

## COOPERATIVE AGREEMENT FOR STREETCAR TRANSITION PROCESS

**THIS COOPERATIVE AGREEMENT FOR STREETCAR TRANSITION PROCESS** is made and entered into this \_\_\_ day of \_\_\_\_\_, 2019 (the “**Effective Date**”), by and among **KANSAS CITY DOWNTOWN STREETCAR TRANSPORTATION DEVELOPMENT DISTRICT**, a political subdivision of the State of Missouri (the “**Downtown Streetcar TDD**”), **THE KANSAS CITY MAIN STREET RAIL TRANSPORTATION DEVELOPMENT DISTRICT**, a political subdivision of the State of Missouri (the “**Extension TDD**”), **CITY OF KANSAS CITY, MISSOURI**, a Constitutional Charter City and political subdivision of the State of Missouri (the “**City**”) and **KANSAS CITY STREETCAR AUTHORITY**, a Missouri nonprofit corporation (the “**Authority**”).

### RECITALS

A. Pursuant to the Missouri Transportation Development District Act, Sections 238.200, et seq., RSMo, as amended (the “**Act**”), 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. Pursuant to the Act, the Extension TDD was established on August 11, 2017 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) the Initial Phase in the place and stead of the 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 “**Extended Line**”);

C. The City is the owner of the physical assets comprising the Initial Phase and will be the owner of the physical assets comprising the Phase 2 Line;

D. All parties believe that the construction and operation of the Phase 2 Line will increase the usefulness and value of the Initial Phase, thereby providing additional benefits to the property owners within the Downtown Streetcar TDD;

E. The 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**”);

F. On behalf of the City and in accordance with City direction, policy and approvals when applicable, the Authority oversees and administers the management and operations of the Initial Phase and will oversee and administer the management and operations of the Extended Line, and the Authority is participating in the planning and design of the Extended Line and the acquisition, installation and testing of the physical assets comprising the Extended Line;

G. The 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**”);

H. The Downtown Streetcar TDD, the City and the Authority are parties to that certain 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**”);

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

J. Pursuant to the Initial Phase Cooperative Agreement, the Downtown Streetcar TDD makes the Downtown Streetcar TDD Revenue available to the City for use by the City, together with the City’s Annual Contribution, to pay debt service on the Existing Financing and the costs of operations and maintenance of the Initial Phase, and to fund a capital repairs and replacements budget for the Initial Phase and certain reserve funds maintained by the City;

K. The 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 the Authority to costs of operations and maintenance of the Initial Phase and other miscellaneous costs relating to the Initial Phase, and which the Authority intends to apply to costs of operations and maintenance of the Extended Line and other miscellaneous costs relating to the Extended Line;

L. Pursuant to the Act, qualified voters within the Extension TDD have approved the imposition by the Extension TDD of a one percent (1.00%) sales tax within its boundary (the “**Extension TDD Sales Tax**”) and certain special assessments within a portion of its boundary (the “**Extension TDD Special Assessments**”, and collectively with the Extension TDD Sales Tax, the “**Extension TDD Revenue**”), subject to the satisfaction of the “Extension TDD Revenue Condition” (defined below);

M. The Extension TDD Revenue cannot be collected until (a) the Downtown Streetcar TDD is abolished, terminated or dissolved, or merged with or into the Extension TDD, or its revenue sources reduced to zero by action of the Board of Directors of the Downtown

Streetcar TDD or otherwise, in accordance with then applicable law, and (b) the Board of Directors of the Extension TDD determines that there are sufficient funds to be derived from sources other than revenue of the Extension TDD in order to make the construction of a substantial portion of the Phase 2 Line financially viable when aggregated with revenue of the Extension TDD (the “**Extension TDD Revenue Condition**”);

N. It is the intention of the parties that upon the satisfaction of the Extension TDD Revenue Condition, the imposition of the Downtown Streetcar TDD Sales Tax would cease on the day immediately preceding the day on which the Extension TDD Sales Tax is first imposed, and that the levy of the Downtown Streetcar TDD Special Assessments would cease in the calendar year immediately preceding the calendar year in which the Extension TDD Special Assessments are first levied, all such that there is neither a gap, nor an overlap, in time between the respective periods of imposition of (a) the Downtown Streetcar TDD Sales Tax and the Extension TDD Sales Tax, and (b) the Downtown Streetcar TDD Special Assessments and the Extension TDD Special Assessments;

O. 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**”);

P. Based upon projections, it is anticipated that the Extension TDD Revenue, the City Annual Contribution and the Authority Miscellaneous Revenue (collectively, “**Extended Line Revenue**”) will generate sufficient funds to support repayment of new financing anticipated to be issued by the City, which may be a bond financing and/or a financing under the federal Transportation Infrastructure and Innovation Act, or a combination thereof (the “**Extension Financing**”) in an amount that would generate in the aggregate approximately \$161,650,000 to pay Phase 2 Capital Costs, after taking into account costs of issuance and bond proceeds funded reserve funds, reimbursement of approximately \$5,000,000 of Phase 2 Capital Costs already advanced, payment of debt service on the Existing Financing (or on any or all of the Existing Financing that may be refinanced through the Extension Financing should the City, in its discretion, choose to do so), payment of the projected costs of operations and maintenance of the Extended Line, and funding of a capital repairs and replacements budget for the Extended Line;

Q. The City has 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 (the “**New Starts Application**”), in the approximate amount of \$163,350,000 (the “**Federal Contribution**”);

R. The FTA has issued a “Medium-High” rating to the New Starts Application, but did not allocate available FY 2018 or FY 2019 appropriated funds for the Phase 2 Capital Costs;

S. The FTA has advised the City that further actions are necessary on the part of the City in order for the FTA to consider the local funding represented by the Extended Line Revenue to be sufficiently committed to the costs of the Phase 2 Line;

T. In order for engineering with respect to the Phase 2 Line to occur at the pace and on the schedule desired by the parties (and expected by the FTA) prior to the FTA allocating appropriated funds for the Phase 2 Capital Costs, it is necessary to incur additional Phase 2 Capital Costs in the approximate amount of \$9,000,000, which represents the costs of essential activities to be undertaken through early 2021 (the “**Interim Progress Costs**”);

U. Because the Extension TDD Revenue Condition has not yet been satisfied, there is no Extension TDD Revenue that could be used to pay Interim Progress Costs nor debt service on financing of Interim Progress Costs;

V. The parties desire to enter into this Agreement to establish the level of commitment sought by the FTA in order for the FTA to consider the local funding represented by the Extended Line Revenue to be sufficiently committed to the costs of the Phase 2 Line, by: (a) establishing a process to occur in order to satisfy the Extension TDD Revenue Condition upon the FTA allocating appropriated funds for the Phase 2 Capital Costs; (b) providing for the Extension Financing by the City, which includes as a component thereof the financing of the Interim Progress Costs (the “**Interim Progress Costs Financing**”); (c) providing for the execution and delivery of a Cooperative Agreement among the City, the Authority and the Extension TDD substantially similar to the Initial Phase Cooperative Agreement (the “**Extension Cooperative Agreement**”); and (d) providing for the voluntary termination of the Initial Phase Cooperative Agreement;

W. The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, on the part of the City has been authorized by Ordinance No. 190150, passed by the City Council of the City (the “**City Council**”) on \_\_\_\_\_, 2019;

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

Y. The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, on the part of the Downtown Streetcar TDD has been authorized by Resolution No. 2019-3, passed by the Board of Directors of the Downtown Streetcar TDD on June 17, 2019;

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

AA. The parties are entering into this Agreement under the authority of the City’s Charter and Sections 70.220, 238.250 and 355.131, RSMo.

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

1. The parties acknowledge that the Extension TDD, by Resolution 2019-7 passed by its Board of Directors on June 20, 2019, has made a determination that upon the FTA allocating appropriated funds for the Phase 2 Capital Costs in an amount no less than \$150,000,000, there are sufficient funds to be derived from sources other than revenue of the Extension TDD in order to make the construction of a substantial portion of the Phase 2 Line financially viable when aggregated with revenue of the Extension TDD.

2. The City shall use reasonable efforts to obtain the Interim Progress Costs Financing no later than April 30, 2020 in accordance with Ordinance No. 190150, passed by the City Council on \_\_\_\_\_, 2019 (the "**Extension Financing Authorization**"). The Authority, the City and the Downtown Streetcar TDD agree that, notwithstanding any provision of the Initial Phase Cooperative Agreement to the contrary and following the issuance of the Interim Progress Costs Financing, debt service on the Interim Progress Costs Financing may be paid from funds on deposit from time to time in that special revenue fund of the City designated as the "**Streetcar Fund**" (and which is the same special revenue fund of the City defined and referred to in the Initial Phase Cooperative Agreement as the "Initial Phase Fund") but only to the extent such funds being so used are deemed surplus in accordance with Section 7-6 of the Initial Phase Cooperative Agreement. Interim Progress Costs may be paid, with prior written consent of Authority unless Authority made the request for payment thereof, from amounts appropriated pursuant to Ordinance No. 190150.

3. In the event that the FTA allocates appropriated funds for the Phase 2 Capital Costs in an amount no less than \$150,000,000, the City shall notify the Authority, the Downtown Streetcar TDD and the Extension TDD in writing of such allocation and the specific amount thereof (the "**FTA Allocation Notice**"). Following the issuance of the FTA Allocation Notice:

a. The Downtown Streetcar TDD shall take such actions as are necessary or appropriate in order to cause the cessation of imposition of the Downtown Streetcar TDD Sales Tax (which may be accomplished by a resolution of the Board of Directors of the Downtown Streetcar TDD reducing the rate of the Downtown Streetcar TDD Sales Tax to zero), and the Extension TDD shall take such actions as are necessary or appropriate in order to cause the commencement of imposition of the Extension TDD Sales Tax, and the Downtown Streetcar TDD and the Extension TDD shall cooperate and coordinate such actions such that (i) there is neither a gap, nor an overlap, in time between the respective periods of imposition of the Downtown Streetcar TDD Sales Tax and the Extension TDD Sales Tax, and (ii) the commencement of imposition of the Extension TDD Sales Tax does not occur in the same calendar year in which the Downtown Streetcar TDD has or will levy the Downtown Streetcar TDD Special Assessments;

b. Commencing with the calendar year during which the Extension TDD Sales Tax is first collected, the Downtown Streetcar TDD shall cease and refrain from further subsequent levy of the Downtown Streetcar TDD Special Assessments (which may be accomplished by a resolution of the Board of Directors of the Downtown Streetcar TDD

reducing the rate of all of the Downtown Streetcar TDD Special Assessments to zero), and the Extension TDD shall first levy the Extension TDD Special Assessments, and the Downtown Streetcar TDD and the Extension TDD shall cooperate and coordinate such actions such that there is neither a gap, nor an overlap, in time between the respective periods of imposition of the Downtown Streetcar TDD Special Assessments and the Extension TDD Special Assessments;

c. The City shall use reasonable efforts to obtain the Extension Financing in accordance with the terms and provisions of the Extension Financing Authorization; and

d. The City, the Authority and the Extension TDD shall enter into the Extension Cooperative Agreement substantially in the form attached hereto as **Exhibit A**, with such changes as are acceptable to the City Manager of the City and the respective Executive Directors of the Authority and the Extension TDD.

4. Downtown Streetcar TDD has previously established a separate depository account into which there is deposited all Downtown Streetcar TDD Revenue received from the Missouri Department of Revenue with respect to the Downtown Streetcar TDD Sales Tax and from Jackson County, Missouri 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 are transferred by the Downtown Streetcar TDD into the Streetcar Fund. Upon the full execution of the Extension Cooperative Agreement, (a) the City shall deem all reserve funds maintained by the City under the Initial Phase Cooperative Agreement to be the reserve funds described in, and maintained under, the Extension Cooperative Agreement, and (b) the Extension TDD shall (i) establish a new separate depository account for the deposit of all Extension TDD Revenue received from the Missouri Department of Revenue with respect to the Extension TDD Sales Tax and from Jackson County, Missouri with respect to the Extension TDD Special Assessments (the “**Extension TDD Depository Account**”), and (ii) arrange for all Extension TDD Revenue to be deposited into the Extension TDD Depository Account, all as further provided in the Extension Cooperative Agreement. Thereupon, the Authority and the City authorize the Downtown Streetcar TDD to, and the 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.

5. The parties acknowledge their mutual understanding that the only financial liabilities or obligations of the Downtown Streetcar TDD (other than incurrence and payment of costs of administering the Downtown Streetcar TDD as such costs are incurred) are those set forth in the Initial Phase Cooperative Agreement whereby it agreed to make the Downtown Streetcar TDD Revenue available to the City to pay the Existing Financing, and that such financial liabilities and obligations will be fully replaced by the financial obligations of the Extension TDD pursuant to the Extension Cooperative Agreement. Therefore, the parties agree that the actions described in **Section 3.a** and **Section 3.b** above will not impair the Downtown

Streetcar TDD's ability to repay any liabilities which it has incurred, money which it has borrowed or revenue bonds, notes or other obligations which it has issued or which have been issued by the commission or any local transportation authority to finance any project or projects in violation of Section 238.236.12(1) of the Act.

6. Upon full execution of the Extension Cooperative Agreement, the Initial Phase Cooperative Agreement shall be deemed terminated and of no further force or effect, and the parties to the Initial Phase Cooperative Agreement shall execute a mutual written termination of the Initial Phase Cooperative Agreement.

7. Following the third (3<sup>rd</sup>) December 31 after the date on which the Extension TDD Sales Tax is first collected, but provided that the Extension Cooperative Agreement has been fully executed, the Downtown Streetcar TDD shall have the right to pursue the abolishment of the Downtown Streetcar TDD in accordance with the Act. The Winding Up Amount shall be used by the Downtown Streetcar TDD for the administration thereof until its abolishment, including the costs of pursuing and effectuating such abolishment, and any Winding Up Amount not so expended upon the abolishment of the Downtown Streetcar TDD shall be transferred to the City for deposit in the Streetcar Fund in compliance with the Act.

8. In the event that the FTA does not allocate appropriated funds for the Phase 2 Capital Costs in an amount no less than \$150,000,000 on or before December 31, 2025, then either City or Authority shall have the right to terminate this Agreement on written notice to all other parties, in which event no party shall have any further rights or obligations hereunder.

9. 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  
Attention: Troy Schulte, City Manager  
414 E. 12th Street, 29<sup>th</sup> Floor  
Kansas City, Missouri 64106

IF TO AUTHORITY:

Kansas City Streetcar Authority  
Attn: Tom Gerend, Executive Director  
600 E. 3rd Street  
Kansas City, Missouri 64106

IF TO DOWNTOWN STREETCAR TDD:

Kansas City Downtown Streetcar TDD  
Attention: Randall Landes, Executive Director  
414 E. 12th Street, Third Floor  
Kansas City, Missouri 64106

IF TO EXTENSION TDD:

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

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.

10. 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.

11. 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.

12. This 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.



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

**KANSAS CITY DOWNTOWN  
STREETCAR TRANSPORTATION  
DEVELOPMENT DISTRICT**

By: \_\_\_\_\_  
Name: Randall Landes  
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

**KANSAS CITY STREETCAR  
AUTHORITY**

By: \_\_\_\_\_  
Name: Tom Gerend  
Title: Executive Director

Approved as to form:

By: \_\_\_\_\_  
Name: Katherine Chandler  
Title: Associate City Attorney

**EXHIBIT A**

**See Attached**