

AMENDED AND RESTATED
FUNDING AGREEMENT
BETWEEN
THE TAX INCREMENT FINANCING COMMISSION
OF KANSAS CITY, MISSOURI
AND
THE CITY OF KANSAS CITY, MISSOURI
FOR THE CONSTRUCTION OF
THE T3B Trails
PURSUANT TO
THE KCI CORRIDOR TAX INCREMENT FINANCING PLAN

Exhibits

- Exhibit A: T3B Trails Description
- Exhibit B: MODOT Agreements
- Exhibit C: Prioritized Improvements
- Exhibit D: Redevelopment Project Costs

SECOND AMENDED AND RESTATED FUNDING AGREEMENT

THIS AMENDED AND RESTATED FUNDING AGREEMENT dated March ____, 2016, amends, restates and replaces that certain Funding Agreement (the “Original Agreement”), dated March 11, 2012, by and between the TAX INCREMENT FINANCING COMMISSION OF KANSAS CITY, MISSOURI (the “Commission”) and the CITY OF KANSAS CITY, MISSOURI (the “City”), with respect to the following facts and objectives:

A. Pursuant to the Real Property Tax Increment Financing Allocation Act, Section 99.100 RSMo. 1988, et seq., as amended (“Act”), on March 11, 1999, the City Council (the “City Council”) of Kansas City, Missouri (the “City”), by way of Ordinance No. 990256, approved the KCI Corridor Tax Increment Financing Plan and designated the area describe therein as a redevelopment area (the “Redevelopment Area”);

B. The KCI Corridor Tax Increment Financing Plan has been subsequently amended by a series of ordinances passed by the City Council (collectively, the “Plan”);

C. The Plan provides, among other things, for the construction of certain roadways and other public infrastructure improvements within and adjacent to the Redevelopment Area, including the construction of trails along Missouri Highway 152, beginning at Ambassador Drive and ending at Platte Purchase Drive (collectively, the “T3B Trails”), as more particularly described on **Exhibit A**, attached hereto;

D. The Industrial Development Authority of the County of Platte County (the “Authority”) issued its Improvement and Refunding Revenue Bonds in the amount of \$34,500,000 (the “Bonds”), pursuant to that certain Trust Indenture by and between the Authority and First Bank of Missouri (the “Trustee”), dated September 1, 2014 (the “Trust Indenture”), for the purpose, in part, of (i) refunding its Improvement and Refunding Revenue Bonds, Series 2009, and refunding its Revenue Bonds, Series 2012 and (ii) funding certain costs related to a portion of the road improvements contemplated by the Plan;

E. The City, pursuant to Ordinance No. 110490, passed on June 30, 2011, entered into two separate Transportation Enhancement Funds Program Agreements (Projects STP3301 (440), STP3301 (445) and STP3400 (437) with the Missouri Highways Transportation Commission (“MODOT”) (the “MODOT Agreements”), in a form substantially similar to **Exhibit B**, attached hereto, which provides, inter alia, that the City shall construct the T3B Trails and MODOT shall contribute One Million Five Hundred Thousand Dollars (\$1,500,000) to the City for payment of costs related to the construction of the T3B Trails; and

F. The Commission desires to contribute to the City Eight Hundred Twenty-One Thousand Three Hundred Seventy-Six Dollars (\$821,376) from the proceeds of the Bonds or from Economic Activity Taxes generated from redevelopment projects described by the Plan (the “Commission Contribution”), provided however, an amount equal to (\$321,376) of the Commission Contribution shall be subject to availability of funds after the payment of the prioritized project improvements described on **Exhibit C**.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Commission and the City agree as follows:

ARTICLE I DEFINED TERMS

Section 1.1 **Defined Terms.** As used in this Agreement, the following terms shall have the following meanings:

(a) “Act” shall mean Real Property Tax Increment Allocation Redevelopment Act, Mo. Rev. Stat. § 99.800 *et seq.* (1982, as amended).

(b) “Agreement” shall mean this Amended and Restated Funding Agreement.

(c) “City” shall mean the City of Kansas City, Missouri.

(d) “Commission’s Contribution” shall mean Eight Hundred Twenty-One Thousand Three Hundred Seventy-Six Dollars (\$821,376) which shall be contributed by the Commission to the City, pursuant to the terms of this Agreement for the purpose of financing a portion of the construction of the T3B Trails.

(e) “Commission” shall mean the Tax Increment Financing Commission of Kansas City, Missouri.

(f) “MODOT Agreements” shall mean certain Missouri Highways and Transportation Commission Transportation Enhancement Funds Program Agreements for Projects STP3301 (440), STP3301 (445) and STP3400 (437) entered into by and between MODOT and the City, pursuant to Ordinance No. 110490.

(g) “Plan” shall mean the KCI Corridor Tax Increment Financing Plan adopted by the City Council of the City, pursuant to Ordinance No. 990256 on March 11, 1999, and as amended from time to time.

(h) “Project Account” shall mean an account in which the City shall deposit the Commission’s Contribution.

(i) “Redevelopment Project Costs” shall mean the costs identified by the Plan that relate to the construction of the T3 Trails, as more specifically identified on **Exhibit D**, attached hereto.

(j) “T3B Trails” shall mean the construction of a 10 foot wide multi-purpose path along Missouri Highway 152, beginning at Ambassador Drive and ending at Platte Purchase Drive, which is more particularly identified on **Exhibit A**, attached hereto.

Section 1.2 **Undefined Terms.** Any capitalized terms undefined by this Article shall have the meanings ascribed to them under the Act.

ARTICLE II REPRESENTATIONS

Section 2.1 Representations by the Commission. The Commission represents and warrants to the City as follows:

(a) Organization and Authority. The Commission (i) is a real property tax increment financing commission duly organized and existing under the Act and (iii) by all necessary action has been duly authorized to execute and deliver this Agreement acting by and through its duly authorized officers.

(b) No Litigation. To the knowledge of the Commission, there is no litigation or proceeding pending or threatened against the Commission or any other person affecting the right of the Commission to execute or deliver this Agreement or the ability of the Commission to comply with its obligations under this Agreement. Neither the execution and delivery of this Agreement by the Commission, nor compliance by the Commission with its obligations under this Agreement, require the approval of any regulatory body, any parent company, or any other entity, which approval has not been obtained.

Section 2.2 Representations by the City. The City represents and warrants to the Commission as follows:

(a) Organization and Authority. The City (i) is a special chartered municipal corporation validly existing under the laws of the State of Missouri, (ii) has lawful power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder, and (iii) by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(b) No Defaults or Violations. The execution and delivery of this Agreement by the City will not conflict with or result in a breach of any of the terms of, or constitute a default under, any agreement or instrument to which the City is a party or by which it or any of its property is bound, or any of the laws, rules or regulations applicable to the City or its property.

(c) No Litigation. To the knowledge of the City, there is no litigation or proceeding pending or threatened against the City or any other person affecting the right of the City to execute this Agreement or to otherwise comply with the obligations under this Agreement. Neither the execution and delivery of this Agreement by the City, nor compliance by the City with its obligations under this Agreement, require the approval of any regulatory body or any other entity, which approval has not been obtained.

Section 2.3 Survival of Representations. All representations of the City and Commission contained in this Agreement or in any certificate or other instrument delivered by the City or the Commission pursuant to this Agreement, or in connection with the transactions contemplated thereby, shall survive the execution and delivery thereof.

**ARTICLE III
FUNDING OF PROJECT COSTS**

Section 3.1 **Deposit by the City.** As soon as reasonably practicable after the receipt of the Commission’s Contribution or any portion thereof, the City agrees to deposit such money in the Project Account. The money on deposit in the Project Account (a) shall be segregated on the books and records of the City from all other money, revenue, funds and accounts of the City, (b) shall be invested pursuant to written instructions provided by the Commission, and (c) shall be utilized exclusively for payment of costs related to the construction of the T3 Trails, which shall be constructed by or at the direction of MODOT.

Section 3.2 **Covenants of the City.** The City hereby covenants and agrees:

- (a) to pledge all right, title and interest in, to and under, the Project Account to the payment for all costs related to the construction of the T3B Trails;
- (b) the City shall exert reasonable efforts to enter into MODOT Agreements to cause, among other things, the construction of the T3B Trails to be completed in accordance with **Exhibit A**, attached hereto; and
- (c) in no event shall any portion of the Commission’s Contribution be expended for any purpose other than for costs related to the construction of the T3 Trails.

Section 3.3 **Covenants of the Commission.** The Commission, as soon as reasonably practicable after its receipt of fully-executed MODOT Agreements, shall contribute to the City for deposit into the Project Account (a) an amount equal to \$500,000 from (i) the available proceeds on deposit in the Project Fund created pursuant to the Trust Indenture or (ii) Economic Activity Taxes generated from redevelopment projects described by the Plan, but only after (A) the payment of all principal and interest relating to the Bonds and, all costs and (B) expenses relating to the Bonds, including costs and expenses of the Trustee and the Commission as contemplated by the Trust Indenture and Financing Agreement described by the Trust Indenture, and, (b) subject to availability, and as soon as practicable after the payment or provision has been made for the payment of costs related to the improvements set forth on **Exhibit C**, an amount equal to \$321,376 from (i) the available proceeds on deposit in the Project Fund created pursuant to the Trust Indenture or (ii) Economic Activity Taxes generated from redevelopment projects described by the Plan, but only after (A) the payment of all principal and interest relating to the Bonds and, all costs and (B) expenses relating to the Bonds, including costs and expenses of the Trustee and the Commission as contemplated by the Trust Indenture and Financing Agreement.

**ARTICLE IV
MISCELLANEOUS**

Section 4.1 **Term of Agreement.** This Agreement shall be effective from and after its execution and delivery and shall continue in full force and effect until the termination of this Agreement in accordance with Section 4.3 (the “Term”).

Section 4.2 Breach; Compliance. If any party (the “Breaching Party”) does not comply with provisions of this Agreement, in that the Breaching Party shall do, permit to be done, or fail or omit to do, or fail or omit to have done, anything contrary to or required of it by this Agreement, and if, within ten (10) days after notice of such default by any one of the other parties (the “Non-Breaching Party”), the Breaching Party shall not have cured such default or commenced such cure and be diligently pursuing the same if such cure would reasonably take longer than said ten (10) day period, then the Non-Breaching Party may institute such proceedings as may be necessary in its opinion to cure the default including, but not limited to, proceedings to compel specific performance by the Breaching Party.

The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative and the exercise by Non-Breaching Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach. No waiver made by the Non-Breaching Party shall apply to obligations beyond those expressly waived.

If any action is instituted by any party hereto to enforce this Agreement, the prevailing party or parties shall be entitled to recover any and all costs, fees and expenses, including reasonable attorneys’ fees incurred, in addition to any other damages that may be awarded in that action.

Section 4.3 Termination of Agreement. In the event after the Commission’s Contribution is made to the City, (a) the Plan is amended to exclude the Redevelopment Project Costs as a reimbursable redevelopment project cost, (b) the Trust Indenture is modified to exclude the T3B Trails as an improvement that may be financed with the proceeds of the Bonds or (c) the City is unable to cause the construction of the T3B Trails by December 31, 2018, the parties hereto agree that this Agreement shall terminate and the City shall reimburse to the Commission the amount of the Commission Contribution received by the City.

Section 4.4 Notices. All written notices required by this Agreement shall be in writing and shall be served either personally or by certified mail, or by any other delivery service which obtains a receipt for delivery unless any such notice is required by law and such law provides a different form of delivery or service. Any such notice or demand served personally shall be delivered to the party being served (provided that such notice may be delivered to the receptionist or any other person apparently in charge of such party’s office at its address hereinafter set forth), and shall be deemed complete upon the day of actual or attempted delivery, as shown by an affidavit of the person so delivering such notice. Any notice so served by certified mail shall be deposited in the United States Mail with postage thereon fully prepaid and addressed to the party or parties so to be served at its address hereinafter stated, and service of any such notice by certified mail shall be deemed complete on the date of actual or attempted delivery as shown by the certified mail receipt. Service of any such notice by another delivery service shall be deemed complete upon the date of actual or attempted delivery as shown on the receipt obtained by such delivery service.

Any notice to the Commission shall be addressed to:

Tax Increment Financing Commission
of Kansas City, Missouri
1100 Walnut Street, Suite 1700
Kansas City, Missouri 64106
Attn: Executive Director

with a copy to:

Bryan Cave LLP
3800 One Kansas City Place
1200 Main Street
Kansas City, Missouri 64105
Attn: Wesley O. Fields, Esq.

Notices to the City shall be addressed to:

City of Kansas City, Missouri
Public Works Department
414 E. 12th Street, 20th Floor
Kansas City, Missouri 64106
Attn: Director

with a copy to:

City of Kansas City, Missouri
Law Department
City Hall
414 E. 12th Street, 28th Floor
Kansas City, Missouri 64106

Each party shall have the right to specify that notice be addressed to any other address by giving to the other party ten (10) days written notice thereof.

Section 4.5 Audit. The City Auditor and the City's Internal Auditor shall have the right to audit this Agreement and all books, documents and records relating thereto. The Commission shall maintain all its books, documents and records relating to this Agreement during the Term of this Agreement and for three (3) years thereafter. The books, documents and records of the Commission in connection with this Agreement shall be made available to the City Auditor, and the City's Internal Auditor, within ten (10) days after the written request is made.

Section 4.6 Performance Date Not a Business Day. If any date for the taking of any action hereunder is on a Saturday, Sunday or business holiday of the City, then such action shall be taken, on the first business day thereafter with the same force and effect as if made on the date fixed for payment or performance.

Section 4.7 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the City and the Commission and their respective successors and assigns.

Section 4.8 **Amendments, Changes and Modifications.** This Agreement may not be effectively amended, changed, modified or altered without the prior concurring written consent of all the parties hereto.

Section 4.9 **Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 4.10 **No Pecuniary Liability.** All covenants, obligations and agreements of the City and the Commission contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future director, officer, agent or employee of the City or the Commission in other than their official capacity.

Section 4.11 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior oral agreements or written agreements, arrangements, and understandings relating thereto.

Section 4.12 **Severability.** If any provision of this Agreement, or any covenant, stipulation, obligation, agreement, act or action, or part thereof made, assumed, entered into or taken thereunder, or any application of such provision, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into, or taken, each of which shall be construed and enforced as if such illegal or invalid portion were not contained herein. Such illegality or invalidity of any application thereof shall not affect any legal and valid application thereof, and each such provision, covenant, stipulation, obligation, agreement, act or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 4.13 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri.

(The remainder of this page left intentionally blank. Signature pages follow.)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed pursuant to due authority as of the date first above set forth.

TAX INCREMENT FINANCING COMMISSION
OF KANSAS CITY, MISSOURI

ATTEST:

Heather A. Brown, Secretary

By: _____
Cynthia M. Circo, Chair

Approved as to form:

Wesley O. Fields
Counsel to the Commission

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

BE IT REMEMBERED, that on this ____ day of March, 2016, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Cynthia M. Circo, Chair of the Tax Increment Financing Commission of Kansas City, Missouri, a commission duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of said commission, and such person duly acknowledged the execution of the same to be the act and deed of said commission.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

NOTARY PUBLIC

My Commission Expires:

THE CITY OF KANSAS CITY, MISSOURI

By: _____
Sherri K. McIntyre, Director of Public Works

Approved as to form and legality:

City Attorney

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

BE IT REMEMBERED, that on this ____ day of March, 2016, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Sherri K. McIntyre, Director of Public Works of the City of Kansas City, Missouri, a special chartered city of the State of Missouri, who is personally known to me to be the same person who executed, as such official, the within instrument on behalf of said City, and such person duly acknowledged the execution of the same to be the act and deed of said City.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

NOTARY PUBLIC

My Commission Expires:

Exhibit A

Description of T3B Trails Construction

The T3B Trail will be designed as a 10 foot wide concrete trail along Mission Route 152 that will connect the existing T2 Trail to Platte Purchase Drive. Typical construction items will include but not be limited to:

1. Local, State and Federal Permitting
2. Right of Way Acquisition
3. Utility Relocation
4. Traffic Control
5. Geotechnical Testing and Inspections
6. Bidding
7. Grading
8. Storm Sewer Construction
9. Waterline Construction
10. Curb Construction
11. Asphalt Construction
12. Sidewalk Construction
13. Streetlights
14. Striping
15. Seeding
16. Sediment and Erosion Control
17. Landscaping
18. Construction Inspection
19. Project Administration
20. Any other construction and administration related activities to be determined throughout the design and bidding process.

Exhibit B

Form of MODOT Agreements

Exhibit C

Prioritized Improvements

1. Project 4A Tiffany Hills Road - Skyview Avenue East to Ambassador Drive
2. Project 5C Skyview Avenue - South of Tiffany Hills Road to Ambassador Drive
3. Project 5D Skyview Avenue - East of Ambassador Drive
4. Project 4C Tiffany Hills Road - Ambassador Drive East to Hull Road
5. Project 2A Ambassador Drive - Extend through Tiffany Hills Road to Skyview Avenue
6. Project 2B Ambassador Drive - Extend from Skyview Avenue to Tiffany Springs Parkway
7. Project 10 - North Congress – North of Platte County Road Project
8. Project 3A – TIF Portion of Tiffany Springs Parkway Interchange.
9. Project 5A – Skyview – North of Ambassador Drive Extension to Tiffany Springs Parkway
10. Project 12 – Barry Road – Boardwalk to Ambassador Drive
11. Project 13 – Tiffany Springs Road – Western entrance of Tiffany Hills Park west to intersection of Amity
12. Project 14 – North Polo Drive – West arc of North Polo Drive: N Ambassador Avenue to Tiffany Springs Parkway
13. Projects T1, T2, T3 - Trails located along 152 & I-29 between North Green Hills Road and Tiffany Springs Parkway (Up to \$500,000 for T3B Trails)
14. First Creek Collector – West Branch
15. Second Creek Collector – Platte Purchase Park Branch
16. Second Creek Collector – Southeast Branch
17. Second Creek Collector – Genesis Branch
18. Second Creek Collector – Quail Run Branch

After fully funding the improvements described above, the remaining improvements described below and may be funded with proceeds on deposit in the Project Fund of the Series 2014 Bonds.

Construction Costs related to:

- Project 4B – Old Tiffany Springs Road over I-29
- Project 6B – Green Hills Road, North of Tiffany Springs Road
- Project 7C – Old Tiffany Springs Road East of Green Hills Road
- Project 8 – Tiffany Springs Parkway East to Green Hills Road
- Project 16 – 108th Street/Shoal Creek Parkway
- Project Trails: T1, T1B, T2, T3, T3B, T4, T5, T6, T7, T8, T9, T10, Line Creek Trail, Second Creek Trail (or any segments of such trails)
- Project First and Second Creek Sewers: Interceptors & Collectors

Engineering Costs related to:

- Project 6B – North of Tiffany Springs Road
- Project 7C – Old Tiffany Springs Road East of Green Hills Road
- Project 8 – Tiffany Springs Parkway East to Green Hills Road
- Project 16 - 108th Street/Shoal Creek Parkway
- Project Trails: T1, T1B, T2, T3, T3B, T4, T5, T6, T7, T8, T9, T10, Line Creek Trail, Second Creek Trail (or any segments of such trails)
- Project - First and Second Creek Sewers: Interceptors & Collectors

Exhibit D

Redevelopment Project Costs

Redevelopment Project Costs related to the implementation of the T3B Trails are set forth below:

Construction	\$1,817,061.00
Property Acquisition	\$4,315.00
Total	\$1,821,376.00