

NINTH AMENDMENT TO THE CHOUTEAU & I-35 TAX INCREMENT FINANCING PLAN

KANSAS CITY, MISSOURI

TIF COMMISSION APPROVAL:

DATE: **RESOLUTION No.**

CITY COUNCIL APPROVAL:

7/14/2022 **220751**

DATE: **ORDINANCE No.**

**NINTH AMENDMENT
TO THE
CHOUTEAU I-35
TAX INCREMENT FINANCING PLAN**

I. INTRODUCTION

The Ninth Amendment to the Chouteau I-35 Tax Increment Financing Plan (the “Ninth Amendment”) shall amend the Chouteau I-35 Redevelopment Plan as approved by the Ordinance No. 980426 on April 23, 1998, the First Amendment to Chouteau I-35 Redevelopment Plan by Ordinance No. 020784 on July 18, 2002, the Second Amendment to Chouteau I-35 Redevelopment Plan by Ordinance No. 030022 on January 16, 2003, the Third Amendment to Chouteau I-35 Redevelopment Plan by Ordinance No. 040097 on February 5, 2004, the Fourth Amendment to Chouteau I-35 Redevelopment Plan by Ordinance 060324 on March 30, 2006, the Fifth Amendment to Chouteau I-35 Redevelopment Plan by Committee Substitute for Ordinance No. 070995 on October 4, 2007, the Sixth Amendment to Chouteau I-35 Redevelopment Plan by Ordinance No. 080141 on February 28, 2008, the Seventh Amendment to Chouteau I-35 Redevelopment Plan by Ordinance No. 130109 on March 7, 2013 and the Eighth Amendment to the Chouteau I-35 Redevelopment Plan by Ordinance No. 200203 on March 26, 2020 (collectively referred to herein as the “Plan”). The proposed Ninth Amendment provides for 1) modifications to the description of the Redevelopment Area, 2) modifications to the Site Map, 3) modifications to the description of the Project Improvements set forth within n the Plan 4) modifications to the Redevelopment Schedule and the estimated dates of completion of the Project Improvements, 5) modifications to the Budget of Redevelopment Project Costs and 6) modifications to the Sources and Uses contemplated by the Plan. The intent of the Plan remains unchanged other than those changes specifically mentioned herein.

II. SPECIFIC AMENDMENTS

In accordance with this Ninth Amendment, the Plan shall be amended as follows:

Amendment No. 1: Section III A. General Description of Plan and Projects.

Revise subsection A of Section III.A. of the Plan by deleting the first two paragraphs in their entirety and replacing them with the following:

The Plan. The Redevelopment Plan proposes to redevelop approximately 27 acres of land located at the intersection of Interstate 35 (I-35) and Chouteau Trafficway in Kansas City, Clay County, Missouri. Approximately 27 acres of the Redevelopment Area is located south of I-35 and east of Chouteau Trafficway and is divided into Project Areas 1 and 2. Approximately 4.4 acres is located south of I-35 and west of Chouteau Trafficway and designated as Project Areas 3 and 4. In Redevelopment Project Areas 1

and 2, the Plan calls for the construction of a 244,709 square foot retail shopping center with a full service supermarket, a large box retailer, two smaller in-line stores and three retail pad sites and out parcels. Restaurants are planned for at least two pad sites. Redevelopment of Project Area 3 calls for the improvement of the site to provide for the construction of a fast food restaurant.

Tax Increment Financing shall be utilized to pay for costs associated with curing blight on the site, which is intended to assist in the commercial development and to pay for costs to construct Chouteau Trafficway into a four-lane boulevard as a portion of the City's planned Centennial Parkway and to make improvements to Chouteau Greenway Park. The street improvements are proposed to be accomplished in two phases. The first phase involves the reconstruction of Chouteau Trafficway adjacent to the Redevelopment Area. This work will be completed in conjunction with the construction of Projects 1 and 2. The second phase involves improvements to Chouteau Trafficway between I-35 and Highway 210 to upgrade Chouteau to boulevard status as part of the City's planed Centennial Parkway. Additional blight remediation and public improvements shall include improvements to Chouteau Greenway Park, the construction and equipping of a fountain located south of I-35 on NE Chouteau and Russell Road, the construction of a non-motorized transportation facility along Searcy Creek between NE Parvin Road to approximately North Topping Avenue and the grading and culvert improvements for a future trail improvement from approximately North Topping Avenue to NE 48th Street and the establishment of a fund for Neighborhood Housing and Infrastructure Improvements. The allocation and prioritization of these improvements will be recommend by an advisory committee, with ultimate approval by the TIF Commission.

Amendment No. 2: Section III C. Project Improvements.

Revise subsection III C, entitled "Project Improvements," by deleting the fourth paragraph in its entirety and replacing it with the following:

4) Public Improvements No. 4: Construction of Searcy Creek Trail. The construction of a 10' wide concrete non-motorized transportation facility along Searcy Creek between NE Parvin Road to approximately North Topping Avenue and the grading and culvert improvements for a future trail improvement from approximately North Topping Avenue to NE 48th Street.

Amendment No. 3: Section III E. Estimated Dates of Completion.

Amend Section III E. entitled "Estimated Dates of Completion by deleting the first paragraph in its entirety and replacing it with the following:

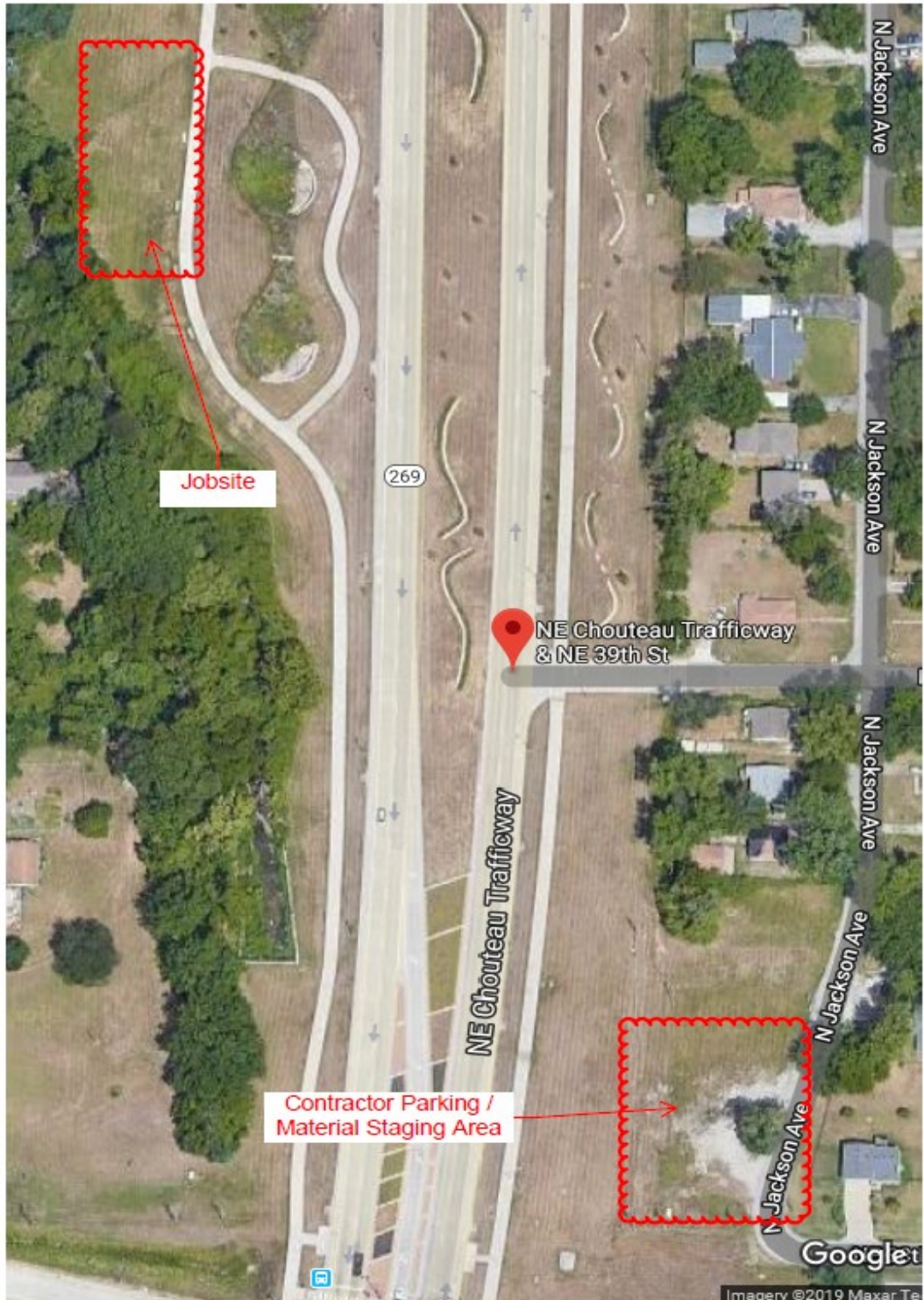
As set forth in the Redevelopment Schedule attached as Exhibit 4, improvements related to Redevelopment Projects 1 and 2 are expected to be completed in 1999. Improvements related to Redevelopment Project 3 are expected to begin in July 2002 and are expected to be completed by May 2003. The funding prioritization and development schedule for the anticipated public improvements to Chouteau Trafficway, Chouteau

Greenway Park and the implementation of the Neighborhood Housing and Infrastructure Program will be recommended by the Chouteau Area Advisory Committee and the Chouteau Housing and Neighborhood Development Advisory Committee, with final approval by the TIF Commission; provided however, Public Improvement No. 4 shall be substantially complete by the end of 2023 and Public Improvement No. 5 shall be substantially complete by 2020. The completion date for Public Improvement No. 6 will be 2027.

III. PLAN EXHIBIT AMENDMENTS

Amendment No. 4: Amend Exhibit 2C, entitled “Site Plan,” by deleting Exhibit 2C and replacing it with the following after the last page of Exhibit 2:

Chouteau Heritage Fountain Site Map



Amendment No. 5: Amend Exhibit 2, entitled “Site Plan,” by incorporating the following **Exhibit 2D** after the last page of Exhibit 2C:

Exhibit 2D – Searcy Creek Trail

**Searcy Creek Trail Segment 2
Clay County, Missouri**



Amendment No. 6: Amend Exhibit 4A, entitled “Estimated Redevelopment Schedule for Pubic Improvement No 4 (4305 N. Antioch Road), Public Improvement No. 5 (Heritage Fountain), and Public Improvement No. 6 (Additional Public Improvements)” by replacing it with the following Exhibit 4A:

EXHIBIT 4A

ESTIMATED REDEVELOPMENT SCHEDULE FOR
PUBLIC IMPROVEMENT NO. 4 (Searcy Creek Trail)
PUBLIC IMPROVEMENT NO. 5 (Heritage Fountain)
PUBLIC IMPROVEMENT NO. 6 (Additional public improvements)

Public Improvements	Substantial Completion
Public Improvement No. 4 (Searcy Creek Trail)	End of 2023
Public Improvement No. 5 (Heritage Fountain)	End of 2020
Public Improvement No. 6 (Additional public improvements to be determined)	End of 2027

Amendment No. 7: Amend Exhibit 5, entitled “Estimated Redevelopment Project Costs,” by replacing Exhibit 5 and inserting in its place the **attached Exhibit 5 “Estimated Redevelopment Project Costs.”**

Amendment No. 8: Amend Exhibit 6, entitled “Sources of Funds,” by replacing Exhibit 6 and inserting in its place the attached Exhibit 6 “**Sources of Funds.**”

Amendment No. 9: Amend Exhibit 10A, entitled “Property Acquisition and Disposition,” by deleting the following from Exhibit 10A:

EXHIBIT 10A

PROPERTY ACQUISITION AND DISPOSITION FOR
THE 4305 N. ANTIOCH PROJECT

Acquisition of 4305 N. Antioch, Kansas City, Missouri

Amendment No. 10: Amend Exhibit 15A to the Plan, entitled “Affidavit Relating to 430 N. Antioch Project and Chouteau Heritage Fountain Project,” by deleting Exhibit 15A and replacing it with the following:

EXHIBIT 5

ESTIMATED REDEVELOPMENT PROEJCT COSTS

(See Attached)

SUMMARY OF PROJECT COSTS
Ninth Amendment
Exhibit 5

	Project Costs	Reimbursable Costs
Projects 1 & 2		
Net Land Costs	\$1,832,131	\$1,090,500
Net Site Work Costs	\$6,555,941	\$6,402,102
Building Construction Costs	\$11,768,865	
Indirect Costs	\$2,496,000	\$630,000
Financing Costs	\$3,104,112	\$1,449,112
Total Pad Sales	-\$538,000	
Commission/Administration	\$338,235	\$338,235
Total	\$25,557,284	\$9,909,949
Project 3 (McDonald's)		
Developer's Costs		
Net Land Costs	-\$50,000	
Net Site Work Costs	\$205,444	\$205,444
Indirect Costs	\$242,177	\$242,177
Financing Costs ^①	\$7,456	\$7,456
Site Improvements	\$29,296	\$29,296
Developer's Legal Costs	\$5,000	\$5,000
Commission/Administration	\$4,500	\$4,500
Developer's Total Costs	\$443,873	\$493,873
McDonald's Costs	\$1,125,000	\$0
Total Project Costs	\$1,568,873	\$493,873
Public Improvement No. 1 - Chouteau Trafficway		
Engineering & Partial Right-of-Way Acquisition	\$2,000,000	\$2,000,000
Public Improvement No. 2 - Winn Road & Chouteau Greenway		
Public Works Estimate--Engineering & Construction	\$102,273	\$102,273
Chouteau Greenway & Neighborhood Improvements ^②	\$697,727	\$697,727
Public Improvement No. 3 - Housing		
Housing & Infrastructure Rehabilitation	\$1,223,000	\$1,223,000
Public Improvement No. 4 - Searcy Creek Trail		
Acquisition of commercial building (Searcy Creek Trail)	\$1,099,096	\$700,000
Public Improvement No. 5 - Chouteau Heritage Fountain		
Construction and equipping of fountain	\$100,000	\$100,000
Public Improvement No. 6 - Additional Public Improvements		
Additional Public Improvements	\$405,000	\$405,000
Additional Legal		
Public Improvements	\$75,000	\$75,000
Bond Issue	\$55,000	\$55,000
Total Additional Legal	\$130,000	\$130,000
TOTAL PROJECT COSTS	\$32,883,253	\$15,761,822

① Financing Costs are an estimate only. All Financing Costs are to be reimbursed per the Commission's Interest Rate Policy.

② Funds remaining from the Chouteau Greenway park improvements shall be used for housing and neighborhood improvements in the Chaumiere and Winnwood/Sunnybrook neighborhoods

EXHIBIT 6
SOURCES OF FUNDS

SOURCES		
PILOTS and EATS		\$15,761,822
Developer Debt and Equity		\$17,121,431
TOTAL		\$32,883,253

BONDS: In 2003, the Commission issued its variable rate demand tax increment financing refunding and improvement revenue bonds in 2 series in the par amount of \$7,355,000 (Series 2003A) and \$7,425,000 (Series 2003B), collectively “the Refunded Bonds”, the proceeds of which were used to pay certain project costs and to refund prior bonds issued in 2001. In 2009, the City issued its variable rate demand special obligation refunding bonds in the par amount of \$12,245,000 to refund and redeem the Refunded Bonds and pay the costs of issuance.

EXHIBIT 15A

AFFIDAVIT RELATING TO SEARCY TRAIL CREEK

(See Attached)

REDEVELOPMENT AGREEMENT

BETWEEN

**THE TAX INCREMENT FINANCING COMMISSION
OF KANSAS CITY, MISSOURI,**

AND

THE CITY OF KANSAS CITY, MISSOURI

**FOR THE DESIGN AND CONSTRUCTION OF TRAILS BETWEEN NORTH
TOPPING AVENUE AND NE 48TH STREET, AS CONTEMPLATED
BY THE CHOUTEAU & I-35 TAX INCREMENT FINANCING PLAN**

Dated: June __, 2022

TABLE OF CONTENTS

	Page
1. Design and Construction of the Searcy Creek Trail Improvements	1
2. Date of Completion.....	2
3. Reimbursement to City for the Design and Construction of the Searcy Creek Trail Improvements	2
4. Certification of Searcy Creek Trail Improvement Costs	2
5. Bids Required for the Design and Construction of the Searcy Creek Trail Improvements.	2
6. Control of the Design and Construction of the Searcy Creek Trail Improvements.....	3
7. Compliance with Laws	3
8. Payment of Prevailing Wages.....	3
9. Payment Bond.....	3
10. Certificate of Completion and Compliance	3
11. Payment of Costs	4
12. Assignment	5
13. MBE/WBE Ordinance	5
14. Work Force	6
15. Breach; Compliance.....	6
16. Mediation	7
17. Modification.....	7
18. Effective Date	7
19. Excusable Delays.....	8
20. Notice.....	8
21. Headings	9
22. Validity and Severability	9

23.	Time is of the Essence	9
24.	Sole Agreement.....	10
25.	Technical Amendments	10
26.	Representations and Warranties.....	10
27.	Choice of Law.....	10
28.	Multiple Counterparts	10
29.	Continued Cooperation of Parties.....	10

EXHIBITS

Exhibit A	Design and Construction of Searcy Creek Trail Improvements
Exhibit B	Costs of Design and Construction of Searcy Creek Trail Improvements
Exhibit C	Development Schedule
Exhibit D	Certification of Costs and Reimbursement Policy
Exhibit E	Payment of Prevailing Wages Policy
Exhibit E-1	Workforce Reporting
Exhibit F	Work Force Policy

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (this “**Agreement**”) is made as of June _____ 2022, 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 April 23, 1998, the City Council of Kansas City, Missouri (the “**Council**”), by way of Ordinance No. 980426, approved the Chouteau & I-35 Tax Increment Financing Plan and designated the area described therein as a redevelopment area (the “**Redevelopment Area**”).

B. The Chouteau & I-35 Tax Increment Financing Plan was subsequently amended several times by the Council’s passage of a series of Ordinances (the Chouteau & I-35 Tax Increment Financing Plan, as amended, is hereafter referred to as the “**Plan**”).

C. The Plan provides, among other things, for the design and construction of a 10’ wide concrete non-motorized transportation facility along Searcy Creek between NE Parvin Road to approximately North Topping Avenue and the grading and culvert improvements for a future trail improvement from approximately North Topping Avenue to NE 48th Street (the “**Searcy Creek Trail Improvements**”), as more specifically described on **Exhibit A**.

D. The City has agreed to implement the Searcy Creek Trail Improvements, pursuant to the Plan, subject to the City’s reimbursement by the Commission for certain costs related thereto that are identified on **Exhibit B**, in accordance with the terms and conditions of this Agreement.

E. The City and the Commission desire to enter into this Agreement to set forth their mutual understanding relative to the design and construction of the Searcy Creek Trail Improvements.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the Commission and the City agree as follows:

1. Design and Construction of the Searcy Creek Trail Improvements The City shall implement or cause to be implemented the Searcy Creek Trail Improvements in accordance with the Scope of Services attached hereto as **Exhibit A**. The final design and construction plans for the Searcy Creek Trail Improvements shall be approved by the City, through the Director of the Public Works Department of the City of Kansas City, Missouri, and all City approvals of the same shall be communicated in writing to the Commission by the City, prior to the City submitting to the Commission for certification any costs related to the Searcy Creek Trail Improvements. All projected reimbursable Redevelopment Project costs associated with the Shoal Creek Trail Segment 3, which shall not exceed \$700,000 (the “**Redevelopment Project Costs**”) are set forth on **Exhibit B**, attached hereto, and such reimbursable Redevelopment Project Costs shall be reimbursed to the City, subject to the terms and conditions of this Agreement.

2. Date of Completion. Subject to the other provisions of this Agreement including, without limitation, **Section 19**, the City shall cause the design and construction of the Searcy Creek Trail Improvements in accordance with **Exhibit C**, attached hereto (the “**Development Schedule**”).

3. Reimbursement to City for the Design and Construction Searcy Creek Trail Improvements. To the extent the City and its contractors have completed the design and construction of the Searcy Creek Trail Improvements and, in doing so, have complied with:

a. Ordinance No. 180535, as further amended (the MBE/WBE Ordinance). The MBE/WBE Ordinance is intended to provide an equal opportunity for minority owned business enterprises, women-owned business enterprises, minorities and women to participate in the development of TIF-assisted redevelopment projects (“**Minority Participants**”). If MBE/WBE Goals for design and construction of the Searcy Creek Trail Improvements shall be established in accordance with the MBE/WBE Ordinance, the City will adhere to all such reasonable rules, regulations, reporting procedures and forms which the Commission may from time to time promulgate for the purpose of facilitating uniform, orderly and efficient compliance with this Section,

b. the City Code of General Ordinances, Chapter 3, Article IV, Division 2, Sections 3-501 through 3-525 (Construction Workforce Ordinance), and

c. Section B of the Commission’s Certification of Costs and Reimbursement Policy, attached hereto as **Exhibit D** (For purposes of the Certification of Costs and Reimbursement Policy, City shall be deemed the “**Developer**” under such Policy).

The City shall be paid for all Searcy Creek Trail Improvement Certified Costs (as defined in **Section 4**) from funds on deposit in the Special Allocation Fund established in connection with Redevelopment Project 3 of the Plan (the “**Special Allocation**”).

4. Certification of Searcy Creek Trail Improvements Costs. The Commission may independently verify any request for payments or reimbursement of any costs related to the design and construction of Searcy Creek Trail Improvements, utilizing the services of employees of the Commission or other qualified individuals and such costs, which have been certified by the Commission pursuant to its Certification of Costs and Reimbursement Policy shall be deemed “**Searcy Creek Trail Improvement Certified Costs**” and, subject to the terms and conditions of this Agreement. The City or its contractors shall provide such information as is reasonably necessary to facilitate such verification and shall require the same of all its designated contractors and subcontractors. The Commission shall make a good faith effort to complete its verification of payment requests prior to the meeting at which a request is to be considered.

5. Bids Required for the Searcy Creek Trail Improvements. The City agrees to solicit bids from qualified contractors for the design and construction of the Searcy Creek Trail Improvements and select the lowest qualified and best bidder, which shall include compliance with the MBE/WBE Ordinance. The City shall communicate in writing to the Commission the amount of such bids and the name of the party selected by the City to design and construct the Searcy Creek Trail Improvements.

6. Control of the Construction of the Searcy Creek Trail Improvements . The City shall have complete and exclusive control over the design and construction of the Searcy Creek Trail Improvements, subject, however, to all applicable laws, rules and regulations, including, but not limited to, all ordinances, rules and regulations of the City. The Commission, its agents or employees seeking to access and inspect the site at which the Searcy Creek Trail Improvements shall be constructed shall provide notice to the City of not less than two (2) business days prior to being provided with access to the Property and the site of the Searcy Creek Trail Improvements so that the City can coordinate such entry with its project manager.

7. Compliance with Laws. At all times during the term of this Agreement, but subject to the City's rights to contest the same in any manner permitted by law, the City, at its sole cost and expense, shall comply in every respect with all applicable laws, ordinances, rules and regulations of all federal, state, county and municipal governments, agencies, bureaus or instrumentalities thereof now in force or which may be enacted hereafter which pertain to the implementation of the Searcy Creek Trail Improvements.

8. Payment of Prevailing Wages. The City shall cause its contractors and subcontractors involved in the construction of the Searcy Creek Trail Improvements (a) to pay prevailing wage rates as established under RSMo. §290-210 through §290-340, inclusive, (b) to comply with the procedures set forth on Exhibit E, attached hereto, and the reporting procedures set forth on Exhibit E-1, attached hereto and (c) to indemnify, protect and defend the Commission and its officers, members, agents and employees against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed, of whatever kind or character (including consequential and punitive damages) occurring or allegedly occurring as a result of such contractor's or subcontractor's failure to comply with this Section.

9. Payment Bond. The City shall cause each of its contractors engaged to design, and construct the Searcy Creek Trail Improvements (a) to furnish a payment bond, with good and sufficient sureties, which among other conditions, shall be conditioned for the payment of any and all materials, incorporated, consumed or used in connection with the design and construction of the Searcy Creek Trail Improvements and all insurance premiums, both for compensation and for all other kinds of insurance required by the construction contract, and for all labor performed in such work whether by subcontractor or otherwise, and (b) cause its contractors and subcontractors to indemnify, protect and defend the Commission and its officers, members, agents and employees against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed, of whatever kind or character (including consequential and punitive damages) occurring or allegedly occurring as a result of such contractor's or subcontractor's failure to comply with this Section. The payment bond shall remain in effect for a period consistent with standards established by the Parks and Recreation Department of the City of Kansas City, Missouri and until the date the design and construction of the Searcy Creek Trail Improvements receives a Certificate of Completion and Compliance from the Commission.

10. Certificate of Completion and Compliance. Within sixty (60) days of the completion of the design and construction of the Searcy Creek Trail Improvements, the City shall submit to the Commission a report certifying that the design and construction of the Searcy Creek

Trail Improvements has been completed in accordance with **Exhibit A** and that the City is in compliance with all provisions of this Agreement and that it has provided to the Commission, or its independent cost certifier, all documentation required by the Commission's Certification of Costs and Reimbursement Policy, attached hereto as **Exhibit D**. The City shall, as part of its report, (a) certify the total cost of completing the Searcy Creek Trail Improvements, and (b) include such supporting documentation necessary for the Commission, or its independent certifier, to substantiate all the costs related to the design and construction of the Searcy Creek Trail Improvements, as described in the Plan, incurred by the City and presented to the Commission for certification. The Commission shall forward the City's report and request for reimbursement to the Commission's cost certifier and the Commission shall exert reasonable best efforts to cause the cost certifier to render a recommendation to the Commission as to whether costs referenced therein should be certified. The Commission may conduct an investigation, and if the Commission determines that the design and construction of the Searcy Creek Trail Improvements have been completed in accordance with the provisions of the Plan and this Agreement, including, but not limited to, the following policies and procedures incorporated herein (if applicable): the MBE/WBE Ordinance, Procedures for the Payment of Prevailing Wages, and other required governmental approvals and that all costs related to the design and construction of the Searcy Creek Trail Improvements have been certified pursuant to the Commission's Certification of Costs and Reimbursement Policy, the Commission shall issue a Certificate of Completion and Compliance and certify such costs. If the Commission determines that the design and construction of the Searcy Creek Trail Improvements, or any phase or portion of the design and construction of the Searcy Creek Trail Improvements, has not been completed in accordance with the provisions of this Section, or that any costs related to the design and construction of the Searcy Creek Trail Improvements have not been certified, pursuant to the Commission's Certification of Costs and Reimbursement Policy, then the Commission may, in its sole discretion, (x) not issue a Certificate of Completion and Compliance, (y) withhold reimbursement of costs related to the design and construction of the Searcy Creek Trail Improvements and (z) specify in writing the reason or reasons for withholding its certification. Upon the request of the City, the Commission shall hold a hearing at which the City may present new and/or additional evidence.

a. The issuance of a Certificate of Completion and Compliance by the Commission shall be a conclusive determination of the satisfaction and termination of the covenants in this Agreement, with respect to the obligations of the City to complete the design and construction of the Searcy Creek Trail Improvements within the dates for the beginning and completion thereof and in accordance with **Exhibit C**, attached hereto.

b. Each such Certificate of Completion and Compliance issued by the Commission shall contain a description of the real property affected thereby and shall be in such form as will enable such certificate to be accepted for recording in the Office of the Recorder of Deeds in the county in which such property is located.

11. Payment of Costs.

a. Subject to the conditions and obligations of the City under this Agreement, including **Section 3**, and the availability of funds in the Special Allocation Fund, the Commission, subject to the terms of this Agreement, shall reimburse the City up to

\$700,000 of the Searcy Creek Trail Improvement Certified Costs, as provided in this Agreement.

b. Requests for reimbursement shall be in writing and include adequate documentation as to the expenditure of funds and the quantity of work completed. Only requests for reimbursement presented to the Commission in a manner consistent with the Certification of Costs and Reimbursement Policy shall be considered by the Commission. If the Commission does not approve all or part of a requested progress payment, it shall, if requested to do so by the City, specify in writing the reason or reasons for withholding its approval. Upon request of the City, the Commission shall promptly hold a hearing at which the City may present new and/or additional evidence.

c. The Commission may independently verify any request for progress payments, utilizing the services of employees of the Commission or other qualified individuals. The City shall provide such information as is reasonably necessary to facilitate such verification and shall require the same of all its designated contractors and subcontractors. The Commission shall make a good faith effort to complete its verification of progress payment requests prior to the meeting at which a request is to be considered.

12. Assignment. The City agrees that this Agreement and the rights, duties and obligations hereunder may not and shall not be assigned by the City except upon terms and conditions agreeable to the Commission. In the event this Agreement is assigned in whole or part, the City shall not be relieved from any obligations set forth herein unless and until the Commission specifically agrees in writing to release the City.

13. MBE/WBE Ordinance. With respect to the design and construction of the Searcy Creek Trail Improvements, the City, acting through its Civil Rights and Equal Opportunity Department, will comply with the MBE/WBE Ordinance, as amended from time to time and incorporated herein by this reference, contractually require its contractors and subcontractors to comply with the terms and provisions of the MBE/WBE Ordinance, exert best efforts to enforce such provisions to the maximum extent permitted by law and further provide that the Commission shall be a third-party beneficiary with respect to the compliance and enforcement of such provisions. The MBE/WBE Ordinance (a) establishes affirmative action goals with respect to the aggregate amount of all costs incurred in connection with the implementation of the design and construction of the Searcy Creek Trail Improvements, (b) requires the City and its contractors to exert good faith efforts to meet such goals, (c) requires the City and its contractors to deliver a professional services utilization plan and a construction services utilization plan to the Civil Rights and Equal Opportunity Department of the City for its approval and (d) requires the City and its contractors to exert good faith efforts, as determined by the Commission, to comply with such utilization plans during the implementation of the design and construction of the Searcy Creek Trail Improvements. The MBE/WBE Ordinance is intended to provide an equal opportunity for minority owned business enterprises, women-owned business enterprises, minorities and women to participate in the development of TIF-assisted redevelopment projects (“**Minority Participants**”). Prior to or simultaneously with the certification and reimbursement of any costs related to the design and construction of the Searcy Creek Trail Improvements incurred by the City in connection with the implementation of the design and construction of the Searcy Creek Trail Improvements the City shall report to the Commission the progress of the City’s utilization of

Minority Participants in the design and construction of the Searcy Creek Trail Improvements and, within sixty (60) days of the completion of the design and construction of the Searcy Creek Trail Improvements, the City shall provide a final report, which shall describe the utilization of Minority Participants in connection with the implementation of the design and construction of the Searcy Creek Trail Improvements. The parties hereto and their successors and assigns expressly agree that the Minority Participants, who shall have demonstrated to the Commission's satisfaction, financial harm or injury as a result of the City's failure to comply with the MBE/WBE Ordinance, shall be third-party beneficiaries with respect to the enforcement and performance of this **Section 13**. The City will adhere to such reasonable rules, regulations, reporting procedures and forms which the Commission may from time to time promulgate for the purpose of facilitating uniform, orderly and efficient compliance with the MBE/WBE Ordinance and which do not alter the goals established by the Civil Rights and Equal Opportunity Department of the City and incorporated within utilization plans for professional services and construction services ("**Utilization Plans**"). Prior to any costs being incurred with respect to the design and construction of the Searcy Creek Trail Improvements, Utilization Plans for design and construction of the Searcy Creek Trail Improvements will be submitted to and approved by the Civil Rights and Equal Opportunity Department of the City.

14. Work Force. With respect to the implementation of the design and construction of the Searcy Creek Trail Improvements, the City, as required by City Code of General Ordinances Chapter 3, Article IV, Division 3, Section 3-401 through 3-525, and acting through its Civil Rights and Equal Opportunity Department, shall comply with the Commission's Workforce Policy, as amended from time to time and attached hereto as **Exhibit F** (the "**Workforce Policy**") and incorporated herein by this reference, and cause its contractors and subcontractors to comply with the terms and provisions of the Workforce Policy, exert best efforts to enforce such provisions to the maximum extent permitted by law and further provide that the Commission shall be a third party beneficiary with respect to the compliance and enforcement of such provisions. The Workforce Policy supports and implements City Code of General Ordinances, Chapter 3, Article IV, Division 3, Sections 3-501 through 3-525 (the "**Workforce Ordinance**") and creates a construction employment program ("**Construction Employment Program**") that establishes goals for the employment of minority, women and resident workers for certain construction contractors engaged by the City, its departments and agencies, including the Commission.

15. Breach; Compliance.

a. If the City does not comply with provisions of this Agreement, within the time limits and in the manner for the completion of the design and construction of the Searcy Creek Trail Improvements as herein stated, except for Excusable Delays, in that the City shall do, permit to be done, or fail or omit to do, or shall be about do, or fail or omit to have done, anything contrary to or required of it by this Agreement or the Act, and if, within thirty (30) days after written notice of such default by the Commission to the City, and the City shall not have cured such default or commenced such cure or be diligently pursuing the same if such cure would reasonably take longer than said thirty (30) day period, then the Commission 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 City of its obligations and the Commission is granted the specific right to terminate this Agreement, the specific right to withhold or apply funds claimed by the

City from the Special Allocation Fund to such extent as is necessary to protect the Commission from loss or to ensure that the Property is acquired and the design and construction of the Searcy Creek Trail Improvements is fully and successfully implemented in a timely fashion and the specific right to withhold issuance of a Certificate of Completion and Compliance.

b. If the Commission fails to comply with the provisions of this Agreement, and within thirty (30) days after written notice of such default by the City to the Commission, the Commission shall not have cured such default or commenced such cure or be diligently pursuing the same if such cure would reasonably take longer than said thirty (30) day period, then the City may institute such proceedings in law or in equity to cure the default.

c. 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 either 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 either party shall apply to obligations beyond those expressly waived.

d. Any delay by any party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this **Section 15** shall not operate as a waiver of such rights or limit them in any way. No waiver made by any party of any specific default by any other party shall be considered or treated as a waiver of the rights of any party with respect to any other defaults, or with respect to the particular default except to the extent specifically waived.

16. Mediation. NOTWITHSTANDING ANYTHING HEREIN STATED IN THIS AGREEMENT TO THE CONTRARY, ANY UNRESOLVED DISPUTE WITH RESPECT TO THIS AGREEMENT SHALL BE SUBMITTED TO MEDIATION BY A SINGLE MEDIATOR. The mediator shall be a person located in the Kansas City metropolitan area agreed to by the parties. If the parties cannot agree to a mediator, the selection shall be made by the Presiding Judge of the Circuit Court of Jackson County, Missouri, on the application of either party. All expenses and fees of the mediator and the mediation shall be assessed by the mediator as he or she finds equitable and just based on his or her findings with respect to the dispute; provided, however, that each party shall bear the expenses and fees of any attorneys, accountants, expert witnesses or others appearing or submitting any materials on such party's behalf.

17. Modification. The terms, conditions and provisions of this Agreement can be neither modified nor eliminated except by written agreement between the Commission and the City. Any such modification to this Agreement as approved shall include an attachment of this Agreement, as approved and executed, for reference.

18. Effective Date. This Agreement shall become effective on the date set forth herein, and shall remain in full force and effect until the completion of the acquisition of the Property and completion of the design and construction of the Searcy Creek Trail Improvements called for in the Plan and this Agreement, and so long thereafter as (a) obligations remain outstanding under this Agreement, or (b) there are any remaining Searcy Creek Trail Improvement Certified Costs

which have not been reimbursed to the City in accordance with this Agreement. At such time as all of the obligations and costs set forth in the preceding sentence have been satisfied and reimbursed, this Agreement shall terminate, provided that in any event, the obligations of the City and Commission arising under the terms and conditions of this Agreement, with respect to the design and construction of the Searcy Creek Trail Improvements, including, but not limited to, the reimbursement of Searcy Creek Trail Improvement Certified Costs, shall cease no later than December 31, 2023.

19. Excusable Delays. The parties understand and agree that the City shall not be deemed to be in default or breach of this Agreement because of delays or temporary inability to proceed due in whole or in part to causes beyond the reasonable control or without the material fault of the City or its contractors, including without limitation strikes, lockouts, the unavailability of necessary materials or labor, delays in the city inspection process and inclement weather (collectively “**Excusable Delays**”). The time of performance hereunder shall be extended for the period of any Excusable Delays caused or resulting from any of the foregoing causes, it being understood that the City is entitled to such extensions upon presentation of reasonable evidence and/or documentation of the periods of such Excusable Delays to the Commission.

20. Notice. All 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 delivery 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 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 delivery as shown on the receipt obtained by such delivery service.

Notices to the Commission

shall be addressed to:

Tax Increment Financing Commission
300 Wyandotte, Suite 400
Kansas City, Missouri 64105
Executive Director

with a copy to:

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

Notices to City shall
be addressed to:

City of Kansas City, Missouri
29th Floor, City Hall
414 E. 12th Street
Kansas City, Missouri 64106
Attn: City Manager

with a copy to:

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

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.

21. Headings. The headings or captions of this Agreement are for convenience and reference only, and in no way define, limit, or describe the scope or intent of the contract or any provisions hereof.

22. Validity and Severability. It is the intention of the parties hereto that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of Missouri, and that the unenforceability (or modification to conform with such laws or public policies) of any provision hereof shall not render unenforceable, or impair, the remainder of this Agreement. Accordingly, if any provision of this Agreement, other than the City's obligation to implement or cause the design and construction of the Searcy Creek Trail Improvements in accordance with **Section 1** of this Agreement, the Commission's obligation to remit the Commission's Contribution to the City or to reimburse the City for certain costs in accordance with **Sections 3 and 11** of this Agreement and any other provision containing material benefits bargained for under the Agreement, the exclusion of which or deemed unenforceability of which would constitute a failure of consideration for a party to go forward with its obligations, shall be deemed invalid or unenforceable in whole or in part, this Agreement shall be deemed amended to delete or modify, in whole or in part, if necessary, the invalid or unenforceable provision or provisions, or portions thereof, and to alter the balance of this Agreement in order to render the same valid and enforceable.

If this Agreement contains any unlawful provisions not an essential part of this Agreement and which shall not appear to have a controlling or material inducement to the making thereof, such provisions shall be deemed of no effect and shall be deemed stricken from this Agreement without affecting the binding force of the remainder. In the event any provision of this Agreement is capable of more than one interpretation, one which would render the provision invalid and one which would render the provision valid, the provision shall be interpreted so as to render it valid.

23. Time is of the Essence. Time and exact performance are of the essence of this Agreement.

24. Sole Agreement. This Agreement, including all exhibits, riders or addenda attached hereto, constitutes the sole agreement between the parties and supersedes any prior understandings or written or oral agreements between the parties.

25. Technical Amendments. In the event that there are minor inaccuracies contained herein or any Exhibit attached hereto or any other agreement contemplated hereby, or the parties agree that changes are required due to unforeseen events or circumstances, or technical matters arising during the term of this Agreement, which changes do not alter the substance of this Agreement, the respective presiding officers of the Commission, and the officers of the City, are authorized to approve such changes, and are authorized to execute any required instruments, to make and incorporate such amendment or change to this Agreement or any Exhibit attached hereto or any other agreement contemplated hereby.

26. Representations and Warranties. City hereby represents and warrants to the Commission the following:

a. City has all requisite power and authority to enter into, execute and deliver this Agreement, and to consummate the transactions contemplated hereby and to perform the obligations hereunder.

b. This Agreement has been duly executed and delivered by City, assuming the due execution and delivery hereof by the Commission and other parties thereto, constitute a legal, valid and binding obligation, of City, enforceable against City in accordance with their respective terms and conditions.

27. Choice of Law. The interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Missouri. Venue for any cause of action arising out of or in connection with this Agreement shall be in Jackson County, Missouri.

28. Multiple Counterparts. This Agreement may be executed in multiple counterpart copies, each of which will be considered an original and all of which constitute but one and the same instrument, binding on all parties hereto, even though all the parties are not signatories to the same counterpart. Any counterpart of this Agreement which has attached to it separate signature pages which together contain the signatures of all parties hereto shall be deemed for all purposes a fully executed original.

29. Continued Cooperation of Parties. Each party agrees that, upon the request of the other, it will provide such other information, documents or instruments and/or undertake such further actions as may be reasonably requested in order to give full force and effect to the intent of the provisions, terms and covenants of this Agreement.

[The remainder of this page intentionally left blank. Signature pages to 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:

By: _____
Heather A. Brown, Secretary

By: _____
Alissia R. Canady, Chair

Approved as to form:

By: _____
Wesley O. Fields, Counsel to the Commission

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this ____ day of _____, 2022, before me, the undersigned a Notary Public in and for the County and State aforesaid, came Alissia R. Canady, the 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.

Signature of Notary Public

My Commission Expires:

CITY OF KANSAS CITY, MISSOURI,

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

Assistant City Attorney

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this ____ day of _____, 2022, before me, a Notary Public in and for the state and county aforesaid, appeared _____, to me personally known, and who being by me duly sworn, did say that he/she is the _____ of the City of Kansas City, Missouri, and, as such official, executed the within instrument on behalf of the City of Kansas City, Missouri, and such person duly acknowledged the execution of the same to be the act and deed of said the City of Kansas City, Missouri.

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

Signature of Notary Public

My Commission Expires:

Exhibit A

Searcy Creek Trail Improvements

Construction of a 10' wide concrete non-motorized transportation facility along Searcy Creek between NE Parvin Road to approximately North Topping Avenue and the grading and culvert improvements for a future trail improvement from approximately North Topping Avenue to NE 48th Street. Improvements will include the following:

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.

Searcy Creek Trail Segment 2 Clay County, Missouri



Exhibit B

Searcy Creek Trail Improvements Costs

Construction	\$1,009,374.32
Project Management	\$89,721.95
Property Acquisition	<u>\$0.00</u>
Total	\$1,099,096.27

* The Commission shall not be obligated to pay or reimburse Redevelopment Project Costs in excess of \$700,000.00

Exhibit C

Development Schedule

Searcy Creek Trail Improvements Schedule

Bidding	June 2022	to	September 2022
Construction	October 2022	to	December 2023

Exhibit D

Certification of Costs and Reimbursement Policy

Exhibit E

Payment of Prevailing Wages Policy

Exhibit E-1

Workforce Reporting Procedures

Pursuant to City Resolution No. 2000554 (the “Workforce Resolution”), the Developer shall comply with the following reporting requirements:

- (A) complete City’s Form 00490 entitled “Pre-contract Certification” that sets forth each contractor’s or subcontractor’s prevailing wage and tax compliance history for the two (2) years prior to any bids for work to be done in furtherance of the Agreement, retain such forms for one (1) year and make them available to the City within five (5) days after written request,
- (B) keep and require each of its contractors and subcontractors engaged in the construction of the Searcy Creek Trail Improvements contemplated by the Agreement and described on **Exhibit A** and for which costs are anticipated to be reimbursed to keep full and accurate records on the City’s “Daily Labor Force Report” Form indicating the worker’s name, occupational title or classification group & skill and the workers’ hours and submit such reports to the City each day,
- (C) submit and require each of its contractors and subcontractors engaged in the construction of the Searcy Creek Trail Improvements contemplated by the Agreement and described on **Exhibit A** and for which costs are anticipated to be reimbursed to submit electronically to submit in a format prescribed by the City, Certified Payroll Report Information indicating the worker’s name, address, social security number, occupation(s), craft(s) of every worker employed in connection with such Searcy Creek Trail Improvements with the number of hours worked by each worker and the actual wages paid in connection with such Searcy Creek Trail Improvements and other pertinent information as requested by the City,
- (D) submit and require each of its contractors and subcontractors engaged in the construction of the Searcy Creek Trail Improvements contemplated by the Agreement and described on **Exhibit A** and for which costs are anticipated to be reimbursed to submit electronically, in format prescribed by the City, a Payroll Certification, which must be signed by the employee or agent who pays or supervises the payment of the workers employed by the contractor and each subcontractor (the Daily Labor Force Report, documents used to compile information for the Certified Payroll Report, and Payroll Certification are collectively referred to as the “Records”) and
- (E) the Developer and its contractors and subcontractors shall agree that all Records shall be considered a public record and the Developer shall cause its contractors and subcontractors to provide the Records to the City in the format required by the City within three (3) working days of any request by the Commission at the Redeveloper’s cost (collectively, the “Workforce Monitoring Program Provisions”).

Exhibit F

Work Force Policy

CITY MANAGER'S AFFIDAVIT

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

1. I, Brian Platt, am the City Manager of the City of Kansas City, Missouri, a constitutional charter city and political subdivision duly organized and validly existing under the laws of the State of Missouri (the “City”) and I am authorized to provide this affidavit on behalf of the City.

2. I am charged with the responsibility of submitting an Annual Budget to the Mayor of the City (the “Mayor”), which shall include, at a minimum, the following:

a. Revenues: An itemized statement of estimated revenues to be realized in cash from all sources for the year which the budget is to cover, together with a comparative statement of estimated cash receipts for the current fiscal year and actual cash receipts for the two fiscal years next preceding the current fiscal year.

b. Appropriation:. An itemized statement of appropriations, which is based, in part, on requests for appropriation from the head of each department under the City Manager, for the ensuing year, with a comparative statement of estimated expenditures for the current fiscal year and actual expenditures for the two fiscal years next preceding the current fiscal year.

c. Additional information: Such other information as may be required by the Mayor and the City Council of the City (the “Council”).

3. The Mayor shall transmit to the City Council the Annual Budget prepared by the City Manager, with any comments of the Mayor.

4. Upon receipt of the Annual Budget, the Council shall review the Annual Budget to determine the need for the expenditures requested and the adequacy, reliability and propriety of estimated revenues.

5. The Council shall, by ordinance, adopt the Annual Budget, which shall itemize the purposes of expenditure by departments, activities, functions, and character classes in not less detail than personal services, contractual services, commodities and capital outlays, and as adopted shall constitute an appropriation for the purposes stated of the sums therein set forth as appropriation and authorization of the amount to be raised by taxation for the purposes of the City, provided that the total amount appropriated shall not in any event exceed the total revenues estimated to be realized in cash during such year, plus any unencumbered balance from previous years.

6. The Council has not adopted an Annual Budget which contemplates, and no department director has requested or indicated any intent to request an appropriation for the funding of the construction of the Searcy Creek Trail or the

7. The undersigned acknowledges and agrees that this Affidavit is being materially relied upon by the Tax Increment Financing Commission of Kansas City, Missouri (the "Commission") in connection with its consideration of the Ninth Amendment to the Chouteau & I-35 Tax Increment Financing Plan. It is reasonable for the Commission to conclude that the public improvements, as described in and as contemplated by the Ninth Amendment to the Chouteau & I-35 Tax Increment Financing Plan, including the Searcy Creek Trail, would not be undertaken without the use of tax increment allocation financing.

The information, statements and averments in this Affidavit are, to the best of my knowledge and belief, true, accurate and complete in all material respects.

CITY OF KANSAS CITY,
MISSOURI

(SEAL)

ATTEST:

By: _____
Brain Platt, City Manager

By: _____
City Clerk

Approved as to form:

By: _____