

FUNDING AND REIMBURSEMENT AGREEMENT
BETWEEN
THE TAX INCREMENT FINANCING COMMISSION
OF KANSAS CITY, MISSOURI
AND
THE CITY OF KANSAS CITY, MISSOURI,
FOR THE DESIGN AND CONSTRUCTION OF
ROUTE 152 AND N. PLATTE PURCHASE DRIVE INTERCHANGE
AS PROVIDED FOR BY
THE PLATTE PURCHASE DEVELOPMENT PLAN

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FUNDING AND REIMBURSEMENT AGREEMENT

THIS FUNDING AND REIMBURSEMENT AGREEMENT (this “Agreement”) is made as of February ___, 2020, between the TAX INCREMENT FINANCING COMMISSION OF KANSAS CITY, MISSOURI (the “Commission”) and the CITY OF KANSAS CITY, MISSOURI (the “City”), with respect to the following facts and objectives:

A. Pursuant to the Real Property Tax Increment Financing Allocation Act, Section 99.800 RSMo. 1988, et seq., as amended (“Act”), on July 28, 2016, the City Council of Kansas City, Missouri (the “Council”), by way of Ordinance No. 160415, approved the Platte Purchase Development Plan, which has been amended from time to time (the “Plan”).

B. The Plan provides, among other things, for certain public infrastructure improvements to the Route 152 and N. Platte Purchase Drive Interchange (the “Interchange”).

C. The City desires to contribute One Million Seven Hundred Forty-Five Thousand Seven Hundred Thirty-Nine Dollars (\$1,745,739) and such additional amounts that the Commission may be obligated to contribute in connection with that certain Missouri Highways and Transportation Cost Share Agreement, dated _____, 2020 (the “Cost Share Agreement”), by and between the Commission and the Missouri Highways and Transportation Commission (“MODOT”) (collectively, the “City’s Contribution”) toward the costs of design and construction of the Interchange, including costs related to new traffic signals, drainage, pedestrian facilities, turning lanes, ramp widening, pedestrian underpass, lighting, right-of-way acquisition and incidentals, utility relocation, and construction and construction contingencies that relate to the implementation of the Interchange (the “Interchange Costs”).

D. The Commission desires to receive the City’s Contribution and deposit it into an separate segregated account maintained by the Commission and utilized exclusively for contributing funds to MODOT, in connection with the Cost Share Agreement for the purpose of financing the design and construction of the Interchange.

E. Upon the recommendation of the Platte Purchase Development Plan Advisory Committee, the City and the Commission desire to enter into this Agreement for the purpose of funding a portion of the Interchange Costs that the Commission is obligated to fund under the Cost Share Agreement.

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

ARTICLE I DEFINED TERMS

Section 1.1 **Defined Terms.** As used in this Agreement, the following terms shall have the following meanings:

(a) “Act” shall mean Real Property Tax Increment Allocation Redevelopment Act, Mo. Rev. Stat. § 99.800 et seq. (1982, as amended).

(b) “Agreement” shall mean this Funding and Reimbursement Agreement.

(c) “City” shall mean the City of Kansas City, Missouri.

(d) “City’s Contribution” shall mean One Million Seven Hundred Forty-Five Thousand Seven Hundred Thirty-Nine Dollars (\$1,745,739) together with all such additional amounts the Commission may be obligated to pay MODOT, in connection with the Cost Share Agreement, which shall be advanced by the City to the Commission.

(e) “Commission” shall mean the Tax Increment Financing Commission of Kansas City, Missouri.

(f) “Cost Share Agreement” shall mean that certain agreement, dated February __, 2020, by and between the Commission and MODOT for the financing of the design and construction of the Interchange.

(g) “Interchange” shall mean the Route 152 and N. Platte Purchase Drive Interchange, as described on Exhibit A, attached hereto.

(h) “Interchange Account” shall mean an account maintained by the Commission that is separate and apart from the Commission’s Special Allocation Fund, in which the Commission shall deposit the City’s Contribution.

(i) “Interchange Costs” shall mean the costs identified by the Plan that relate to the design and construction of the Interchange, including costs related to new traffic signals, drainage, pedestrian facilities, turning lanes, ramp widening, pedestrian underpass, lighting, right-of-way acquisition and incidentals, utility relocation, and construction and construction contingencies that relate to the implementation of the Interchange, which are more particularly identified on Exhibit B, attached hereto.

(j) “MODOT” shall mean the Missouri Highways and Transportation Commission.

(k) “Plan” shall mean the Platte Purchase Development Plan adopted by the City Council of the City, pursuant to Ordinance No. 160415 on July 28, 2016, and as amended from time to time.

Section 1.2 Undefined Terms. Any capitalized terms undefined by this Article shall the meanings ascribed to them under the Act.

ARTICLE II REPRESENTATIONS

Section 2.1 Representations by the Commission. The Commission represents and warrants to the City as follows:

(a) Organization and Authority. The Commission (i) is a real property tax increment financing commission duly organized and existing under the Act, (ii) has lawful power and authority to enter into, execute and deliver this Agreement, and to carry out its obligations hereunder, and (iii) by all necessary action has been duly authorized to execute and deliver this Agreement acting by and through its duly authorized officers.

(b) No Defaults or Violations. The execution and delivery of this Agreement by the Commission will not result in a breach of any of the terms of, or constitute a default under, any agreement or instrument to which the Commission is a party or by which it or any of its property is bound or its bylaws or any of the constitutional or statutory laws, rules or regulations applicable to the Commission or its property.

(c) No Litigation. To the knowledge of the Commission, there is no litigation or proceeding pending or threatened against the Commission or any other person affecting the right of the Commission to execute or deliver this Agreement or the ability of the Commission to comply with its obligations under this Agreement. Neither the execution and delivery of this Agreement by the Commission, nor compliance by the Commission with its obligations under this Agreement, require the approval of any regulatory body, any parent company, or any other entity, which approval has not been obtained.

Section 2.2 Representations by the City. The City represents and warrants to the Commission as follows:

(a) Organization and Authority. The City (i) is a constitutionally chartered municipal corporation validly existing under the laws of the State of Missouri, (ii) has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder, and (iii) by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(b) No Defaults or Violations. The execution and delivery of this Agreement by the City will not conflict with or result in a breach of any of the terms of, or constitute a default under, any agreement or instrument to which the City is a party or by which it or any of its property is bound, or any of the laws, rules or regulations applicable to the City or its property.

(c) No Litigation. To the knowledge of the City, there is no litigation or proceeding pending or threatened against the City or any other person affecting the right of the City to execute this Agreement or to otherwise comply with the obligations under this Agreement. Neither the execution and delivery of this Agreement by the City, nor compliance by the City with its obligations under this Agreement, require the approval of any regulatory body or any other entity, which approval has not been obtained.

Section 2.3 **Survival of Representations.** All representations of the City and Commission contained in this Agreement or in any certificate or other instrument delivered by the City or the Commission pursuant to this Agreement, or in connection with the transactions contemplated thereby, shall survive the execution and delivery thereof.

ARTICLE III FUNDING AND REIMBURSEMENT OF INTERCHANGE COSTS

Section 3.1 **Deposit by the Commission.** As soon as reasonably practicable after the receipt of the City's Contribution, the Commission shall deposit such funds in the Interchange Account. The Interchange Account shall be segregated on the books and records of the Commission from all other money, revenue, funds, and accounts of the Commission and the money therein, including all interest accruing thereto, shall be utilized to pay the Interchange Costs the Commission is obligated to pay, pursuant to the terms and conditions of the Cost Share Agreement.

Section 3.2 **Covenants of the Commission.** The Commission hereby covenants and agrees:

(a) to pledge all right, title and interest in, to and under, the Interchange Account to the payment of the Interchange Costs the Commission is obligated to pay, pursuant to the terms and conditions of the Cost Share Agreement;

(b) the Commission shall exert reasonable efforts to enter into the Cost Share Agreement; and

(c) in no event shall any portion of the City's Contribution, or any interest accruing thereto, be expended for any purpose other than for the payment of Interchange Costs.

Section 3.3 **Closeout of the Cost Share Agreement.**

(a) In the event that the Commission does not enter into the Cost Share Agreement by _____, 2020, the Commission shall promptly refund the City Contribution, together with all interest accruing thereto, to the City.

(b) Upon final payment of Interchange Costs, the Commission will provide the City a final accounting of all funds expended under the Cost Share Agreement. If the final actual cost of the Interchange is less than the amount estimated on Exhibit B, the Commission shall promptly refund to the City a percentage of the City Contribution that is proportionate to the percentage of actual savings the Commission realizes from its contribution under the Cost Share Agreement.

Section 3.4 **Covenants of the City.** The City hereby covenants and agrees:

(a) the City, subject to appropriation and as soon as reasonably practicable after the execution and delivery of this Agreement, shall remit to the Commission, in immediately available funds, a portion of the City's Contribution in an amount equal to One

Million Seven Hundred Forty-Five Thousand Seven Hundred Thirty-Nine Dollars (\$1,745,739) for deposit into the Interchange Account;

(b) the City shall be responsible for payment of Interchange Costs and all cost overruns in excess of the total amount listed on Exhibit B, and will be solely responsible for any cost incurred for right-of-way acquisition, right-of-way incidentals and utility relocations, if needed;

(c) in the event the City desires to accelerate construction of the Interchange, the City shall make a payment to the Commission in the amount of Five Million Six Thousand Four Hundred Dollars (\$5,006,414) to cover estimated construction costs no later than twenty (20) days prior to MODOT's publishing of the request for proposal for construction of the Interchange; provided that the Commission, upon receipt of any refunded amount by MODOT, will reimburse the City its proportionate share of contribution from such refunded amount within fourteen (14) days of receiving the same;

(d) the City, through its Public Works Department, on behalf of the Commission and in accordance with the Cost Share Agreement, shall be responsible for preliminary engineering of the Interchange, including preparation of the detailed construction plans and project specifications, the solicitation and contract management for the design consultant, the environmental review, and right-of-way plans and utility coordination, if needed (collectively, the "Plans"). The Plans shall be in accordance with and conform to MODOT requirements and follow the Local Public Agency Process and the Plans shall not be changed in concept or scope without prior written approval of MODOT;

(e) in the event right-of-way or utility relocations are required for the Interchange, the City, on behalf of the Commission and in accordance with the Cost Share Agreement, shall (i) acquire right-of-way in accordance with MODOT requirements and will comply with all applicable Federal laws, rules, and regulations, including 42 U.S.C. 4601-4655, the Uniform Relocation Assistance and Real Property Acquisition Act, as amended, and any regulations promulgated in connection therewith and (ii) be responsible for coordinating such utility relocations;

(f) the City, on behalf of the Commission and in accordance with the Cost Share Agreement, shall work directly with the design consultant and MODOT's Kansas City District Project Manager to ensure the Interchange project meets its purposes and need, schedule, intended scope, and budget. MODOT (i) through its Kansas City District Project Manager, will provide an example of scope of services and review, (ii) will provide recommendations for approval of the final scope of services, and (iii) will provide representatives to assist with scoring for the design consultant;

(g) the City, through its Public Works Department, on behalf of the Commission and in accordance with the Cost Share Agreement, shall provide, and submit with the Plans, the survey and legal descriptions required for the conveyances of the approximately 4.8 lane miles of the U.S. 169 outer roads, including Thomas Meyers Drive from Barry Road south to approximately NW 79th Street, NW 79th Street from Thomas Meyers Drive to the south

termini and the west outer road of U.S. 169 south of Shoal Creek Parkway (the “U.S. 169 Outer Roads”), from MODOT to the City;

(h) the City shall enter into a Relinquishment Agreement (#2020-01-55074) between the City and MODOT, pursuant to which the City shall take ownership and maintenance responsibilities of the U.S. 169 Outer Roads;

(i) the City shall enter into a Maintenance Agreement between MODOT and the City, pursuant to which the City shall maintain the pedestrian underpass facilities, continuous lighting and aesthetics, and sidewalks constructed on the Interchange; and

(j) the City, on behalf of the Commission and in accordance with the Cost Share Agreement, shall require the following of any contractor procured by the City to perform work related to the Interchange:

(i) to obtain a no cost permit from MODOT’s district engineer prior to working on MODOT’s right-of-way, which permit shall be signed by an authorized contractor representative; and

(ii) to carry commercial general liability insurance and commercial automobile liability insurance in the amounts and in accordance with the terms of the Cost Share Agreement.

ARTICLE IV MISCELLANEOUS

Section 4.1 Term of Agreement. This Agreement shall be effective from and after its execution and delivery and shall continue in full force and effect until the earlier of (a) the payment of all Interchange Costs the Commission is obligated to pay under the Cost Share Agreement, or (b) the termination of this Agreement in accordance with Section 4.3 (the “Term”).

Section 4.2 Breach; Compliance. If any party (the “Breaching Party”) does not comply with provisions of this Agreement, in that the Breaching Party shall do, permit to be done, or fail or omit to do, or fail or omit to have done, anything contrary to or required of it by this Agreement, and if, within ten (10) days after notice of such default by any one of the other parties (the “Non Breaching Party”), the Breaching 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 ten (10) day period, then the Non Breaching Party may institute such proceedings as may be necessary in its opinion to cure the default including, but not limited to, proceedings to compel specific performance by the Breaching Party.

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 Non Breaching 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 the Non Breaching Party shall apply to obligations beyond those expressly waived.

If any action is instituted by any party hereto to enforce this Agreement, the prevailing party or parties shall be entitled to recover any and all costs, fees and expenses, including reasonable attorneys' fees incurred, in addition to any other damages that may be awarded in that action.

Section 4.3 Termination of Agreement. In the event that prior to contributing funds to MODOT, as contemplated by the Cost Share Agreement, from the City's Contribution (a) the Plan is amended to exclude the Interchange Costs as a reimbursable redevelopment project costs or (b) the Commission is unable to enter into the Cost Share Agreement, the parties hereto agree that this Agreement shall terminate and the Commission shall reimburse to the City the amount of the City Contribution, and any interest accruing thereto, or any portion thereof, paid to the Commission and on deposit within the Interchange Account.

Section 4.4 Notices. All written notices required by this Agreement shall be in writing and shall be served either personally or by certified mail, or by any other delivery service which obtains a receipt for delivery unless any such notice is required by law and such law provides a different form of delivery or service. Any such notice or demand served personally shall be delivered to the party being served (provided that such notice may be delivered to the receptionist or any other person apparently in charge of such party's office at its address hereinafter set forth), and shall be deemed complete upon the day of actual or attempted delivery, as shown by an affidavit of the person so delivering such notice. Any notice so served by certified mail shall be deposited in the United States Mail with postage thereon fully prepaid and addressed to the party or parties so to be served at its address hereinafter stated, and service of any such notice by certified mail shall be deemed complete on the date of actual or attempted delivery as shown by the certified mail receipt. Service of any such notice by another delivery service shall be deemed complete upon the date of actual or attempted delivery as shown on the receipt obtained by such delivery service.

Any notice to the Commission shall be addressed to the Secretary of the Commission at:

Tax Increment Financing Commission
of Kansas City, Missouri
300 Wyandotte, Suite 400
Kansas City, Missouri 64105
Attn: Executive Director

with a copy to:

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

Notices to the City shall be addressed to:

City of Kansas City, Missouri
City Hall
414 E. 12th Street, 29th Floor
Kansas City, Missouri 64105
Attn: City Manager

with a copy to:

City of Kansas City, Missouri
Law Department
City Hall
414 E. 12th Street, 28th Floor
Kansas City, Missouri 64106

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

Section 4.5 Audit. The City Auditor and the City's Internal Auditor shall have the right to audit this Agreement and all books, documents and records relating thereto. The Commission and the City shall maintain all its books, documents and records relating to this Agreement during the Term of this Agreement and for three (3) years thereafter. The books, documents and records of the Commission and the City in connection with this Agreement shall be made available to the City Auditor and the City's Internal Auditor, within ten (10) days after the written request is made.

Section 4.6 Performance Date Not a Business Day. If any date for the taking of any action hereunder is on a Saturday, Sunday or business holiday of the City, then such action shall be taken, on the first business day thereafter with the same force and effect as if made on the date fixed for payment or performance.

Section 4.7 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the City and the Commission and their respective successors and assigns.

Section 4.8 Amendments, Changes and Modifications. This Agreement may not be effectively amended, changed, modified, altered, or terminated without the prior concurring written consent of all the parties hereto.

Section 4.9 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 4.10 No Pecuniary Liability. All covenants, obligations and agreements of the City and the Commission contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future director, officer, agent or employee of the City or the Commission in other than their official capacity.

Section 4.11 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior oral agreements or written agreements, arrangements, and understandings relating thereto.

Section 4.12 **Severability.** If any provision of this Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into or taken thereunder, or any application of such provision, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into, or taken, each of which shall be construed and enforced as if such illegal or invalid portion were not contained herein. Such illegality or invalidity of any application thereof shall not affect any legal and valid application thereof, and each such provision, covenant, stipulation, obligation, agreement, act or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 4.13 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

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

TAX INCREMENT FINANCING COMMISSION
OF KANSAS CITY, MISSOURI

ATTEST:

Heather A. Brown, Secretary

By: _____
Alissia R. Canady, Chair

Approved as to form:

Counsel to the Commission

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

BE IT REMEMBERED, that on this ____ day of _____, 2020, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Alissia R. Canady, Chair of the Tax Increment Financing Commission of Kansas City, Missouri, a commission duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of said commission, and such person duly acknowledged the execution of the same to be the act and deed of said commission.

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

NOTARY PUBLIC

My Commission Expires:

THE CITY OF KANSAS CITY, MISSOURI

ATTEST:

Secretary

By: _____
Name: _____
Title: _____

Approved as to form and legality:

City Attorney

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

BE IT REMEMBERED, that on this ____ day of _____, 2020, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came _____, _____ of the City of Kansas City, Missouri, a special chartered city of the State of Missouri, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of said City, and such person duly acknowledged the execution of the same to be the act and deed of said City.

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

NOTARY PUBLIC

My Commission Expires:

Exhibit A

Description of Route 152 and N. Platte Purchase Drive Interchange

Exhibit B

Route 152 and N. Platte Purchase Drive Interchange Costs

Construction/Design Estimates

Design	\$712,998
PE Review (MODOT Staff)	25,000
Construction	5,465,482
Construction Engineering	375,082
<hr/>	
	\$6,578,562