

ORDINANCE NO. XXXXXX

CONTRACT

**CITY OF KANSAS CITY, MISSOURI AND
ECONOMIC DEVELOPMENT CORPORATION**

May 1, 2022 to April 30, 2023

THIS CONTRACT is made and entered into as of this 1st day of May 2022, by and between **The City of Kansas City, Missouri**, a constitutionally chartered municipal corporation of the State of Missouri (the "**City**") through its City Manager or his designee, and the **Economic Development Corporation of Kansas City, Missouri**, a Missouri not-for-profit corporation, (the "**EDC**").

Recitals:

- A. The EDC is a Missouri not-for-profit corporation that is the driver for economic development in Kansas City, Missouri through coordinating the City's economic development efforts and opportunities;
- B. On behalf of the City, the EDC engages in comprehensive business retention and recruitment efforts and proactive redevelopment efforts designed to attract businesses and jobs to Kansas City, to retain its existing business and employment base, and to enhance economic productivity of real property within the City;
- C. The Mayor and City Council desire that the EDC provide economic development services, as well as administrative and staff support, and coordination of the activities of the City's economic development and redevelopment agencies including the Land Clearance For Redevelopment Authority ("**LCRA**"), the Tax Increment Financing Commission ("**TIF Commission**"), the Enhanced Enterprise Zone Boards ("**EEZ**"), the Industrial Development Authority ("**IDA**"), and the Kansas City Chapter 353 Advisory Board ("**353 Board**") (the foregoing agencies are hereinafter collectively referred to as the "**Economic Development Agencies**"), as well as providing support for Alt Cap CDFI, the Planned Industrial Expansion Authority ("**PIEA**"), the EDC Loan Corporation ("**Loan Corporation**"), Chapter 100, and Urban Agricultural Zone

activities or any other economic development projects requiring administration through the AdvanceKC process, and coordination of activities with Port KC; and

- D. The City and EDC acknowledge that each of the Economic Development Agencies are part of the City's overall economic development efforts and contemplate that the EDC will enter into agreements with each of the Economic Development Agencies specifying the level of support and services to be provided by the EDC, except with regards to TIF Commission, which matters are specifically addressed in Part II of this Contract rather than in a separate agreement to be executed by the EDC and TIF Commission; and
- E. The City and EDC contemplate that the parties may enter into future similar agreements for similar scopes of work after the term of this Agreement ends. Prior to entering any such future agreements, the parties expect to establish key performance indicators, performance outcome measures, and a line-item budget.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter expressed, the parties mutually agree as follows:

Part I- Special Contract Terms and Conditions

1. **Agreement with EDC.** Subject to the provisions of Sections 5 and 6 herein, the City agrees to furnish a portion of the funds required for operation of the EDC as specifically set forth in **Exhibit A, "Budget"**, and the EDC hereby agrees to engage in the economic development and development activities described in this Contract for the benefit of the City.
2. **Services to be Performed by EDC.** Working in cooperation with and pursuant to the City's direction, and in alignment with adopted City policies and ordinances, including the City's Economic Development & Incentive Policy and AdvanceKC program, the EDC agrees to:
 - a. Carry out its primary responsibility as the lead agency for economic development in Kansas City, Missouri through implementation of AdvanceKC, retention and expansion of existing businesses, development and implementation of strategic initiatives, stimulation of development of disadvantaged and opportunity areas, promotion of workforce development and job growth opportunities, work with partner agencies to stimulate entrepreneurship and small business and early stage business growth, recruitment of new business and investment, including business attraction efforts for targeted business sectors, and marketing of Kansas City, Missouri regionally, nationally and internationally, while maintaining committed leadership that facilitates and drives action to stimulate the local economy.
 - b. Serve as the lead agency to coordinate, evaluate, and recommend incentives for, as appropriate, all development and redevelopment activities by serving as the key intake agency for all such development and redevelopment projects on behalf of the City, as

well as the Economic Development Agencies, whether staffed by the EDC or otherwise. These activities will be conducted in accordance with current and future economic development and incentive policies that may be adopted from time-to-time by the City.

- c. Promote the EDC and its services to existing Kansas City, Missouri located companies and nonprofit organizations as part of the Enhanced Business Retention & Expansion Initiative. As a part of this effort, conduct ongoing business visits to obtain information about the business environment in the City, and communicate findings to City staff and elected officials in order to improve systems and processes that will make Kansas City more business friendly.
- d. Carry out strategic initiatives adopted by the EDC Board of Directors.
- e. As may be directed and funded by the City, conduct a marketing program designed to enhance the profile of Kansas City as a competitive business community and to communicate that profile regionally and nationally in conjunction with partners such as Kansas City Area Development Council, the Missouri Partnership, and the Missouri Department of Economic Development.
- f. Provide services to existing and potential businesses including: technical assistance consultation; access to local, state and federal incentive programs; small business financing and referral to other service providers; grants and programming for early stage companies, and the provision of demographic, economic and real estate information.
- g. Provide services to private sector and nonprofit developers including: consultation on available assistance programs and recommendation on pursuance of certain programs; and assistance in obtaining debt and equity financing, state or federal tax credits, tax abatements, tax increment financing, grants and other non-City sources of revenue or assistance.
- h. Actively participate with the City in the implementation of AdvanceKC, the City's comprehensive economic development strategy, and coordinating other general economic development project activities including project tracking, monitoring, and/or reporting and associated data collection as may be requested by the City Manager's Office. Provide technical assistance and communication support for proposed and enacted relevant state and federal economic development and business legislation.
- i. Provide support for the Economic Development Agencies in a manner consistent with the terms of the agreements entered into or to be entered into between the EDC and each of the Economic Development Agencies (except with regards to the TIF Commission, which matters are specifically addressed in Part II of this Contract rather than in a separate agreement to be entered into by the EDC and TIF Commission), and work cooperatively with the Economic Development Agencies to ensure compliance

with the City's policies and economic development goals and, to the extent possible, harmonize any such policies between the various Economic Development Agencies.

- j. Provide technical support where needed and work cooperatively with the Economic Development Agencies and, as appropriate, the City, other jurisdictions, and agencies such as the Missouri Department of Economic Development, to further the City's economic development mission, strategy, and policies, and to ensure alignment and synergy between the City and these agencies.
- k. Do and perform any and all other tasks necessary to fulfill the foregoing economic development services as assigned by the City Manager.
- l. Provide the City with complete copies of any agreements and amendments thereto between the EDC and each of the Economic Development Agencies within 30 days after execution.
- m. Maintain computer hardware/software necessary to track and report project activities and program outcomes of the EDC and each of the Economic Development Agencies and provide the City with user access to any such computer hardware/software containing project related data and/or databases, not otherwise deemed confidential for the purposes of maintaining joint records necessary to track the status of projects through the duration of all incentives. Cooperate with the City in executing any associated licenses or agreements needed to provide such access, or implement improvements to such processes/systems.
- n. As directed by the EDC Board, pursue non-City funding to help supplement resources available for business and economic development support.

3. **Records and Reports.** The EDC shall submit the required records and reports in compliance with the following procedures and comply with the following:

- a. EDC shall capture, maintain and report, upon request of the City, records for all incentive applications received including at a minimum - Application Received Date, Financial Analysis Delivery Date, AdvanceKC Agency Director Review Date, Statutory Agency Hearing Date, Statutory Agency Approval Date and Resolution Number (if applicable), and City Council Approval Date (if applicable)
- b. No later than quarterly on July 31, October 31, January 31, and April 30th the EDC shall submit and present to the City Council:

A detailed written description of any strategic initiative development and /or implementation, including any costs incurred by the EDC in connection with this strategic initiative development and implementation

- c. The EDC shall present annually for itself and shall cause each Economic Development Agency to present at Business Session for the full City Council “Key Performance Indicators” and results of strategic initiatives.
- d. At its discretion, the EDC may also schedule meetings with City Council members as appropriate to discuss progress regarding individual projects, strategic initiatives, policy issues or other pertinent items.
- e. Key Performance Indicators for the purposed of Section 2 above, shall include but not be limited to:
 - List of current active projects (which may be anonymous if subject to a non-disclosure agreement),
 - Number of jobs retained or created for KCMO Residents
 - Average Wages of jobs retained or created for KCMO Residents as compared to industry benchmarks
 - Projects that are in an AdvanceKC Target Sector,
 - project types
 - project locations (if known),
 - Educational, vocational, or workforce development or training benefits generated
 - Projects by council district
 - Projects by level of distress as delineated on the AdvanceKC Scorecard
 - AdvanceKC project scores,
 - Projects involving Historic Preservation and/or Brownfield Remediation
 - Housing units incented by MFI (30%, 40%, 50%, 60%, 70%, 80%, 90%, 100%, > 100%)
 - % of housing units deemed affordable or extremely affordable as a % of total units generated
 - Projects located in high transit corridors including existing and future streetcar and/or BRT
 - Projects by employer size,
 - Projected real and personal property investments amounts,
 - Amount of incentives approved including any negotiated PILOTs necessary to calculate funding for the Shared Success Fund,
 - % of public vs private participation for each project
 - Projects that comply with incentive caps and set aside requirements
 - % of statutory and % of capped incentives awarded to projects
 - amount of any additional redirected tax incentives awarded by the City,
 - List of applications that were determined to be ineligible for assistance or referred to an alternate provider, and
 - Total abated and redirected taxes by taxing jurisdiction

- f. Copies of written reports and presentations made to the City Council shall be provided to the City Manager's Office within 10 business days of submittal to the City Council.
 - g. The EDC shall submit to the City annually a copy of the EDC's payroll report for both the time-period of May 1, 2022 to April 30, 2023 and the time period inclusive of the terms of this Contract. This annual report shall be submitted on a calendar year basis and shall be provided to the City by no later than May 31, 2023. Work with the City's Office of Economic Development to update data collection, key performance indicators, management and reporting protocols to ensure that they are sufficient to implement the policies and programs of the Mayor, City Council and City Manager and that those protocols integrate tracking of metrics that measure the performance of actual economic development project results including, but not limited to, investment and job creation generated from all projects being reported pursuant to Section 3.b.ii.
 - h. Adopt and use generally accepted accounting principles in EDC's fiscal record keeping, and as appropriate or necessary in support of the Economic Development Agencies. Use its best efforts to obtain all equipment and materials for use in the performance of its services under this Contract at the lowest possible cost and to purchase such equipment and materials by means of a system of competitive bidding whenever required by law or whenever practical. The EDC shall identify, label, protect and release to City at the termination of this Contract, all non-expendable equipment purchased with funds provided under this Contract.
 - i. Provide reasonable efforts to facilitate and cooperate with all monitoring, legislative approval, and evaluation activities conducted directly or through contract by the City relative to activities described herein and bound by this Contract, including, but not limited to, preparing and submitting necessary ordinances and staff reports on behalf of the Economic Development Agencies to the City for consideration, providing full access to the project site, files, and relevant due diligence work provided that full client confidentiality is assured, and programmatic and fiscal records to authorized representatives of the City or to other persons as may be designated from time to time by the City.
4. **Sunshine Law:** Notwithstanding the foregoing, EDC and the City acknowledge that the EDC must comply with the Sunshine Law.
5. **Time of Performance.** This Contract is to begin May 1, 2022 and shall terminate on April 30, 2023.
6. **Method of Payment.**
- a. The City shall pay the EDC for costs incurred in providing the services specified herein in a total amount which shall not exceed \$2,977,500 for the term of this Contract for services rendered as described above. The EDC shall submit requests for payment to the City on a monthly basis in twelve (12) equal installments.
 - b. It shall be a condition precedent to payment of any invoice from the EDC that it is in compliance with, and not in breach or default of, all terms, covenants and conditions of this Contract, and that the EDC be current with its monthly, quarterly, and annual

reporting requirements to the City as described in this Contract. If damages are sustained by the City as a result of breach or default by EDC, City may withhold payment(s) to the EDC for the purpose of set off until such time as the exact amount of damages due the City from the EDC may be determined.

7. **Total Obligation under Agreement.** The total obligation which may accrue to the City under this Contract for the period commencing May 1, 2022 and ending April 30, 2023, subject to Section 5 of this Contract, is \$2,977,500.00, which consists of the amount set forth in the line item designating the City's contribution to the EDC on **Exhibit A**.
8. **Additional City Obligations.** As needed, the City will serve as a liaison between the EDC and the Economic Development Agencies to assist the EDC in coordinating their efforts and to assist in resolving any disputes that may arise between them. In the event of a dispute between the EDC and any of the Economic Development Agencies, the EDC will notify the City, which will initiate action thirty days following receipt of notice by the EDC and seek to resolve disputes within ninety days. Additionally, the City will provide staff to timely respond to requests for data or other information needed by the EDC and the Economic Development Agencies from the City in order to fulfill its obligations under this Contract.
9. **Notices.** All notices required by this Contract shall be in writing sent by regular U.S. mail, postage prepaid or commercial overnight courier or facsimile to the following:

- a. If to the City:

City Manager
414 East 12th Street
29th Floor
Kansas City, Missouri 64106
Fax:(816) 513-1363

With a copy to:

City Attorney
414 E. 12th Street
23rd Floor
Kansas City, Missouri 64106
Fax: (816) 513-3133

- b. If to EDC:

Economic Development Corporation
300 Wyandotte, Suite 400

Kansas City, Missouri 64105
Attention: Heather Brown, Interim President/CEO
Fax: (816) 221-0189

With a copy to:

Rosalie McNamara
Lathrop GPM LLP
2345 Grand Blvd, Suite 2200
Kansas City, MO 64108-2618
Direct 816.460,5604

All notices are effective on the date mailed or deposited with courier.

10. **Representations and Warranties.** The City and the EDC each represent and warrant that they have the power and authority to execute and deliver this Contract, to use the funds as contemplated hereby and to perform this Contract in accordance with its terms.
11. **Binding Effect.** This Contract shall be binding upon the parties hereto and upon their successors in interest.
12. **Modification.** Unless stated otherwise in this Contract, no provision of this Contract may be waived, modified, or amended except by written amendment signed by the City Manager and the EDC.
13. **Audit.**
 - a. The City shall have the right to audit this Contract and all books, documents and records relating thereto. The books, documents, and records of EDC in connection with this Contract shall be made available to the City Manager or City Auditor within ten (10) days after the written request is made. The City will also have the right to audit the Economic Development Agencies, and towards that end, the EDC will use its best efforts to include the City's right to conduct audits in the EDC's agreements with each of the Economic Development Agencies.
 - b. The EDC shall maintain all its books, documents and records relating to this Contract during the contract period and for three (3) years after the date of final payment.
 - c. The EDC will engage (i) an independent certified public accountant ("**CPA**") to conduct an audit or audits, and (ii) a qualified professional to analyze the EDC's internal control structures. The EDC will require the CPA and such qualified professional to furnish the City Auditor and City Manager with a copy of the audit or audits, copies of any management letters, reports, and copies of the EDC's responses to management letters within 30 days after completion of such audit and in no case later than the last effective day of this agreement. An audit, management letter and

response, shall be promptly provided to the City Auditor without the need for a special request. The City Auditor and the City Manager are authorized to make inquiries directly to the EDC's auditor and professionals engaged pursuant to this subsection (c), and the EDC shall require the EDC's auditor and professionals to respond completely to such questions. Notwithstanding the foregoing, in the event of litigation, the EDC reserves all rights and privileges granted to an auditor and its client.

- d. The EDC shall submit to the City Manager and City Auditor the EDC's annual fiscal year financial audit no later than October 15th following the end of the EDC's fiscal year.
- e. The EDC shall cooperate with and participate in all monitoring and evaluation activities conducted by the City relative to this Contract.
- f. The EDC will offer to assist in making arrangements for preparation of audits on behalf of the Economic Development Agencies and will use its best efforts to address conduct of audits in an agreement with each such agency. However, the City recognizes and agrees that the Economic Development Agencies have independently appointed boards or commissions, and that the EDC expressly does not assume any fiduciary duties with respect to their finances or audits, except as may be explicitly contracted for in agreements between the EDC and each such Economic Development Agency.

14. Termination of Contract; Default and Remedy.

- a. The City may, at any time upon material default and providing thirty (30) days' notice to the EDC, terminate this Contract in whole or in part. If this Contract is terminated by the City, the City shall be liable under the payment provisions of this Contract only for payment for services rendered before the effective date of termination. The EDC may terminate this Contract upon thirty (30) days' notice to the City if the City is in material breach of this Contract and fails to cure the breach before the end of the thirty (30) day notice period.
- b. If this Contract is terminated prior to EDC's completion of the services to be performed hereunder, all work or materials prepared or obtained by EDC pursuant to this Contract shall become the City's property.
- c. In addition to the remedy set forth in Section 14.a, if the EDC is in default or breach of any provision of this Contract, the City may suspend EDC's performance, withhold payment, or invoke any other legal or equitable remedy after giving the EDC notice and thirty (30) days to correct such default or breach, which may be extended for a reasonable period upon request by the EDC and at the City's discretion. Upon cure of any default or breach in manner satisfactory to the City, notwithstanding any other terms of this Agreement, the City shall resume payments to the EDC.

15. **Affirmative Action; Minority and Women's Business Enterprise; Construction Employment.**

- a. *Affirmative Action.* The EDC shall establish and maintain for the term of this Contract an affirmative action program or policy consistent with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto to the extent that City's Code requires it to comply or, if not so required by the City's Code, shall adopt an affirmative action policy and plan which complies with the City's goals. The EDC will not discriminate against any employee or applicant for employment because of the person's race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3.
- b. *Minority and Women's Business Enterprise.* The City has established the Minority and Women's Business Enterprise Program ("**MBE/WBE Program**") in order to ensure that MBEs/WBEs have equal opportunity to participate in taxpayer subsidized contracts, subcontracts and procurements. The EDC will adopt and implement an MBE/WBE policy that is consistent with the applicable provisions of Chapter 3, Code of Ordinances, and the rules and regulations adopted pursuant thereto, as may be amended from time to time to the extent that the City's Code requires them to comply. The EDC will work collaboratively with the City's Civil Rights and Equal Opportunity Department to comply with the provisions of the City's MBE/WBE Program, including, but not limited to, implementing the appropriate goal setting process to review contract opportunities for participation and segmentation on a contract by contract basis with analysis of the available and capable MBEs and WBEs, maintaining the appropriate documentation to demonstrate the participation achieved and whether good faith efforts are substantiated, and developing and issuing a report for MBE and WBE participation to show compliance with the City's MBE/WBE Program. EDC will submit annual reports of MBE/WBE participation to the City Manager and/or his designee(s) by April 1 of each year.
- c. *Construction Employment.* The City has established a construction employment program, also known as the workforce utilization program; for the purpose of ensuring that minorities and women are not discriminatorily denied the opportunity to work under taxpayer subsidized construction contracts and subcontracts. As applicable, the EDC will work with the Economic Development Agencies to comply with the workforce utilization program.
- d. *Coordination with Economic Development Agencies.* The EDC will assist the Economic Development Agencies in adopting affirmative action programs and policies, minority and women's business enterprise programs and policies, and construction employment programs and policies that are consistent with the City's programs as enacted in Chapter 3, Code of Ordinances and are to the greatest extent possible uniform in their application across agencies. The EDC will address these matters in agreements with each such Economic Development Agency to be executed separately

from this Contract. The EDC will designate a staff member to assist the Economic Development Agencies in administering programs and policies, and to serve as a liaison to the City's Civil Rights and Equal Opportunity Department.

16. **Employment and Recruitment.** The EDC will maintain a policy requiring all employees, within 12 months of their employment, to establish and maintain their primary residences/domiciles within the corporate limits of Kansas City, Missouri. The EDC shall provide the City with a list of all employees and their current addresses upon request.
17. **State and Federal Income Tax Reports.** The EDC shall submit copies of the employer's quarterly return of employment excise taxes withheld (Form No. 941), employer's quarterly deposit of the Federal Unemployment Tax (FUTA Form No. 508), excise tax quarter return (Form No. 720) and copies of canceled checks to the City for each quarter of the program year. In addition, EDC shall submit copies of the employer's quarterly State tax (Form No. MO941), local tax Form No. 1214-ETS, copies of tax payments, canceled checks and bank deposit receipts (for tax payments), for each quarter of the program year.
18. **Procurement Process.** When entering into contracts funded in whole or in part through this Contract, EDC will follow procurement procedures that are consistent with the procurement procedures of the City. The EDC, in its role of assisting the Economic Development Agencies in the fulfillment of their purposes, as contemplated by this Contract, will utilize its best efforts to ensure that the Economic Development Agencies follow the procurement procedures required or authorized by their respective governing statutes, or, if none, seek to cause them to adopt and implement procurement procedures consistent with the procurement procedures of the City, and address such matters in individual agreements to be executed separately from this Contract with each Economic Development Agency.
19. **Americans with Disabilities Act.** EDC agrees to comply with the provisions of 42 U.S.C. §§ 1201, *et seq.*, as well as 28 C.F.R Part 35 and 29 C.F.R. Part 1630, as applicable, (Americans With Disabilities Act), as amended from time to time during the course of this Contract.
20. **Obtaining Professional Services.**
 - a. In accordance with Section 2-83 of the Code of Ordinances of the City of Kansas City, Missouri, the EDC shall not contract for professional services with any architect, engineer or other professional, exclusive of medical doctors or appraisers, who, at the time of the issuance of the contract or during the course of employment with the EDC serves as an expert witness for any party in litigation against the City.
 - b. In accordance with Section 2-83 of the Code of Ordinances of the City of Kansas City, Missouri, the EDC shall not contract for professional services with any attorney who,

at the time of the issuance of this Contract or during the course of his or her retention by the EDC, either in an individual or firm capacity, represents any party in litigation against the City, exclusive of representation in Municipal Court, exclusive of those attorneys employed by a not-for-profit legal services corporation and exclusive of where the City is named as a nominal defendant.

- c. Prior to engaging any individual or firm for professional services, the EDC will require each such individual or firm to certify that they are current with respect to payment of City earnings and/or profits tax that may be due to the City. Ongoing compliance with payment of City earnings and/or profits tax shall be a condition of continued engagement of any such individual or firm by the EDC, except for the existence of circumstances constituting a good faith dispute or appeal of alleged tax liability.
21. **Financial Disclosures of Board.** The EDC will advise the members of its Board of Directors as to the provisions of Chapter 2, Article XV, Code of Ordinances, as the same may be amended and recodified from time-to-time and shall require that its members be advised of their obligation to file the annual conflict of interest disclosure report.
 22. **No Gratuities and Kickbacks.** The provisions of City's Code Section 3-303, prohibiting gratuities to city employees, and kickbacks by subcontractors, and Code Sections 3- 307 and 3-309, imposing sanctions for violations, shall apply to this Contract.
 - a. *Gratuities.* The EDC certifies that it has not and will not offer or give any City employee or officer a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a contract requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract, or to any solicitation or proposal therefor.
 - b. *Kickbacks.* The EDC certifies that no payment, gratuity, offer of employment or benefit has been or will be made by or on behalf of or solicited from a subcontractor under a contract to EDC, or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.
 23. **Prohibition against Contingent Fees.** The provisions of City's Code Section 3- 305, prohibiting the retention of persons to solicit contracts for contingent fees, and Code Sections 3-307 and 3-309, imposing sanctions for violations, shall apply to this Contract. The EDC certifies that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the EDC for the purpose of securing business. For breach or violation of this warranty, the City shall have the right

to annul this Contract without liability or, at its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

24. **Assignability or Subcontracting.** The EDC shall not subcontract, assign, or transfer any part or all of its obligations or interests without the City's prior written approval. If the EDC subcontracts, assigns, or transfers any part of its interests or obligations under this Contract without the prior approval of City, it shall constitute a material breach of this Contract.
25. **Independent Contractor Status.** The EDC is an independent contractor and is not the City's agent with respect to all services performed under this Contract. The EDC accepts full and exclusive liability for the payment of any and all premiums, contributions or taxes for workers' compensation, Social Security, unemployment benefits, or other employee benefits now or hereinafter imposed under any state or federal law which are measured by the wages, salaries or other remuneration paid to persons employed by the EDC on work performed under the terms of this Contract. The EDC shall defend, indemnify, and save harmless City from any claims or liability for such contributions or taxes. Nothing contained in this Contract, nor any act of the City or the EDC, shall be deemed or construed to create any third-party beneficiary or principal and agent association or relationship with City. The EDC is not the City's agent and the EDC has no authority to take any action or execute any documents on behalf of the City.
26. **Compliance with Laws.** The EDC shall comply with all federal, state, and local laws, ordinances, and regulations applicable to the work. The EDC, at its own expense, shall secure all occupational and professional licenses and permits from public or private sources necessary for the fulfillment of its obligations under this Contract. This Contract is governed by the laws of the state of Missouri.
27. **Tax Compliance.** The EDC shall provide proof of compliance with the City's tax ordinances administered by the City's Commissioner of Revenue as a precondition to the City making the first payment under this Contract, or any contract renewal or subcontract when the total contract amount exceeds \$150,000.00 in one year.
28. **Waiver.** Waiver by the City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other terms, covenant, or condition. No term, covenant, or condition of this Contract can be waived except by written consent of the City, and forbearance or indulgence by the City in any regard whatsoever shall not constitute a waiver of same to be performed by the EDC to which the same may apply. Until complete performance by the EDC of such term, covenant or condition, the City shall be entitled to invoke any remedy available to it under this Contract or by law despite any such forbearance or indulgence.
29. **Rights and Remedies Cumulative and Not Exclusive.** All rights and remedies granted to the City herein and any other rights and remedies which it may have at law and in

equity are hereby declared to be cumulative and not exclusive. The fact that the City may have exercised any remedy without terminating this Contract shall not impair the City's rights thereafter to terminate or to exercise any other remedy herein granted, or to which City may be otherwise entitled.

30. **Merger.** This Contract, including any attachments and incorporated documents, constitutes the entire agreement between the City and the EDC with respect to this subject matter.
31. **Insurance.**
 - a. The EDC shall procure and maintain in effect throughout the duration of this Contract insurance coverage not less than the types and amounts specified in this section. In the event that additional insurance not specified herein, is required during the course of the services covered by this Contract, the EDC shall supply such insurance at City's cost. Policies containing a Self-Insured Retention are unacceptable to City.
 - b. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
 1. Severability of Interests Coverage applying to Additional Insureds.
 2. Contractual Liability
 3. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
 4. No Contractual Liability Limitation Endorsement
 5. Additional Insured Endorsement, ISO form CG20 10, current edition, or its equivalent.
 - c. Workers' Compensation Insurance: as required by statute, including Employees Liability with limits of:
 1. Workers' Compensation: Statutory
 2. Employers Liability: \$100,000 accident with limits of \$500,000
 3. Disease-policy: \$100,000 disease limit, each employee
 - d. Commercial Automobile Liability Insurance: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. Coverage provided shall be on an "any auto" basis and written on an "occurrence" basis. This insurance will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Contract, by EDC.
 - e. If applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.00.

- f. The policies listed above may not be canceled until after ten (10) days written notice of cancellation to the City ten (10) days in the event of non-payment of premium. The Commercial General and Automobile Liability Insurance specified above shall provide that the City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Contract. The EDC shall provide to the City at execution of this Contract a certificate of insurance showing all required endorsements and additional insureds. The certificate shall be in a form that is acceptable to the City.
 - g. All insurance coverage must be written by companies that have an A.M. Best's rating of "13+V" or better and are licensed or approved by the State of Missouri to do business in Missouri.
 - h. Regardless of any approval by the City, it is the responsibility of the EDC to maintain the required insurance coverage in force at all times, its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of the EDC's failure to maintain the required insurance in effect, the City may order the EDC to immediately stop work and may pursue its remedies for breach of this Contract as provided for herein and by law.
32. **Indemnification.** The EDC shall defend, indemnify, and hold harmless the City and any of its 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 this Contract, caused in whole or in part by the EDC, its employees, agents, or subcontractors, or others for whom the EDC is liable. Any obligation under this subsection on the part of the EDC with respect to indemnification shall be limited to the coverage and limits of insurance that the EDC is required to procure and maintain under this Contract. The EDC shall not be obligated to indemnify the City for acts or actions of the City which constitute gross negligence or willful misconduct.

Part II - TIF Commission

The provisions of Part I of this Contract shall apply with equal force with regards to matters pertaining to the TIF Commission, except to the extent expressly excluded therein. The EDC shall provide a certain range of services to the TIF Commission, which services are being funded by City, in part, through utilization of the administrative fee received by the City from amounts deposited to the Special Allocation Fund established and held by the City in conjunction with tax increment financing under the Real Property Tax Increment Allocation Redevelopment Act. The EDC and City jointly agree that the TIF Commission is to be provided no less services than have historically been provided to the TIF Commission by the EDC, except with regards to those accounting and financial reporting services which are being provided by the City effective May 1, 2016, pursuant to that certain Financial Accounting and Limited Partial Assignment and Assumption Agreement Between the City of Kansas City,

Missouri and the Tax Increment Financing Commission of Kansas City, Missouri, dated May 1, 2016, and incorporated herein by reference.

Without limiting the general nature of the foregoing, the EDC and City agree further as follows with respect to services to be provided to the TIF Commission:

EDC Staffing. Within budgetary constraints, the EDC will maintain a fully qualified staff to support the activities of the TIF Commission. Such staff shall be employed in accordance with the EDC's Affirmative Action Program and Personnel Policies and Procedures as adopted by the EDC's Board from time to time. The EDC, to the extent possible, shall assign staff to meet the needs of the TIF Commission.

TIF Commission Staffing. The EDC shall employ an Executive Director for the TIF Commission, subject to the advice and counsel of the TIF Commission. The Executive Director, although employed by the EDC, will be assigned to support the TIF Commission, and the TIF Commission, on an annual basis, shall participate in evaluating the work and/or service of the Executive Director. Any decisions regarding the retention and discharge of the Executive Director will be made by the EDC in consultation with the TIF Commission. The EDC shall also employ other staff for the TIF Commission; however, any decisions regarding the retention and discharge of such staff, for the TIF Commission, shall be within the sole discretion of the EDC. All personnel employed by the EDC, shall be responsible to and work at the direction of the President/CEO of the EDC; provided, however, the Executive Director shall be responsive to the concerns and needs of the TIF Commission, and the Executive Director, after consultation with the TIF Commission, may be discharged by the EDC in its sole discretion. Should the TIF Commission have any concerns regarding the Executive Director's performance, the TIF Commission may request a meeting with the President/CEO of the EDC to discuss such concerns and request that the President/CEO take appropriate responsive action in accordance with the EDC's personnel policies. The TIF Commission understands and agrees that all personnel hired by the EDC shall be employees of the EDC and shall directly report to the EDC's President/CEO (or their designated supervisors as directed by the EDC) in furtherance of the obligations and responsibilities of the EDC; provided, however, the Executive Director shall be responsive to the concerns and needs of the TIF Commission.

Services to be Provided by EDC Staff Members. The EDC staff members provided to the TIF Commission shall perform all staff functions necessary to enable the TIF Commission to properly carry out the obligations and responsibilities imposed on it by its enabling statute and applicable City ordinances, including, but not limited to, the obligations of the TIF Commission that are set forth in Ordinance No. 54556, as amended by Committee Substitute for Ordinance No. 911076, As Amended, Ordinance No. 100089, As Amended, Ordinance No. 130986, and Committee Substitute for Ordinance No. 140823, As Amended, and the obligation to prepare all reporting required under Section 99.865 RSMo. Furthermore, the EDC staff members shall work cooperatively with any third-party contractor retained by the City to provide accounting and financial reporting services to the TIF Commission.

Office Space and Equipment. The EDC will provide office space and equipment to enable the EDC staff to carry out the EDC's obligations to the TIF Commission, including but not limited to providing telephones, fax machines, computers, computer software and other office equipment. Furthermore, these obligations of the EDC shall extend to any third-party contractor retained by the City to provide accounting and financial reporting services to the TIF Commission. In addition, the EDC will provide adequate conference room space and equipment to the governing body of the TIF Commission to enable it to carry out its obligations under its enabling statute. The TIF Commission shall be an intended third-party beneficiary with respect to Part II of this Contract. No changes to any term within this Part II shall be made without the written consent of the TIF Commission, which consent shall not be unreasonably withheld.

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IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized representatives the day and year first above written.

CITY OF KANSAS CITY, MISSOURI

A Constitutionally Chartered Municipal
Corporation of the State of Missouri

By: _____
Brian Platt, City Manager

Approved as to form:

Emalea Black
Assistant City Attorney

**CITY DIRECTOR OF FINANCE CERTIFICATION OF
AVAILABILITY OF FUNDS**

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriations to which the foregoing expenditure is to be charged, sufficient to meet the obligation hereby incurred and a cash balance sufficient to meet the obligation hereby incurred from which payment is to be made.

By: _____
Tammy Queen, Director of Finance

THIS CONTRACT REQUIRES YOU TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE CITY FROM ANY ACTS OR OMISSIONS IN CONNECTION WITH THE CONTRACT.

ATTEST:

ECONOMIC DEVELOPMENT CORPORATION
OF KANSAS CITY, MISSOURI

By: _____
Secretary

By: _____
Bridgette Williams, Chair of the Board of
Directors

(AFFIX CORPORATE SEAL)

APPROVED:

By: _____

Heather A. Brown, Interim President/CEO