

## COOPERATIVE AGREEMENT FOR STREETCAR PHASE 2

**THIS COOPERATIVE AGREEMENT FOR STREETCAR PHASE 2** (“**Agreement**”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ between **THE KANSAS CITY MAIN STREET RAIL TRANSPORTATION DEVELOPMENT DISTRICT**, a political subdivision of the State of Missouri (“**District**”), **KANSAS CITY, MISSOURI**, a constitutionally chartered municipal corporation (“**City**”), and **KANSAS CITY STREETCAR AUTHORITY**, a not-for-profit corporation organized and existing under the laws of the State of Missouri (“**Authority**”).

### RECITALS

A. Pursuant to the Missouri Transportation Development District Act, Sections 238.200, et seq., RSMo, as amended (the “**Act**”), the Kansas City Downtown Streetcar Transportation Development District (the “**Downtown Streetcar TDD**”) was established on August 2, 2012 by Order of the Circuit Court of Jackson County, Missouri, for the purpose of undertaking or causing to be undertaken, and funding, along with other sources, the design, construction, ownership and/or operation of a 2.2 mile (+/-) modern streetcar line running generally along Main Street from River Market to Union Station, which began operations on May 6, 2016 and is currently operating (the “**Initial Phase**”);

B. Downtown Streetcar TDD derives revenue from a one percent (1.00%) sales tax within its boundary (the “**Downtown Streetcar TDD Sales Tax**”) and certain special assessments within its boundary (the “**Downtown Streetcar TDD Special Assessments**”, and collectively with the Downtown Streetcar TDD Sales Tax, the “**Downtown Streetcar TDD Revenue**”);

C. Authority was created by act of incorporation as the mechanism for overseeing and administering the management and operations of the Initial Phase and any extensions thereof on City’s behalf, as well as participating in the process of Downtown Streetcar TDD determining the rate at which the Downtown Streetcar TDD Special Assessments should be levied by Downtown Streetcar TDD;

D. In order to establish a framework for allocating responsibilities regarding the construction, financing, management and operation of the Initial Phase, City, Downtown Streetcar TDD and Authority entered into that Streetcar Design, Construction, Management & Operations Agreement dated November 21, 2012, as subsequently amended by that First Amendment to Streetcar Design, Construction, Management & Operations Agreement dated April 15, 2013, and as amended and restated by that Amended and Restated Streetcar Agreement dated June 16, 2014, and as again amended and restated by that Second Amended and Restated Streetcar Agreement dated April 27, 2017, as amended or supplemented by Letter Agreements dated February 1, 2018 and October 23, 2018 (collectively, the “**Initial Phase Cooperative Agreement**”);

E. Pursuant to the Initial Phase Cooperative Agreement and City’s Ordinance No. 130778 As Amended, and Committee Substitute for Ordinance No. 130976, City provides, subject to annual appropriation, supplemental financial support for the costs of the Initial Phase and/or expansion thereof from funds in City’s Public Mass Transportation Fund in the annual amount of \$2,039,000 (the “**City’s Annual Contribution**”);

F. Authority generates additional revenue from certain activities such as on-vehicle advertising (“**Authority Miscellaneous Revenue**”) which, pursuant to the Initial Phase Cooperative Agreement, is applied by Authority to costs of operations and maintenance of the Initial Phase and other miscellaneous costs relating to the Initial Phase;

G. Pursuant to the Act, District was established on August 11, 2017 by Order of the Circuit Court of Jackson County, Missouri (the “**District Formation Order**”), for the purpose of undertaking or causing to be undertaken, and funding, along with other sources, the design, construction, ownership and/or operation of (a) the Initial Phase in the place and stead of Downtown Streetcar TDD, and (b) an extension of the Initial Phase, running south from Union Station generally along Main Street with a terminus in the general vicinity of the University of Missouri – Kansas City’s Volker campus (the “**Phase 2 Line**”, and collectively with the Initial Phase, the “**Project**”);

H. District is intended to replace the existing Downtown Streetcar TDD, and to assume any financial obligations of Downtown Streetcar TDD, and in furtherance of such intent, City, Authority, District and Downtown Streetcar TDD entered into that Cooperative Agreement for Streetcar Transition Process dated \_\_\_\_\_, 2019 (the “**Transition Agreement**”);

I. Pursuant to the Act, District’s “**Qualified Voters**” (as defined in the Act) have approved the imposition by District of a one percent (1.00%) sales tax within its boundary (the “**District Sales Tax**”) and certain special assessments within a portion of its boundary (the “**District Special Assessments**”, and collectively with the District Sales Tax, the “**District Revenue**”), subject to the satisfaction of the “**Extension TDD Revenue Condition**” (as defined in the Transition Agreement);

J. City is the issuer of certain currently outstanding special obligation bonds and the borrower with respect to certain other special obligations, the proceeds of which were used to finance (a) the planning, design, engineering and construction of the Initial Phase and the acquisition of the physical assets comprising the Initial Phase (the “**Initial Phase Bonds**”), and (b) the acquisition of additional streetcar vehicles (the “**Additional Vehicle Financing**”, and collectively with the Initial Phase Bonds, the “**Existing Financing**”);

K. The costs of planning, design, acquisition (including additional vehicles) and construction of the Phase 2 Line is presently estimated to be approximately \$330,000,000 (“**Phase 2 Capital Costs**”) including contingency budgeting as required by the U.S. Department of Transportation’s Federal Transit Administration (the “**FTA**”);

L. City applied to the FTA for a Capital Investment Grant under the United States Department of Transportation’s New Starts program (codified at 49 U.S.C. Section 5309) to pay the portion of Phase 2 Capital Costs not financed by the Extension Financing, and the FTA has allocated appropriated funds for the Phase 2 Capital Costs in the amount of [\$163,350,000 \**subject to change prior to execution*\*] (the “**Federal Contribution**”);

M. District and Authority are parties to (and City has been provided a copy of) a Funding Agreement dated April 24, 2018, as amended by Amendment to Funding Agreement dated September 21, 2018 (collectively, the "**Funding Agreement**"), pursuant to which District has agreed to reimburse Authority for Phase 2 Capital Costs advanced on behalf of the Project and District (the "**Authority Capital Cost Reimbursement**") and for operating costs of District advanced on behalf of District (the "**Authority District Cost Reimbursement**"), all as more specifically described in the Funding Agreement;

N. City, as sponsor of the Project, owner of the public right-of-way in which the Project is and will be located, recipient of any federal funding granted to the Project, and entity responsible for design and construction of the Project, will own and operate the Project in its entirety subject to the provisions of this Agreement;

O. Pursuant to the Transition Agreement, City, Authority, District and Downtown Streetcar TDD agreed that upon satisfaction of the Extension TDD Revenue Condition, City, Authority, District would enter into this Agreement and the Initial Phase Cooperative Agreement would be terminated;

P. The Extension TDD Revenue Condition has been satisfied;

Q. The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, on the part of City has been authorized by Ordinance No. 190150, passed by the City Council of City (the "**City Council**") on \_\_\_\_\_;

R. The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, on the part of Authority has been authorized by action of the Board of Directors of Authority on May 16, 2019; and

S. The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, on the part of District has been authorized by Resolution No. 2019-7, passed by the Board of Directors of District on June 20, 2019.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual covenants and agreements herein contained, the parties hereby agree as follows:

## **ARTICLE I GENERAL PROVISIONS/DEFINITIONS**

**Sec. 1-1. Authority.** The parties hereto execute this Agreement under the authority of the City's Charter and Sections 70.220, 238.250 and 355.131, RSMo.

**Sec. 1-2. Project ownership/control.** City shall at all times own and control the Project subject to the terms of this Agreement and of any Federal grants. Exclusive ownership and control of the Project will pass to City from District contemporaneous with the execution of this Agreement and District shall execute and record as appropriate any additional documentation that may be requested or required by City in order to effect the conveyances of ownership and control to City.

**Sec. 1-3. *Defined terms.*** The following table lists the defined terms used in this Agreement and the Section of this Agreement in which the term's definition is contained:

<b>DEFINED TERM</b>	<b>LOCATION</b>
Act	Recital A
Additional Vehicle Financing	Recital J
Agreement	Introductory Paragraph
Annual Appropriation Stabilization Reserve	Sec. 7-5
Applicable Procurement Rules	Sec. 5-1
Authority	Introductory Paragraph
Authority Capital Cost Reimbursement	Recital M
Authority District Cost Reimbursement	Recital M
Authority Miscellaneous Revenue	Recital F
Authority Reimbursement	Sec. 2-4
Authority's Project Team	Sec. 4-1
City	Introductory Paragraph
City's Annual Contribution	Recital E
City Council	Recital Q
Conflict Provisions	Sec. 5-4
Control Provisions	Sec. 12-17
County	Sec. 3-3
Current O&M Contract	Sec. 5-1
DBE Program	Sec. 5-3
Debt Service Coverage Reserve	Sec. 7-5
District	Introductory Paragraph
District Depository Account	Sec. 7-2
District Formation Order	Recital G
District Revenue	Recital I
District Sales Tax	Recital I
District Special Assessments	Recital I
Downtown Streetcar TDD	Recital A
Downtown Streetcar TDD Depository Account	Sec. 7-2
Downtown Streetcar TDD Revenue	Recital B
Downtown Streetcar TDD Sales Tax	Recital B
Downtown Streetcar TDD Special Assessments	Recital B
Existing Financing	Recital J
Expansion Contribution	Sec. 7-8
Extension TDD Revenue Condition	Recital I
Federal Contribution	Recital L
Formation Costs Reimbursement	Sec. 2-4
FTA	Recital K
Funding Agreement	Recital M
Herzog	Sec. 5-1
Initial Phase	Recital A
Initial Phase Bonds	Recital J

Initial Phase Cooperative Agreement	Recital D
Initial Phase Fund	Sec. 7-1
KCATA	Sec. 5-1
MARC	Sec. 7-10
MODOR	Sec. 3-3
Net Proceeds of District Revenue	Sec. 3-3
New O&M Contract	Sec. 5-1
Nominally Owned Property	Sec. 3-6
Nominally Owned Property Payments	Sec. 3-6
O&M Contract	Sec. 5-1
Operator	Sec. 5-1
Operations and Maintenance Services	Sec. 5-1
Phase 2 Capital Costs	Recital K
Phase 2 Financing	Sec. 2-2
Phase 2 Line	Recital G
Previously Advanced Reimbursable Funds	Sec. 2-4
Project	Recital G
Qualified Voters	Recital I
Reserves	Sec. 7-5
Smart City Revenue	Sec. 3-7
Streetcar Financing	Sec. 2-2
Streetcar Fund	Sec. 7-1
Streetwork	Sec. 7-9
Tax Code	Sec. 5-1
Transition Plan	Sec. 11-2
Transition Agreement	Recital H
Winding Up Amount	Sec. 7-2

**ARTICLE II  
FINANCING CAPITAL COSTS OF THE PROJECT**

**Sec. 2-1. Initial Phase Bonds.** The parties acknowledge that the Initial Phase Bonds were issued by City as part of a larger bond issue. The parties agree that the par amount of the portion of such larger bond issue that constitutes the Initial Phase Bonds was \$63,955,000. The Initial Phase Bonds are secured by City’s annual appropriation pledge and repayable from amounts on deposit in the Streetcar Fund.

**Sec. 2-2. Phase 2 Financing.** Pursuant to Ordinance No. 190150 passed by the City Council of the City, the City intends to finance the portion of the Phase 2 Capital Costs not funded by the Federal Contribution nor by the amount of the Authority Capital Cost Reimbursement (the “**Phase 2 Financing**”). The Phase 2 Financing may be one or more bond financings and/or financings under the federal Transportation Infrastructure and Innovation Act, or a combination thereof. A portion of the Phase 2 Financing in the aggregate par amount of \$\_\_\_\_\_ was obtained by City prior to the date of this Agreement pursuant to the Transition Agreement and Ordinance No. 190150. The Phase 2 Financing is anticipated to be in an aggregate par amount necessary to generate a project fund sufficient to fund approximately [\$161,650,000 \**subject to*

*change prior to execution\**] of Phase 2 Capital Costs, costs of the transaction(s) and reserves to be funded by the proceeds of such financing(s). All of the net proceeds from the Phase 2 Financing shall be used solely with respect to the Project.

City may also at its option elect to refinance all or any portion of the Initial Phase Bonds and the Additional Vehicle Financing as part of the Phase 2 Financing. The Phase 2 Financing, and (to the extent not refinanced with the Phase 2 Financing) the Initial Phase Bonds and the Additional Vehicle Financing, are referred to as the “**Streetcar Financing**”.

Although Authority has the right to, and may, review the agreements, instruments and documents being executed in connection with the issuance, marketing, sale and repayment of the Phase 2 Financing, Authority is not hereby waiving any of its rights under this Agreement or agreeing that any provision of any of such agreements, instruments or documents shall amend or limit the rights of Authority hereunder or preclude Authority from exercising all of its rights and remedies under this Agreement, and City shall not take actions inconsistent with the provision of this Agreement.

**Sec. 2-3. Funding Phase 2 Capital Costs.** Phase 2 Capital Costs in excess of the amount of the Authority Capital Cost Reimbursement shall be funded from the net proceeds of the Phase 2 Financing together with the Federal Contribution and any contributions, grants or loans from any other source that City may receive for the express purpose of funding the Project.

**Sec. 2-4. Reimbursement for costs advanced.** The parties acknowledge that the Kansas City Regional Transit Alliance, a Missouri nonprofit corporation, advanced certain funds for the formation of District and the conduct of certain elections required by the Act. District has passed its Resolution \_\_\_\_ determining that the Kansas City Regional Transit Alliance is entitled to be reimbursed from District Revenue for such advances made on behalf of District in the amount of \$\_\_\_\_\_, as specified in such Resolution (the “**Formation Costs Reimbursement**”) [*approximately \$104,000 remains unreimbursed - amount subject to approval by District Board at a later date, but prior to execution*]. District has passed its Resolution \_\_\_\_ determining that Authority is entitled to be reimbursed from District Revenue for the Authority Capital Cost Reimbursement in the amount of \$\_\_\_\_\_ and for the Authority District Cost Reimbursement in the amount of \$\_\_\_\_\_ [*anticipated to be approximately \$5.5 million total - amount subject to approval by District Board at a later date, but prior to execution*], all as specified in such Resolution (the “**Authority Reimbursement**”, and together with the Formation Costs Reimbursement, the “**Previously Advanced Reimbursable Funds**”).

### ARTICLE III

#### DISTRICT’S OBLIGATIONS / USE OF DISTRICT REVENUE AND OTHER FUNDS

**Sec. 3-1. Imposition of District Sales Tax.** District has imposed the District Sales Tax at the maximum rate authorized by the Formation Order, and the Qualified Voters have approved such imposition. District shall take all such actions as are necessary in order for the collection of the District Sales Tax to commence, to the extent not already accomplished.

**Sec. 3-2. Imposition of District Special Assessments.** District has passed its resolution calling for the levying of the District Special Assessments at the maximum rate authorized by the Formation Order, and the Qualified Voters have approved such levy.

**Sec. 3-3. *Transfer of net proceeds of District Revenue.*** District shall remit to City the “Net Proceeds of District Revenue”, with such frequency as required by City, less only those reasonable administrative costs and expenses incurred by District for services including, but not limited to, accounting, legal, auditing and insurance. The balance of the Net Proceeds of District Revenue shall be deposited into the Streetcar Fund as provided in Section 7-3. The term “**Net Proceeds of District Revenue**” means the entirety of the proceeds actually received by District from Jackson County, Missouri (“**County**”) with respect to collected District Special Assessments, and from the Missouri Department of Revenue (“**MODOR**”) with respect to collected District Sales Tax.

**Sec. 3-4. *Operational expenses deemed District liability.*** The purposes for which District was established include the operation of the Project following its design and construction. The costs to operate the Project shall therefore be deemed to be among the liabilities incurred by District for purposes of determining whether it is proper under the Act to submit to the Qualified Voters the questions of repealing the District Sales Tax or the District Special Assessments or reducing the rates thereof from those then at the time in effect.

**Sec. 3-5. *Increases in Special Assessment levy rates permissible, when.*** In the event that the rates of the District Special Assessments are hereafter reduced below the maximum levy rates approved by the Qualified Voters as permitted by Section 7-6, District shall not initiate any action that would increase the levy rates then in effect unless the amounts being collected under the current levies when combined with the City’s Annual Contribution and the projected proceeds from the District Sales Tax, Nominally Owned Property Payments and Authority Miscellaneous Revenue are projected to be insufficient to fully fund the debt service on the Streetcar Financing, and operational and maintenance expenses of the Project while maintaining reasonable reserve funds as provided for more fully in Article VII. In no event shall District seek to increase the levies in amounts that would exceed those set forth in the Petition.

**Sec. 3-6. *City’s Nominally Owned Property.*** City acknowledges that fee title to certain real property may from time to time be owned by City or an agency, commission, authority or other instrumentality of City, but actually occupied or used, or being constructed, reconstructed, redeveloped, rehabilitated or renovated to be actually occupied or used, for private commercial, industrial or residential purposes pursuant to, or in the furtherance or implementation of, a plan or project under (1) the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri, as amended, (2) the Planned Industrial Expansion Law, Sections 100.300 to 100.620 of the Revised Statutes of Missouri, as amended, (3) the Missouri Downtown and Rural Economic Stimulus Act, Sections 99.915 to 99.1060 of the Revised Statutes of Missouri, as amended, (4) Sections 100.010 to 100.200 of the Revised Statutes of Missouri, as amended, (5) the Land Clearance for Redevelopment Authority Law, Sections 99.300 to 99.660 of the Revised Statutes of Missouri, as amended, or (6) Sections 23(a), 27 or 27(b) of Article VI of the Missouri Constitution, as amended (such real property so owned on January 1 of a year with respect to which the District Special Assessment is levied being referred to as “**Nominally Owned Property**”). With respect to Nominally Owned Property owned by City, City agrees to include in the appropriate transaction document an obligation on the part of the private developer to annually pay, on or before December 31 of each year with respect to which the District Special Assessment is levied while the applicable real property is Nominally Owned Property an amount equal to the District Special Assessment that would be payable with respect to such real

property if the real property were not Nominally Owned Property. With respect to Nominally Owned Property owned by an agency, commission, authority or other instrumentality of City, City agrees to use its reasonable best efforts to cause such agency, commission, authority or other instrumentality of City to include in the appropriate transaction document an obligation on the part of the private developer to annually pay, on or before December 31 of each year with respect to which the District Special Assessment is levied while the applicable real property is Nominally Owned Property an amount equal to the District Special Assessment that would be payable with respect to such real property if the real property were not Nominally Owned Property. Amounts paid with respect to Nominally Owned Property are referred to as “**Nominally Owned Property Payments**”).

**Sec. 3-7. City’s Annual Contribution, Smart City Revenue and Nominally Owned Property Payments.** Subject to annual appropriation, City shall deposit into the Streetcar Fund (i) City’s Annual Contribution, and (ii) so long as Authority shall remain engaged in ensuring that any information broadcast with respect to streetcar system related content remains current, twelve and one-half percent (12.5%) of any “net revenue” received by City from the phase one deployment as such term is defined in the agreement between City and Smart City Media, LLC signed on September 24, 2015 (“**Smart City Revenue**”). In addition, District shall remit to City all Nominally Owned Property Payments it receives. City shall deposit all Nominally Owned Property Payments received from District, or received by City directly from the payor or collector thereof, into the Streetcar Fund. City’s Annual Contribution, Smart City Revenue and Nominally Owned Property Payments are, by this Agreement, dedicated and restricted to the Project. City and District acknowledge that neither the City’s Annual Contribution nor the Smart City Revenue are or will be funds that were collected or possessed by District notwithstanding that they may be deposited into the Streetcar Fund.

#### **ARTICLE IV DESIGN AND CONSTRUCTION**

**Sec. 4-1. Contract solicitation/award.** City shall solicit and award all contracts related to the design and construction of the Project and for the procurement of every component of the Project in accordance with City’s established procedures for soliciting and awarding contracts and in compliance with the requirements of any Federal grant applicable to the Project. This shall include, but shall not be limited to, any and all architectural, engineering, land surveying contracts (commonly referred to as design professional services); professional, specialized or technical services contracts; construction contracts; and procurement contracts for every component of the Project. City recognizes that Authority, as the party charged with overseeing and administering the Project’s management and operations on City’s behalf, has a unique interest in participating in the solicitation and award processes for the same. Authority shall appoint no more than five (5) persons who shall thereafter serve as “**Authority’s Project Team**.” Authority’s Project Team shall be entitled to participate in all decision making and other processes as further delineated in this Article IV. Authority shall not appoint any person or family member of any person employed by, related to, or in any manner associated with any person or entity that might reasonably be expected to respond to any solicitation being developed or seek employment as a subcontractor to any person or entity selected to provide design professional and/or construction services, or who would otherwise be prohibited from appointment pursuant to City’s procurement policies provided to Authority by City.



**Sec. 4-2. Construction delivery models.** City reserves the right to utilize one or more construction delivery models as authorized by Section 3-3 of City's Code of Ordinances. Notwithstanding the foregoing, City shall confer in good faith with Authority's Project Team prior to determining to utilize anything other than a traditional design-bid-build process.

**Sec. 4-3. Preparation of RFQs/RFPs/IFBs.** City shall permit Authority's Project Team to fully participate in all aspects of the development of any Request for Qualifications (RFQ), Request for Proposals (RFP), Invitation for Bids (IFB), or any combination thereof, related to the design and construction of the Project. Each person on Authority's Project Team shall be required to execute and abide by the terms of any confidentiality agreement required by City of all City employees and consultants participating in activities addressed in this Section 4-3, and his/her failure to do so shall result in his/her immediate removal from Authority's Project Team for all purposes. The confidentiality agreement shall not preclude Authority's Project Team from discussing any aspect of the Project with any director or officer of Authority having executed a confidentiality agreement.

**Sec. 4-4. Selection processes.** In the event City's established procedures for soliciting and awarding Project contracts call for the qualification or selection of a firm, or the procurements of components, utilizing any criteria other than price alone, City shall include no less than one representative from the Authority Project Team on any review/selection team established by City and shall permit such representative to participate fully in the review/selection process upon the same terms and conditions as every other member of the review/selection team. City shall permit more than one representative from Authority's Project Team to participate if permitted by applicable law.

**Sec. 4-5. Contract negotiations.** In the event the terms and conditions of any Project contract to be awarded by City are negotiable, Authority's Project Team shall be entitled to fully participate in all aspects of such negotiations. Each person on Authority's Project Team shall be required to execute and abide by the terms of any confidentiality agreement required by City of all City employees and consultants participating in activities addressed in this Section 4-5, and his/her failure to do so shall result in his/her immediate removal from Authority's Project Team for all purposes. The confidentiality agreement shall not preclude Authority's Project Team from discussing any aspect of the Project with any director or officer of Authority having executed a confidentiality agreement.

**Sec. 4-6. Ongoing contract management.** City shall be responsible for managing any contracts awarded for the design and construction of the Project. Authority's Project Team shall be notified of the meetings in advance and be entitled to attend and participate in any scheduled project management meetings.

**Sec. 4-7. City control of contracting.** Notwithstanding anything in this Article IV to the contrary, City shall maintain sole control over the selection, award and ongoing management of any contract for design and construction of the Project and shall hold the majority of seats on any committee appointed for such purposes.

**ARTICLE V  
MANAGEMENT AND OPERATIONS**

**Sec. 5-1. Appointment.** City hereby appoints Authority as overseer and administrator of the management and operations of the Project on behalf of City upon the terms and conditions set forth in this Agreement. Authority shall provide services in accordance with this Agreement. Day-to-day operations, maintenance of the Project and other related services (“**Operations and Maintenance Services**”) shall be provided by a professional streetcar operator (the “**Operator**”). Pursuant to the Initial Phase Cooperative Agreement, City and Authority have selected Herzog Transit Services, Inc. (“**Herzog**”) to serve as the Operator for the Initial Phase under a contract between Authority and Herzog that expires on \_\_\_\_\_ [*to be inserted prior to execution*](the “**Current O&M Contract**”). In the event not completed prior to the execution of this Agreement, City and Authority may if permitted by law negotiate with Herzog to incorporate Operations and Maintenance Services with respect to the Phase 2 Line into the Current O&M Contract. Upon the expiration of the Current O&M Contract, or in the event the Current O&M Contract cannot (by law or as a result of failed negotiations) be amended to incorporate Operations and Maintenance Services with respect to the Phase 2 Line Authority shall procure the services of Herzog or a different Operator to perform the Operations and Maintenance Services for the Project utilizing the procedure set forth below in this Section 5-1.

Authority shall develop a Request for Proposals (RFP) by which it will solicit the services of an Operator to perform the Operations and Maintenance Services. The RFP shall be presented to City prior to its release and Authority shall make such revisions as City shall reasonably require. Authority shall not solicit the participation of or discuss the RFP prior to its release with any third person or entity not a party to this Agreement or family member of any person employed by, related to, or in any manner associated with any person or entity not a party to this Agreement that might reasonably be expected to respond to the solicitation being developed or seek employment or engagement as a subcontractor to any person or entity selected to perform the Operations and Maintenance Services, or any person who would otherwise be prohibited from appointment pursuant to City’s procurement policies provided to Authority by City.

Authority shall advertise the RFP in a manner reasonably calculated to reach those entities providing such services, and shall require, as a condition thereof, that every proposer submit its proposed budget for the proposed contract term in responding to such RFP. Authority shall specify a contract term of not less than four (4) years and not more than five (5) years, and if authorized in writing by City’s Director of Public Works, Authority may specify a renewal term equal in length to the initial contract term. All proposals shall be sealed and shall not be opened by Authority until on or after the date and time established for the deadline for responding to the RFP. No proposal not submitted under seal by the established deadline shall be opened or considered.

Authority and City shall evaluate and rank the responsive proposals. Annual and cumulative costs over the proposed contract term shall be considered by Authority and City in evaluating the proposals but need not be the determinative factor. Authority shall proceed in good faith to negotiate a contract with the best proposer to perform the Operations and Maintenance Services, subject to the requirements of Section 5-3. City shall be entitled to participate to the extent it may elect to do so in the negotiations of the contract to perform the Operations and Maintenance Services upon the expiration of the Current O&M Contract (the “**New O&M Contract**”, and

together with the Current O&M Contract, as the same may be amended as provided herein, an “**O&M Contract**”) and Authority shall not select or award the New O&M Contract to any vendor for which City has identified a reasonable objection. Authority shall also permit a representative of the Kansas City Area Transportation Authority (“**KCATA**”) to participate unless the KCATA or any other entity formed by the KCATA shall have submitted a proposal, provided however that the KCATA representative shall not have the reasonable objection right reserved to City herein.

With respect to any contract that Authority is negotiating, but to which City would not also be a party (other than contracts for professional or administrative support of Authority, such as engagement of attorneys, accountants or administrative staff, and other than contracts for the marketing, branding and promotion of the Project, as distinguished from contracts for sponsorship or the sale of advertising space or naming rights on or in a streetcar vehicle, station stop, maintenance facility or other physical asset that is a part of the Project, which latter contracts are subject to the review procedures in this paragraph), Authority shall provide to City for review and comment (a) a copy of the first draft circulated among all proposed parties to that contract, reasonably promptly following the distribution thereof to the proposed parties, and (b) a copy of the final negotiated contract, at least 20 days prior to approval or execution thereof by Authority. In the event that City determines in its reasonable judgment that any contract proposed to be entered into by Authority would breach or conflict with obligations that may be imposed or otherwise be deemed applicable pursuant to the terms of the FTA’s Master Agreement and 49 U.S.C. chapter 53 and the rules and regulations adopted thereunder and so notifies Authority within 20 days of City receiving the contract, then the contract shall be revised to eliminate any such breach or conflict to the reasonable satisfaction of City prior to Authority entering into such contract.

In the event that any bonds issued to finance the Project are issued as tax-exempt bonds, any contract (other than contracts for professional or administrative support of Authority, such as engagement of attorneys, accountants or administrative staff) proposed to be entered into by Authority (whether alone or jointly with City) shall be reviewed and approved by City’s bond counsel prior to execution by Authority. If City’s bond counsel determines and notifies Authority within 20 days after receiving the draft of the contract that any such contract proposed to be entered into by Authority (whether alone or jointly with City) would adversely affect the exclusion from gross income for federal income tax purposes of the interest on any bonds issued by City to finance the Project, then the contract shall be revised to the satisfaction of City’s bond counsel prior to Authority entering into such contract. In the event that any component of the Streetcar Financing is issued as governmental obligations the interest payable on which is excluded from gross income for federal income tax purposes under the U. S. Internal Revenue Code (the “**Tax Code**”), Authority agrees that in order to maintain the exclusion of the interest on the Streetcar Financing from gross income for federal income tax purposes, Authority: (1) will take whatever action specified in detail by City’s bond counsel, and refrain from whatever action specified in detail by City’s bond counsel, necessary to comply with the applicable requirements of the Tax Code, and (2) will, to the extent Authority receives specified, detailed instructions not use, or permit the use of, any portion of the Project in a manner that would violate applicable provisions of the Tax Code. Authority will include the provisions of the immediately preceding sentence (made applicable to the other party or parties to such contract) in all contracts (other than contracts for professional or administrative support of Authority, such as engagement of attorneys, accountants or administrative staff). The parties acknowledge that any extension of the Project may involve the

issuance of bonds at a future date, which future bonds may be issued as governmental obligations the interest payable on which is excluded from gross income for federal income tax purposes under the Tax Code, and that it is essential that any contract awarded by Authority, whether alone or jointly with City (other than contracts for professional or administrative support of Authority, such as engagement of attorneys, accountants or administrative staff) not adversely affect the exclusion of the interest on such bonds from gross income for federal income tax purposes. Authority shall reserve in any such contract (regardless of whether any component of the Streetcar Financing is issued on a tax-exempt basis), the right to terminate or amend such contract at a future date for the purposes of ensuring the availability or continuity of the exclusion of the interest on such bonds from gross income for federal income tax purposes and shall, if notified by City's bond counsel that the contract is reasonably likely to adversely affect such exclusion, exercise such right in a manner that will make available or preserve such exclusion; provided, however, that inasmuch as any O&M Contract must be reviewed and approved by City's bond counsel as being in conformance with Tax Code requirements for qualified management agreements prior to being executed by Authority and City, any O&M Contract which has been so reviewed and approved by bond counsel is not required to contain such reserved right.

The fees and costs of City's bond counsel for services related to the Project, including without limitation, any O&M Contract, the Streetcar Financing and Authority Miscellaneous Revenue, will be payable from funds on deposit in the Streetcar Fund.

Authority acknowledges that the process by which Authority procures some or all of its goods and services with respect to the Project may be subject to rules, regulations and requirements of FTA, or contractual obligations owed by City to FTA pursuant to one or more agreements between City and FTA ("**Applicable Procurement Rules**"). Authority agrees to (1) consult with City prior to initiating procurement of goods or services the procurement of which is subject to the Applicable Procurement Rules as generally described in a letter from Mokhtee Ahmad, Regional Administrator of FTA Region VII, to Mayor Sly James and Authority Chairman Tom Trabon dated October 23, 2013, in order to assure that such process for any given good or service does not violate the Applicable Procurement Rules, and (2) comply with all Applicable Procurement Rules.

Unless otherwise authorized in writing by City's Director of Public Works, no O&M Contract shall continue for a period in excess of five (5) years. The procedures set forth herein shall be repeated each and every time that Operations and Maintenance Services are required to be procured and shall be commenced in a timely manner as to ensure a consistent and uninterrupted level of service. The failure by Authority to ensure the continuity of an O&M Contract shall be deemed a material breach of this Agreement except under circumstances in which an interruption shall be attributable to circumstances beyond Authority's reasonable control. Notwithstanding the foregoing, nothing herein shall preclude any entity from being selected for one or more contract terms.

Notwithstanding anything herein to the contrary, Authority shall be deemed to be acting on behalf of Authority and City in issuing the RFP and negotiating the terms of any O&M Contract pursuant to this Article V. City shall be a named party to any O&M Contract and such contract shall require the Operator to comply with any obligations that may be imposed on it or otherwise be deemed applicable to it pursuant to the terms of the FTA's Master Agreement and 49 U.S.C. chapter 53 and the rules and regulations adopted thereunder. The failure by Authority to include City as a

party to any O&M Contract or to contractually require compliance with any requirement imposed by the FTA shall be deemed a material breach of this Agreement.

**Sec. 5-2. General obligations.** Authority's obligations, powers and rights as overseer and administrator of the management and operations of the Project shall include, but not be limited to, the following, subject to the annual appropriation of funds by City for such purposes:

- A. Develop and submit to City a proposed annual budget as provided for in Article VI.
- B. Establish ridership rates and a system for collecting and enforcing such fares, if any.
- C. Establish reasonable hours of operation and headway times for the Project, provided however that the hours of operations shall be no less than 8:00 AM to 9:00 PM and the parties acknowledge their mutual desire to achieve headway times no greater than 10 minutes (average peak) and 20 minutes (average nonpeak).
- D. Provide for advertising or sponsorship on the terminals, streetcars and related components of the Project in a manner consistent with and to the extent permitted by City's ordinances, collect the revenue therefrom, and deposit such revenue in accordance with the provisions of Section 2-1615 of City's Code of Ordinances into the Streetcar Fund established by section 7-1, provided however that (1) with respect to any maintenance building, City shall have the right to require that the name of such building incorporate the name of any individual or organization that City, in its sole discretion, desires to honor by such action, in which event, the name of such building shall incorporate such honoree's name in a manner determined to be reasonably appropriate by City, and (2) station stop names, both orally and in written media, shall incorporate the geographic location and/or place location name of such station stop, as determined by City, and be combined in any station sponsor name or advertising in a prominent manner so as not to detract from way finding.
- E. Hire and employ all such personnel who, in Authority's judgment, are necessary for Authority to oversee and administer the management and operations of the Project in accordance with the provisions of this Agreement.
- F. Require that the Project is operated and maintained in a manner consistent with industry standards and all applicable federal, state and local laws, and that portrays City in a positive light.
- G. Conduct customer satisfaction surveys at least once per year, and report to City the results and any responsive actions of those surveys within thirty (30) days after completion.
- H. Assist City in preparing a Strategic Plan for the Project at least every five years.
- I. Deposit into the Streetcar Fund, subject to Section 7-1, all Authority Miscellaneous Revenue (i) received from advertising and sponsorships, (i) received from the operation, use, marketing, promotion, or physical exploitations of federally funded assets of the Project that are subject to the FTA's Master Agreement and 49 USC Chapter 53, or (iii) as may be otherwise required in order to not violate the provisions of the sixth paragraph of Section 5-1 herein.

J. Pay all management and operating costs of the Project on behalf of City from sums appropriated by City to Authority for such purposes (or from other revenue sources) and within the budgets submitted by Authority and approved by City for such purposes.

K. Provide such information and maintain such records as may be necessary in connection with the Streetcar Financing.

L. Perform such other responsibilities as allocated to it elsewhere within this Agreement.

It is the intent that this Agreement is for Authority to provide the services set forth herein solely on behalf of City. It is the further intent of this Agreement that in the event that any bonds issued to finance the Project are issued as tax-exempt bonds, (i) that moneys will not be paid or transferred to Authority by City or as approved by City for anything that is not an ordinary expense or capital expenditure of Authority relating to City's Project as determined using generally accepted accounting principles, and further that any moneys so paid or transferred to Authority will be to fund Authority reserves and to fund actual Project expenses paid by Authority that do not constitute the payment of a management fee to Authority, unless City and Authority receive an opinion of bond counsel to the effect that the payment or transfer of moneys to Authority for another purpose will not adversely affect the exclusion of interest on such bonds for federal income tax purposes, and (ii) that if Authority determines at a later date that Authority wants to receive or be paid a fee for providing its services hereunder or otherwise with respect to the Project, directly or indirectly, that Authority cannot receive or be paid any such fee unless City and Authority receive an opinion of bond counsel to the effect that the payment of such fee will not adversely affect the exclusion of interest on such bonds for federal income tax purposes.

**Sec. 5-3. M/WBE; Affirmative Action; Non-discrimination.** Authority shall require any Operator to abide by the requirements on contractors of Chapter 3 of City's Code of Ordinances, and any applicable rules, regulations, and procedures adopted thereunder, as the same may be amended or re-codified from time-to-time, as would be applicable were only City soliciting and contracting with the Operator. Authority shall consult with City and shall follow such applicable required processes with regard to implementing the programs to any O&M Contract, provided however that nothing herein shall be construed as relieving City from its obligation to administer such programs or transfer the obligation to administer such programs to Authority. No construction contract with a value in excess of \$300,000 or any other contract with a value in excess of \$160,000, as those amounts may be adjusted by the City Council from time to time, shall be awarded by Authority unless the same fully complies with the requirements of Chapter 3, Code of Ordinances, as reasonably determined by City in writing. Notwithstanding the foregoing, Authority acknowledges that the process by which Authority procures some or all of its goods and services with respect to the Project may be subject to rules, regulations and requirements of the FTA or other federal agency, or contractual obligations owed by City to FTA or other federal agency pursuant to the Applicable Procurement Rules, which may include applicability of the federal government's Disadvantaged Business Enterprise program (the "**DBE Program**"). In the event that the DBE Program is determined by City to be applicable to the procurement at issue, Authority shall abide by the terms of the DBE Program in lieu of City's Minority and Women's Business Enterprise program for purposes of such procurement.

**Sec. 5-4. Conflicts of Interest.** Authority's Bylaws shall at all times while this Agreement is in effect include a provision similar in all material respects to Section 2-2020 of the Kansas City Code, as amended from time to time. City agrees that the provisions of Article XII, Section 7 of the Amended and Restated Bylaws of Authority as adopted by the Board of Directors of Authority on October 31, 2012 (the "**Conflict Provisions**") satisfy the requirements of this section. With respect to any proposed modification to, or replacement of, the Conflict Provisions after the date of this Agreement, the City Manager shall determine on behalf of City whether any proposed modification or replacement satisfies the requirements of this section 5-4.

**Sec. 5-5. Certifications.** Authority certifies that it has not been suspended or debarred or has not otherwise been excluded from receiving any contract, subcontract or any other financial or nonfinancial assistance or benefits under any provision of federal, state or local law. A false certification or subsequent suspension, debarment or exclusion of Authority shall be deemed a material breach of this Agreement. Any Operator for the Project shall also be required to provide such a certification, and the inability to do so truthfully shall preclude their being selected or awarded any O&M Contract pursuant to Article V. Any O&M Contract awarded by City and Authority pursuant to Article V shall provide that any certification determined to be false or subsequent suspension, debarment or exclusion of any Operator for the Project shall constitute a material breach of such O&M Contract.

## **ARTICLE VI BUDGETS**

**Sec. 6-1. Budgets.** No later than September 1 of each calendar year (commencing with the September 1 immediately following the date of this Agreement) Authority shall prepare and submit to City two proposed line item budgets (a management and operations budget, and a capital improvements budget) for the Project which shall conform to City's next ensuing fiscal year of May 1 through April 30. (By way of example only, the proposed budgets submitted no later than September 1, 2024 would include the period of May 1, 2025 through April 30, 2026). Each such budget shall include a projection of gross revenues to be realized from Authority Miscellaneous Revenue and expenses to be incurred by Authority, presented on a monthly and annual basis. Pursuant to the Initial Phase Cooperative Agreement, City has approved the management and operations, and capital improvements budgets for the fiscal year ending on the April 30<sup>th</sup> next following the date of this Agreement. [*may require adjustment prior to execution depending on timing of execution*]

The projected expenses in each annual management and operations budget shall include, but not be limited to, the following general categories of expenses on a line item basis: provided, however, that the budgets need not be presented in this particular format or ordering, (i) accounting and legal, (ii) marketing and communications, (iii) insurance and consulting contracts, (iv) administrative, operations and maintenance, (v) extension, expansion and system planning, (vi) capital program, (vii) maintenance of a management and operations reserve of \$1,000,000 (provided that such reserve shall not be funded in excess of \$500,000 unless the Debt Service Coverage Reserve and Annual Appropriation Stabilization Reserve shall be fully funded); and (viii) maintenance of any additional reserve(s) related to the management and operations that Authority and City may mutually agree to be appropriate. In the event that City elects to insure the components of the Project against loss due to any casualty, in lieu of or in addition to any self-

insuring by City against such loss, City shall notify Authority of the premium to be paid for such policy or policies and Authority shall also include such cost(s) as a line item on the annual management and operations budget submitted to City.

The projected costs in each annual capital improvements budget shall include, but not be limited to, the following costs on a line item basis: (i) expenditures for additions, alterations, or improvements and for purchases of additional or replacement furniture, machinery, buildings, equipment or other property, where the cost of such expenditure is greater than \$5,000 and the depreciable life of the applicable item is, according to generally accepted accounting principles, in excess of one (1) year; and (ii) any capital reserve that Authority may request.

City shall present Authority's proposed budget to the City Council as a distinct program within the Public Works department. The Authority's proposed line item budget will be incorporated into City's submitted budget and will require substantive approval by the City Council prior to becoming effective for the fiscal year beginning May 1 of each year. Each annual budget shall be subject to the review and final approval of City. In order for City to fully evaluate and analyze such budgets or any other request by Authority relating to income and expenses, Authority agrees to provide to City such reasonable financial information relating to the Project as may be requested by City from time to time, and agrees to meet with such frequency as requested by City, but no more frequently than quarterly and participate in a review of revenues and expenditures, with City's Finance Department. If extraordinary events occur during any fiscal year which could not reasonably be contemplated at the time the corresponding budget was prepared, Authority may submit an amendment to such budget for review and approval by City. If City fails to approve any annual budgets (or any proposed amendment thereto), City, shall provide Authority in writing the specific reasons therefor and its suggested modifications to the proposed budgets or amendment in order to make them acceptable (for an amendment, City shall provide Authority the reasons and suggested modifications within 45 days of City's receipt of the suggested amendment). The parties shall then engage in good faith discussions and use reasonable commercial efforts to attempt to resolve the matter to the mutual satisfaction of the parties. If, despite such good faith negotiations, the parties are unable to agree on the budgets for such period, the budgets approved by City shall control; provided, however, that City agrees it shall not unreasonably require that Authority's operating reserves be utilized or otherwise applied as a part of determining whether or not to approve the management and operations budget for any fiscal year, except to the extent that the operating reserves exceed the amount budgeted as operating reserves on the immediately preceding fiscal year's management and operations budget.

Authority shall use all reasonable efforts to cause the Project to be managed, operated and improved on behalf of City in accordance with the approved budgets. Without the prior consent of City, Authority shall not exceed, commit or contract to expend any sums in excess of the aggregate amounts allowed in the budgets or otherwise approved by City, except if (i) such additional expenditure is necessary to perform an emergency repair as provided in Section 8-3 of this Agreement, in which event Authority shall use commercially reasonable efforts to notify City prior to making such repair, or (ii) such additional cost is offset by a corresponding increase in revenue not projected on the budgets submitted to and approved by City. Authority agrees to report in writing to City, as promptly as practicable after becoming aware of such, any significant change or variance in the bottom line number in the budgets, and any material increase in the total costs (as opposed to any particular line item cost) from that provided for in the budgets.



City shall provide funding only for those expenditures authorized by the City Council in its approval of City's annual budget. City may issue an advance of funds to Authority in an amount not to exceed 16.67% (two months) of the total annual budgeted amount. If applicable, such advance shall be issued within three working days of the beginning of the fiscal year (May 1). On or before the fifteenth working day of each succeeding month, Authority shall provide City an accounting of all expenditures for the previous month. Such accounting shall list expenditures at the level of the line item (admin) budget approved by the City Council. Such report shall include budgeted funds, monthly expenditures, fiscal year to date expenditures and remaining available budget for each line item in the annual budget. Within forty-five days of the receipt of the accounting of expenditures, City shall have reconciled the amount against the advance of funds and shall issue a payment to Authority to replenish the advance to its original amount. Upon termination of this Agreement, Authority shall provide City a final accounting of expenditures and remit to City the balance of any remaining advance of funds.

Any surplus funds existing in the management and operations budget and capital improvements budget at the end of each fiscal year (April 30) and not having been obligated by Authority or needed by Authority for purposes of fully funding the operating reserve, shall be retained by Authority and shall be rolled forward and reflected in the proposed management and operations budget and capital improvements budget, as applicable, for the next succeeding fiscal year.

**Sec. 6-2. Budget adjustments – Management and Operations.** The annual management and operations budget will be funded and approved on the basis of revenue estimated to be produced through sources that include, but are not limited to, District Revenues yet to be generated, and sums paid to Authority by third parties (e.g., ridership fares, advertising revenue, etc.). In the event that revenue is being generated from sources in an amount less than that which was estimated to have been generated in the approved budget, and City shall have notified Authority of the same in writing no later than the close of City's third quarter of the fiscal year, then City shall have the right to proportionally adjust payments for the management and operations budget during each month of the remaining quarter of such fiscal year and Authority shall draw upon any management and operations reserve which Authority may have accumulated for purposes of meeting the deficiency. In the event that any such management and operations reserve is insufficient for purposes of meeting the deficiency, then City may elect to meet the deficiency by utilizing funds within the Annual Appropriation Stabilization Reserve. Notwithstanding the foregoing, City intends to make reasonable efforts to fund any deficit in the management and operations budget before making any adjustment in payments, subject to City's right to seek reimbursement as provided in Section 7-6.

**Sec. 6-3. Budget adjustments – Capital Improvements.** The annual capital improvements budget will be funded and approved on the basis of revenue estimated to be produced through sources that include, but are not limited to, District Revenues yet to be generated. In the event that revenue is being generated from all sources in an amount less than that which was estimated to have been generated in the approved budget, and City shall have notified Authority of the same in writing no later than the close of City's third quarter of the fiscal year, then City shall have the right to proportionally adjust payments for the capital improvements budget during each month of the remaining quarter of such fiscal year and Authority shall draw upon any capital improvements reserve which Authority may have accumulated for purposes of meeting the deficiency. In the event that Authority does not have a capital improvements reserve or the reserve

is otherwise insufficient for purposes of meeting the deficiency, then City, with the consent of Authority, such consent not to be unreasonably withheld, may elect to meet the deficiency by utilizing funds within the Annual Appropriation Stabilization Reserve. Notwithstanding the foregoing, City intends to make reasonable efforts to fund any deficit in the capital improvements budget before making any adjustment in payments, subject to City's right to seek reimbursement as provided in Section 7-6.

**Sec. 6-4. *Records.*** Authority agrees to keep and maintain separate and independent records, in accordance with generally accepted accounting principles, devoted exclusively to its oversight of the management and operations of the Project. Such records (including books, ledgers, journals, and accounts) shall contain all entries reflecting the business operations of Authority under this Agreement. The City, District, FTA or their authorized agents shall have the right to audit and inspect such records from time to time. Authority shall retain such records for no less than five (5) years.

**Sec. 6-5. *Monthly Financial Reports.*** Authority agrees to provide to City, within thirty (30) days after the end of each month, financial reports, including a balance sheet, aging report on accounts receivable, and statement of revenues and expenditures (budget to actual) for such month and year to date in accordance with generally accepted accounting principles.

**Sec. 6-6. *Audit – Financial and Performance.*** City may conduct during normal business hours reasonable audits of the financial books and records of Authority and the Operator relating to the management and operation of the Project for the purpose of confirming compliance with the terms of this Agreement. Authority agrees to provide to City, within one hundred twenty (120) days following the end of each fiscal year, an audited financial statement with an unmodified audit opinion, conducted by an external auditor reasonably acceptable to City using generally accepted accounting principles and generally accepted auditing standards, unless City has advised Authority that City will include such financial statements in City's engagement for outside audit services. Costs associated with obtaining such financial statement shall be a budgeted operating expense.

City, as an FTA grantee, is the entity ultimately obligated to ensure compliance with the Applicable Procurement Rules and demonstrate such compliance to FTA's satisfaction. City's right to audit shall include the right to exercise ongoing oversight of Authority's performance under this Agreement and to conduct such performance and program compliance reviews as it and FTA may require.

Authority shall allow the Missouri Department of Transportation and FTA such access to Authority's records and the Project as they may require for the purpose of conducting any audit within their purview to conduct. Authority shall ensure that the O&M Contract requires the Operator to cooperate and provide such access as shall be required by the auditing agencies for such purposes.

**Sec. 6-7. *Use of terminology.*** The references in this Article VI to management and operations budgets and amendments thereto being prepared, maintained or otherwise administered by Authority are intended for budgeting purposes only and shall not be construed as granting to Authority any powers beyond those granted elsewhere in this Agreement. Day-to-day operations

and maintenance of the Project shall be provided by an Operator to be procured by City and Authority as provided in Article V.

## ARTICLE VII SPECIAL REVENUE FUND; RESERVES

**Sec. 7-1. *Special Revenue Fund.*** Pursuant to the Initial Phase Cooperative Agreement, City has established a special revenue fund for the deposit of all funds attributable to or designated for the Project (the “**Streetcar Fund**”) excluding, however, any Authority Miscellaneous Revenue which is not from the operation, use, marketing, promotion, or physical exploitations of the federally funded assets of the Project which are subject to the FTA’s Master Agreement and 49 USC Chapter 53 unless the deposit of such otherwise so excluded funds into the Streetcar Fund is required in order to not violate the provisions of the sixth paragraph of section 5-1, in which event such funds shall be deposited into the Streetcar Fund. Such funds are, by this Agreement, dedicated and restricted to the Project. The Streetcar Fund shall include Authority Miscellaneous Revenue related to the operations, use, marketing, promotion, or physical exploitation of the federally funded assets of the Project, including, but not limited to ridership fares, advertising revenue and sponsorship revenue, excluding, however, any Authority Miscellaneous Revenue which is not from the operation, use, marketing, promotion, or physical exploitation of the federally funded assets of the Project which are subject to the FTA’s Master Agreement and 49 USC Chapter 53, unless the deposit of such otherwise so excluded funds into the Streetcar Fund is required in order to not violate the provisions of the sixth paragraph of Section 5-1, in which event such funds shall be deposited into the Streetcar Fund. In the event that City (or City’s Finance Director) and Authority shall jointly determine in writing that Authority Miscellaneous Revenue from a particular source should not be deposited in the Streetcar Fund, then such amounts shall be reflected within the budgets submitted by Authority to City and utilized for purposes of funding the management and operations budget and capital improvements budget, but shall not be funds coming into City’s possession for purposes of depositing the same into the Streetcar Fund. For purposes of the Initial Phase Cooperative Agreement, the special revenue fund had been previously designated and named the “**Initial Phase Fund**”.

**Sec. 7-2. *Transfer of Downtown Streetcar TDD Revenue.*** Downtown Streetcar TDD previously established a separate depository account into which there is deposited all Downtown Streetcar TDD Revenue received from MODOR with respect to the Downtown Streetcar TDD Sales Tax and from County with respect to the Downtown Streetcar TDD Special Assessments (the “**Downtown Streetcar TDD Depository Account**”) and funds on deposit from time to time in the Downtown Streetcar TDD Depository Account have been transferred by Downtown Streetcar TDD into the Streetcar Fund in accordance with the Initial Phase Cooperative Agreement. Upon the execution of this Agreement, (a) City shall deem all reserve funds maintained by City under the Initial Phase Cooperative Agreement to be the reserve funds described in, and maintained under, this Agreement, and (b) District shall (i) establish a new separate depository account for the deposit of all District Revenue received from MODOR with respect to the District Sales Tax and from County with respect to the District Special Assessments (the “**District Depository Account**”), and (ii) arrange for all District Revenue to be deposited into the District Depository Account. Thereupon, and pursuant to authority granted to Downtown Streetcar TDD by Authority and City under the Transition Agreement, Downtown Streetcar TDD shall (a) transfer into the Streetcar Fund all funds then on deposit in the Downtown Streetcar TDD

Depository Account, save and except the sum of \$500,000 (the “**Winding Up Amount**”), (b) transfer into the Streetcar Fund from time to time any additional Downtown Streetcar TDD Revenue thereafter deposited into the Downtown Streetcar TDD Depository Account, but retaining therein the Winding Up Amount.

**Sec. 7-3. Special Revenue Fund Receipts/Expenditures.** All District Revenues remitted to City by District, including funds on deposit from time to time in the District Depository Account (less only those bond counsel expenses allowed by Section 3-3), all Downtown Streetcar TDD Revenue remitted to City by Downtown Streetcar TDD pursuant to the Transition Agreement, including funds on deposit from time to time in the Downtown Streetcar TDD Depository Account, all Nominally Owned Property Payments, and, subject to annual appropriation, the City’s Annual Contribution and the Smart City Revenue, and all other funds attributable to or designated for the Project and coming into City’s possession from any source, shall be deposited into the Streetcar Fund and shall be expended for the following items in the following order of priority (except as set forth in Section 7-4): (1) payment of the scheduled debt service on the Streetcar Financing, (2) reimbursement of the Previously Advanced Reimbursable Funds, in such relative priority as between them as is set forth in the Funding Agreement, (3) funding all of Authority’s annual budgets and any amendments thereto as approved by City, (4) funding any other non-capital expense for the maintenance and repair of the Project provided the expenditure is approved by ordinance passed by City’s City Council and the expenditure is reasonably necessary to keep the Project in a state of good repair, (5) at the option of City with respect to any fiscal year of City, but with the consent of the Authority in each instance, the “Dedicated City Employees Costs” incurred for the “Dedicated City Employees”, not to exceed Two Hundred Thousand Dollars (\$200,000) for any fiscal year of City (as those terms are defined in that certain Letter Agreement dated February 1, 2018 among City, Authority and Downtown Streetcar TDD), and (6) the “NTD-Required Audit Cost” in any year in which the NTD-Required Audit Cost is incurred for an “NTD-Required Audit” (as those terms are defined in that certain Letter Agreement dated October 23, 2018 among City, Authority and Downtown Streetcar TDD).

With regard to the category (4) expenses, City shall confer with Authority prior to the City Council considering approval of (or if earlier, prior to incurring) such expenses. To the extent the Streetcar Fund contains an unappropriated fund balance at the end of any fiscal year, then the unappropriated fund balance shall be used in the manner provided for in Sections 7-5 and 7-6 below.

**Sec. 7-4. Sources of Phase 2 Capital Costs.** The following are the anticipated sources of Phase 2 Capital Costs: [*individual source amounts subject to adjustment before execution*]

Project Fund From Phase 2 Financing	\$161,650,000
Advances by Authority to be Reimbursed by Authority Reimbursement	\$5,000,000
Federal Contribution	<u>\$163,350,000</u>
TOTAL	\$330,000,000

In the event that the Phase 2 Capital Costs exceed \$330,000,000, City shall fully fund the difference from a source it shall identify, provided however that no portion of such excess may be paid for with District Revenue without the consent of Authority and District.

**Sec. 7-5. Special Revenue Fund Reserves.** Unappropriated funds shall accumulate within the Streetcar Fund and shall first be used to fund the following in the following order of priority: (1) a debt service coverage reserve, which shall be funded at 0.5x the average annual debt service on the Streetcar Financing (the “**Debt Service Coverage Reserve**”), (2) an annual appropriation stabilization reserve which shall be funded at 1x the average annual debt service on the Streetcar Financing (the “**Annual Appropriation Stabilization Reserve**”), and (3) any other reserves which Authority and City may mutually agree to fund (“**Reserves**”). The Reserves shall be fully funded in their order of priority such that the Annual Appropriation Stabilization Reserve shall not be funded in any amount until the Debt Service Coverage Reserve shall have been fully funded. The Reserves shall thereafter be re-filled in the same order of priority in the event that any portion of a reserve is expended. Money in the Debt Service Coverage Reserve may be used and applied solely for the purpose of paying the principal and interest due on the Streetcar Financing, or for reimbursing City for City general fund revenues advanced to pay principal and interest on the Streetcar Financing to the extent there were insufficient moneys in the Streetcar Fund during the applicable City fiscal year to make such payments when due, and shall be utilized, to the extent available, before any funds are withdrawn from any debt service reserve funded by bond proceeds. Money in the Annual Appropriation Stabilization Reserve may be used and applied solely for one or more of the following purposes, in any order or combination City determines appropriate after conferring in good faith with Authority’s Chair or such other person as Authority may designate for such purpose: (1) replenishing the Debt Service Coverage Reserve, (2) claims and liabilities for personal injury or property damage attributable to the operations of the Project, to the extent not covered by insurance, (3) management and operations budget shortfalls, to the extent there are insufficient funds in Authority’s management and operations reserves to meet such management and operations budget shortfalls, (4) capital improvements budget shortfalls first utilizing any capital improvements reserve that Authority may have established, and (5) the cost of unanticipated necessary capital improvements, repairs or replacements to the Project not provided for in the capital improvements budget. Interest earnings on the Debt Service Coverage Reserve and Annual Appropriation Stabilization Reserve, after each such reserve is fully funded, will remain in the Streetcar Fund.

**Sec. 7-6. Surplus Revenue.** In the event that the Debt Service Coverage Reserve, the Annual Appropriation Stabilization Reserve and any other agreed upon reserve shall have been fully funded and additional unappropriated funds remain within the Streetcar Fund, those remaining funds shall be deemed surplus (“**Surplus**”) and shall be utilized in the following manner and in the following order of priority: (1) to reimburse City dollar for dollar in the event that City has expended any sum in excess of City’s Annual Contribution in support of the Project during

any fiscal year, and (2) to fund any Project related expenditure as may be agreed to in writing by Authority, District and City, and (3) to reduce District Special Assessment levies. Notwithstanding the foregoing, District's Executive Director shall consult with City's Director of Finance and Authority's Chair, or such other person as City or Authority may designate, prior to any reduction in District Special Assessment levies. In the event that District makes reductions in District Special Assessment levies, then those reductions shall be allocated with respect to the applicable fiscal year of District among the Residential Property Assessment, the Commercial Property Assessment and the Tax Exempt Property Assessment pro rata based on the total amount billed for such component with respect to the preceding fiscal year. District shall notify City of any reduction and City shall thereafter release the Surplus, and no more, for purposes of supplementing the revenue within the Streetcar Fund for the next ensuing fiscal year.

**Sec. 7-7. Jackson County Contribution.** County is considering and may present to the voters, at some future date, one or more funding mechanisms for the purposes of designing and constructing a commuter rail system that may terminate or otherwise stop at a location serviced by the Project. Should County succeed in its efforts, City will use good faith efforts to obtain the agreement of County for a financial contribution from County to City in consideration of the fact that the Project will serve to support the successful implementation of the commuter rail system. Authority and District acknowledge that City cannot compel County to contribute any sum, notwithstanding City's request. In the event, however, that City receives any such contribution from County, then such contribution shall be deposited into the Streetcar Fund and utilized as provided for in Section 7-6, provided however that if there is a county-wide sales tax imposed by County for rail-based transit, any contribution by County shall be deposited into the Streetcar Fund and shall be used to reduce the rate of the District Sales Tax in lieu of the District Special Assessment levies, notwithstanding the provisions of Section 7-6. Notwithstanding the foregoing, in the event that the Project is expanded beyond the Phase 2 Line and such extension is funded, in whole or in part, by an additional sales tax imposed by another statutorily established district, then any contribution City may receive from County from and after the date such extension shall commence operating shall be allocated such that the portion deposited into the Streetcar Fund shall be proportionate to the gross sales occurring within District in relation to the combined gross sales occurring within the geographical boundaries of those statutorily established districts imposing a sales tax in support of the Project as so expanded.

**Sec. 7-8. Expansion Contributions.** In the event the streetcar system is expanded beyond the Phase 2 Line, City shall require that any entity implementing such expansion make reasonable financial contribution toward a sharing of costs incurred for any components constructed as part of the Project and that will be shared, exclusive of track (an "**Expansion Contribution**"). Expansions of the streetcar system and Expansion Contributions shall be determined by City after conferring in good faith with Authority's Chair or such other person as Authority may designate for such purpose. Expansion Contributions shall be determined with due regard for the capital costs that are to be incurred by the entity implementing the expansion and from which District will derive a direct benefit, such as, for example, additional streetcar vehicles or new maintenance facilities outside of District's boundaries but otherwise servicing the streetcar system as so expanded. Any Expansion Contribution shall be deposited into the Streetcar Fund and utilized as provided for in Section 7-6.

**Sec. 7-9. *Street resurfacing.*** No portion of the Streetcar Fund shall be utilized to repair, maintain, reconstruct, resurface, mill, overlay or otherwise improve (collectively, “**Streetwork**”) any roadbed or road surface on which the Project may operate. After completion of utility plans for the streets on which the Project will operate, City and Authority will negotiate in good faith to agree upon a protocol (with the goal of eliminating or limiting the expenditure of the Streetcar Fund) with respect to their respective obligations for the payment of costs that may be incurred in removing, re-installing or replacing any track work lying within the public right-of-way necessitated by any Streetwork on any street on which the Project will operate, provided however that this section shall not be construed as relieving any utility from paying any such costs to the extent such costs are incurred in connection with any work done by such utility in the public right-of-way.

**Sec. 7-10. *Future grant/loan proceeds.*** Subject to the last sentence of this Section 7-10, the proceeds of federal, state or other governmental grants or loans attributable to or designated for the Project shall, unless otherwise agreed to by Authority upon City’s request or prohibited by the terms and conditions of such grant or loan, be deposited into the Streetcar Fund and used first to fund any deficiency existing in any of the Reserves, and thereafter shall next be either applied to redeem or repay (wholly or partially) the unpaid balance of the Streetcar Financing at the earliest lawfully permissible date or treated as Surplus, as determined by City after consultation with Authority. The provisions of this Section 7-10 shall not apply to the Federal Contribution, nor to Surface Transportation Program funds or Congestion Mitigation and Air Quality Improvement Program funds that may be allocated to the Project by the Mid-America Regional Council (“**MARC**”) and that reduced the initial amount of Phase 2 Financing, nor to funds provided by City that were not derived from federal, state or other governmental grants or loans attributable to or designated for the Project.

## **ARTICLE VIII MAINTENANCE; CAPITAL IMPROVEMENTS**

**Sec. 8-1. *Maintenance of Facilities.*** Subject to City appropriating sufficient funds, Authority and City shall be responsible for causing the Operator to maintain the Project in a condition which permits its proper and efficient operation in accordance with industry standards, and in any event not less than maintenance standards and requirements set forth in applicable manuals and specifications provided by equipment manufacturers and suppliers. All contracts entered into by Authority for the purchase of property or the provision of services regarding the Project shall be solicited and awarded in accordance with City’s requirements applicable to such work and any Applicable Procurement Rules, and Authority and City shall require any Operator to do the same. City shall provide procurement assistance services to Authority at Authority’s request.

**Sec. 8-2. *Capital Improvements.*** Subject to City appropriating sufficient funds, Authority and City shall work cooperatively in City procuring, causing and owning all necessary capital improvements to the Project. All contracts regarding those capital improvements shall be solicited and awarded in accordance with City’s requirements applicable to such work and any Applicable Procurement Rules. City shall provide procurement assistance services to Authority at Authority’s request.

**Sec. 8-3. *Emergency Repairs.*** Authority shall make reasonable efforts to cause to be repaired any condition in the Project of which it is aware which, if not performed immediately, creates an imminent danger to persons or property and/or an unsafe condition threatening persons or property, notwithstanding that funding sufficient to pay the same may not have been included within the budget approved by City. Authority shall be reimbursed within forty-five (45) business days by City for any portion of such expenditure which cannot be satisfied from the fund balance of Authority's capital improvements reserve. Authority shall, if practicable under the circumstances, notify City prior to making any such expenditure, and, in all cases, notify City promptly following the making of any such repair.

**Sec. 8-4. *Payment of prevailing wage.*** Authority shall pay, and shall contractually require any third party maintaining or improving the Project to pay wages as required under Sections 290.210 to 290.340, inclusive, of the Revised Statutes of Missouri, or Davis-Bacon and related federal acts, to the extent such provisions are applicable to such work.

**Sec. 8-5. *M/WBE; Construction Workforce; Affirmative Action; Non-discrimination.*** Authority shall abide by, and shall contractually require any third party maintaining or improving the Project to abide by, the requirements of Chapter 3 of City's Code of Ordinances, and any rules, regulations, and procedures adopted thereunder as the same may be amended or recodified from time-to-time, as would be applicable were City soliciting and contracting for such goods and services. Authority shall consult with City and shall follow such applicable required processes with regard to implementing the programs to any contract related to the maintenance or improvement of the Project, provided however that nothing herein shall be construed as relieving City from its obligation to administer such programs or transfer the obligation to administer such programs to Authority. No construction contract with a value in excess of \$300,000 or any other contract with a value in excess of \$160,000, as those amounts may be adjusted by the City Council from time to time, shall be awarded by Authority unless the same fully complies with the applicable requirements of Chapter 3, Code of Ordinances, as reasonably determined by City in writing. Notwithstanding the foregoing, Authority acknowledges that the process by which Authority procures some or all of its goods and services with respect to the Project may be subject to rules, regulations and requirements of the FTA or other federal agency, or contractual obligations owed by City to FTA or other federal agency pursuant to the Applicable Procurement Rules, which may include applicability of the DBE Program. In the event that the DBE Program is determined by City to be applicable to the procurement at issue, Authority shall abide by the terms of the DBE Program in lieu of City's Minority and Women's Business Enterprise program for purposes of such procurement.

## **ARTICLE IX OWNERSHIP AND CONTROL; PROJECT ONGOING**

**Sec. 9-1. *Ownership and Control of Personal Property and Fixtures.*** City shall solely own and control the personal property and fixtures constituting the Project as provided in Section 1-2.

**Sec. 9-2. *Ownership and Control of Right-of-Way and Real Property.*** Ownership and control of the right-of-way in which the personal property and fixtures constituting the Project is located, whether such right-of-way presently exists or is subsequently acquired, shall remain at



all times in City. Title to any real property acquired for any portion of the Project shall be conveyed to and held by City. Nothing herein shall be construed as granting any party to this Agreement or any other person or entity an interest in City's right-of-way.

**Sec. 9-3. *Project deemed ongoing.*** The Project includes the ongoing operation of the streetcar following its construction such that the parties hereto shall not deem the Project to be completed until such time as the streetcar may permanently cease operating. The streetcar shall be deemed to have permanently ceased operating only if services have been discontinued in their entirety, regardless of cause, and the governing bodies of City and Authority shall have each adopted resolutions affirming that the streetcar has permanently ceased operating. District shall not seek to voluntarily abolish itself or submit such question to an election as provided in the Act unless the governing bodies of City and Authority shall both shall have consented thereto and the abolishment is otherwise proper pursuant to the provisions of the Act.

## **ARTICLE X INSURANCE; INDEMNIFICATION**

**Sec. 10-1. *Commercial General Liability.*** Authority shall obtain and maintain in effect, and shall require the Operator to obtain and maintain in effect, insurance coverage with regard to commercial general liability, including products and completed operations, bodily injury and property damage liability, contractual liability, independent contractors' liability and personal and advertising injury liability against claims occurring on, in, or about the Project, or otherwise arising under Section 10-6 of this Agreement, in amounts not less than the following, provided however that Authority shall increase, and shall require the Operator to increase, such coverage as reasonably requested by City or District from time-to-time:

- \$1,000,000 per occurrence
- \$1,000,000 personal and advertising injury
- \$1,000,000 products-completed operations aggregate

**Sec. 10-2. *Commercial Automobile Liability.*** Authority shall obtain and maintain in effect, and shall require the Operator to obtain and maintain in effect, insurance coverage with regard to commercial automobile liability, including coverage of the operation of owned, leased, hired and non-owned vehicles, in amounts not less than the following, provided however that Authority shall increase, and shall require the Operator to increase, such coverage as reasonably requested by City or District from time-to-time:

- \$1,000,000 per accident (PI and PD combined single limit)

**Sec. 10-3. *Workers Compensation and Employer's Liability Insurance.*** Authority shall obtain and maintain in effect, and shall require the Operator to obtain and maintain in effect, worker's compensation as required by law and employer's liability insurance as required by law.

**Sec. 10-4. *Umbrella/Excess Liability Insurance.*** Authority shall obtain and maintain in effect, and shall require the Operator to obtain and maintain in effect, insurance coverage with regard to umbrella or excess liability insurance in amounts not less than the following, provided however that Authority shall increase or decrease, and shall require the Operator to increase or decrease, such coverage as reasonably requested by City or District from time-to-time, unless (in

the case of a proposed decrease) Authority reasonably determines that such a decrease creates an unreasonable risk to Authority or other parties insured by the subject policies:

\$10,000,000 each occurrence

\$10,000,000 aggregate

**Sec. 10-5. *Miscellaneous Insurance Provisions.*** All insurance policies obtained pursuant to this Agreement (other than those provided for in Sections 10-7 and 10-8 of this Agreement) shall: (i) name City, District and, if reasonably obtainable, each of their respective officials, officers and employees as primary noncontributory additional insureds and shall waive subrogation and include any special endorsements reasonably required by City or District; (ii) provide, to the extent reasonably obtainable, that the policy may not be suspended, voided, cancelled, non-renewed, or reduced in coverage or in limits without prior written notice to the policy holder, City and District; and (iii) be issued by a company or companies authorized to do business in the State of Missouri, approved by City and with a Best's rating of claims paying ability of no less than -B+V or its equivalent. Authority shall provide, and shall require the Operator to provide, City and District with original certificates evidencing the coverage required by this Agreement. The original certificates shall be provided no less than annually and with such frequency as reasonably requested by City or District, and shall be subject to review and approval by City's Risk Manager.

**Sec. 10-6. *Indemnification.*** Authority shall defend, indemnify, and hold harmless City, District and each of their respective agencies, officials, officers, or employees from and against all claims, damages, liability, losses costs, and expenses, including reasonable attorneys' fees, arising out of or resulting from any acts or omissions in connection with the management and operation of the streetcar, caused in whole or in part by Authority, its employees, agents, contractors subcontractors, or others for whom Authority is liable, regardless of whether or not caused in part by any act or omission, including negligence, of City, District, their agencies, officials, officers, or employees. Authority shall require the Operator to defend, indemnify, and hold harmless City, District and each of their respective agencies, officials, officers or employees to the same extent and subject to the same terms as Authority is obligated to hereunder, provided however that Authority's failure to do so shall not relieve Authority from its independent obligation to indemnify City and District for the actions of its contractors and subcontractors. Authority's and the Operator's obligations under this section shall be limited to the coverage and limits of insurance that each is required to procure and maintain under this Agreement or the coverage and limits of insurance that Authority and the Operator may carry, whichever is greater, but those obligations shall not be relieved by Authority's or the Operator's failure to procure and maintain such insurance. Notwithstanding Authority's obligation to indemnify, in no event shall the language in this Section constitute or be construed as a waiver or limitation of (i) City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law, or (ii) to the extent otherwise available to Authority pursuant to applicable law, Authority's rights to possess or enjoy such immunities and protections.

**Sec. 10-7. *Directors and Officers Liability Insurance.*** Authority and District shall procure directors and officers liability insurance policies in such amounts and containing such terms as their respective governing bodies shall determine proper.

**Sec. 10-8. *Property insurance; City.*** City may elect to carry coverage insuring the components of the Project, including but not limited to the streetcars, from loss in such amounts as City shall deem appropriate, all as provided more fully in Section 6-2 of this Agreement. If City elects to obtain such coverage, City shall use reasonable efforts to obtain such policies at a commercially reasonable cost and with a commercially reasonable scope.

**Sec. 10-9. *Commercial General Liability Insurance; City.*** City may elect, in its sole discretion, to carry commercial general liability insurance restricted in its coverage to losses arising from the Project. In the event City elects to obtain such coverage, City shall name Authority and, if reasonably obtainable, each of Authority's respective officials, officers and employees as additional insureds. Nothing herein shall be construed to require that City name Authority or its respective offices, officers and employees as additional insureds on any insurance policy that City might presently have or elect to obtain if such policy is not applicable solely to the Project, notwithstanding that such policy might cover losses arising from the Project. City's election to carry insurance of any type, whether specific to the Project or otherwise, shall not relieve Authority of its obligation to indemnify City as provided more fully in Section 10-6 of this Agreement.

## **ARTICLE XI TERM AND TERMINATION**

**Sec. 11-1. *Term.*** The term of this Agreement shall commence on the date hereof and, subject to the terms of Section 11-4 below, shall continue for a term of forty (40) years or until such time as the Project shall permanently cease operating as determined pursuant to Section 9-3, whichever shall occur first.

**Sec. 11-2. *City's Termination of O&M Contract.*** In addition to Authority's rights, City shall also have the right to terminate an O&M Contract and such right shall be expressly reserved non-exclusively to City in any O&M Contract awarded by City and Authority. City's right to terminate shall be exercised upon those grounds for which Authority would be entitled to terminate such O&M Contract as may be set forth therein and which shall include the right to terminate for convenience, and if City exercises or attempts to exercise such termination right, City shall pay all costs incurred by City and Authority related to or resulting from City's action. City or Authority shall give the other no less than fourteen (14) days' notice of its intent to exercise such right to terminate and shall provide with such notice (1) a copy of any writing invoking such right to terminate, and (2) a written transition plan explaining how operation and maintenance of the Project will continue without material disruption following such termination (a "**Transition Plan**"). Neither City nor Authority shall terminate an O&M Contract if such termination would cause the Project's service to the public to be materially disrupted, as reasonably determined by the other of the two based upon the substance of the Transition Plan.

**Sec. 11-3. *Termination of Authority's Executive Director; Board members.*** City shall have the right to require that Authority terminate the services of its executive director or such other person(s) with primary responsibility for the day-to-day oversight and supervision of the management and operations of the Project upon those grounds for which Authority would be entitled to terminate such services, provided such termination is made upon grounds that a reasonable person would conclude materially impairs the management and operations of the

Project in the manner contemplated by this Agreement, and provided further that such termination is not exercised unlawfully. City and Authority shall confer in good faith to resolve any management and operational concerns to City's satisfaction prior to taking such action. Authority shall provide by its bylaws that any board member engaging in acts of misfeasance or malfeasance related to his or her position or having been convicted or pleading guilty or *nolo contendere* to (a) a felony (other than traffic violations), (b) a crime involving moral turpitude, or (c) a criminal act which adversely affects the reputation of Authority, City or District, shall forfeit such position and be replaced without unreasonable delay.

**Sec. 11-4. Breach; Termination.** In the event of any breach or non-performance by a party of its obligations hereunder, either or both of the other parties may exercise all rights and remedies available at law or in equity, provided, however, that no party shall have the right to terminate this Agreement by reason of another party's breach or non-performance unless such breach or non-performance constitutes a material breach of this Agreement. In the event a party believes that a material breach exists, the party asserting the material breach shall give the other parties written notice describing the material breach and of the asserting party's intent to terminate. If the material breach has not been entirely cured within thirty (30) days of the date of the notice, then the asserting party may terminate this Agreement at any time thereafter by giving the other parties subsequent written notice of termination; provided, however, that in the case of a material breach that is not reasonably practicable to entirely cure within such thirty (30) day period, the thirty (30) day period shall be extended for such reasonable time as is necessary to complete such cure, so long as the cure of the breach was commenced within the thirty (30) day period and such cure is thereafter pursued continuously and with due diligence so that the material breach is cured as soon as is reasonably practicable or within one hundred eighty (180) days, whichever shall occur first. The termination of this Agreement shall not relieve any party hereto of any financial obligations they may have occurred, nor shall any party hereto be deemed to have assumed the financial obligations of any other party hereto. Upon termination, Authority's interest in any contracts relating to the operation and maintenance of the Project shall be assigned to and assumed by City and City shall assume the rights and obligations thereunder. City's rights to terminate provided in Sections 11-2 and 11-3 above shall not affect City's right to terminate this Agreement for cause as provided by this section, nor shall the exercise of any such right as provided in Sections 11-2 and 11-3 above be deemed a condition precedent to City's exercise of the right to terminate this Agreement for cause as provided by this section.

## ARTICLE XII MISCELLANEOUS

**Sec. 12-1. Authority.** Each party represents and warrants to the other party that the execution and delivery of this Agreement by it has been duly authorized by all proper actions and proceedings to enter into and perform this Agreement and that this Agreement constitutes the legal, valid, binding and enforceable obligation of such party, subject to applicable bankruptcy, insolvency or other laws affecting creditors' rights generally.

**Sec. 12-2. Use of City Name/Logos.** City reserves full rights and privileges to place its name and logo on or within any and all stations, streetcars, maintenance facilities and any other component of the Project, provided however that Authority shall have the right to require City to place its name and logo in designated areas that, while readily visible, do not unreasonably impair

Authority's ability to generate revenue through the sale of advertisements or sponsorships. Authority shall have the right to use (and permit others to use in furtherance of Authority's obligations hereunder), without restriction and for no charge, the name and all logos of the City of Kansas City, Missouri, on Authority's stationary, in its advertising of the Project, and whenever conducting business of the Project; provided, that Authority shall take all prudent and appropriate measures to protect the intellectual property rights of City relating to such logos. All intellectual property rights in any Project logos developed by Authority shall be and at all times remain the sole and exclusive property of Authority. City shall have the right to use (and permit others to use in furtherance of City's obligations hereunder), without restriction and for no charge, the name and all logos of Authority; provided, that City shall take all prudent and appropriate measures to protect the intellectual property rights of Authority relating to such logos. In the event that this Agreement is terminated, City shall have the right to continue using Authority's logo, without restriction and for no charge, for a period of time not less than six (6) months. Authority shall use commercially reasonable efforts, where appropriate, to include the City name and/or logo in its advertisements for the Project.

**Sec. 12-3**     ***Regional branding; Uniform fare payment system.*** MARC may ultimately adopt a region-wide transit branding policy and/or uniform fare acceptance system (such as, by way of example, uniform fare tokens or pre-paid or discount fare cards). In the event that such a policy or system is adopted and agreed to by City for implementation within City's corporate boundaries, Authority shall comply with and participate in the implementation of such policy or system with regards to the branding of the Project and uniform fare acceptance, provided, that the foregoing shall not require Authority to charge a fare, or a particular fare, to patronize the Project or any portion thereof. City agrees that it shall not participate in the development of any such policy or system unless Authority is permitted to participate in the development thereof.

**Sec. 12-4.**     ***Assignment.*** No party may assign this Agreement without the prior written consent of every other party hereto. Any purported assignment in contravention of this section shall be void.

**Sec. 12-5.**     ***Notices.*** All notices required or permitted to be given pursuant to this Agreement shall be in writing and delivered personally or sent by registered or certified mail, return receipt requested, or by generally recognized, prepaid, overnight air courier services, to the address and individual set forth below. All such notices to either party shall be deemed to have been provided when delivered, if delivered personally, three (3) days after mailed, if sent by registered or certified mail, or the next business day, if sent by generally recognized, prepaid, overnight air courier services.

IF TO CITY:                                 City of Kansas City, Missouri  
  414 E. 12<sup>th</sup> Street  
  Kansas City, Missouri 64106  
  Attention: Troy Schulte, City Manager

IF TO DISTRICT:                             The Kansas City Main Street Rail TDD  
  Attention: Cindy Circo, Executive Director  
  106 West 14<sup>th</sup> Street #2203  
  Kansas City, Missouri 64105

IF TO AUTHORITY: Kansas City Streetcar Authority  
Attn: Tom Gerend, Executive Director  
600 E. 3<sup>rd</sup> Street  
Kansas City, Missouri 64106

Any party shall have the right to change its respective address for notices by a written notice to that effect given to all other parties.

**Sec. 12-6. *Prior Agreements.*** This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings concerning the subject matter hereof. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations, agreements or understandings, whether oral or written.

**Sec. 12-7. *Governing Law.*** The Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Missouri, without regard to its conflict of laws principles.

**Sec. 12-8. *Amendments.*** Neither this Agreement nor any of its terms may be changed or modified or terminated (unless as otherwise provided hereunder) except by an instrument in writing signed by all parties.

**Sec. 12-9. *Waiver; Remedies.*** No failure or delay by a party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of this Agreement, but each and every term of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

**Sec. 12-10. *Relationship of Parties.*** Nothing contained in this Agreement shall be deemed to create, whether express or implied, a partnership, joint venture, employment, or agency relationship between any of the parties hereto except the same be expressly set forth in this Agreement

**Sec. 12-11. *Counterparts.*** This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document.

**Sec. 12-12. *Severability.*** If any provision of this Agreement shall be adjudged invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

**Sec. 12-13. *Interpretations; Construction.*** Article and Section titles and headings are provided for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. To the extent permitted by the context in which used,

(a) words in the singular number shall include the plural, words in the masculine gender shall include the feminine and neuter, and vice versa, and (b) reference to “persons” or “parties” in this Agreement shall be deemed to refer to natural persons, corporations, general partnerships, limited partnerships, trusts and other entities. The parties agree that this Agreement has been prepared by the joint efforts of the parties and their respective counsel, and the resulting document shall not be construed more strictly against one of the parties than against the other.

**Sec. 12-14. Captions.** Captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and shall not be deemed to limit or alter any provisions hereof and shall not be deemed relevant in construing this Agreement.

**Sec. 12-15. Covenant to Maintain Status.** Authority covenants to maintain its status as a Missouri nonprofit corporation in good standing and to apply for and maintain, if granted, its tax-exempt status under 26 U.S.C. section 501(c) (3).

**Sec. 12-16. Compliance with Laws and Related Provisions.** Each party shall comply with all federal, state, and local laws, ordinances and regulations applicable to that party and relating to the Project, including but not limited to, the Missouri Open Records Law, Chapter 610, RSMo. City shall notify Authority of the specific provisions of any such laws, ordinances and regulations relating to FTA (and, by implication, the U.S. Department of Labor with respect to any Section 13(c) requirements arising from FTA’s financial assistance to the Project) Authority must comply with. Without limiting the foregoing in any manner, the parties acknowledge that certain obligations are imposed as a result of FTA’s provision of financial assistance to City in support of the Project. The parties agree that they shall require the Operator to comply with any contractual obligations that may be imposed on them or otherwise be deemed applicable to them pursuant to the terms of the FTA’s Master Agreement with City and 49 U.S.C. chapter 53 and the rules and regulations adopted thereunder. City will conduct ongoing monitoring of Authority’s operations to assure compliance with the provisions of this section. Authority shall direct its executive director to implement any remedial measures identified by City as necessary to bring into compliance Authority’s operations under this Agreement if City appropriates funding sufficient for the implementation of such remedial measures.

**Sec. 12-17 Authority and District Bylaws.** Authority was established at the direction of City’s governing body as authorized by Committee Substitute for Resolution No. 120692. All parties to this Agreement acknowledge that they share mutual interests in ensuring that Authority’s bylaws adequately address those matters which have been agreed to by the parties hereto but which are outside the subject matter of this Agreement. As of the execution of this Agreement, Authority has adopted Bylaws. The provisions of Article IV, Sections 2 through 6 of Authority’s Bylaws, as in effect upon the date of this Agreement (the “**Control Provisions**”) are incorporated herein by reference, and the failure or refusal of Authority to act in conformity with such sections of its Bylaws shall be a material breach of this Agreement. Authority shall not take action to amend or repeal the Control Provisions without obtaining the consent of District and of City, which consent shall not be unreasonably withheld or delayed.

**Sec. 12-18. Revision of Authority’s board composition.** The parties acknowledge that one or more further extensions to the Project are possible and that the composition of Authority’s board must continue to be fairly allocated to ensure representation of those individuals and

businesses obligated to pay District Special Assessment, collect District Sales Tax, or otherwise financially support the Project. Notwithstanding anything in Section 12-17 to the contrary, Authority shall amend its Control Provisions from time-to-time (subject to those consents required by Section 12-17) for the purpose of ensuring such representation on Authority's board. The total number of board members shall be determined by Authority so long as the representation called for in this Section is provided.

**Sec. 12-19. *Continuing Control.*** City, as an FTA grantee, must retain continuing control over the Project. Any ambiguity herein shall be resolved in a manner consistent with such objective, provided however that this provision shall not be construed in a manner that would waive City's financial obligations under this Agreement.

**Sec. 12-20. *Further Expansion of the Project.*** With regard to any further expansion of the Project, either or both City and/or Authority may engage in or otherwise cause planning, studying and related activities, and each party shall provide the other party the opportunity for direct participation in the related planning processes, studies, or evaluations and inform the other of the status, substance and results of all planning efforts. Prior to any further expansion or extension plans being implemented, Authority and City shall use good faith reasonable efforts to agree in writing to the plans, financial terms of the expansion or extension, the completion and advancement of plans, and the methods of financing an expanded Project. The agreement shall provide that City shall manage the project development activities and construction, which shall include, without limitation, the pursuit of any federal funding the City Council may elect to pursue, preparation for construction and the purchase and preparation of land, and Authority shall oversee operations and management of the further expanded Project unless an alternative is mutually agreed to in writing. City's right to enter into such agreement and its obligations under such agreement shall be subject only to such authorization(s) from the City Council as may be required for such purposes and shall not be submitted to nor subject to approval or ratification by the voters except to the extent the same is required by the terms of any grant City may elect to receive, or such election has been expressly mandated by any law in effect as of the date this section has been agreed to by the parties in writing.

**Sec. 12-21. *Expansion of the Project; Third Parties.*** The parties to this Agreement are aware that other transportation development districts established pursuant to the Act might be entitled to pursue further expansions to the Project without being required to submit its plans and specifications to City for City's prior approval. In such event, City and Authority shall jointly seek to engage the proposed transportation development district and negotiate mutually agreeable terms with regards to such expansion. City's right to enter into any agreement and its obligations under such agreement shall be subject only to such authorization(s) from the City Council as may be required for such purposes and shall not be submitted to nor subject to approval or ratification by the voters except to the extent the same is required by the terms of any grant City may elect to receive, or such election has been expressly mandated by any law in effect as of the date this section has been agreed to by the parties in writing

**Sec. 12-22. *Meaning of Expand and Extend.*** For purposes of this Agreement, the words "expand" and "extend" and any form or derivations of these words, when used in relation to the Project, shall be synonymous and there shall be no distinction or variation attributed to the



use of one or the other, including, without limitation, the words “expansion” and “extension” and “expanding” and “extending”.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

**KANSAS CITY STREETCAR  
AUTHORITY**

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

Name: Tom Gerend

Title: Executive Director

**THE MAIN STREET RAIL  
TRANSPORTATION DEVELOPMENT  
DISTRICT**

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

Name: Cindy Circo

Title: Executive Director

**CITY OF KANSAS CITY, MISSOURI**

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

Name: Troy Schulte

Title: City Manager

Approved as to form:

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

Name: Katherine Chandler

Title: Associate City Attorney