

SETTLEMENT AGREEMENT

THIS AGREEMENT is made this ___ day of _____, 2012, by and between **CITY OF KANSAS CITY, MISSOURI, a duly organized and existing Missouri constitutional charter city**, hereinafter "Entity," and **CLAY COUNTY, MISSOURI**, hereinafter "County", collectively referred to hereinafter as the "Parties".

WHEREAS, in September of the year 2007, County approved an annual Road and Bridge levy in an amount of twenty-four cents per \$100 assessed valuation, and

WHEREAS, in September of the years 2008, 2009, 2010 and 2011, County approved its annual Road and Bridge levy (hereinafter the "2008-2011 annual levy") in an amount of eight cents per \$100 dollars assessed valuation (hereinafter the "eight cent levy"), and

WHEREAS, County may allocate other County revenue, specifically, sales tax monies, to Entity for Road and Bridge purposes under Section 67.548 RSMO., and

WHEREAS, Entity asserts that County had a duty under Section 67.548 RSMo to grant sales tax revenues to Entity to supplement the reduced 2008-2011 annual levy, and

WHEREAS, Entity claims entitlement to additional monies from the County in reliance upon the provisions of Sections 67.548, 137.555, and 137.556 RSMo and the holding of the Western District Court of Appeals in *Gladstone Special Road District No. 3 of Clay County, et al. v. County of Clay, Missouri*, 248 S.W.3d 60 (Mo.App.W.D. 2008) and maintains that, because County reduced the Special Road

and Bridge levy from 24 cents to 8 cents per \$100.00 assessed valuation in 2008 and continued to set the levy at the reduced 8 cents amount for subsequent years 2009, 2010, and 2011, County had a duty to supplement the levy with sales tax revenues to provide a total levy equivalent of 24 cents per \$100.00 assessed valuation. Entity has made claims against County for arrearages in an amount which represents the difference between the 24 cent levy approved by County in 1987 and 2007 and the 8 cent levy set by the County in 2008, 2009, 2010 and 2011. Entity asserts that this amount for the years 2008-2011 is **\$2,381,368.00**. Entity has also made claim against County that County must set the levy for the Road and Bridge Fund at 24 cents prospectively, or provide the equivalent of a 24 cent levy by granting sales tax revenues to supplement the levy; and

WHEREAS, County disputes the entitlement of any additional monies from County for the 2008-2011 annual levy and/or under Section 67.548 RSMO., and

WHEREAS, the Parties feel it is in the best interests of the Citizens to resolve the issues between them.

NOW, THEREFORE, it is agreed by and between the Parties as follows:

ARREARAGE PAYMENT

1. The County shall pay Entity **One Million Seven Hundred Eighty-Six Thousand Twenty-Six Dollars and no cents (\$1,786,026.00)** as the settlement amount for the years 2008, 2009, 2010 and 2011. Such payment shall be made in two installments, with 50% of the payment to be made within thirty (30) days of the date this Agreement is fully executed by both Parties and the second payment to be made within one (1) year of the date the first payment is made.

2. Entity waives, releases and foregoes any claims to any further payments,

including principal, interest, attorney's fees or other distributions of County funds relating to the 2008-2011 annual levy and/or any funds payable under Section 67.548 RSMo. in connection with the 2008-2011 annual levy and which would typically be paid as part of the budget following the year the levy was adopted. Entity specifically agrees and understands that County may make any payment under this agreement from any source (such as sales tax, road and bridge levy, general fund levy, use tax or any funds currently held by County in its Treasury) and Entity may not make a claim for additional County funds from any source for this period except as provided specifically in paragraph 11.

PROSPECTIVE PAYMENTS

3. Entity and County agree that, beginning year 2012 (the "future annual levy"), the Entity shall be entitled to receive an amount equal to 40% of County's Road and Bridge maximum authorized levy of 0.35 per \$100 assessed valuation.

4. The payments made for the future annual levy shall be calculated and made as if the County implemented a Road and Bridge levy equal to 40% of County's Road and Bridge maximum authorized levy of 0.35 per \$100 assessed valuation. Any portion of the future annual levy that is paid from a revenue source other than County's Road and Bridge levy will be calculated assuming a 98% collection rate.

5. The amount due each entity who execute a similar agreement shall be determined by taking the Assessed Valuation for each year as determined by the County Assessor multiplied by fourteen cents (.14) per one hundred dollars (\$100) assessed valuation less any statutorily mandated fees.

6. Upon request of Entity, County shall provide an Accounting Officer Certification

of the amounts deposited in the Special Road and Bridge Fund.

7. Entity waives, releases and foregoes any claims to any further payments, including principal, interest, attorney's fees or other distributions of County funds relating to the future annual levy and/or any funds payable under Section 67.548 RSMo. in connection with the future annual levy and which would typically be paid as part of the budget following the year the levy was adopted. Entity specifically agrees and understands that County may make any payment under this agreement from any source (such as sales tax, road and bridge levy, general fund levy, use tax or any funds currently held by County in its Treasury) and Entity may not make a claim for additional County funds from any source for this period.

SALES TAX PAYMENTS

8. The parties also agree that Entity shall be entitled to receive funds from the County's sales tax implemented under RSMO Section 67.547 (the "sales tax"), as follows:

A. For calendar years 2013-2026, Entity shall share with other entities who execute a similar agreement an amount equal to 50% of all annual, gross, sales tax revenue collected that exceed \$7,000,000.00, up to a maximum of \$9,000,000.00. The parties shall equally bear any reductions in the sales tax (such as TIF obligations) that are incurred by County. Such payments shall be made no later than January 31st of the year following the tax year. For example, distribution of sales tax will be computed as follows:

If, for example, the annual gross sales tax collected by the County was \$7,200,000.00, there would be a payout because the threshold level of \$7,000,000.00 was reached. The \$7,000,000.00 would be subtracted from \$7,200,000.00, leaving \$200,000.00. If, for example, TIF payments for that year equaled 10% of collections,

then 10% or \$20,000.00 would be subtracted from \$200,000.00, leaving \$180,000.00 for distribution to cities and road districts.

B. For calendar years 2027 and beyond, Entity shall share with other entities who execute a similar agreement an amount equal to 50% of all annual, gross, sales tax revenue collected that exceed \$7,000,000.00, up to a maximum of \$10,000,000.00. The parties shall equally bear any reductions in the sales tax (such as TIF obligations) that are incurred by County as described in the preceding subsection

A. Such payments shall be made no later than January 31st of the year following the tax year.

9. Payments made under this provision shall be made to Entity and shall be in the same percentage proportion of the total levy revenue as Entity received for the future annual levy in that year. No payments of sales tax revenues, as set forth herein, shall be made until legislation agreeable to the Parties has been passed by the Missouri General Assembly.

If the Missouri General Assembly has not passed legislation authorizing the use of sales tax receipts as provided herein by May 31, 2014, then either party may terminate this Settlement Agreement. Notwithstanding the terms set forth in Paragraphs 3 and 8 above, if this Agreement is terminated Entity shall be entitled to assert whatever prospective claim it believes it has against the County for an annual Road & Bridge levy in an amount of Twenty-Four Cents (.24) per One Hundred Dollars (\$100) assessed valuation, regardless of the execution of this Settlement Agreement or past performance of the terms herein.

FURTHER CONSIDERATIONS

10. The Parties agree that this Agreement shall remain in place so long as both Parties are in compliance with its terms and have acted in accordance with its terms. In the event either

Party shall breach this Agreement or fail to act as provided herein, then the other Party may terminate this Agreement. Notwithstanding the terms set forth in paragraphs 3 and 8 above, if this Agreement is terminated, a Party shall be entitled to assert whatever claim it believes it has against the other regardless of the execution of this contract or past performance of the terms herein. The Parties agree that until enabling legislation agreeable to all Parties is adopted, this agreement constitutes year-to-year settlements of the Entity's claim to a specific share of tax revenues. Entity shall have thirty (30) days from the receipt of monies paid under this Agreement to notify County, in writing, of any disputes that exist with regard to the funds received. If no notification is made, the payment made shall be deemed accepted. In the event that Entity notifies County of a dispute in writing, County shall have sixty (60) days to review the dispute and, if appropriate, resolve the dispute prior to Entity exercising any remedies available to it. The Parties agree in the event that the Entity believes a breach of this agreement has occurred and until such enabling legislation is enacted, the Entity shall not be limited to damages under this agreement and, for any year in which County has breached this agreement, Entity retains the ability to assert that County owes Entity monies equal to 0.24 cents per \$100 assessed valuation and County waives the defense of Statute of Limitations to that claim.

11. Most Favored Nation. Should County agree to pay another entity (a Clay County City or Road District) a higher arrearage amount, or a higher annual levy payment, or a higher future sales tax distribution than those set out hereinbefore, then those higher payments shall forthwith become the amounts due under, and applicable to, this Agreement and shall be paid by the County to Entity.

12. The Parties agree to work cooperatively to pass legislation by the Missouri General Assembly that shall substantially implement the intent of this Agreement including a

pledge that neither Party will submit a legislative plan that was not approved by the other. County agrees to continue its policy of not taking a formal position in favor of, or in opposition to, legislation or a ballot measure sought by a municipality located within County. Nothing contained herein will limit any Clay County Commissioner from taking a personal position or expressing a personal opinion as to the proposed legislation or ballot measure.”

13. The undersigned represent and warrant that they have executed this Settlement Agreement on behalf of the political entity which each represents with the full consent and authority of the governing body of such entity.

IN WITNESS WHEREOF, the Parties have signed this Agreement the day and year first above written.

CLAY COUNTY, MISSOURI

ATTEST:

By: _____

APPROVED AS TO FORM:

Kevin A. Graham
County Counselor

CITY OF KANSAS CITY, MISSOURI

ATTEST:

Vickie Thompson-Carr
City Clerk

By: _____
Troy E. Schulte
City Manager

APPROVED AS TO FORM:

Galen P. Beaufort
Senior Associate City Attorney