

TAX REIMBURSEMENT AGREEMENT

Between

City of Kansas City, Missouri

And

Jacob Rieger & Company

Dated October __, 2018

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “**Agreement**”) is made as of the ___ day of October, 2018 (the “**Effective Date**”), by and between the **CITY OF KANSAS CITY, MISSOURI**, a constitutionally chartered municipal corporation of the State of Missouri (the “**City**”) and **JACOB RIEGER & COMPANY, LLC**, a Missouri limited liability company, (the “**Developer**”) (collectively, the “**Parties**”).

RECITALS

- A. Reference is made to certain properties in Jackson County, Kansas City, Missouri generally located in the vicinity of 2700 Guinotte Avenue (the “**Project Area**”) as shown on the site plan attached hereto as **Exhibit A** (the “**Site Plan**”) and legally described on **Exhibit B**.
- B. The Planned Industrial Expansion Authority (PIEA) approved the Developer’s expansion of operations in an existing 15,000 sq. ft. industrial/warehouse space to merge into a 44,000 sq. ft. historic building (the “**J. Rieger & Co. Expansion**”), to be used for production equipment and storage, bottling, historic exhibits, gift shop, visitor lounges, public boardroom, event spaces, catering prep-kitchens, and an 8,000 sq ft. patio.
- C. The Developer has proposed to make significant infrastructure improvements in the immediate area either in lieu of city funding or in addition to city funding. The improvements will cure long-standing blight in the area that will assist in acting as a catalyst for future neighborhood development.
- D. Developer is fee simple owner of the Project Area as conveyed through Missouri Special Warranty Deed filed with the Jackson County, Missouri Recorder of Deeds Office Instrument Numbers as legally described on **Exhibit B**.
- E. Exterior infrastructure improvements and blight remediation will include, but not be limited to: sidewalk repairs, street resurfacing, crosswalk installation, removal of illegal dumping on various sites, removal of immobile vehicles on various sites, site improvements via parking lot construction, landscaping with irrigation, area lighting, and a camera-based security.
- F. Located in a severely-distressed census tract, the Developer estimates that the J. Rieger & Co. Expansion will create over 40 full-time equivalent jobs within the low-income community, with an median salary above the county average;
- G. The City believes that utilizing a portion of the City’s net new revenues generated by the J. Rieger & Co. Expansion will advance multiple primarily public purposes including, but not limited to, (1) the elimination of blighting conditions, (2) the retention and/or creation of high quality jobs, and (3) improvement of area infrastructure.
- H. The Developer and the City anticipate that economic activity will be created at the J. Rieger & Co. Expansion that will result in tax revenues to the City, including without limitation tax revenues from (i) expenditures of funds by Developer to construct, rehabilitate, remodel and improve the area; (ii) substantial new investment in the area for public and tenant use; (iii) increased consumption of goods, services and utilities by new employees and the public; and (iv) activities of employees in the City while located at or traveling to or from the area such as, but not limited to, retail purchases, consumption of goods and services and patronage of restaurant/bar, entertainment and other facilities in the City;

- I. The City understands that traditional lender confidence is low within this specific low-income community where the Project Area exists and a reimbursement agreement will provide a significant amount of confidence to lenders and can assist in increasing capital provided by traditional bank lenders.
- J. The City believes that utilizing a portion of the City's net new revenues generated by the J. Rieger & Co. Expansion will provide a significant amount of confidence to traditional bank lenders to illustrate that (1) the City desires to see the immediate area surrounding the Project Area see a significant amount of increased economic development, (2) the City has faith in Developer in being the catalyst for the area surrounding the Project Area, and (3) the City is willing to financially support the area surrounding the Project Area.
- K. The City and the Developer desire to enter into this Agreement for the purpose of setting forth their respective covenants, agreements and obligations.

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

ARTICLE I

GENERAL PROVISIONS, DEFINITIONS & EXHIBITS

Section 1.01 Recitals. The Recitals to this Agreement are incorporated into and shall constitute a part of this Agreement.

Section 1.02 Scope of Agreement.

The purpose of this Agreement is to provide a coordinated and clear outline of the obligations contemplated of City and Developer and agreement to negotiate in good faith concerning the incentives necessary to complete the Development Project.

Section 1.03 Definitions and Rules of Interpretation.

(a) Unless the context clearly indicates to the contrary or unless otherwise provided herein, the following rules of interpretation shall apply to this Agreement:

(i) The terms defined in this Agreement which refer to a particular agreement, instrument or document also refer to and include all renewals, extensions, modifications, amendments and restatements of such agreement, instrument or document; provided that nothing contained in this sentence shall be construed to authorize any such renewal, extension, modification, amendment or restatement, other than in accordance with this Agreement.

(ii) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Section, subsection and exhibit references are to this Agreement, unless otherwise specified. Whenever an item or items are listed after the word "including," such listing is not intended to be a listing that excludes items not listed.

(iii) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, words importing the singular number shall include the plural and vice versa, and words importing person shall include individuals, corporations, limited liability companies, partnerships, joint ventures, associations, joint stock companies, trusts, unincorporated organizations and governments and any agency or political subdivision thereof.

(iv) The captions and headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

Section 1.04 Defined Terms.

In addition to the terms defined elsewhere in this Agreement, the following terms shall have the meanings set forth as follows:

- a. "City" means City of Kansas City, Missouri.
- b. "City Council" means the City Council of the City of Kansas City, Missouri.
- c. "Developer" means Jacob Rieger & Company, LLC.
- d. "Development Project" means collectively the area infrastructure improvements and area blight remediation.
- e. "Earnings Tax" means the tax collected by the City pursuant to Section 68-382 of the Code of Ordinances of Kansas City, Missouri, or any amendment or successor provision thereto (exclusive of penalties and interest) on earnings of employees of Employer located in the City.
- f. "Eligible Reimbursement Funds" means an amount equal to two percent (2.00%) of the net new annual taxable sales, which base shall be calculated based upon sales and earnings tax collections for the Developer from the calendar year ending December 31, 2018, and the one percent (1.00%) of payroll collected in Earnings Tax as illustrated in **Exhibit C** in Year 1, and one-and-a-half percent (1.50%) of the net new annual taxable sales along with the one percent (1.00%) of payroll collected in Earnings Tax in Years 2 – 20, identified in **Exhibit C**. Such amounts shall be net of any fees or discounts applied or granted by the State of Missouri.
- g. "Reimbursement Period" means the period beginning on the first May 1, 2019 and ending upon the earlier to occur of (i) the date upon which the Developer has received Eligible Reimbursement Funds in an aggregate amount equal to the Reimbursement Amount, or (ii) twenty (20) years.
- h. "Reimbursement Amount" means an amount equal to one hundred percent (100%) of the reimbursable expenses incurred for the Development Project, provided that such expenditure shall not exceed One Million Four Hundred Fifty Thousand Dollars (\$1,450,000.00), which amount shall be subject to the provisions of Section 4.02 of this Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01 City Representations and Warranties.

(a) Organization, Authorization. The City (1) is a constitutionally chartered city validly existing under the laws of the State of Missouri; (2) has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder, and (3) by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(b) Effect on Prior Agreements. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the performance of or compliance with the terms and conditions of this Agreement by the City will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the City is a party or by which it or any of its property is bound, or any order, rule or regulation of any court or governmental body applicable to the City or any of its property, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City under the terms of any instrument or agreement to which the City is a party.

(c) Litigation. To the best knowledge of the City, there is no action, threatened or pending, against the City, which would prevent or impair the City's performance hereunder.

(d) Warranty. The City represents and warrants to the Developer that the foregoing items (a), (b) and (c) are true, accurate and complete as of the Effective Date and agrees that upon closing any transaction contemplated by this Agreement, the City shall confirm that the foregoing items (a), (b) and (c) shall be accurate, true and complete as of the Closing Date of such transaction.

Section 2.02 Developer Representations and Warranties.

(a) Organization, Authorization. The Developer (1) is a limited liability company validly existing under the laws of the State of Missouri; (2) has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder; and (3) by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(b) Prior Agreements. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of the terms or conditions hereof do not and will not conflict with or result in a breach of any terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

(c) Litigation. To the best knowledge of Developer, there is no action, threatened or pending, against the Developer which would prevent or impair the Developer's performance hereunder.

(d) Warranty. The Developer represents and warrants to the City that the foregoing items (a), (b) and (c) are true, accurate and complete as of the Effective Date and agrees that upon closing any transaction contemplated by this Agreement the Developer shall confirm that the foregoing items (a), (b) and (c) shall be accurate, true and complete as of the Closing Date of such transaction.

ARTICLE III

THE DEVELOPMENT PROJECT

Section 3.01 The Development Project.

(a) Blight Remediation. The Developer will perform general long-standing blight remediation throughout the Project Area.

(b) Public Infrastructure Improvements. Developer desires to meaningfully contribute financially to exterior infrastructure improvements including, but not limited to new sidewalks, road resurfacing, crosswalks, landscaping, irrigation, parking construction, lighting, and implementation of security systems for public safety.

(c) ADA Accessible. The Development Project will be constructed according to ACA accessibility requirements.

(d) Developer Ownership. The Developer shall be responsible for construction, maintenance, and operations for the Development Project.

Section 3.02 The J. Rieger & Co. Expansion.

(a) J. Rieger & Co. Expansion. Developer desires to redevelop a 44,000 sq ft. structure currently listed on the National Register of Historic Places. The significant financial investment is seen by the City as a catalytic-type investment that will lead to additional private redevelopment efforts within the low-income community.

Section 3.03 Affirmative Action.

(a) The City's Human Relations Department is responsible for establishing MBE/WBE goals and the Developer will make good faith efforts to achieve the goals established by the Human Relations Department for professional and construction services. The Developer has previously submitted its estimated professional and construction services budget to the Human Relations Department for establishing goals, and the goals are incorporated herein by reference.

(b) The Developer agrees that all compliance reporting will be submitted electronically. This reporting will be for both contract payments to subcontractors and contract payments to MBE/WBE firms. Developer agrees to utilize forms provided by City for any non-electronic submittals required for the MBE/WBE Program.

(c) Additional Provisions. Developer agrees to the following:

i. Developer will comply fully with the City's Minority and Women's Business Enterprise Program (as codified in Chapter 3, Article IV, Divisions 2 and 3 of the City's

Code of Ordinances) and with the HRD Instructions for Tax-Incentivized Construction Contracts, a copy of which is attached hereto as **Exhibit D**.

ii. Developer will allow the City's Human Relations Department (or its designee) to monitor the MBE/WBE achievement levels through reporting and onsite monitoring. This includes access to all books and records of Developer at reasonable times.

iii. If the Developer fails to make good faith efforts to achieve the goals for MBE/WBE, the City could sustain damages, the exact extent of which would be difficult or impossible to ascertain. Therefore, in order to liquidate those damages, the Developer could be liable for Liquidated Damages as provided in the HRD Instructions for Tax-Incentivized Construction Contracts (**Exhibit D**). Such determination shall be subject to the provisions of the appeal procedure outlined in Chapter 3, Article IV, Division 2 of the City's Code of Ordinances.

ARTICLE IV

FINANCING AND INCENTIVES FOR DEVELOPMENT PROJECT

Section 4.01 Parties.

The City agrees to work in good faith with Developer to administer Developer's applications for receipt of qualifying incentives.

Section 4.02 Incentives. Developer, in good faith, if applicable, shall negotiate to obtain tenant(s) that will promote the highest public purpose and will serve as a catalyst for additional investment and development surrounding the Project Area. The City, in good faith, agrees to support Developer in capturing certain tax revenues for reimbursements as follows:

(a) Reimbursement.

(i) In order to make possible the Development Project and to support the resulting economic development, the City agrees, subject to the annual appropriation of funds for such purposes and its AdvanceKC economic incentives policies and compliance with statutory processes, to reimburse Developer with the Eligible Reimbursement Funds (defined Section 1.04) generated by the J. Rieger & Co. Expansion up to the Reimbursement Amount (defined Section 1.04) for the Reimbursement Period (defined Section 1.04). Notwithstanding the foregoing, the Developer shall furnish to the City such information, in such format as the City may reasonably require, with respect to net new sales taxes generated within the J. Rieger & Co. Expansion as the City may require for purposes of calculating the amount to be remitted, and the City shall not be required to budget or contribute any sums in the absence of Developer's full compliance.

(ii) Reimbursement Obligations. Subject to the provisions of this Agreement, the City in connection with the Reimbursement assumes the following obligations:

i. City Agreement to Reimburse. The City will, during the Reimbursement Period, pay to the Developer all Eligible Reimbursement Funds (defined Section 1.04) received by the City,

until the Developer has received payment in full of the Reimbursement Amount. Notwithstanding the foregoing, in the event that the Eligible Reimbursement Funds shall generate less than the full Reimbursement Amount during the Reimbursement Period, the City shall not be obligated to fund the difference.

ii. Payment of Reimbursement Amount. The City during the Reimbursement Period shall bi-annually transfer these funds to the Developer within 60 days of receipt of required Sales and Earnings Tax data, subject to certification of expenditures by City of the Project's costs as stated in 4.02(b)(ii)

iii. Sales and Earnings Tax Data – Developer shall furnish to the City bi-annually on July 31 and subsequent January 31, such information in such format as the City may reasonably require with respect to tax revenues generated within the project area as the City may require for purposes of calculating the amount of Eligible Reimbursement Funds to be remitted pursuant to this agreement. Notwithstanding anything herein to the contrary the City shall not be required to budget or contribute any Eligible Reimbursement Funds in the absences of the Developer's full compliance with its obligations under this Agreement.

iii. Tenant Reporting. In connection with this Agreement, if applicable, Developer shall require all tenants to provide the City with access to such parties' sales, earnings, or other appropriate tax returns for economic activities located in or generated by the J. Rieger & Co. Expansion, and shall provide such related information reasonably requested by the City in connection therewith, including certification of the number of employees and total payroll (not to include production of individual income tax returns).

iv. Budget for Contributable Sales Taxes. The City intends, on or before the last day of each City fiscal year, to budget, specifically with respect to this Agreement, money sufficient to fulfill its obligation with respect to the next succeeding fiscal year. City's obligation to budget such funds shall expire at such time as the Reimbursement Period shall have expired.

v. Annual Budget Request. The chief executive of the City or other officer of the City at any time charged with the responsibility of formulating budget proposals shall include in the budget proposals submitted to the Council, in each fiscal year in which this Agreement shall be in effect, a budgeted amount to be paid under this Agreement for the ensuing fiscal year; it being the intention of the City that the decision to budget or not to budget under this Agreement shall be made solely by the respective governing body and not by any other official of the City. The City agrees, subject to the provisions above respecting the failure of the City to budget, to contribute in accordance with this Agreement.

vi. Restriction on Use of Proceeds. Notwithstanding any provision of this Agreement to the contrary, the parties acknowledge and agree that the Eligible Reimbursement Funds may include sums generated from sales taxes that are restricted in their use to such purposes as are included within the terms of those statutes and ordinances authorizing the imposition and collection of such sales taxes. In the event that a court of competent jurisdiction shall have finally determined that any portion of the Eligible Reimbursement Funds may not lawfully be made for the purposes of reimbursing or paying certain costs related to the implementation of the Development Project, then the City shall not be required to budget or contribute such portions.

vii. Eligible Reimbursement Funds to Constitute Current Expense. The parties acknowledge and agree that the Eligible Reimbursement Funds shall constitute currently budgeted expenditures of the City, and shall not in any way be construed or interpreted as creating a liability or a general obligation or debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of general credit, tax revenues, funds or money of the City. The City's payment obligations under this Agreement shall be from year to year only, and shall not constitute a mandatory payment obligation of the City in any ensuing fiscal year beyond the then current fiscal year.

(b) Certification of Costs - Notwithstanding anything herein to the contrary, no cost or expense incurred by Developer shall be eligible for reimbursement under this Agreement, and no such cost or expense shall be payable to Developer under this Agreement, until such cost or expense has been certified pursuant to the Certification of Costs and Reimbursement Policy attached hereto as **Exhibit E**. The costs of such Cost Certification may be paid by Developer or, in the alternative, paid by City in the form of a deduction against those amounts otherwise contributable to Developer pursuant to this Agreement.

(c) Reimbursement Cap.

The City's contribution shall not exceed One Million Four Hundred and Fifty Thousand Dollars (\$1,450,000.00) in the aggregate unless the City shall have agreed otherwise in writing.

(d) Incentives Generally.

Notwithstanding anything in this Agreement to the contrary, any and all incentives that may be extended to the Development Project shall be extended consistent with the City's AdvanceKC economic incentives policies and procedures and compliance with statutory processes. In the event that such policies and procedures indicate that an amount less than the Reimbursement Amount is warranted, the parties shall execute an amendment to this Agreement for purposes of documenting such lesser amount or Developer may elect, in writing, to terminate this Agreement. In the event that Developer shall fail to execute any amendment as provided for in this paragraph within thirty (30) calendar days of being

requested to do so by City, in writing, Developer shall be deemed to have exercised its right to terminate.

Section 4.03 Permitting and Approval Assistance. From and after the Effective Date of this Agreement, City shall assist and support the Developer in obtaining all permits and approvals, that are sought by the Developer in connection with the Development Project, including the following:

(a) Providing good faith review and process of all City approvals, consents and permits relating to the Development Project, specifically including, without limitation, codes review and building permit issuance.

(b) Assisting Developer with the processing of the zoning and platting (If requested by Developer) for the Development Project. By execution of this Agreement, the City directs the City Manager, Director of City Planning and Development, and encourages the City's development agencies to proceed in good faith with the review and approval process for all zoning, platting and permitting, inspections and review and approval for the Development Project.

(c) The City shall exercise good faith and best efforts, in performing its obligations under this Agreement.

(d) The City's liaison for these purposes shall be the City Manager and/or his designee.

Section 4.04 Private Capital.

The Developer will be responsible for obtaining private capital in an amount sufficient, when added to the Eligible Reimbursement Funds, to finance the Development Project. The Developer, along with other equity partners and participants, will be prepared to fund the amount of private equity necessary to complete the financing of the Development Project (the "**Private Equity**").

Section 4.05 Community Improvement District.

Developer, in cooperation with the City, may request that the City Council form a political subdivision Community Improvement District ("**CID**") under the authority of Sections 67.1401 to 67.1571, Revised Statutes of Missouri (the "**CID Act**"). Following the Effective Date of this Agreement, Developer may file a Community Improvement District Petition (the "**Petition**") with the City of Kansas City, Missouri in accordance with Section 67.1421, Revised Statutes of Missouri. The Petition would authorize the public and private improvements to be constructed as part of the Development Project and the CID Sales Tax as follows:

(a) The CID may be formed as a political subdivision, with all statutory powers, may include, but not limited to the following:

(i) Facilitating efforts of the parties to complete office facilities, transportation and infrastructure improvements, development and redevelopments associated with and including the Development Project;

(ii) Partnering with parties to expand office and other uses providing new good jobs for citizens of the City of Kansas City;

(iii) Levying a 1% sales tax to generate revenues to be used for public improvements and the maintenance and operation of transportation facilities;

(iv) Operating any portion of the Project; and

(v) Partnering with the City on construction and development of other economic development area projects.

(b) The CID shall be governed by a Board of Directors, in accordance with Section 67.1451 of the Revised Statutes of Missouri.

(c) If the Petition is granted, the Board of Directors of the CID may adopt a resolution which would impose a district sales and use tax at a maximum rate of one percent (1%) on all retail sales made in the CID which are subject to taxation pursuant to Sections 144.010 to 144.525 of the Revised Statutes of Missouri (the “**CID Sales Tax**”). The CID Sales Tax would be collected by the Missouri Department of Revenue (the “**DOR**”), as provided in the CID Act. The CID Sales Tax shall remain in effect for so long as any public incentives are being provided to the Development Project.

(d) The CID shall cooperate with the City and the State of Missouri with respect to all functions incident to the administration and enforcement of the CID Sales Tax, pursuant to the CID Act and this Agreement.

(e) The CID shall distribute the CID Sales Tax revenues according to the priority to be set forth in the Petition.

ARTICLE V

ADDITIONAL OBLIGATIONS OF PARTIES

Section 5.01 Obligations of Developer.

Developer agrees that it will undertake the following actions:

(a) Development of the Project. The Developer is to finance, design, develop, construct and cause to be operated and maintained the Development Project pursuant to this Agreement.

(b) Financing. The Developer is responsible for obtaining and negotiating the terms of the Private Equity. Developer is prepared, subject to the approval of Incentives, to obtain debt financing and fund the amount of Private Equity necessary to complete the Development Project.

(c) CID. Developer will prepare and submit all necessary applications, forms and materials required for the formation of the Community Improvement District as outlined in Section 4.05.

(d) Good Faith and Best Efforts. Developer shall exercise good faith and best efforts in performing its obligations under this Agreement.

ARTICLE VI

TERM AND TERMINATION

Section 6.01 Term.

This Agreement shall become effective on the Effective Date, and shall remain in full force and effect until the earlier of payment of all Eligible Reimbursement Funds or twenty (20) years from the Effective Date, unless otherwise terminated by, or deemed terminated by, Developer pursuant to Section 4.02(c).

ARTICLE VII

DEFAULT AND REMEDIES

Section 7.01 Event of Default.

A party (the “**Defaulting Party**”) to this Agreement shall be in default of this Agreement upon the happening of any of the following events if within thirty (30) days after notice of the happening of any of the following events by any other party to this Agreement (a “**Non-Defaulting Party**”) to the Defaulting Party, the Defaulting Party shall not have cured such default or commenced such cure and be diligently pursuing the same if such cure would reasonably take longer than said thirty (30) day period (each, an “**Event of Default**”):

- (a) Any party does not comply with the provisions of this Agreement, in that a party shall do, permit to be done, or fail or omit to have done anything contrary to or required of it by this Agreement.
- (b) The suspension or revocation of any act, power, license, permit or authority that has the effect of preventing and stopping Developer or City from performing under this Agreement;
- (c) The failure of any party to perform its materials obligations under this Agreement.

Section 7.02 Breach; Compliance.

Upon an Event of Default, a Non-Defaulting Party shall have the option to pursue any one or more or all of the following remedies, without notice or demand whatsoever, except as otherwise provided for herein:

- (a) The Non-Defaulting Party, at its option, may terminate this Agreement and the Non-Defaulting Party shall be entitled to pursue any other rights or remedies at law or in equity as a result of such Event of Default.
- (b) A Non-Defaulting Party may maintain this Agreement in full force and effect, in which case the Parties shall perform all of their respective obligations hereunder, subject to a Non-Defaulting Party’s right to elect to terminate this Agreement at any time, provided any such Event of Default remains uncured.
- (c) A Non-Defaulting Party may do whatever a Defaulting Party is obligated to do under the terms of this Agreement, in which event the Defaulting Party shall reimburse the Non-Defaulting Party on demand for any expenses, including, without limitation, reasonable attorney’s

fees, which the Non-Defaulting Party may incur and thus effecting satisfaction and performance of, or compliance with, the Defaulting Party's duties and obligations under this Agreement.

(d) Pursuit by the Non-Defaulting Party of any of the foregoing remedies shall not preclude pursuit by the Non-Defaulting Party of any other remedies herein provided or any other remedies provided by law (all such remedies being cumulative), nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver or any amounts then due to the Non-Defaulting Party hereunder or of any amounts accruing to the Non-Defaulting Party by reason of the violation of any of the terms, provisions, and covenants herein contained. No waiver by the Non-Defaulting Party of any violation or breach of any of the terms, provisions or covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions or covenants herein contained. Forbearance by the Non-Defaulting Party in enforcing one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of such default or of the Non-Defaulting Party's right to enforce any such remedies with respect to any such default or any subsequent default. In case suit be brought because of the breach of any agreement or obligations contained in this Agreement on the part of Developer or the City to be kept or performed, and a breach is established, the prevailing party shall be entitled to recover all expenses incurred in connection with such suit, including reasonable attorney's fees.

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 any 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 a party shall apply to obligations beyond those expressly waived.

ARTICLE VIII

MISCELLANEOUS

Section 8.01 Acceptance, Approval, Consent of City.

Any consent, approval or acceptance by the City permitted or required pursuant to this Agreement, may be exercised in the reasonable discretion of the City Manager without further City Council approval, unless approval by the City Council is otherwise required by any provision of law in effect on the Effective Date of this Agreement.

Section 8.02 Modification.

The terms, conditions and provisions of this Agreement can be neither modified, amended nor eliminated, except by written agreement of each signed by the Developer and the City. The City Manager shall have the authority to execute any amendment to this Agreement, and any other documents required or contemplated by this Agreement, without further approval of the City Council, provided such amendment does not result in an additional material monetary obligation of the City.

Section 8.03 No Gratuities and Kickbacks.

The provisions of Kansas City Municipal Code Section 3-303 prohibiting gratuities to City employees, and kickbacks by contractors, and Sections 3-307 and 3-309, imposing sanctions and penalties for violations shall apply to this Agreement.

Developer: Jacob Rieger & Company, LLC
Attn: Andy Rieger
2700 Guinotte Ave
Kansas City, Missouri 64120
Email: Andy@JRiegerCo.com

Section 8.06 Validity and Severability.

(a) 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 the State 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 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.

(b) 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.

Section 8.07 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri. This Agreement sets forth the entire agreement between the Parties in regard to the subject matter hereof and supersedes any and all prior agreements between the Parties in regard to the subject matter hereof.

Section 8.08 Time is of the Essence.

Time and exact performance are of the essence of this Agreement. Developer and City agree to diligently seek to finalize this agreement so Developer can confidentially share with financing parties.

Section 8.09 Binding Effect; Entirety.

(a) Binding Effect. This Agreement shall be binding upon the Parties hereto and upon their assigns, transferees and successors in interest, provided no party may assign this Agreement or the rights or obligations hereunder without the express written consent of the other Parties.

(b) Entirety. This Agreement sets forth the complete understanding of City and Developer and supersedes all previous negotiations, representations and agreements between them and their agents.

Section 8.10 Multiple Counterparts.

This Agreement may be executed in multiple counterpart copies, each of which will be considered an original and all of which shall constitute but one and the same instrument, binding on all Parties hereto, even though all the Parties are not signatory 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.

Section 8.11 Continued Cooperation of Parties.

The City and Developer agree, upon the request of another party, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications and provide such other information as may be reasonably requested, necessary or appropriate to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent and to give full force and effect to the intent of the provisions, terms and covenants of this Agreement.

Section 8.12 Further Actions.

The City and Developer acknowledge that this Agreement contemplates the execution of further agreements, that the objectives of this Agreement necessitate such further agreements being executed, that the purpose and intent of this Agreement will be frustrated, to the detriment of City and Developer, if such further actions do not occur as contemplated herein, and that the contractual expectations arising under this Agreement will be impaired unless such further actions shall proceed on a timely basis pursuant to the schedules established by this Agreement. Therefore, the City Manager is authorized and directed, without further City Council approval, to take such further actions as are consistent with the realizing of the objectives of this Agreement, including, but not limited to, executing any further document, however denominated, which might be necessary or beneficial in the implementation of this Agreement.

[Signature Pages Follow]

CITY OF KANSAS CITY, MISSOURI

By: _____

Attest:

Print Name: Troy Schulte

Title: City Manager

Marilyn Sanders, City Clerk

Approved as to form:

Assistant City Attorney

STATE OF MISSOURI)
)
COUNTY OF JACKSON)

On this ____ day of _____, 2018, before me, a Notary Public in and for said state, personally appeared **Troy Schulte**, the City Manager of the City of Kansas City, Missouri, and Marilyn Sanders, City Clerk of the City of Kansas City, Missouri, who are personally known to me to be the same persons who executed, as officials, the within instrument on behalf of said City, and such persons duly acknowledged to me that they executed the same for the purposes herein stated, and that the execution of the same was the free act and deed of the City.

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

Notary Public

My Commission Expires:

JACOB RIEGER & COMPANY, LLC

By: _____

Print Name: Andy Rieger

Title: Managing Officer

STATE OF MISSOURI)
)
COUNTY OF JACKSON)

On this ___ day of _____, 2018, before me, a Notary Public in and for said state, personally appeared **Andy Rieger**, the Managing Officer of Jacob Rieger & Company, LLC, personally known to me to be the same person who executed the within instrument on behalf of said Jacob Rieger & Company, LLC, and such person duly acknowledged to me that he executed the same for the purposes herein stated, and that the execution of the same was the free act and deed of Jacob Rieger & Company, LLC.

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

Notary Public

My Commission Expires:

INDEX OF EXHIBITS

- A Site Plan
- B Legal Description
- C Eligible Reimbursement Tax Sources
- D HRD Instructions for Tax-Incentivized Construction Contracts

EXHIBIT B**Project Parcels - Legal Descriptions**

<u>Address</u>	<u>Parcel Number</u>	<u>Notes/Description</u>	<u>Legal Description</u>
517 N Prospect	JA13920060200000000	Parking Lot: NW corner	/HOWARD & SCOTT'S ADD ALL LOTS 22 & 23 BLK 2
515 N Prospect	JA13920061800000000	Parking Lot: Middle West	515 N PROSPECT HOWARD & SCOTT'S ADD LOTS 20 & 21 BLK 2
513 N Prospect	JA13920060400000000	Parking Lot: SW corner	513 N PROSPECT HOWARD & SCOTT'S ADD ALL LOTS 18 & 19 BLK 2
518 N Montgall	JA13920060100000000	Parking Lot: NE corner	518 N MONTGALL/VAC LOT HOWARD & SCOTT'S ADD LOT 1 BLK 2
516 N Montgall	JA13920061400000000	Parking Lot: Middle East top	516 N MONTGALL/VAC LOT HOWARD & SCOTT'S ADD LOT 2 BLK 2
512 N Montgall	JA13920061300000000	Parking Lot: Middle East bottom	512 N MONTGALL/VAC LOT HOWARD & SCOTT'S ADD LOTS 3 & 4 BLK 2
510 N Montgall	JA13920061200000000	Parking Lot: SE corner	/LOTS 5 & 6 BLK 2 HOWARD & SCOTT'S ADD
507 N Montgall	JA13920011000000000	J. Rieger & Co. Expansion	HOWARD & SCOTT'S ADD---LOTS 1-21 BLK 1 & A PORTION OF VAC N-S & E-W ALLEYS MORE PARTICULARLY DAF: BEG SW COR SD BLK 1 TH N 02 DEG 19 MIN 51 SEC E 270.74' TH N 74 DEG 57 MIN 36 SEC E 214.46' TH S 02 DEG 43 MIN 38 SEC W 270.79' TH S 74 DEG 49 MIN 08 SEC W 212.66' TO POB (KNOWN AS LOT 1 PER CERT SURV BK 15 PG 12)

EXHIBIT C

Eligible Reimbursement Tax Sources

Taxes that make up the Eligible Reimbursement Sources:

Tax Sources for Reimbursement	January 1, 2019 – December 31, 2019 Year 1	Beginning January 1, 2020 Years 2-20
Total Sales Tax Sources ^	2.000%	1.500%
KCMO Earnings Tax *	1.000%	1.000%

The City reserves the right to fund the amount listed above from whichever levy sources it sees fit; a substitution of an alternative source may be made by the City at any time.

^ denotes a portion of the amount collected by KCMO under MO Tax ID 222-54-064, subject to change or additions by Developer

* denotes the total amount collected by KCMO under FEIN 46-2870823, subject to change or additions by Developer

EXHIBIT D

HRD INSTRUCTIONS FOR TAX-INCENTIVIZED CONSTRUCTION CONTRACTS

PART A. MINORITY/WOMEN BUSINESS ENTERPRISE REQUIREMENTS

I. City's M/WBE Program.

- A. These Human Relations Department ("HRD") Forms & Instructions are incorporated into the Contract between Developer and City.
- B. The City has adopted a Minority/Women Business Enterprise ("M/WBE") Program (Sections 3-421 through 3-469, Code of Ordinances) (the "Program") to implement the City's policy of supporting the fullest possible participation in tax-incentivized contracts and change orders of firms owned and controlled by minorities and women. Each contract may have an MBE and/or WBE goal for participation. An MBE or WBE goal is a numerical objective the City has set for the contract. Goals are stated as a percentage of contract dollars. For example, if an MBE goal for a contract is 10% and Developer contracts for \$100,000 in improvements, the goal for MBE participation would equal \$10,000.
- C. Although it is not a requirement that a Developer in fact meet or exceed both the MBE and WBE goals, it is a requirement that a Developer objectively demonstrate to the City that good faith efforts have been made to meet the goals. Developers must attempt to meet both the MBE and WBE goals. Under circumstances where it is reasonably anticipated that underutilization will occur, a Developer must request a waiver of the M/WBE goals.
- D. The following HRD Forms are incorporated by reference and must be used for M/WBE utilization or closeout:
 1. Contractor Utilization Plan/Request for Waiver (HRD Form 8); and
 2. Letter of Intent to Subcontract (HRD Form 00450.01); and
 3. Construction Contractor Employee Identification Report (HRD Form 0485.04); and
 4. Timetable for M/WBE Utilization (HRD Form 10); and
 5. Request for Modification or Substitution (HRD Form 11); and
 6. Contractor Affidavit for Final Payment (Form 01290.14); and
 7. Subcontractor Affidavit for Final Payment (Form 01290.15).

IMPORTANT: A certified M/WBE firm is a firm that has been certified by the City's Human Relations Department as such. The City gives M/WBE credit for a Developer's use of City certified M/WBEs. A M/WBE firm must be certified before the date on which the CUP is submitted. Certified MBEs and WBEs are listed in the M/W/DBE Kansas City MO Online Directory, which is available on the City's website at www.kcmo.gov. Before a Developer submits a CUP, the Developer is responsible to contact HRD and consult the Directory to make sure any firm proposed for use for M/WBE participation is currently certified.

II. Required Submissions Following Application Approval.

- A. Developer must submit the following documents, no later than ninety (90) days after the date upon which the City Council adopts an ordinance authorizing tax abatements for the Redevelopment Project and, in any event, prior to commencement of the Project:
 1. **Contractor Utilization Plan/Request for Waiver (HRD Form 8).** This form states a Developer's plan to use specific M/WBEs in the performance of the contract. The form must be completed with the following information:

- a. The work to be performed by each M/WBE and the amounts each is to be paid for the work; and
- b. The name, address, race or ethnic origin, gender and employer identification number or social security number of each M/WBE that will perform the work.
- c. An automatic request for waiver is inherent in the form when a Developer anticipates that it will not meet or exceed the M/WBE goals for the contract but believes that it has made good faith efforts to meet or exceed the goals. If a waiver is requested, HRD will examine the Developer's documentation of good faith efforts and make a recommendation to grant or deny the waiver.

NOTE: HRD will recommend a waiver be granted *only* if the Developer has documented proof of good faith efforts to obtain M/WBE participation.

2. **Letter(s) of Intent to Subcontract (HRD Form 00450.01).** A Letter of Intent (LOI) must be provided from each M/WBE listed on the Contractor Utilization Plan (CUP). These LOIs verifies that the M/WBE has agreed to execute a formal agreement for the scope(s) of work to be performed and the price agreed upon for the work. This form must be submitted with the CUP.
3. **Construction Contractor Employee Identification Report (HRD Form 0485.04).** This form states the Developer's General Contractor's company-wide personnel/staff at the time of submittal. This form lists the number of employee(s) by name, address, title, gender, and ethnicity. *See* Part B of these instructions for details.
4. **First Source Job Order Form** (available at www.feckc.org). *See* Part B of these instructions for details.

III. Required Monthly Submissions during term of Contract.

A. Developer must submit the following document on a monthly basis during construction of the project:

1. M/WBE Monthly Utilization Report.

Developer shall submit this report through the B2GNow Diversity Management System (B2GNow). HRD Form 00485.01 may be submitted in lieu of the B2GNow system under certain conditions. Reports must be submitted to the Director by the 15th of each month. Failure to submit timely reports may result in delays in processing of current and future tax-incentive approvals.

IV. Required Submittals Upon Completion of the Project.

A. Developer must submit the following documents when project work is complete:

1. Contractor/Developer Affidavit for Final Payment (Form 01290.14)
2. Subcontractor Affidavit(s) for Final Payment (Form 01290.15)
3. Final B2GNOW Monthly Contract Audit Report with all payment audits confirmed.

V. Additional Submittals.

A. Developer must submit the following documents *when* requested by City:

1. Timetable for M/WBE Utilization (HRD Form 10).
2. Affirmative Action Workforce Form (HRD Form 0801-07)
3. Documentation of good faith efforts.

B. Developer may be required to make additional submittals during the term of the Contract, including

Request for Modification or Substitution (HRD Form 11). Refer to Section VIII, *Modification of the Contractor Utilization Plan or Substitution of an M/WBE*, for additional instructions on when this form must be submitted.

VI. M/WBE Participation Credit.

- A. The following shall be credited towards achieving the goals:
1. The total contract dollar amount that a Developer has paid or is obligated to pay to its general contractor or a subcontractor that is a qualified M/WBE, except as otherwise expressly provided for herein.
 2. Twenty-five percent (25%) of the total dollar amount paid or to be paid by a Developer to obtain supplies or goods from a supplier who is a qualified M/WBE.
 3. Ten percent (10%) of the total dollar amount paid or to be paid by a Developer to obtain supplies or goods from a supply broker who is a qualified M/WBE.
 4. One hundred percent (100%) of the total dollar amount paid or to be paid by a Developer to a manufacturer of construction supplies who is a qualified M/WBE.
 5. Subcontractor participation with a lower tier M/WBE subcontractor using one of the above methods of participation.
- B. **NO CREDIT**, however, will be given for the following:
1. Participation by a M/WBE that is not certified by the City of Kansas City Missouri.
 2. Participation in a contract by a M/WBE that does not perform a commercially useful function as defined by the Program; and
 3. Any portion of the value of the contract that a M/WBE subcontractor subcontracts back to the Developer or the Developer's General Contractor or any other contractor who is not a qualified M/WBE; and
 4. A M/WBE Developer's own participation in its contract with the tax-incentive agency; and
 5. Materials and supplies used on the contract unless the M/WBE is responsible for negotiating the price, determining quality and quantity, ordering the materials and installing (where applicable) and paying for material itself; and
 6. Work performed by a M/WBE in a scope of work other than that in which the M/WBE is currently certified.
 7. In determining the amount actually paid to qualified M/WBEs, no credit will be given for the portion of participation that was not approved by the Director; unless the Director determines that the Developer acted in good faith.

VII. Methods for Securing Participation of M/WBEs and Good Faith Efforts.

- A. In the event a Developer does not meet M/WBE goals or anticipates that it will not meet M/WBE goals, the efforts taken by the Developer will be evaluated to determine whether good faith efforts were made to secure participation. Mere administrative effort to comply with the factors herein does not constitute good faith efforts alone. An analysis will be completed to determine if a Developer has in fact made good faith efforts to secure M/WBE participation.
- B. **Definition of Good Faith Efforts.** A Developer is encouraged to make good faith efforts to achieve the M/WBE goals. Good faith efforts are efforts that, given all relevant circumstances, a Developer is actively and aggressively seeking to meet the goals can be reasonably expected to make. Good faith efforts must be made before the Developer submits a CUP.

- C. In evaluating good faith efforts, the Director of HRD will consider whether the Developer has performed the following, along with any other relevant factors:
1. **Advertisement.** Advertised opportunities to participate in the contract in general circulation media, trade and professional association publications, small and minority business media, and publications of minority and women's business organizations in sufficient time to allow M/WBE firms to participate effectively.
 2. **Notice.** Provided notice to a reasonable number of minority and women's business organizations of specific opportunities to participate in the contract in sufficient time to allow M/WBE firms to participate effectively.
 3. **Direct Contact.**
 - a. Sent written notices, by certified mail or facsimile, to qualified M/WBEs soliciting their participation in the contract in sufficient time to allow them to participate effectively.
 - b. Attempted to identify portions of the work for qualified M/WBE participation in order to increase the likelihood of meeting the goals, including breaking down contracts into economically feasible units. A Developer should send letters by certified mail or facsimile to those M/WBE contractors identified by HRD listed in those categories, which are in those subcontractors' scope of work.
 - c. The portion of work for which a proposal from an M/WBE is being solicited shall be as specific as possible. Letters which are general are not acceptable.
 4. **Contact with HRD.** Requested assistance in achieving the M/WBE goals from the Director and acted on the Director's recommendations.
 5. **Conference.** Conferred with qualified M/WBEs and explained the scope and requirements of the work for which their bids or proposals were solicited.
 6. **Negotiations.** Attempted to negotiate in good faith with qualified M/WBEs to perform specific subcontracts; not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Documentation of good faith negotiations with M/WBEs from whom proposals were received in an effort to reach a mutually acceptable price should include:
 - a. Names, addresses and telephone numbers of M/WBEs that were contacted and date of contact;
 - b. The information provided to M/WBEs regarding the plans and specifications for portions of the work to be performed by them;
 - c. The reasons no agreement was reached with any M/WBE, including the basis for any rejection (i.e., availability, price, qualifications or other);
 - d. Descriptions of attempts to provide technical assistance to M/WBEs to obtain necessary insurance and/or to obtain necessary supplies at the best prices available.

NOTE: Upon request by the City, a Developer will be required to give the City documentation to prove that it made good faith efforts. The Developer will be contacted by the City with further instructions if documented proof of good faith efforts is needed.

VIII. Modification of the Contractor Utilization Plan or Substitution of an M/WBE.

- A. After a CUP has been approved, a Developer or its General Contractor may wish to substitute a MBE and/or WBE or request that the amount of M/WBE participation listed in its CUP be modified. If so, Developer must file a Request for Modification or Substitution (HRD Form 11)

prior to actual substitution and within a reasonable time after learning that a modification or substitution is necessary. The Director may approve substitutions or modifications.

Upon approval, the modifications and substitutions will become an amendment to the CUP. Modifications or substitutions may be approved when:

1. The Director finds that the Developer made and provided evidence of good faith efforts to substitute the M/WBE listed on the CUP with other certified M/WBEs for the scope of work or any other scope of work in the contract; AND
 2. The Director also finds one (1) of the following:
 - a. The listed M/WBE is non-responsive or cannot perform; or
 - b. The listed M/WBE has increased its previously quoted price to the Developer or contractor without a corresponding change in the scope of the work; or
 - c. The listed M/WBE has committed a material default or breach of its contract with the Developer; or
 - d. Requirements of the scope of work of the contract have changed and render subcontracting not feasible or is considered not feasible at the levels required by the goals established for the contract; or
 - e. The listed M/WBE is unacceptable to the contracting tax-incentive agency; or
 - f. The listed M/WBE thereafter had its certification revoked; or
 - g. The Developer has not attempted intentionally to evade the requirements of the Program and it is in the best interests of the City to allow a modification or substitution.
- B. A modification shall not be made unless the modification or substitution has first been requested and approved by the Director. Once a modification has been approved, a *Construction Contractor Employee Identification Report* (HRD Form 0485.04) must be submitted at least ten (10) days prior to the commencing work on a tax-incentivized contract by the newly approved subcontractor.

IX. Access to Documents and Records; Cooperation with Surveys & Studies.

- A. By submitting an application with a tax-incentive agency, Developer agrees to permit the City, its duly authorized agents or employees, access at all reasonable times to all books and business records of Developer as may be necessary to ascertain compliance with the requirements of this document and the Act, within ten (10) days of the date of the written request.
- B. By submitting an application, Developer agrees to cooperate with the contracting tax-incentive agency and HRD in studies and surveys regarding the M/WBE program.

X. Miscellaneous.

- A. In the event of any conflict between this document and the Program, the provisions of the Program shall control. The terms used in this document are defined in the Program.
- B. The City Council may waive the requirements of this document and the Program if the City Council determines a waiver is in the best interests of the City.
- C. The Director may grant Developers time extensions for submission of CUP and LOIs.
- D. A Developer shall bear the burden of proof with regard to all issues on appeal.

XI. Liquidated Damages

- A. If Developer fails to achieve the M/WBE goals stated in its CUP or fails to illustrate good faith efforts to achieve the M/WBE goals stated in its CUP, the City could sustain damages, the exact extent of which would be difficult or impossible to ascertain. Therefore, if the payment of liquidated damages by Developer is deemed warranted pursuant to Section XI.B below, in order to liquidate those damages, the monetary difference between the amount of the M/WBE goals set forth in the Contractor Utilization Plan, as amended, and the amount actually paid to qualified MBEs and WBEs for performing a commercially useful function could be due from the Developer as liquidated damages.
- B. Liquidated damages will not be imposed when, for reasons beyond the control of the Developer, the M/WBE participation stated in the CUP, as amended and approved by the Director is not met.

PART B. CONSTRUCTION EMPLOYMENT PROGRAM REQUIREMENTS
(THIS PART IS APPLICABLE TO CONTRACTS ESTIMATED TO REQUIRE MORE THAN 800
CONSTRUCTION LABOR HOURS AND COSTING IN EXCESS OF \$324,000.00.)

I. City's Construction Employment Program.

- A. The City has adopted a Construction Employment Program (Sections 3-501 through 3-525, Code of Ordinances) (the "Program") to implement the City's policy of supporting the fullest possible utilization of minority and women workers in the construction industry. A person or firm who is awarded a contract to construct, reconstruct, improve, enlarge or alter any fixed work that is estimated by the City prior to solicitation as requiring more than 800 construction labor hours, has an estimated costs that exceeds \$324,000.00, and involves the expenditure of public funds, is subject to company-wide construction employment goals. The minimum goals are currently set at 10% for minorities and 2% for women, but public recognition may be provided if the bidder achieves at least twice the minimum participation. The successful bidder may meet these company-wide goals by counting the bidder's utilization of minorities and women throughout the Kansas City metropolitan statistical area.
- B. These Human Relations Department ("HRD") Forms & Instructions are part of the Contract documents. Developer agrees, as a material term of the contract, to carry out the City's Construction Employment Program by making good faith efforts to utilize minority and women workers on the job sites to the fullest extent. Developer agrees that the Program is incorporated into this Contract and agrees to follow the Program. Although it is not a requirement that a Developer in fact meet or exceed the construction employment goals to receive approval from HRD, a Developer not doing so is required to objectively demonstrate to HRD that good faith efforts have been made.

II. Required Monthly Submissions during Term of Contract.

- A. The following HRD Forms are to be used for Construction Employment Program submittals:
 - 1. Project Workforce Monthly Report (HRD Form 00485.02) This report is contract specific. Two copies of this report must be submitted to the City by the 15th of each month. The first copy will be utilized to report the general contractor's workforce compliance data with regard to this Contract. The second copy will be utilized to report consolidated workforce compliance data for every subcontractor retained by general contractor on this Contract.
 - 2. Company-Wide Workforce Monthly Report (HRD Form 00485.03). This report is not contract specific; it is used to report on the utilization of females and minorities, by trade, company-wide. Two copies of this report must be submitted to the City by the 15th of each month. The first copy will be utilized to report the general contractor's workforce compliance data with regard to every contract (both privately and publicly funded) general contractor has in progress

throughout the Kansas City metropolitan statistical area. The second copy will be utilized to report consolidated workforce compliance data for every subcontractor retained by general contractor on every contract contractor has in progress throughout the Kansas City metropolitan statistical area

III. Submittal Required for Final Approval.

- A. The last Project Workforce Monthly Report(s) and Company-Wide Workforce Monthly Report(s) shall serve as the final reports and must be submitted before final approval will be made. Contractor shall note the submittal of the final reports by notation in the box entitled "Final Cumulative Report".

IV. Methods for Securing Workforce Participation and Good Faith Efforts

A Developer is required to make good faith efforts to achieve the construction employment goals. If Developer will be unable to secure enough minority and female participation to meet or exceed the construction employment goals, developer must, within a reasonable time after so learning, request a waiver or modification of the goals by the Director of HRD. The Director will examine the request and the documentation of good faith efforts and grant or deny a waiver or modification. The Director will grant a waiver or modification only if the Developer shows a good faith effort has been made to secure minority and female participation.

In evaluating good faith efforts, the Director will consider whether the Developer has performed the following:

1. For those Developers with contractors that are not signatories to a collective bargaining agreement with organized labor:
 - a. Requested in writing the assistance of the Director with respect to efforts to promote the utilization of minorities and women in the workforce and acted upon the Director's recommendations; and
 - b. Advertised in minority or women trade association newsletters and/or minority or women owned media at least 15 calendar days prior to the utilization of any construction services on the city construction contract and used terminology that sufficiently describes the work available, the 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
 - c. Maintained copies of each advertisement and a log identifying the publication and date of publication; and
 - d. Conducted real and substantial recruitment efforts, both oral and written, targeting resident, minority and women community-based organization, schools with a significant minority student population, and training organizations serving the recruitment area; and
 - e. Established and maintained a current list of resident, minority and women recruitment sources, providing written notification to the recruitment sources of available employment opportunities, and maintained records of the notices submitted to the organizations and any responses thereto; and
 - f. Maintained a current file for the time period of the city 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

- g. Promoted the retention of minorities and women in its workforce with the goals of achieving sufficient annual hours for minorities and women to qualify for applicable benefits; and
 - h. Required by written contract that all subcontractors comply with the above efforts.
2. For those Developers with contractors that are signatories to collective bargaining agreements with organized labor:
- a. Supported the efforts of the Joint Apprenticeship Training Committee (JATC), a joint effort of Labor Unions and contractors, or some other apprenticeship program, whose purpose is to recruit, train and employ new workers for a full time career in the construction industry; and
 - b. Requested in writing from each labor union representing crafts to be employed that:
 - i. the labor union make efforts to promote the utilization of residents of the City, minorities and women in the workforce; and
 - ii. the labor union identify any residents of the City, minorities and women in its membership eligible for employment; and
 - iii. the JATC take substantial and real steps to increase the participation of minorities in the union apprenticeship programs in the aggregate to 30% by 2011 and encourage other labor unions to do the same; and
 - iv. the JATC take substantial and real steps to increase the participation of women in the union apprenticeship programs in the aggregate to 5% by 2011 and encourage other labor unions to do the same; and
 - v. the JATC partner with workforce preparedness programs, community based organizations, employment referral programs and school-sponsored programs to accomplish these goals.
 - c. Collaborated 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; and
 - d. Maintained a current file with the name, address, and telephone number of each resident, minority and women 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.
 - e. To the extent the good faith efforts applicable to bidders that are signatories to collective bargaining agreements with organized labor conflict with the procedures implemented by the bidder in order to comply with the relevant bargaining agreement, the bidder shall substitute other procedures as may be approved by the Director in writing.

A Developer will be required to give the City documentation to prove that it made good faith efforts. The Developer will be contacted by the City with further instructions about when this documentation must be submitted.

V. Access to Documents and Records.

- A. Developer agrees to permit the City, its duly authorized agents or employees, access at all reasonable times to all books and business records of Developer as may be necessary to ascertain compliance with the requirements of this document and the Program, within ten (10) days of the date of the written request. Each Developer further agrees to require, if awarded the contract, that

every subcontractor permit the City the same access to documents and records.

- B. Developer agrees to cooperate with the contracting department and HRD in studies and surveys regarding the construction employment program.

VI. Miscellaneous.

- A. A Developer or contractor shall bear the burden of proof with regard to all issues on appeal.
- B. Developer may be required to meet with the Director of HRD or the Director's designee for the purpose of discussing the construction employment program, the Developer's efforts to realize the goals, and any other problems and/or issues affecting the realization of the goals or the program in general.
- C. In the event of any conflict between this document and the Program, the provisions of the Program shall control. The terms used in this document are defined in the Program.

VII. Liquidated Damages; Suspension – Workforce Program.

- A. If Developer fails to achieve the construction employment goals without having previously obtained a waiver or modification of those goals, the City could sustain damages, the exact extent of which would be difficult or impossible to ascertain. These damages are magnified if the failure to abide by the requirements of the Workforce Program is recurring. Therefore, if Developer failed to meet or exceed the minimum employment goals or otherwise establish that Developer is entitled to a waiver liquidated damages could be assessed the sum of three thousand dollars (\$3,000.00).
- B. In addition, if Developer failed to meet or exceed the minimum employment goals or otherwise establish that Developer is entitled to a waiver, Developer could be required to attend mandatory compliance training on Workforce Program compliance

VIII. First Source Program

- A. The City has established a labor force recruiting program intended to assist contractors in identifying, interviewing and hiring qualified job applicants residing in Kansas City, Missouri. While a Developer is not prohibited from hiring persons residing outside Kansas City, Missouri, the recruiting resource provided for herein (the "First Source Program") must be utilized by the Developer subject to the construction employment goals as set forth in this **PART B, CONSTRUCTION EMPLOYMENT PROGRAM REQUIREMENTS**.
- B. The City utilizes the services of the Full Employment Council, Inc., to administer the First Source Program. The Developer shall contact the Full Employment Council within 48 hours execution of the Contract, regardless of whether the Developer has any hiring needs at that time, and within 48 hours following any job vacancy which the Developer reasonably anticipates filling during the term of the Contract. The Developer shall comply with the First Source Program requirements as implemented by the Full Employment Council unless otherwise excused in writing by the Director of HRD for good cause shown. To ensure compliance with the First Source Program, the Developer shall contact those persons at the Full Employment Council responsible for administering the program, which may be identified by visiting their website at www.feckc.org and clicking on the link for KCMO First Source Hiring Program.
- C. The Developer shall require that its general contractor and subcontractors utilize the First Source Program to the same extent that the Developer is required to do so, and shall incorporate the requirements of this Section VIII into every subcontract. Every subcontractor shall be required to contact the Full Employment Council within 48 hours of subcontract award, regardless of whether the subcontractor has any hiring needs at that time, and within 48 hours following any job vacancy which the subcontractor reasonably anticipates filling during the term of their subcontract.

Exhibit E

Certification of Costs and Reimbursement Policy

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 must be observed and complied with as a requirement of any contribution of sales taxes to any development project.

Actions Required Prior to Certification

1. The City Council must have authorized, by ordinance, the execution of the agreement pursuant to which sales tax revenues are to be contributed.
2. The City and the relevant developer must have properly executed an agreement identifying the improvements for which the Developer will incur costs and seek reimbursement. Costs shall not be certified or reimbursed if the Developer is in breach of such agreement, or any other agreement related to the project executed by any public entity pursuant to which real and/or personal property taxes are to be abated or exempted.

Obligation of Developer Prior to Reimbursement

1. Prior to the City's reimbursement of any eligible reimbursable costs, the Developer shall submit two (2) copies of all documentation, as reasonably requested by the City or the Cost Certifier, to substantiate that such costs were incurred.
2. The Developer may be requested to meet with City staff or the Cost Certifier to address questions or concerns that may arise concerning a certification request, in which event, Developer shall attend such meeting.

Obligation of City Staff During Certification Process

1. City staff will forward to the Cost Certifier the certification request as stated by the Developer, along with the original documentation submitted by the Developer and any other information requested by the Cost Certifier.
2. In the event questions or requests for additional documentation arise during the review process, City will maintain a copy of all additional documentation provided to the Cost Certifier.
3. The City shall not consider requests for reimbursement from the Developer (a) that are not submitted pursuant to this policy and (b) that are not submitted to the City within eighteen (18) months from the date such costs were incurred by the Developer.

Cost Certifier's Review and Report: Certification

1. Upon the Cost Certifier's receipt of a request for certification, the Cost Certifier shall review all documentation provided with such request and will issue a report

notating the amount recommended for certification by the City, and any disallowed or questioned costs.

2. City will notify the Developer of disallowed or questioned costs and the reason for the questioned costs included in the recommendation from Cost Certifier. In the event the Developer is able to address the disallowed or questioned costs, City will cooperate with the Developer and Cost Certifier to answer the questions and complete the report.

3. The certification of costs shall be made by the City's Director of Economic Development. Following such certification the amounts so certified shall be distributed in accordance with the terms of the applicable agreement under which the sales taxes are being contributed.

Selection of Cost Certifier

The City shall select the Cost Certifier to be used hereunder from the list of Cost Certifiers providing such services to the Tax Increment Financing Commission of Kansas City, Missouri.

Exhibit F

Certified Costs