

ACCESS AND USE AGREEMENT

THIS ACCESS AND USE AGREEMENT (“Agreement”) is entered into as of May __, 2024 (“**Effective Date**”), by and between THE CITY OF KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation (“**City**”) and THE PORT AUTHORITY OF KANSAS CITY, MISSOURI, a political subdivision of the State of Missouri created pursuant to Section 68.010 *et seq.*, RSMo (“**Port KC**”). City and Port KC may be referred to collectively as the “**Parties**.”

WHEREAS, City has caused the construction of various segments of the Riverfront Heritage Trail network, the northernmost portion of which is located adjacent to Berkley Riverfront Heritage Park and runs parallel to the Missouri River; and

WHEREAS, Riverfront Heritage Trail currently detours at the Town of Kansas Bridge, at which point its users must navigate various sidewalks and public streets, traversing a heavily utilized industrial corridor, to access the West Bottoms and points further to the west and south; and

WHEREAS, Greenline KC is a proposed 10-mile urban loop around greater downtown that aims to connect previously disconnected neighborhoods and promote healthy lifestyle options; and

WHEREAS, Greenline KC aims to extend the Riverfront Heritage Trail further west along the Missouri River to Liberty Street, thereby extending the dedicated trail system in a manner that will allow its users to avoid the numerous detours; and

WHEREAS, City currently owns certain unimproved real property adjacent to the Missouri River that could be utilized to extend the Riverfront Heritage Trail from the Town of Kansas Bridge to Liberty Street (“**Trail Extension**”); and

WHEREAS, Port KC is willing to design, construct, operate and maintain the Trail Extension at no cost to City; NOW, THEREFORE,

NOW, THEREFORE, in consideration of the mutual representations, covenants and agreements herein contained, and other good and valuable considerations, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. PROPERTY; PERMITTED USES. City hereby grants to Port KC the right to access and use the real property identified in **EXHIBIT A**, attached hereto and incorporated herein (“**Property**”), for the purpose of designing, constructing, operating and maintaining the Trail Extension (“**Permitted Use**”), which shall not include riparian rights nor water access. Port KC shall use the Property solely for the Permitted Use. Port KC shall engage in the Permitted Use in all material respects in compliance with all the terms of this Agreement. Port KC shall not use the Property for any purpose other than the Permitted Use without first having secured the written consent of City, which consent may be conditioned or withheld in City’s sole discretion. Port KC shall provide the City with written plans for any request related to the Permitted Use. Port KC further acknowledges and understands that the Property is situated within the federally constructed floodwall. The Critical Zone is generally

considered the area 300 feet riverwards to 500 feet landward of a levee or floodwall centerline (the "Critical Zone.") To identify the Critical Zone, Port KC shall obtain an ALTA land survey at its own cost and shall provide a copy of the same to the City. Any plans for construction or trail use within the Critical Zone must be approved by the United States Army Corps of Engineers prior to the start of construction and the Kansas City Levee Committee. Port KC further acknowledges that certain City infrastructure, including but not limited to the Broadway Pump Station, is located within the boundaries of the Property, and the Permitted Use shall not interfere with the operation, maintenance, or control of such infrastructure.

Section 2. CONDITION OF PROPERTY. Port KC accepts access to and use of the Property on an "AS IS" basis and without any agreements, representations, understandings or obligations on the part of City to perform any alterations, repairs or improvements thereto, and subject to any and all reservations, conditions, notices, restrictions and other covenants of record. Port KC acknowledges that City makes no representations or warranties concerning the Property nor its suitability for the Permitted Use.

Section 3. COSTS. All costs incurred for the Permitted Use shall be borne by Port KC, without contribution from or reimbursement by City.

Section 4. CITY ACCESS. City reserves the right at all times for its agents, officials and employees to access and traverse the Property and Trail Extension. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that the right reserved to City herein shall remain paramount to any rights granted to Port KC by this Agreement. Use of the Property and the Trail Extension shall be subject to all easements of record, activities related to flood wall maintenance, and the location, construction, operation, maintenance, repair, use, and access of sewer lines, outfalls, facilities, appurtenances and related improvements as may be currently situated or needed by City in the future and for activities associated with the operation and maintenance of the levee system.

Section 5. TEMPORARY CLOSURE OF TRAIL EXTENSION. City shall have the right, without compensation to Port KC, to temporarily close all or any portion of the Trail Extension as needed for the performance of any rights reserved by City pursuant to Section 4 of this Agreement. Without limiting the foregoing, City may further close, or require that Port KC close, any portion of the Trail Extension during any high-water event that might reasonably be deemed to endanger life or property.

Section 6. REVOCATION OF AGREEMENT. City shall be entitled to remove, at its sole cost and expense and without compensation to Port KC, and regardless of whether any default under this Agreement shall have occurred or be continuing, all or any portion of the Trail Extension constructed on the Property in the event City shall determine, in its sole discretion, that the Property is needed or desired by City, in whole or in part, for any purpose other than the Trail Extension and which City deems to be in the public interest. In such event, City shall have the unilateral and absolute and unfettered right to declare this Agreement null and void. In the event City determines that something less than the entirety of the Property is needed or desired, City may elect to declare this Agreement null and void with respect to such portion or portions of

the Property as City shall have determined appropriate, in which case the boundaries of the Property shall, notwithstanding anything to the contrary in **EXHIBIT A** or any other provision of this Agreement, be deemed modified as to remove such portions being recovered by City while leaving the balance for Port KC's continued use pursuant to the terms and conditions of this Agreement. Notwithstanding the foregoing, any election by City to recover less than the entirety of the Property shall not preclude or impair City in recovering additional portion of the Property at any future date(s) during the Term of this Agreement, should City determine to do so. Further notwithstanding the foregoing, City covenants and agrees that it shall act in good faith in making any election pursuant to this Section and that it will confer with Port KC with respect to such matters. City shall provide not less than ninety (90) calendar days' written notice to Port KC prior to the effective date of any full or partial revocation of this Agreement.

Section 7. TERM. This term of this Agreement shall commence as of the Effective Date, and thereafter continue in perpetuity ("**Term**"), unless otherwise revoked, in whole or in part, as provided in Section 6 or for an uncured event of default.

Section 8. TITLE TO PROPERTY. Title to the Property and any subsequent alterations, changes or additions thereto, including but not limited to the Trail Extension, shall remain solely in City during the Term of this Agreement.

Section 9. SURRENDER OF PROPERTY. In the event City shall elect to terminate this Agreement, in whole or in part, the Parties hereby agree that Port KC will promptly vacate and surrender possession of the Property or portion thereof, as applicable. In no event shall Port KC be obligated to remove the Trail Extension.

Section 10. MAINTENANCE. Port KC shall, at all times during the Term, and at its own cost and expense, keep and maintain or cause to be kept and maintained in good repair and condition the Property and Trail Extension, reasonable wear and tear excepted, and shall use all reasonable precaution to prevent waste, damage, injury or casualty. City shall not be required to furnish any services or facilities or to make any improvements, repairs or alterations in or to the Property and Trail Extension.

Section 11. INSURANCE. Port KC shall require that any contractor retained by it to construct the Trail Extension name City as an additional insured on any policy of insurance Port KC shall contractually require.

Section 12. INDEMNIFICATION. Port KC shall require that any contractor retained by it to construct the Trail Extension indemnify and save City harmless, defend any action, cause of action, suit, debt, cost, expense, claim, or demand whatsoever brought or asserted by any third person whomsoever, at law or in equity, arising by way of the activities undertaken by Port KC pursuant to this Agreement. Notwithstanding the foregoing the indemnification requirements shall not apply to any negligent act or omission or willful misconduct of City or any of City's employees, servants, agents, or other persons for whom City is responsible. In no event shall the language in Sections 11 and 12 constitute or be construed as a waiver or limitation of the City's

rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions and by law.

Section 13. ASSIGNMENT. The Parties shall not assign or transfer any right or interest in and to this Agreement without their mutual consent, which consent shall not be unreasonably conditioned, delayed or withheld.

Section 14. MECHANIC'S LIENS. Port KC shall not permit any mechanic's liens, or other liens, to be placed upon the Property by any contractor, or subcontractor thereto, retained for the purpose of constructing or maintaining the Trail Extension

Section 15. DEFAULT AND REMEDIES. If either party hereto fails to comply with any term, provision or covenant of this Agreement (the "**Defaulting Party**") and shall not cure such failure within thirty (30) days after receipt of written notice from the non-defaulting party (the "**Non-Defaulting Party**"), or if the default is of such character as to require more than thirty (30) days to cure and the Defaulting Party shall fail to commence to cure the same within such period, or shall fail to continuously use reasonable diligence in curing such default thereafter, the Non-Defaulting Party shall have the right to pursue any and all remedies available to it at law or in equity.

Section 16. NOTICES. Any notice required or otherwise made pursuant to this Agreement shall be deemed to be given if it is in writing and if it is either: (i) sent via overnight courier (such as Federal Express or UPS), (ii) mailed by United States registered or certified mail, postage prepaid, (iii) delivered by hand or (iv) e-mail delivery with appropriate confirmation provided such e-mail delivery is immediately followed by a duplicate delivery through first class US Mail, postage repaid (provided notice shall be deemed received upon delivery of such e-mail and not upon receipt by other means), and addressed as follows:

If to City: City of Kansas City, Missouri
Attn: City Manager
414 E. 12th Street
Kansas City, MO 64106

With a copy to: City of Kansas City, Missouri
Attn: City Attorney
414 E. 12th Street
Kansas City, MO 64106

If to Port KC: Port KC
Attn: President & CEO
110 Berkley Plaza
Kansas City, MO 64120

With a copy to: Port KC
Attn: General Counsel
110 Berkley Plaza
Kansas City, MO 64120

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' prior notice thereof.

Section 17. FORCE MAJEURE. City and Port KC shall each be excused from performing an obligation or an undertaking required by this Agreement so long as such performance is prevented or delayed or hindered by an act of God, fire, earthquake, flood, explosion, action of the elements, war, pandemic, invasion, insurrection, riot, mob, violence, inability to procure or a general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strike, lockout, action of labor unions, a taking by eminent domain, requisition, laws, orders of government, or civil or military or naval authorities, or any other cause similar to the foregoing, not within the reasonable control of City or Port KC, including reasonable delays for adjustments of insurance, and the time period for the performance of such obligation or undertaking shall be extended for a period equal to the time period of such delay by such cause. The party claiming force majeure shall give written notice of such claim to the other party promptly after the occurrence of the event giving rise to the claim.

Section 18. AMENDMENTS. The terms, conditions, and provisions of this Agreement cannot be modified, amended, or eliminated, except by written agreement of the Parties.

Section 19. GOOD FAITH AND FURTHER ASSURANCES. The Parties shall use and exercise good faith in connection with the implementation of all the terms and provisions of this Agreement.

Section 20. PARTIES TO AGREEMENT. The parties to this Agreement are City and Port KC. No other individual or entity is a party to this Agreement, and this is not an agreement for the benefit of any third party.

Section 21. PARTIAL INVALIDITY. If any part of this Agreement is invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect.

Section 22. COMPLETE AGREEMENT; MODIFICATION. All of the representations and obligations of the Parties are contained in this Agreement, and no modification, waiver or amendment of this Agreement will be binding upon a party unless in writing signed by such party.

Section 23. WAIVER. No waiver of any provision of this Agreement will be implied by any failure of a party to enforce any remedy upon the violation of such provision, even if such violation is continued or repeat subsequently. No express waiver will affect any provision other than the one specified in such waiver, and only for the time and in the manner specifically stated.

Section 24. CAPTIONS. The captions of Sections are for convenience only and will not be deemed to limit, construe, affect or alter the meaning of such Sections.

Section 25. SUCCESSORS. All of the terms, covenants and conditions of this Agreement shall apply and inure to the benefit of, and be binding upon the parties hereto, and upon their respective successors in interest and legal representatives but this provision shall not be deemed to permit assignment of this Agreement, except as agreed elsewhere in this Agreement.

Section 26. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which together shall constitute one Agreement. Signature pages to this Agreement transmitted by facsimile or by e-mail in portable document format will have the same legal effect as manually executed signature pages.

Section 27. CONFLICT OF LAWS: This Agreement is deemed made and executed in State of Missouri, shall be performed in the State of Missouri, and shall be governed by the laws of the State of Missouri without regard to its conflicts of laws provisions.

Section 28. RELATIONSHIP OF PARTIES. Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers, or any other similar such relationship. Nothing contained in this Agreement shall be construed to confer upon any other party the rights of a third-party beneficiary.

Section 29. INTERPRETATION OF AGREEMENT. The Parties acknowledge that each and their respective counsel have participated in the negotiation and preparation of this Agreement. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party causing the Agreement to be drafted. If any provision of this Agreement requires that action be taken on or before a particular date that falls on a day that is not a business day, the time for the taking of such action shall automatically be postponed until the next following business day.

Section 30. ELECTRONIC STORAGE AND NOTICE. The transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, City and Port KC have executed this Agreement or have caused it to be executed by their respective authorized representatives effective as of the day and year first above written. Each of the persons executing this Agreement represents that s/he is authorized to execute the same on behalf of the party for whom s/he executed hereafter.

CITY OF KANSAS CITY

By: _____
Brian Platt
City Manager

APPROVED AS TO FORM:

By: _____
Assistant City Attorney

**THE PORT AUTHORITY OF KANSAS CITY,
MISSOURI**

By: _____
Jon Stephens
President & CEO

APPROVED AS TO FORM:

By: _____
Brian Rabineau
General Counsel

EXHIBIT A

Approximately 5.554± acres of unimproved real property generally identified as follows:

Parcel Numbers 12-830-41-01-02-0-00-000 (commonly known as 52 Delaware Street) and 12-930-03-18-00-0-00-000 (commonly known as 10 Broadway Boulevard), excluding therefrom those portions previously conveyed by the City of Kansas City, Missouri to the Port Authority of Kansas City, Missouri via Special Warranty Deed dated June 25, 2019 and recorded with the Jackson County Missouri Recorder of Deeds on June 29, 2019 as Instrument No. 2019E0049045.