

FIRST AMENDMENT TO INTERGOVERNMENTAL COOPERATIVE AGREEMENT

THIS FIRST AMENDMENT TO INTERGOVERNMENTAL COOPERATIVE AGREEMENT (the "First Amendment") is made this ____ day of _____, 2023, by and between CITY OF KANSAS CITY, MISSOURI (the "City") and the PORT AUTHORITY OF KANSAS CITY, MISSOURI ("Port KC"), a political subdivision of the State of Missouri created pursuant to Section 68.010 *et seq.*, RSMo (collectively, the "Parties").

WITNESSETH:

WHEREAS, the Parties entered into an Intergovernmental Cooperative Agreement (the "Agreement") on August 26, 2020 for the conveyance and development of the Subject Property, as such term is defined in the Agreement; and

WHEREAS, the Agreement provides certain terms for the Development of the Subject Property and affirmation of compliance with said development agreement; and

WHEREAS, the Parties have agreed to make modifications to the Agreement, as more fully set forth in this First Amendment;

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, effective on the date first set forth above, the parties agree to the foregoing recitals and as follows:

1. ~~City Funds; Blight Determination~~ Section 5.1 of the Intergovernmental Cooperative Agreement is hereby deleted in its entirety and replaced with the following:

Section 5.1 Mandatory Terms. Port KC shall not convey the Subject Property to a developer or otherwise authorize development of the same to commence unless the relevant agreements executed in conjunction therewith include the following special terms:

- A. Any development must include ~~the construction of~~ not less than one hundred sixty (160) parking stalls, with one hundred and forty (140) stalls within a structured parking facility to be constructed by the Developer on the Subject Property and ~~or at twenty (20) stalls another nearby off-site location in the right-of-way along Main Street;~~ but in any event mutually agreed upon by the City and Port KC, and such spaces shall be dedicated to transient public parking for a period of not less than twenty-five (25) years (the "Public Parking"). ~~The City is intended to consult with the RMCA and the CMOC as to the sufficiency of any off-site parking, as those entities' customers, and business and residential tenants or occupants, and other neighborhood residential owners are the intended beneficiaries of such replacement parking. The~~ Developer shall bear all management, operations and maintenance costs of the Public Parking. ~~The~~ Developer may impose charges for the use of the Public Parking, but such charges shall not exceed the rates charged by the Developer to its tenants, if converted to a short-term use on an hourly basis, unless otherwise agreed to by the City. ~~If requested by City, Port KC, Developer and City shall, execute either as part of a development agreement or as an independent parking agreement for the Subject Property, purposes of preserving the ensure that the Public Parking remain transient public parking for not less than twenty-five (25) years. Such development agreement or parking agreement obligation shall and defining the~~

standards ~~by~~ which the Public Parking will be managed, operated, and maintained for the duration of the Public Parking obligation. ~~Said development or parking agreement shall provide that the Public Parking will not be used by tenants or employees of the Developer but shall provide a right of first refusal to those neighboring business currently renting parking stalls at the Subject Property on a long-term basis to retain a substantially similar number of stalls as part of the Public Parking so that they have the opportunity to elect to preserve their long-term parking prior to the Public Parking being made available to the general public on a first-come-first-served basis. Port KC shall provide the City a copy of said development agreement or parking agreement no less than twenty-one (21) days before execution of the agreement. City, Port KC and Developer shall confer for purposes of determining whether the day-to-day management, operations and maintenance are to be performed by Developer, City or a third party, but this shall not relieve Developer of the financial obligation with respect to such costs.~~

- B. The Developer shall be obligated to tender the purchase price for the Subject Property to Port KC at such time as the Subject Property is conveyed to the developer. Port KC shall hold the purchase proceeds and utilize the same to offset the construction of the Public Parking through a single disbursement to the developer or such third party as the developer may direct upon issuance of a certificate of occupancy for the completed project. ~~Notwithstanding the foregoing, in lieu of tendering the purchase price at conveyance, Port KC may elect to require that the developer provide a completion guarantee from a financially sound and reputable completion guarantor for purposes of unconditionally and absolutely guaranteeing to Port KC that it shall cause construction to commence and thereafter proceed to completion.~~

~~E.C.~~ The Developer shall be required to ensure that at least fifteen percent (15%) of the total number of residential housing units being constructed on the Subject Property ~~(but not less than 45 residential units)~~ shall be leased at a rate that is affordable to those households having an income equal to or lower than seventy percent (70%) of the median family income for the Kansas City MO-KS Metropolitan area using annually published HUD Income Limits (<https://www.huduser.gov/portal/datasets/il.html>), for the duration of any period of real property tax exemption of the Subject Property including an allowance for utilities. ~~The Selection Committee shall give greater consideration to projects with housing available to lower income levels.~~

~~The developer shall also be required to work in good faith with Port KC towards the construction of a Low Income Housing Tax Credit (LIHTC) project, or an otherwise substantively comparable project, on a parcel within Port KC's Master Planned Development approved by City's governing body pursuant to Ordinance No. 140583, that will include the construction of not less than 40 residential units, a portion of which will be leased at a rate that is affordable to those households having an income equal to fifty percent (50%) of the median family income for all households within the Kansas City MO-KS Metropolitan area using annually published HUD Income Limits (<https://www.huduser.gov/portal/datasets/il.html>).~~

- (i) That all units qualifying as affordable housing shall be on the Subject Property and shall not be off site from the project.

- (ii) That affordable housing units be mixed with, and not clustered together or segregated in any way from, market-rate units.
- (iii) That units qualifying as affordable housing shall not be limited to one unit size.
- (iv) If the project development contains a phasing plan, the phasing plan shall provide for the development of affordable housing units concurrently with the market-rate units. No phasing plan shall provide that the affordable housing units are the last units built.
- (v) The exterior appearance of affordable housing units shall be made similar to market-rate units by the provision of exterior building materials and finishes substantially the same in type and quality.
- (vi) The Developer shall be required to covenant with City and successors in interest that the units remain affordable for a period of not less than the entire duration of time during which the developer or its successors in interest receive tax abatements or redirections from PortKC.
- (vii) The Developer shall be required to income verify its tenants at the at the initial time of leasing to ensure affordable units are provided to those meeting income guidelines defined in this Section D.

~~In the event the developer and Port KC are unable to secure a LIHTC or substantively comparable project on a parcel within Port KC's Master Planned Development, Port KC will require that the developer exceed the minimum affordable housing requirement with respect to the Subject Property in an amount and manner to be determined by Port KC and City in writing.~~

~~F.D.~~ Notwithstanding anything in this Agreement to the contrary, any and all Incentives that may be extended to the Development Project, including incentives conveyed by PortKC, shall be subject to City Council Ordinance 160383, and shall be substantiated by a qualified financial analysis that measures the impact to the taxing jurisdictions. This project will follow the approved Port KC Development Finance process as attached in Exhibit A, with the exception that the Selection Committee shall also review the development application and quantitative analysis and may recommend further analysis to Port KC. The Parties agree that subject to findings of the qualified financial analysis by Port KC, Port KC may seek Incentives exceeding those provided in Ordinance 160383 necessary to facilitate the development of affordable housing. If any such request is made to the Board, Port KC shall notify the City and provide a copy of any qualitative analysis seven business days in advance of any public meeting at which the request will be considered.

~~G.E.~~ The Developer shall be obligated to reimburse City and Port KC, in full, for the costs of their respective Pre-Transfer Actions incurred pursuant to Section 2.1 of this Agreement.

~~H.F.~~ The developer shall be obligated to comply with all Port KC policies applicable to the construction of improvements anticipated to be owned by Port KC including, without limitation, M/WBE and Construction Workforce requirements, bonding, prompt pay, OSHA 10-hour certifications, E-Verify, public competitive procurements and, to the extent applicable, prevailing wage.

~~1.G.~~ The Developer shall be required to comply with any reasonable request from the City to show compliance with the requirements of this agreement.

Port KC may elect to request that City affirm that any development agreement is compliant with the provisions of Section 5.1 of this Agreement. The City Manager shall have the sole right to make such determination on behalf of City, provided no development agreement shall provide for any less than the number of Public Parking stalls and Affordable Housing units outlined in sections 5.1(A) and 5.1(C) and, and the City Manager's written determination that the provisions of Section 5.1 of this Agreement have been satisfied shall conclusively establish Port KC's compliance with the same. At least ten (10) days prior to providing any such determination, the City Manager shall provide written notice of the requested determination to all members of the City Council.

3. **Defined Terms.** Unless otherwise defined in this First Amendment, the defined terms used herein shall have the meanings defined in the Agreement.

4. **Full Force; No Defaults.** Except as modified by the terms of this First Amendment, the Lease and Acquisition Agreement is hereby reaffirmed and ratified, as amended herein, and shall remain in full force and effect. The Parties acknowledge that, as of the date of this First Amendment, no defaults or events of default exist under the Agreement.

5. **Multiple Counterparts.** This First Amendment may be executed in multiple counterparts via facsimile, each of which shall constitute an original, but all of which together shall constitute but one instrument.

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IN WITNESS WHEREOF, the parties have executed this First Amendment as of the date first above written.

CITY:

CITY OF KANSAS CITY, MISSOURI

By: _____
Brian Platt, City Manager

Approved as to form:

Emalea Kaye Black
Assistant City Attorney

**PORT AUTHORITY OF KANSAS CITY,
MISSOURI**

By: _____
Jon D. Stephens, President and CEO

Approved as to form:

Brian T. Rabineau
~~Deputy~~ General Counsel