction Labor Hours of a Construction Contractor on all Construction Projects within the Kansas City Metropolitan Statistical Area. The Construction Employment Goals applicable under this Workforce Policy shall be those established under the City Construction Employment Program in effect at any time. As of the effective date of this Workforce Policy, the Construction Employment Goals are as follows: (A) for Minorities, an Incentive Construction Employment Goal of 20% and a Minimum Construction Employment Goal of 10% and (B) for Women, an Incentive Construction Employment Goal of 4% and a Minimum Construction Employment Goal of 2%.

A. Minimum Construction Employment Goals, unless otherwise waived by the TIFC, upon the recommendation of the Director, shall be met on a quarterly basis during the term of a Construction Contract.

B. The Minimum Construction Employment Goals, unless otherwise waived by the TIFC, upon the recommendation of the Director, shall be applicable as follows:

- (1) As to the Construction Contractor individually, the Construction Contract.
- (2) As to the Construction Contractor individually, all construction projects performed by the Construction Contractor in the MSA during the term of the Construction Contract.
- (3) As to the subcontractors collectively, the Construction Contract.

Only the construction labor hours performed by those working sufficient hours to qualify for benefits shall be counted.

C. All Redevelopment Agreements entered into between the TIFC and a Redeveloper or the TIFC and a Construction Contractor shall require that the Construction Contractor comply with this Workforce Policy and include the requirements of this Workforce Policy in all subcontracts of any tier and that the Construction Contractor shall enforce such provision to the maximum extent permitted by law to ensure that such subcontractors comply with this Workforce Policy.

D. The TIFC may provide public recognition to a Construction Contractor that achieves the Incentive Construction Employment Goals.

E. This Workforce Policy shall not be construed as requiring or encouraging a Construction Contractor, or any subcontractor working in conjunction with the Construction Contractor, to make employment decisions or otherwise alter the terms and conditions of employment based upon race or gender.

**III. MONITORING AND COMPLIANCE WITH THE CITY CONSTRUCTION PROGRAM**

A. At the time a bid is submitted for a Construction Contract, the Redeveloper shall cause each potential Construction Contractor to submit with its response to the bid solicitation a Construction Hours Affidavit stating the Construction Contractor's intent to meet or exceed, and cause the subcontractors to collectively meet or exceed, the Minimum Construction Employment Goals while performing the Construction Contract or request a waiver. The Construction Hours Affidavit shall be in the format utilized by the City in connection with the City Construction Employment Program.

B. Within 48 hours after bid opening, or prior to contract execution for those Construction Contracts awarded pursuant to a request for proposals, the Construction Contractor shall submit an employee identification report to the Redeveloper, which, upon the request of the TIFC, shall be made available to the TIFC, and such report shall be, in a format to be determined by the Director, which report shall include:

*The name, home address, job title, gender and race/ethnicity of each person working for the Construction Contractor and which the Construction Contractor anticipates will be performing construction labor hours creditable towards the Minimum Construction Employment Goals applicable to the Construction Contractor individually.*

The Director, with the consent of the TIFC, is authorized to extend the deadline for the Construction Contractor's submission of the employee identification report.

C. Within ten (10) days prior to the date upon which any subcontractor is to commence work under a Construction Contract, the Construction Contractor shall submit an employee identification to the Redeveloper, which, upon the request of the TIFC, shall be available to the TIFC, and such identification report shall be in a format to be determined by the Director, which report shall include:

*The name, home address, job title, gender and race/ethnicity of each person working for the subcontractor and which will be performing construction labor hours creditable towards the Minimum Construction Employment Goals applicable to the subcontractor.*

The Director, with the consent of the TIFC, is authorized to extend the deadline for the subcontractor's submission of the employee identification report.

D. After the Construction Contract has been awarded, but before work under the Construction Contract begins, a Redeveloper shall cause the selected Construction Contractor to meet with the Director and the TIFC Representative for the purpose of discussing (i) the Construction Contractor's willingness to provide first opportunity for employment on Construction Projects to Residents, (ii) the Minimum Construction Employment Goals for Minority and Women workers, (iii) how the Construction Contractor will endeavor in good faith to individually meet, and require the



subcontractors to collectively meet, the Minimum Construction Employment Goals, (iv) any problems that may affect the Construction Contractor's ability to employ Residents or achieve the Minimum Construction Employment Goals, and (v) the forms and procedures required for the Construction Contractor's reporting obligations.

E. The Director shall assess compliance with the Construction Employment Program, and recommend that the TIFC impose any authorized remedy for any failure to comply on a quarterly basis, for the duration of the Construction Contract; provided, however, that the Director's failure to assess compliance during one or more quarters having expired, or recommend that the TIFC impose any remedy for any failure to comply determined to have occurred during one or more quarters having expired, shall not preclude the Director from assessing compliance as to any subsequent quarter or recommending that the TIFC impose any remedy for any failure to comply determined to have occurred during any subsequent quarter.

F. After completion of work on the Construction Contract, but before release of retainage, final acceptance and closeout, the Redeveloper shall cause the Construction Contractor to provide to the Director and the TIFC, in a format approved by the Director, a final cumulative report detailing the Construction Contractor's and the subcontractors' utilization of minorities and women.

G. Monthly reporting: The Redeveloper shall cause the Construction Contractor performing work under a Construction Contract to submit to the Director and the TIFC Representative workforce reports detailing the Construction Contractor's utilization individually, and the subcontractors' utilization collectively, of residents, minorities and women under the Construction Contract and on every construction project, public or private, that the Construction Contractor has in progress throughout the MSA. The reports shall be submitted to the Director and the TIFC Representative by the fifteenth of each month through the duration of the Construction Contract. The reports shall state the number of resident, minority and women construction labor hours performed on site per trade, and shall be submitted in a format determined by the Director.

H. Within sixty (60) days of the completion of work on the Construction Contract, and before the issuance of a Certificate of Completion and Compliance, the Redeveloper shall cause the Construction Contractor to provide to the TIFC Representative and the Director, in the format required by the City Construction Employment Program, the payroll records of the Construction Contractor and its subcontractors that perform services in connection with the Construction Contract, for each calendar quarter for the years spanning the duration of the Construction Contract, documenting: (i) the total number of Construction Labor Hours performed by Minorities and Women on the Construction Contract and company-wide within the MSA as compared to the total number of Construction Labor Hours performed by all workers on the Construction Contract and company-wide within the MSA; and (ii) the Construction Labor Hours worked per capita by Minorities and Women as compared to the Construction Labor Hours worked per capita by all other workers in the Construction Contractor's workforce.

I. The Redeveloper shall cause all Construction Contractors to comply with all federal laws, including those of the Immigration and Naturalization Service and the Department of Homeland Security. Only those Construction Labor Hours performed by workers in compliance with federal law shall be counted towards the meeting the Minimum Construction Employment Goals.

J. The Redeveloper shall cause the Construction Contractor to permit the TIFC Representative and/or the Director to have access, at all reasonable times, to all books, papers, records, reports or accounts in possession of or under the control of the Construction Contractor and its subcontractors as may be reasonably necessary to ascertain compliance with this Workforce Policy. The Redeveloper shall cause the Construction Contractor and its subcontractors to furnish such further information as may be required by the TIFC Representative and/or the Director within ten (10) working days of the date it is requested in writing.

K. The Redeveloper shall cause the Construction Contractor to permit TIFC Representative and/or the Director to conduct on-site audits and records inspections of the Construction Contractor and its subcontractors without prior notice as may be necessary to ascertain compliance with this Workforce Policy. The Redeveloper shall cause the Construction Contractor to require all of its subcontractors to comply with the requirements of this Section III.

L. The Redeveloper shall cause the Construction Contractor to obtain and retain documentation establishing the residence of record for any person working on a Construction Project. The documentation may be one of the following:

- (1) driver's license or identification card issued by a government or governmental agency with a photograph of the holder; or
- (2) voter registration card; or
- (3) utility bill showing the account holder's name and address; or
- (4) valid United States Passport; or
- (5) other document that sufficiently establishes residency.

M. It is the responsibility of the Redeveloper to demonstrate compliance with this Workforce Policy, including, but not limited to, its Construction Contractor's good faith efforts to achieve the Minimum Construction Employment Goals. The Director, together with the TIFC Representative, shall monitor the Redeveloper's Construction Contractor's ongoing compliance with this Workforce Policy, shall assist the Construction Contractor in its good faith efforts to meet or exceed the Minimum Construction Employment Goals and otherwise comply with this Workforce Policy, and shall make periodic reports to the TIFC relative thereto.

**IV. EQUAL EMPLOYMENT STANDARDS**

A. The TIFC shall include an Equal Opportunity Clause in all Redevelopment Agreements and cause Construction Contractors to incorporate the same in all Construction Contracts. The Equal Opportunity clause shall require that all Redevelopers and Construction Contractors adhere to the equal opportunity requirements in the City's Code of Ordinances, Chapter 38, Article III, Section 38-132. The Equal Opportunity Clause shall include, at a minimum, the following provisions:

(1) The Redeveloper and/or Construction Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or ancestry, disability, sexual orientation, gender identity or age.

(2) The Redeveloper and/or Construction Contractor will take affirmative action to ensure that employees are treated fairly during employment without regard to their race, color, religion, sex, national origin or ancestry, disability, sexual orientation, gender identity or age. Such action shall include, but not be limited to the following: employment, promotion, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(3) The Redeveloper and/or Construction Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of the Equal Opportunity Clause.

B. The Redeveloper shall cause its Construction Contractors to include, in all solicitations or advertisements for employees placed by or on behalf of the Construction Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or ancestry, disability, sexual orientation, gender identity or age.

C. In the event of the Redeveloper's noncompliance with the Equal Employment Clause of the Redevelopment Agreement or with any of the said rules, regulations or orders, the Director shall bring a complaint before the TIFC and the Redevelopment Agreement may be canceled, terminated or suspended in whole or in part and the Redeveloper may be declared ineligible for further agreements with the TIFC for a period of one (1) year should the Redeveloper fail to agree to comply with the terms of any order arising from that proceeding.

**V. GOOD FAITH EFFORTS TO ACHIEVE THE MINIMUM CONSTRUCTION EMPLOYMENT GOALS**

A. Redeveloper shall be presumed conclusively to be in compliance with this Workforce Policy as it relates to good faith efforts to meet the Minimum Construction

Employment Goals if the Minimum Construction Employment Goals, as set forth in Section II., are achieved for each Construction Contractor.

B. Redeveloper shall be presumed conclusively to be in compliance with this Workforce Policy as it relates to good faith efforts to meet the Minimum Construction Employment Goals if, in the event the Minimum Construction Employment Goals have not been met, the Redeveloper shall have requested and received from the TIFC a Good Faith Waiver. The TIFC shall grant a Redeveloper's request for a Good Faith Waiver if the Redeveloper can demonstrate that good-faith efforts have been made to achieve the Minimum Construction Employment Goals. In determining whether a Redeveloper made or caused the Construction Contractor to make a good faith effort to achieve the Minimum Construction Employment Goals, the TIFC shall consider, at least in part, a recommendation from the Director, that the Redeveloper undertook the following actions:

For those Redevelopers that have entered into Construction Contracts with Construction Contractors that are not signatories to a collective bargaining agreement with organized labor, the Redeveloper shall cause the Construction Contractor to:

- (1) Request in writing the assistance of the TIFC Representative with respect to efforts to promote the utilization of Minorities and Women in the workforce of the Construction Contractor and acted upon the TIFC's recommendations; and
- (2) Advertise in Minority/Women's Trade Association Newsletter and/or minority owned media at least 15 calendar days prior to the utilization of any Construction Services for each Construction Contract seeking employees, appropriately describing the work available, pay scale, the application process and anything else that one might reasonably be expected to be informed of relevant to the position being advertised; and
- (3) Maintain copies of each advertisement and a log identifying the publication and date of publication; and
- (4) Establish and maintain a current list of Resident, Minority and Women recruitment sources, providing written notifications to the recruitment sources of available employment opportunities, and maintained records of the notices submitted to the organizations and any responses thereto; and
- (5) Maintain a current file for the time period of the Construction Contract with the name, address, and telephone number of each Resident, Minority and Woman job applicant, the source of the referral, whether or not the person was hired, and in the event that the applicant was not hired, the reason therefore; and
- (6) Require by written contract all subcontractors to comply with this Section of the Workforce Policy; and

(7) Promote the retention of Minorities and Women in its Workforce, as determined by the Director and reported to the TIFC, with the goal of achieving sufficient annual hours for Minorities and Women to qualify for benefits and count toward the Employment Construction Goals.

For those Redevelopers that have entered into Construction Contracts with Construction Contractors that are signatories to collective bargaining agreements with organized labor, the Redeveloper shall cause the Construction Contractor to:

(8) Request in writing from each Labor Union representing crafts to be employed by the Construction Contractor that:

i. The Labor Union make efforts to promote the utilization of Residents, Minorities and Women in the Workforce; and

ii. The Labor Union identifies any Residents, Minorities and Women in its membership eligible for employment by the Construction Contractor.

(9) Collaborate with Labor Unions in promoting mentoring programs intended to assist Minorities and Women in increasing retention with the goals of achieving sufficient annual hours to qualify for applicable benefits.

(10) Maintain a current file with the name, address, and telephone number of each Resident, Minority and Woman worker identified by the Labor Union, whether or not the person was hired, and in the event the person was not hired, the reason therefore.

(11) To the extent that the good-faith effort requirements set forth in this section are in conflict with the procedures implemented by the Construction Contractor in order to comply with a competitive bargaining agreement, the Construction Contractor shall substitute other procedures, as may be approved by the TIFC and Director in writing, in order to accomplish the purpose and intent of this section.

## **VI. REMEDIES**

A. Prior to reimbursing a Redeveloper for any eligible Redevelopment Project Costs, the Director shall provide a written report to the TIFC that incorporates a finding as to whether such Redeveloper has complied and has caused its Construction Contractor(s) and their respective subcontractors to comply with Sections III, IV and V of this Workforce Policy. If the Director shall find, within its written report to the TIFC, that, after investigation, a Redeveloper has not caused the Construction Contractor and its subcontractors to comply with Sections III, IV and V, the TIFC shall, within ten (10) days after such finding, notify the Redeveloper in accordance with the Redevelopment Agreement.

B. After due notice is given to the Redeveloper, the TIFC shall hold a hearing and determine whether the Redeveloper has complied and has caused the Construction Contractor and its subcontractors to comply with this Workforce Policy and to determine the appropriate remedy, if the TIFC determines that the Redeveloper failed to comply and/or failed to cause the Construction Contractor and its subcontractors to comply with this Workforce Policy. Remedies for such failure may include canceling, terminating, or suspending, in whole or in part, the Redevelopment Agreement, withholding reimbursement of eligible Redevelopment Project Costs, imposing liquidated damages in the amount specified on Exhibit A, attached hereto, withholding the issuance of a Certificate of Completion and Compliance, requiring the Redeveloper and Construction Contractor to attend mandatory training and/or declaring the Construction Contractor ineligible for further Construction Contracts or participate as a subcontractor under any Construction Contract for a period of time up to six (6) months in furtherance of implementing tax increment financed projects. If the TIFC determines that the Redeveloper complied and has caused the Construction Contractor to comply with Sections III, IV and V of this Workforce Policy, then the TIFC shall grant a Good Faith Waiver to the Redeveloper.

## **VII. APPEALS – CONSTRUCTION WORKFORCE BOARD**

A. The Workforce Ordinance established a Construction Workforce Board to hear appeals from Construction Contractors. Following a decision by the TIFC that a Redeveloper failed to exert good faith efforts to meet the Minimum Construction Goals and failed to cause a Construction Contractor to comply with Sections III, IV and V of this Workforce Policy, a Redeveloper may appeal the TIFC's decision to the Construction Workforce Board.

B. Appeals shall be made to the Construction Workforce Board by filing with the TIFC Representative and the Director within ten (10) working days after notice of the TIFC's 's determination, a written request for review by the Construction Workforce Board, stating the grounds of such appeal with specificity. The TIFC Representative shall promptly forward to the chairperson and members of the Construction Workforce Board a copy of any appeal.

C Failure to file a timely appeal in accordance with Section VII.B. shall constitute a waiver of the right of a Redeveloper to appeal the TIFC's determination and such person shall be estopped to deny the validity of any order, recommendation, determination or action taken by the TIFC which could have been timely appealed and shall have been deemed to have exhausted all administrative remedies under this Workforce Policy.

D. The Construction Workforce Board shall have authority to require that a party first make a written submission of its appeal prior to permitting a hearing and may summarily dispose of those appeals that it determines to be frivolous and without merit.

E. After receiving an appeal from the Redeveloper, the Construction Workforce Board, shall set a date upon which a hearing shall be held by the Construction Workforce

Board and shall notify all parties of the date thereof. The notice of hearing shall be served upon the parties at least ten (10) calendar days prior to the date of the hearing. A copy of the TIFC's determination shall be attached to each such notice. A hearing shall be set no later than twenty-one (21) calendar days after receipt of the request for appeal to the Construction Workforce Board.

F. The hearing shall be conducted under rules adopted by the Construction Workforce Board. The Construction Workforce Board may subpoena witnesses, compel their attendance, administer oaths, take the testimony of persons under oath, and require the production for examination any books, papers or other materials relating to any matter under investigation or in question before the Construction Workforce Board.

G. The Construction Workforce Board shall cause all proceedings before it to be either audio recorded or held before a certified court reporter.

H. The Construction Workforce Board shall have authority to affirm, modify or reverse the determination of the TIFC with respect to whether good-faith efforts were made to meet the Minimum Construction Employment Goals.

The determination of the Construction Workforce Board with respect to good-faith efforts, shall be a final determination and the TIFC and the Redeveloper shall agree, pursuant to the Redevelopment Agreement, that the decision of the Construction Workforce Board shall be binding upon the TIFC and the Redeveloper; provided, however, that the TIFC shall make the final determination as to the appropriate remedy under the Redevelopment Agreement.

**The TIFC and the Redeveloper shall agree, pursuant to a Redevelopment Agreement that the decision of the Construction Workforce Board to affirm, modify or reverse the determination of the TIFC shall be binding upon the TIFC and the Redeveloper.**

#### **VIII. COMPLIANCE EXPENSE**

To the extent the Redeveloper is in compliance with this Workforce Policy, the reasonable and necessary administrative expenses associated with determining compliance may be reimbursed as Redevelopment Project Costs.

#### **IX. SEVERABILITY**

If any section, subsection, clause, or provision of this Workforce Policy is deemed to be invalid or unenforceable in whole or in part, this Workforce Policy shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable subsection(s), clause(s), provision(s) or portion(s) thereof, and alter the balance of those same sections in order to render the same valid and enforceable.

**X. EFFECTIVENESS; IMPLEMENTATION**

Subject to Section X.B., the Chairman, Vice-Chairman and Secretary are authorized and directed to undertake any activities, including signing any documents, certificates or other instruments, necessary to carry out and implement the Workforce Policy.

**HUMAN RELATIONS DEPARTMENT ACKNOWLEDGEMENT AND APPROVAL**

The Director of the Human Relations Department of the City of Kansas City, Missouri (the "City"), pursuant to Chapter 38, Article II, has reviewed this Workforce Policy and hereby determines that it is consistent with the City's Workforce Ordinance and the City Construction Employment Program.

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Director, Human Relations Department



## Exhibit A to Workforce Policy

### Calculation of Liquidated Damages

Because the amount of harm caused by the Redeveloper not complying with the Workforce Policy is uncertain, if not impossible, to determine, the Redeveloper agrees to pay to the TIFC liquidated damages in an amount not to exceed the fees and expenses incurred by the TIFC in investigating and determining that the Redeveloper has not complied with the Workforce Policy; plus an amount equal to the percentage of the total amount of dollars paid by the Construction Contractor for Labor Hours worked in connection with all construction projects in the Kansas City Metropolitan Statistical Area, plus an amount equal to the percentage of the total amount of dollars paid by the Construction Contractor and by its subcontractors for Labor Hours worked in connection with the construction projects related to each Construction Contract that is subject to the Redevelopment Agreement, in each case, that would have otherwise been paid to Minorities and Women had Minimum Construction Employment Goals set forth in the Workforce Policy been attained. Notwithstanding anything to the contrary, the liquidated damages shall not be a reimbursable Redevelopment Project Cost. To illustrate the application of this liquidated damages provision, please refer the example below:

#### Example

1. Pursuant to the implementation of a tax increment financing plan, a Redeveloper enters into a Construction Contract with a Construction Contractor and the Construction Contractor, in turn, enters into a contract with a subcontractor to perform certain work contemplated by the Construction Contract and in furtherance of a Redevelopment Agreement and tax increment financing plan.
2. The Construction Contractor employs minorities at a rate of 2% for all construction projects within the Kansas City Metropolitan Statistical Area and, together with its subcontractor, employs minorities at a rate of 5% for the construction projects related to the Construction Contract.
3. The Minimum Construction Employment Goal for Minorities that is to be attained by the Construction Contractor and its subcontractors in connection with construction projects related to the Construction Contract is 10% and the Minimum Construction Employment Goal for Minorities that is to be attained by the Construction Contractor in connection with all projects performed by the Construction Contractor in the Kansas City Metropolitan Statistical Area is also 10%. The TIFC finds that the Redeveloper failed to cause the Construction Contractor and its subcontractors to comply with the Workforce Policy.
  - A. The payroll records of the Construction Contractor reflect that the amount paid to employees for each percentage of total Labor Hours worked on behalf of the Construction Contractor within the Kansas City Metropolitan Statistical Area during the construction period of the Construction Contract equals \$20,000. Thus, had the Construction Contractor increased the number of Labor Hours worked by Minorities on all construction projects within the Kansas City Metropolitan Statistical Area by 8%, the

Construction Contractor would have paid Minorities an additional \$160,000 for such work performed in connection with the construction projects.

B. The payroll records of the Construction Contractor and its subcontractors for construction projects that relate to the Construction Contract reflect that the amount paid to employees for each percentage of total Labor Hours worked on behalf of the Construction Contractor and its subcontractors equals \$10,000. Thus, had the Construction Contractor and its subcontractors increased the number of Labor Hours worked by Minorities on the construction projects that relate to the Construction Contract by 5%, the Construction Contractor and its subcontractors would have paid Minorities an additional \$50,000 for such work performed in connection with the Construction Contract.

4. Pursuant to the liquidated damages provision of the Workforce Policy, the Redeveloper shall be obligated to pay to the TIFC liquidated damages in an amount up to \$10,000 (the cost associated with TIFC in investigating and determining that the Redeveloper has not complied with the Workforce Policy); plus \$160,000 (the amount the Construction Contractor would have paid to Minorities for all construction projects within the Kansas City Metropolitan Statistical Area, had the Minimum Construction Employment Goal been attained); plus \$50,000 (the amount the Construction Contractor and its subcontractors would have paid to Minorities for the construction projects related to the Construction Contract, had the Minimum Construction Employment Goal been attained) for an aggregate amount of \$220,000 in liquidated damages.