

RESOLUTION NO. 070331

Consenting to the determination by the Tax Increment Financing Commission of Kansas City, Missouri that utilities relocate their facilities at their own expense where necessary for the construction of road improvements in the KCI Corridor Redevelopment Area.

WHEREAS, on March 11, 1999, upon recommendation of the Tax Increment Finance Commission ("TIF Commission"), the City Council found the KCI Corridor Redevelopment Area ("Redevelopment Area") to be an Economic Development Area as defined in Section 99.805(5), RSMo, designated the area as a Redevelopment Area, and approved the KCI Corridor Tax Increment Financing Redevelopment Plan by Ordinance No. 990256 (the "Plan"); and

WHEREAS, the Plan was subsequently amended on February 3, 2005 by Ordinance No. 050107 to provide for certain public improvements, including certain roadways within and adjacent to the Redevelopment Area, and specifically, the improvements identified on Exhibit "A-2", attached hereto (the "Road Improvements"); and

WHEREAS, on January 11, 2006, the TIF Commission, pursuant to Resolution No. 01-6-06, designated MD Management, Inc. (the "Developer") as the developer for the Road Improvements; and

WHEREAS, on March 30, 2006, the Developer entered into an Agreement with the TIF Commission (the "Agreement") in which the Developer agreed to construct the Road Improvements, pursuant to the Plan, as amended, subject to the reimbursement of the Developer's costs related thereto that are identified on Exhibit "A-2" and as set forth on Exhibit "A-1", attached hereto, and on Exhibit 7 to the Plan, as amended (the "Redevelopment Costs"), in accordance with the terms and conditions of the Agreement; and

WHEREAS, pursuant to the Agreement, the Developer shall implement or cause to be implemented the Road Improvements in conformance with the plans to be prepared by TransSystems Corporation and its subcontractors and approved by the City's Public Works Department (hereinafter "Public Works"); and

WHEREAS, all projected costs associated with the Road Improvements, including, but not limited to, engineering, right-of-way acquisition, construction, project management and Developer's legal fees required in connection with the Road Improvements are described on Exhibit 7 to the Plan, as amended, and set forth on Exhibit A-2 attached hereto; and

WHEREAS, the Road Improvements shall be built in accordance with the Plan and Public Works' Primary Arterial Design Standards and shall specifically include, but not be limited to, the installation of streetlights, traffic signals, sidewalks, bike trails, water mains, storm sewers, and utilities' relocations; and upon completion, the improved

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roadway, including a right-of-way consistent with that shown on the plans and specifications approved by Public Works, shall be dedicated to the City of Kansas City, Missouri (the "City") as appropriate; and

WHEREAS, in order to implement the Road Improvements in accordance with the Plan, it will be necessary that certain utilities' facilities be relocated from the right-of-way; and

WHEREAS, the utilities have advised Developer that they would not relocate their facilities until the Developer has advanced the funds the utilities deem necessary to effectuate the relocations; and

WHEREAS, the Plan does not contemplate reimbursing Developer for the utilities' relocations because under the common law and case law of Missouri, a utility must relocate its facilities in public streets at its own expense when the relocation has been necessitated by a municipality's exercise of a governmental rather than a proprietary function or purpose; and

WHEREAS, the Missouri Supreme Court in *Union Electric Company v. Land Clearance for Redevelopment Authority of the City of St. Louis*, 555 S.W. 2d 29 (Mo. en banc 1977), has held that the relocation of utility facilities required by a redevelopment project were acts of the City and the Authority in the exercise of a governmental rather than a proprietary function; and

WHEREAS, on February 14, 2007, the TIF Commission, by Resolution No. 2-26-07, a copy of which is attached hereto as Exhibit "B", found that the relocation of utilities in the Redevelopment Area is necessary to implement the Plan, which has been legislatively declared to be in furtherance of a public purpose, thus, the utilities are required by Missouri law to relocate their facilities at their own expense; and

WHEREAS, in such resolution, the TIF Commission authorized its Executive Director to notify the utilities, whose facilities in the Redevelopment Area need to be relocated to accommodate the Road Improvements, to so relocate such facilities at each utility's own expense and also to take all necessary action to obtain compliance by each of the utilities; and

WHEREAS, the Executive Director is concerned that the utilities may refuse or not comply with his direction to so relocate such facilities in a timely manner at each utility's own expense, without a similar resolution by the City Council concurring with and consenting to the findings of the TIF Commission in its Resolution No. 02-26-07, and directing the utilities, whose facilities in the Redevelopment Area that need to be relocated to accommodate the Road Improvements, to so relocate such facilities in a timely manner at each utility's own expense; NOW, THEREFORE,

BE IT RESOLVED BY THE COUNCIL OF KANSAS CITY:

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Section 1. That the Council hereby states its concurrence and consent to the findings of the TIF Commission in its Resolution 02-26-07.

Section 2. That the Council finds that the relocation of utilities in the Redevelopment Area is necessary to implement the Plan, which has been legislatively declared to be in furtherance of a public purpose, thus, the utilities are required by Missouri law to relocate said facilities at their own expense.

Section 3. That the Council does hereby notify and direct each of the utilities, whose facilities in the Redevelopment Area that need to be relocated to accommodate the Road Improvements, to so relocate such facilities in a timely manner at each utility's own expense.

Section 4. That this Resolution takes effect immediately upon its adoption.
