

COMPARED VERSION
COMMITTEE SUBSTITUTE TO ORIGINAL ORDINANCE

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 190930

Authorizing the City Manager to enter into a Tax Contribution Agreement with Project Decoy for the purpose of incentivizing job creation and investments in Kansas City; approving real property tax abatement for improvements on real property located in Downtown Kansas City, Missouri, within Enhanced Enterprise Zone 1; approving an Industrial Development Plan for Project Decoy; authorizing and approving various agreements for the purpose of setting forth covenants, agreements and obligations of the City and Project Decoy; authorizing the issuance of taxable industrial revenue bonds; authorizing and approving certain other documents; authorizing certain other actions in connection with the issuance of said bonds; and directing the City Clerk to provide a copy of this Ordinance to the Director of the Missouri Department of Economic Development.

WHEREAS, Project Decoy (Company) has identified a site to create a business presence in Kansas City, Missouri (Business Site), at which it anticipates employing 919 full-time employees (Project) plus an additional 120 full-time employees over 6 years, with an anticipated average annual salary of \$166,377.00, which would generate a projected payroll of \$172,824,143.00 per year; and

WHEREAS, the Company also anticipates entering into a long-term lease of at least 15 years for the Business Site; and

WHEREAS, Company's job creation and investments in City would be economic activities that would result in tax revenues to City including, without limitation, expenditures of funds to construct, rehabilitate, remodel or otherwise improve the Business Site; increase in employment resulting in net new payroll to the City; investments in equipment to render the Business Site suitable for Company's intended use; business operations with resulting consumption of goods, services and utilities; employee activity in being located at or traveling to and from the Business Site through retail purchases, and the consumption of goods and services and patronage of restaurant, entertainment and other facilities in City; and

WHEREAS, participating in such investments serves a public municipal purpose because it will, without limitation, (i) result in over 900 jobs within City and potentially create additional new jobs within City, (ii) establish or expand Company's economic presence in City, (iii) promote economic development in the area of City in which the Business Site is located, (iv) result in generation of tax revenues to City from the conduct of business and other activities in City that would not otherwise occur, (v) serve as a catalyst for additional investment in and further redevelopment and rehabilitation of the area of City in which the Business Site is located, and (vi) further City's policy of encouraging economic stability and growth; and

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WHEREAS, the City therefore desires to encourage the Project for the purpose of realizing these predominantly public purposes by entering into an agreement to contribute certain revenues from city taxes generated by the Project in an amount needed to cause the Project to be undertaken; and

WHEREAS, the tax contributions contemplated by this Agreement are limited to those which have been determined to be needed for the purpose of ensuring that the Project proceeds, and but for their contribution, the Project would not proceed, to the detriment of the public interest;

WHEREAS, Section 135.963, RSMo, authorizes, upon governing body approval, up to twenty-five years of tax abatement for improvements made to real property within an Enhanced Enterprise Zone after the date of enterprise zone designation by the Missouri Department of Economic Development; and

WHEREAS, on August 25, 2005, by Resolution No. 051066, the City Council designated pursuant to Section 135.960, RSMo, an enhanced enterprise zone program area known as Enhanced Enterprise Zone 1; and

WHEREAS, on August 25, 2005, by Resolution No. 051066, the City Council directed that improvements to real property within the Enhanced Enterprise Zone 1 shall be exempt from assessment and payment of at least 50% of the ad valorem taxes on such improvements for a period of ten years, and shall be eligible for abatement of ad valorem taxes for rates and periods exceeding the 50% for 10 year abatement by passage of an ordinance or resolution by the City Council authorizing the abatement and establishing the terms of such abatement; and

WHEREAS, on November 22, 2005, by Ordinance No. 051411, the City Council identified the types of business by NAICS sector names which would qualify for state and local incentives within the Enhanced Enterprise Zone 1; and

WHEREAS, Company has requested tax abatement for certain improvements to real property located within Enhanced Enterprise Zone 1 in Downtown Kansas City, for use by the Project; and

WHEREAS, Company's application complies with the requirements of Section 135.963, RSMo, and the City's ordinances and resolutions governing enhanced enterprise zones; and

WHEREAS, the EDC staff recommended fifteen (15) years, seventy-five percent (75%) abatement; and

WHEREAS, WHEREAS, the Board for Enhanced Enterprise Zone 1 approved a 15-year abatement of 75% real property tax abatement for the Project; and

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WHEREAS, the City of Kansas City, Missouri, a constitutional charter city and municipal corporation of the State of Missouri (the “City”) is authorized pursuant to the provisions of Article VI, Section 27(b) of the Missouri Constitution, as amended, and Sections 100.010 to 100.200, inclusive, of the Revised Statutes of Missouri, as amended, and the City of Kansas City Charter (collectively, the “Act”), to issue its revenue bonds for carrying out a project or projects under the Act, such revenue bonds to be paid solely from revenue received from such project, and to enter into a lease of certain personal property associated with the project to be financed with the proceeds of such revenue bonds with any person, firm or corporation; and

WHEREAS, the City has heretofore prepared and approved plans for the industrial development of the City and desires to approve an Industrial Development Plan (the “Plan”) for the purpose of carrying out a development project (the “Development Project”) for Company; and

WHEREAS, the City intends to issue its Taxable Industrial Revenue Bonds (Project Decoy) (the “Bonds”) for the purpose of furthering the Development Project located in Downtown Kansas City, Missouri (the “Project Site”); and

WHEREAS, notice of the Development Project was given to the taxing jurisdictions in accordance with Section 100.059.1 of the Revised Statutes of Missouri; and

WHEREAS, the Council has heretofore and does hereby find and determine that it is desirable for the economic development of the City and within the public purposes of the Act that the Council approve a Chapter 100 Industrial Development Plan as proposed by the Company; and that the City issue the Bonds, as more fully described in the Indenture and in the Lease, as hereinafter defined and authorized, proceeds of which shall be used to fund the construction material costs associated with the construction, improvement and renovation of the Project through a sales tax exemption; and

WHEREAS, the principal amount of the Bonds will be issued in taxable Chapter 100 bonds over a period of time not to exceed the year ending December 31, 2029 and which will be repaid solely by the Company under the terms of the Lease (defined herein); and

WHEREAS, for a Chapter 100 bond issuance, the City Council has previously established a policy (Ordinance No. 041033) for the review and approval of these projects, one component of which suggests a maximum bond term of 10 years and another of which suggests payments-in-lieu-of-taxes (PILOTS) at a level of no less than 50% of the amount that would have been paid on the property if it had been fully taxed, to the affected taxing jurisdictions during the term of the bonds; and

WHEREAS, the principal amount of the Bonds will be advanced over a period of not to exceed ten years following Project commencement, commensurate with the City’s incremental acquisition of the property comprising the Project, and such property will be leased by the City to the Company for a period of not to exceed ten years following

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Redevelopment Project commencement (subject to earlier termination as provided in the Lease), which period will, for any leased property, commence in the year of the advance and end on the applicable month and day set forth in the Lease in the earlier of the tenth calendar year from the year of the advance or 2029, so that the final lease period for any leased property shall end no later than December 31, 2029; and

WHEREAS, the City further finds and determines that it is necessary and desirable in connection with the Redevelopment Project and the issuance of the Bonds that the City enter into certain documents, and that the City take certain other actions and approve the execution of certain other documents as herein provided; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That the City Manager, upon the City's receipt of an executed lease for Business Site by Company, is hereby authorized to execute a Tax Contribution Agreement with Project Decoy, in substantial form to that which is attached hereto.

Section 2. The Mayor, the City Manager, the Director of Finance and other officials, agents and employees of the City as required, are hereby authorized to take such further actions, and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this ordinance.

Section 3. That pursuant to Section 135.963, RSMo, the City Council hereby approves the application for tax abatement by Project for improvements made after the date of Enhanced Enterprise Zone 1 designation to the real property located in the Enhanced Enterprise Zone 1 in Downtown Kansas City, Missouri (the "Property").

Section 4. That the tax abatement granted herein shall, except as provided in Section 3 hereof, be 75% of the value of the improvements on the Property for a period of 15 calendar years. Further, the abatement granted herein shall apply to all ad valorem taxes, imposed by all political subdivisions with the power to tax, on improvements made on the Property after August 19, 2005, subject to continued compliance with Section 135.963, RSMo, and the City's ordinances and resolutions governing enhanced enterprise zones. The affected political subdivisions are:

City - Kansas City
Kansas City Missouri School District
Jackson County
Board of Disabled Services
Mental Health
Metropolitan Community College
Kansas City Public Library
State Blind Pension

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Section 5. That the tax abatement granted herein shall not extend to any property categorized by the Jackson County Assessor as residential real property for ad valorem taxation purposes.

Section 6. Approval of Industrial Development Plan. The City Council hereby finds and determines that the Development Project will promote the economic well-being and industrial development of the City and the Development Project will be in furtherance of the public purposes set forth in the Act. The City Council hereby approves the Plan for the Development Project, which includes the following provisions:

(a) Construction of a new facility at the Project Site, the relocation of over 900 employees to the City, and an addition of over 100 jobs at the Project Site in the City; and

(b) A total estimated project cost of approximately \$148,000,000.00; and

(c) A sales tax exemption solely for construction materials associated with the construction, improvement, and renovation of the Project will be funded from proceeds of the sale of up to \$50,000,000.00 maximum principal amount of Taxable Industrial Revenue Bonds to be issued by the City and purchased by the Company or other purchaser named in the herein-defined Purchase Agreement.

Section 7. Authorization of Documents. The City is hereby authorized to enter into the following documents (the “City Documents”), in such form as shall be approved by the officials of the City executing such documents, such officials’ signatures thereon being conclusive evidence of their approval thereof:

(a) Trust Indenture (the “Indenture”), between the City and the trustee named therein (the “Trustee”), pursuant to which the Bonds shall be issued and the City shall pledge the Project and assign certain of the payments, revenues and receipts received pursuant to the Lease to the Trustee for the benefit and security of the owners of the Bonds upon the terms and conditions as set forth in the Indenture.

(b) Lease Agreement (the “Lease”), between the City and the Company, under which the City will acquire the Development Project and lease the Development Project to the Company pursuant to the terms and conditions in said Lease, in consideration of rental payments by the Company which will be sufficient to pay the principal of, premium, if any, and interest on the Bonds.

(c) Purchase Agreement, as defined below, under which the purchaser named therein agrees to purchase the Bonds.

Section 8. Authorization of the Bonds. The City is hereby authorized to issue and sell its Taxable Industrial Revenue Bonds (Project Decoy), in a maximum aggregate principal amount not to exceed \$50,000,000.00, for the purpose of providing funds construction material costs associated with the construction, improvement, and renovation of the Project. The Bonds shall be issued and secured pursuant to the herein authorized

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Indenture and shall bear such date, shall mature at such time, shall be in such denominations, shall bear interest at such rates, shall be in such form, shall be subject to redemption and other terms and conditions, and shall be issued in such manner, subject to such provisions, covenants and agreements, as are set forth in the Indenture.

Section 9. Sale and Terms of Bonds; Authorization and Execution of Bond Purchase Agreement. The Bonds will be sold to the Company or other purchaser under the terms of a Bond Purchase Agreement between the City and the Company or other purchaser (the "Purchase Agreement"). The maximum aggregate principal amount of the Bonds shall be \$50,000,000.00, the interest rate on the Bonds shall not exceed 5.00%, principal shall be payable at maturity, the maturity date shall be no later than December 1, 2029, the Bonds shall be purchased at 100% of the principal amount thereof and the Bonds may be redeemed at any time at a redemption price equal to the principal amount thereof plus accrued interest. The Director of Finance or the City Treasurer is each authorized to execute the Purchase Agreement for and on behalf of and as the act and deed of the City.

Section 10. Limitation on Liability. The Bonds and the interest thereon shall be limited obligations of the City payable solely out of certain payments, revenues and receipts derived by the City from the Lease described herein, and such payments, revenues and receipts shall be pledged and assigned to the Trustee as security for the payment of the Bonds as provided in the Indenture. The Bonds and the interest thereon shall not constitute general obligations of the City or the State of Missouri. The Bonds shall not constitute indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and are not payable in any manner by taxation.

Section 11. Creation of Bond Fund. The City is hereby authorized to establish with the Trustee pursuant to the Indenture, a special trust fund in the name of the City to be designated the "City of Kansas City, Missouri, Bond Fund – Project Decoy" and the City shall cause all sums required by the Indenture to be deposited therein and shall create all accounts therein required by the Indenture.

Section 12. Execution of Documents. The Mayor is hereby authorized and directed to execute the Bonds and to deliver the Bonds to the Trustee for authentication for and on behalf of and as the act and deed of the City in the manner provided in the Indenture. The Director of Finance is hereby authorized and directed to execute the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance, for and on behalf of and as the act and deed of the City. The City Clerk or a deputy City Clerk, of the City is hereby authorized and directed to attest to and affix the seal of the City to the Bonds and the City Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 13. Further Authority. The Mayor, Director of Finance and other officials, agents and employees of the City as required, are hereby authorized and directed to take such further action, and execute such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance and to

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carry out, comply with and perform the duties of the City with respect to the Bonds, the City Documents, and tax redirection.

Section 14. That the City Clerk is hereby directed to deliver a copy of this ordinance to the State Director of Economic Development within thirty days following passage of this ordinance.

Approved as to form and legality:

Katherine Chandler
Assistant City Attorney