

THIRD AND GRAND COOPERATION AGREEMENT

THIS COOPERATION AGREEMENT (this “**Agreement**”) is entered into as of the ___ day of December, 2021 (“**Effective Date**”) by and between the Kansas City Area Transportation Authority, a body corporate and politic and a political subdivision of the States of Missouri and Kansas (“**KCATA**”), and the City of Kansas City, Missouri, a duly organized and existing constitutional chartered city under the laws of the State of Missouri (the “**City,**” each a “**Party**” and, together, the “**Parties**”).

RECITALS

A. KCATA and the City are parties to a certain Parking Agreement dated September 20, 1999, attached hereto as Exhibit A (the “**Parking Agreement**”), pursuant to which the KCATA leases certain property located generally at 3rd and Grand Boulevard (the “**Property**”) to the City.

B. The current term of the Parking Agreement expires on April 30, 2029 and, unless otherwise terminated, the Parking Agreement is intended to continue to renew for successive ten-year periods.

C. KCATA and the City together with the Port Authority of Kansas City are parties to a certain Cooperative Agreement for Purchase and Use of Real Property dated April 5, 1999, attached hereto as Exhibit B (the “**Purchase Agreement**”), pursuant to which the KCATA owed certain financial compensation to the City upon termination of the Parking Agreement.

D. KCATA is also party to that certain Development Agreement between KCATA, Ride KC, and 3G Development, LLC dated as of December 3, 2020 (the “**Development Agreement**”) pursuant to which 3G Development, LLC (the “**Developer**”) will develop a mixed-use development adjacent to the City Market and including the Property (the “**Developer’s Mixed-Use Project**”).

E. The Parties also desire to generally encourage transit-oriented development, multi-modal transportation, and the repopulation of the River Market area (“**Transportation Oriented Development**”).

F. The City and the KCATA are planning the development of an extension of the Streetcar System, which will include Grand Boulevard north of 3rd Street adjacent to the Property and continue on the Grand Boulevard Viaduct eastwardly on the riverfront (“**Riverfront Extension**”). Per separate agreement among KCATA, City, Port KC and the Kansas City Streetcar Authority, KCATA is the lead agency for the Riverfront Extension design and construction.

G. The City requires the acquisition of additional property for the purpose of widening the Grand Boulevard right-of-way in order to provide for a new cycle track, tree line, sidewalk, and appropriate buffers between these elements (“**Grand Boulevard City Infrastructure**”); the Riverfront Extension; and Developer’s Mixed-Use Project.

H. In order to construct the Grand Boulevard City Infrastructure with necessary buffers making possible the planned Riverfront Extension, the KCATA must convey 6,930 square feet in an easterly direction into the property owned by the KCATA (“**Grand Right-of-Way Expansion**”).

I. The consulting team for the Riverfront Extension has developed the engineering drawing attached hereto as Exhibit C, which shows the Grand Right-of -Way Expansion necessary for the Grand Boulevard City Infrastructure.

J. A drawing showing the site plan for Developer’s Mixed-Use Project is attached hereto as Exhibit D and incorporated herein by reference.

K. As is shown on Exhibit C, the parties have also agreed to a re-striping of Oak Street between 2nd and 3rd Streets to make Oak a three-lane, one-way south section to provide more appropriate lane and parking widths within the existing Oak Street right-of-way.

L. The KCATA has provided, at its expense, certain engineering drawings that show the expanded right-of-way, the boundaries of the remaining KCATA property, and the location of the Grand Boulevard City Infrastructure a copy of which is attached as Exhibit E and incorporated herein by reference.

M. The KCATA’s Property is 1.89 acres (86,770 square feet) of which 6,930 square feet will be conveyed to the City for the Grand Right-of -Way Expansion by the KCATA as herein provided.

N. The Parties have agreed to value the KCATA Property at \$28 per square foot for a total of \$2,430,000 based on an appraisal obtained by KCATA in 2015 “Appraised Value.”

O. The Parties agree the value of the Grand Right of Way Expansion is \$194,040.00.

P. The Parties desire that the Grand Right-of-Way Expansion be shown in a replat of the KCATA Property which plat drawing is to be prepared by an engineering consultant selected and paid by the KCATA but shared by the Parties upon the KCATA’s conveyance of the KCATA property for the Grand Right-of-Way expansion. The cost of such engineering expenses shall be approximately \$20,000 (“**Engineering Expenses**”).

Q. The construction of either the Transportation Oriented Development or the Grand Boulevard City Infrastructure will require termination of the Parking Agreement.

R. The Parties therefore desire to provide for termination of the Parking Agreement, the conveyance of the needed right-of-way to the City, and agreement to cooperative actions that facilitate Developer’s Mixed-Use Project or other Transportation-Oriented Development

NOW THEREFORE, in consideration of the foregoing recitals and the good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The recitals set forth above are incorporated herein and made a part of this Agreement.

2. Termination of the Parking Agreement. The City and the KCATA agree to terminate the Parking Agreement upon either (a) the closing of the Development Agreement by the KCATA for the Developer's Mixed-Use Project; (b) the KCATA's election to acquire the property under Section 3 below upon the commencement of construction of the Riverfront Extension or the Grand Boulevard City Infrastructure; or (c) upon the election of the KCATA within two years of the Effective Date.

3. Allocation of Value of the KCATA Property Under Section 2(a) or Section 2(b). Upon the occurrence of the event stated in Section 2(a) above, or the commencement of either construction event under Section 2(b) above, the Parties agree to allocate the value of the KCATA Property as follows:

- (a) Upon the closing of the Development Agreement, the KCATA will receive from Developer \$2,235,960, which is the Appraised Value of the KCATA property minus the value of the Grand Right of Way Expansion ("Agreed Sale Price") and reduced by the normal costs of closing such as the Title Insurance Policy.
- (b) Upon the commencement of construction of the Riverfront Extension or the Grand Boulevard City Infrastructure under Section 2(b), the KCATA may elect within 90 days thereafter, to pay the City \$1,117,980.00, less one-half of the engineering costs, in which event the Parking Agreement will be terminated.
- (c) The City and the KCATA, upon the sale of the current KCATA property for the Agreed Sale Price to the Developer, each would receive \$1,117,980.00 adjusted by closing costs. Additionally, the City's portion of the Agreed Sale Price shall be reduced by half the value of the Engineering Expenses and said half value shall be remitted to KCATA.
- (d) At closing of the Development Agreement or commencement of the construction of the Riverfront Extension or the Grand Boulevard City Infrastructure, the 6,930 square feet of the Grand Right of Way Expansion will be conveyed to the City.
- (e) Any payment to the City under subsections (b) or (c) of this Section shall be deemed to satisfy the obligation under the Purchase Agreement of KCATA to compensate the City upon termination of the Parking Agreement.

4. Allocation of Value of the KCATA Property. Upon the occurrence of the KCATA's election stated in Section 2.c above, the Parties agree as follows:

- (a) A new appraisal will be obtained to determine the current value of the Property, the costs of which will be shared by the Parties, subject to any necessary appropriations by the City Council for such purposes.
- (b) The KCATA will pay to the City half of the value of the Property as determined by the appraisal required in Section 4.a above minus the value of the Grand Right of Way Expansion determined by said appraisal and half of the value of the Engineering Expenses incurred by KCATA. Any payment to the City made pursuant to this subsection (b) shall be deemed to satisfy the obligation under the Purchase Agreement of KCATA to compensate the City upon termination of the Parking Agreement.
- (c) The 6,930 square feet of the Grand Right of Way Expansion will be conveyed to the City from KCATA.
- (d) In the event of the occurrence of Section 2.b, the City shall be responsible for the costs of associated with the replatting of the Property.

5. KCATA's Waiver of Right of Acquisition Under Section 2(b). In the event the KCATA fails to elect to acquire the Property within 90 days as stated in Section 2(b), the Parties agree as follows:

- (a) The Parking Agreement will be amended to provide for the correct legal description and otherwise will be subject to the existing written terms.
- (b) In the event that the KCATA provides 90 days' notice to the City thereafter, the KCATA may acquire the Property in which event the Parking Agreement will be terminated, and the City will be paid one-half of the value in accordance with an appraisal as required in Section 4(a) above.

6. Obligations of the KCATA. The KCATA agrees on behalf of the Parties as follows:

- (a) The KCATA will communicate the Parties' design specifications for the Modified Plat to the retained consultant.
- (b) The KCATA will request and contract for the preparation of the Modified Plat by the retained consultant.
- (c) The KCATA will provide that portion of the Property required for the Modified Plat.
- (d) The KCATA will advance the retained consultant contract expenses for the Modified Plat.

- (e) In keeping with a separate agreement on the Riverfront Extension among the KCATA, the City, the Kansas City Streetcar Authority and PortKC, KCATA is the lead agency for the Riverfront Streetcar design and construction.

7. Obligations of the City. The City agrees on behalf of the Parties as follows:

- (a) The City will cooperate with the KCATA and Developer on development of Developer's Mixed-Use Project as follows:
 - (i) Subject to the Developer's compliance with AdvanceKC, the City will take reasonable actions pursuant to its normal course of business to support the Developer's application for tax abatement from the Planned Industrial Expansion Authority, Developer's Application for Approval of UR zoning, and Developer's Application for Preliminary Plat/Plan Approval.
 - (ii) The City will take reasonable actions pursuant to its normal course of business with the KCATA and the Developer to approve the plat on behalf of the Parties to file and process the Modified Plat.
 - (iii) The City will appoint a representative to serve on a project advisory committee consisting of one representative of the City, one representative of the KCATA, one representative of Ride KC Development Corporation, and one representative of the Developer.
- (b) Upon any event stated in Section 2, the City will be responsible for, or for finding alternative funding for, the cost of design and construction of the Grand Boulevard Public Improvements, other than the Riverfront Streetcar which is separately funded.
- (c) The City will take reasonable actions pursuant to its normal course of business to work with the KCATA to obtain any approvals of the City's Parks Department and its Transportation Management Committee to obtain any necessary waiver of any set-back requirement on Grand Boulevard and to obtain a 3-lane, one-way south designation for Oak between 2nd and 3rd Streets.

8. Date of Termination and Payment of Expenses. Upon the occurrence of any event in Section 2, all benefits, obligations, duties and liabilities of the parties under the Parking Agreement shall cease and terminate and the Parking Agreement will be of no further force or effect from and thereafter. The KCATA will provide the City 60 days' written notice of either closing on the Development Agreement, as provided for in Section 2(a), or its exercise of the KCATA election to terminate the Parking Agreement as provided for in Section 2(b) . The City agrees to provide the KCATA 60 days' notice of commencement of the construction of the Riverfront Extension or the Grand Boulevard City Infrastructure as provided for in Section 2(b).

9. Mutual Release. In consideration of the covenants, agreements, and undertakings of the Parties under this Agreement, each Party, on behalf of itself and its respective present and

former parents, subsidiaries, affiliates, officers, directors, shareholders, members, successors, and assigns (collectively, “**Releasors**”) hereby releases, waives, and forever discharges the other Party and its respective present and former, direct and indirect, parents, subsidiaries, affiliates, employees, officers, directors, shareholders, members, agents, representatives, permitted successors, and permitted assigns (collectively, “**Releasees**”) of and from any and all actions, causes of action, suits, losses, liabilities, rights, debts, dues, sums of money, accounts, reckonings, obligations, costs, expenses, liens, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands, of every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law, admiralty, or equity (collectively, “**Claims**”), which any of such Releasors ever had, now have, or hereafter can, shall, or may have against any of such Releasees for, upon, or by reason of any matter, cause, or thing whatsoever from the beginning of time through the date of this Agreement arising out of or relating to the Parking Agreement.

10. No Gratuities and Kickbacks. The provisions of City’s Code Section 3-303, prohibiting gratuities to City employees, and kickbacks by Contractors, and Sections 3-307 and 3-309, imposing sanctions for violations, shall apply to this Agreement.

- (a) **Gratuities.** No party to this Agreement has or will offer or give any City or KCATA 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 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 therefore.
- (b) **Kickbacks.** City and KCATA certify that no payment, gratuity, offer of employment or benefit has been or will be made by or on behalf of or solicited from any third-party contractor under a contract to City or KCATA as an inducement for the award of a subcontract or order in connection with the subject matter of this Agreement.

11. Conflicts of Interest. The provisions of City’s Code Sections 2 1015 and 3-301, prohibiting City officers and employees from having a personal financial interest in any contract with City, Code Sections 3-307 and 3-309, imposing sanctions for violations, shall apply to this Agreement. KCATA and City each certify that no officer or employee of KCATA or City has, or will have, a direct or indirect financial interest in this Agreement which is incompatible with the officer’s or employee’s discharge of official duties in the public interest, and that no officer or employee of KCATA or City, or member of such officer’s or employee’s immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of City or KCATA in this Agreement.

12. Assignment. No party to this Agreement shall assign or transfer any part or all of their respective obligations or interests without the other parties' prior written approval. If any party shall assign or transfer any part of its interests or obligations under this Agreement without such prior approval, it shall constitute a material breach of this Agreement. No party shall be obligated to pay or be liable for payment of any monies which may be due to any subcontractor of the other parties. City and KCATA shall include in any subcontract a requirement that the subcontractor shall comply with all requirements of this Agreement in performing the services hereunder.

13. Insurance. The parties to this Agreement shall follow their own respective policies and regulations regarding insurance requirements.

14. Governing Law. This Agreement shall be construed and governed in accordance with the law of the State of Missouri.

15. Defaults and Remedies; Termination.

- (a) A party to this Agreement shall be in default of this Agreement upon the happening of any of the following events:
 - i. Upon the suspension or revocation of any act, power, license, permit, or authority that has the effect of preventing and stopping KCATA or City from performing under this Agreement; or
 - ii. Upon the failure of either party to perform any material obligation due under this Agreement.
- (b) Upon any default or breach of this Agreement, written notice shall be provided to the defaulting party specifying the default. Upon receipt of such notice, the alleged defaulting party shall have a period of thirty (30) days to cure such default. Failure to cure such default entitles the non-defaulting party to:
 - i. Enjoin any breach or threatened breach by any party of any covenants, agreements, terms, provisions or conditions hereof; or
 - ii. Bring suit for the performance of any obligation under this Agreement or suit for any damage incurred for non-performance, all without terminating this Agreement; or
 - iii. Terminate this Agreement.
- (c) No party shall be deemed to be in default in its performance under this Agreement where nonperformance is due to an unavoidable delay. Unavoidable delay means any circumstance beyond the reasonable control of the party which causes a delay in performance under this Agreement including, without

limitation, war, strikes, lock outs, riots, floods, earthquakes, fires, acts of terrorism, casualties, labor disputes, embargoes, tornadoes, acts of God or any other causes beyond the reasonable control of the parties.

- (d) This Agreement may also be terminated for convenience upon the mutual written agreement of the parties hereto.

16. Anti-Discrimination. KCATA and City shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national, origin, disability or marital status.

17. Severability of Provisions. Except as specifically provided herein, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provisions that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provisions; or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

18. Prevailing Wage. Each party to this Agreement shall comply in all respects with the Prevailing Wage Laws of the State of Missouri, Section 290.210 to 290.340, RSMo., 2000, as amended, and any federal prevailing wage laws that apply to applicable work. Each party agrees that the other party shall not be responsible for assisting the other party in providing any required documentation necessary to demonstrate compliance with the Prevailing Wage Laws.

19. Binding Effect. This Agreement shall be binding upon the parties hereto and upon their assigns, transferees and successors in interest, provided no party may assign this Agreement or the rights or obligations hereunder without the express written consent of the other parties.

20. Representations and Warranties. City and KCATA each certify that they have the power and authority to execute and deliver this Agreement, to use the funds as contemplated hereby and to perform this Agreement in accordance with its terms.

21. Condition. This agreement is subject to KCATA Board approval.

22. Notices. Any notices or other communications required or permitted to be given hereunder shall be in writing and shall be deemed given when delivered personally or deposited in the United States Mail, either certified or registered mail, postage prepaid, overnight delivery service, return receipt requested, by facsimile, addressed as follows:

City: City Manager
29th Floor, City Hall
414 East 12th Street
Kansas City, MO 64106

with a copy to: Director of Public Works
20th Floor, City Hall
414 East 12th Street
Kansas City, MO 64106

with a copy to: City Attorney
23rd Floor, City Hall
414 East 12th Street,
Kansas City, MO 64106

KCATA: CEO / President
Kansas City Area Transportation Authority
1200 E. 18th Street
Kansas City, MO 64108
Email: _____

with a copy to: CEO RideKC Development Corporation
Kansas City Area Transportation Authority
1106 E. 30th Street, Suite M
Kansas City, MO 64109
Email: _____

and a copy to: VP - Finance
Kansas City Area Transportation Authority
1350 E. 17th Street
Kansas City, MO 64108
Email: _____

and a copy to: Jerry Riffel, Esq.
Lathrop GPM LLP
2345 Grand Boulevard, Suite 2200
Kansas City, MO 64108
Email: _____

23. Amendment. This Agreement shall not be amended, modified or canceled without the written consent of the parties to this Agreement.

24. Miscellaneous. Each party to this Agreement agrees to perform any further acts and deliver any additional documents which may be reasonably requested to carry out the provisions of this Agreement. In the event any part, term or provisions of this Agreement shall be declared illegal or in conflict with any law, rule or regulation, the validity of the remaining portion, terms or provisions shall not be affected thereby. The terms and conditions contained and incorporated herein constitute the entire agreement of the parties and supersede all prior written and oral

agreements and understandings relating to the subject matter hereof. The captions at the beginning of each Section are used for convenience only and are not be used in attempting to construe any part of this Agreement. Unless the context indicated otherwise, words importing the singular number shall include the plural and words of masculine gender shall be deemed and construed to include the feminine and neuter genders and vice versa.

[Signature Page Follows]

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

Kansas City Area Transportation Authority

By: _____
Name: _____
Title: _____

City of Kansas City, Missouri

By: _____
Name: _____
Title: _____

Approved as to form and legality:

Assistant City Attorney