

Per
4/19/13

R. 18104
Revised Agreement
February 25, 2013

COOPERATIVE AGREEMENT – SOCCER FACILITY IMPROVEMENTS

1st THIS COOPERATIVE AGREEMENT (the “Agreement”) is made and entered into this day of APRIL, 2013, between the **CITY OF KANSAS CITY, MISSOURI** (the “City”), and **JACKSON COUNTY, MISSOURI** (the “County”).

WITNESSETH:

WHEREAS, the City Council of the City (the “City Council”) adopted Ordinance No. 911435 on December 19, 1991, pursuant to Sections 99.800 to 99.865, RSMo., as amended (the “TIF Act”), approving the Winchester Center Tax Increment Financing Plan (the “Original TIF Plan”) and thereafter, by separate ordinances, authorized tax increment financing within the Redevelopment Project Areas described by the TIF Plan. On MARCH 21, 2013, the City Council adopted Ordinance No. 30155, approving the Sixth Amendment to the Winchester Center Tax Increment Financing Plan (the “Sixth Amended Plan” and together with the Original TIF Plan, as previously amended, the “TIF Plan”). Capitalized terms not defined herein shall have the meanings ascribed to them in the TIF Plan;

WHEREAS, pursuant to the TIF Plan, Payments in Lieu of Taxes (“PILOTS”) and Economic Activity Taxes (“EATs” and together with the PILOTS, the “TIF Revenues”) are to be and have been collected by the County and remitted to the City for deposit in the Special Allocation Fund(s) established in connection with each of the Redevelopment Project Areas described by the TIF Plan (the “Special Allocation Fund”);

WHEREAS, pursuant to the Sixth Amended Plan, after all Redevelopment Project Costs are paid, all moneys remaining on deposit in the Special Allocation Fund, along with all TIF Revenues estimated to be collected throughout the available statutory life of the TIF Plan, subject to Section 99.850 RSMo., as amended, are to be deemed surplus (the “Surplus Funds”) and transferred to the affected taxing districts, including, but not limited to, the City and the County;

WHEREAS, pursuant to Ordinance No. 30155, adopted on MARCH 21, 2013, the City has terminated the TIF Plan and directed that the Surplus Funds be transferred to the affected taxing districts, including, but not limited to, the City and the County;

WHEREAS, the City and the County have determined it to be in the best interests of the residents of the City and County to construct a soccer complex and related improvements in Swope Park, as more particularly described in **Exhibit A** (the “Project”);

WHEREAS, the City and the County desire and intend to contribute moneys for the development and construction of the Project in an amount equal to the sum of (i) the Surplus Funds received by the City and the County, plus (ii) the amount of TIF Revenues that would have been attributable to each of the City and the County under the TIF Plan for the period through December 31, 2024 had the TIF Plan remained in effect for such period (the “Youth Soccer Facility Funds”), plus (iii) such other moneys as the City shall appropriate for the purpose of the Project, to the extent the combination of such funds are necessary to pay the costs of the Project; and

WHEREAS, the City and the County desire to enter into this Agreement to set forth their mutual understanding relative to the Surplus Funds and the Project;

FILED
APR 16 2013
MARY JO SPINO
COUNTY CLERK

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Appropriation and Deposit of City and County Surplus Funds.

(a) City Surplus Funds. The City will receive approximately \$4,296,000 in Surplus Funds (the “**City Surplus Funds**”) upon termination of the TIF Plan, after payment of amounts pursuant to that certain Intergovernmental and Mutual Release Agreement of even date herewith by and among the Tax Increment Financing Commission of Kansas City, Missouri, the City of Kansas City, Missouri, Jackson County, Missouri, Consolidated School District No. 2 (Raytown) and Mid-Continent Public Library (the “**Intergovernmental Agreement**”). The City Council has approved the estimation and appropriation of the City Surplus Funds to pay a portion of the Project costs pursuant to Ordinance No. 130155. The City Surplus Funds shall be deposited to an account established by the City for the Project, which account may be, but is not required to be, an account established with a bond trustee if bonds are issued to finance the Project (the “**Project Account**”). The City further agrees that, if it receives a future distribution of Surplus Funds, it is the intent of the City to estimate and appropriate such funds for deposit to the Project Account for payment of Project costs.

(b) County Surplus Funds. The County will receive approximately \$327,000 in Surplus Funds upon termination of the TIF Plan after payment of amounts pursuant to the Intergovernmental Agreement (the “**County Surplus Funds**”). The County has, pursuant to the terms of the Intergovernmental Agreement, directed the Tax Increment Financing Commission of Kansas City, Missouri, to pay the County Surplus Funds to the City for deposit to the Project Account for application to Project costs.

2. Payment of Projects costs by the County. On or before March 1st of each year during the term of this Agreement, beginning March 1, 2014, the County subject to Sections 3 and 5, shall make annual payments to the City for Project costs (“**Annual Payments**”), with each Annual Payment to be in the amount set forth in **Exhibit B**. The County shall remit such Annual Payments to an account designated, in writing, by the City (or (i) to any bond trustee designated by the City pursuant to a bond indenture executed in connection with bonds issued to finance the Project or (ii) to a third party designated by the City and with which the City contracts to develop or construct the Project).

3. Payments by County Subject to Appropriation. All payments by the County pursuant to the Agreement, with the sole exception of the County Surplus Funds, are subject to appropriation by the governing body of the County. The County covenants and agrees that the officer of the County charged with the responsibility of formulating budget proposals will be directed to include in all budget proposals submitted to the County’s governing body for each year the Annual Payment described in **Section 2**.

The County hereby declares its intent to appropriate the Annual Payments described in **Section 2**. Notwithstanding the foregoing, the decision to appropriate or not appropriate the Annual Payments shall be made solely by the governing body of the County. The County acknowledges that any decision not to appropriate the Annual Payments may be reported by the City to rating agencies or municipal credit or disclosure services in the event bonds are issued to finance the Project.

4. Use of the Annual Payments by the City. The City hereby agrees to use the County Annual Payments to construct the Project described on **Exhibit A** or to pay debt service on bonds issued to finance the Project as the City shall elect in its sole discretion. The City (or an entity selected by the

City) may issue bonds for the purpose of providing funds to construct the Project and may assign the Annual Payments received from the County and/or the rights to receive said moneys to a bond trustee as support for debt service on bonds issued for such purpose.

The City shall have the sole decision making authority with respect to the issuance of any bonds for financing of the Project. Bonds for the Project may be issued in one or more series at such time or times as the City shall determine. Bonds for the Project may be issued by the City or an entity acting on behalf of the City. Any bonds issued for the Project shall be secured and paid in such manner as the City shall determine in its sole discretion. The City shall use such bond counsel, underwriter, trustee or other professional service providers for any bond issue for the Project as the City shall determine in its sole discretion.

5. Project Scope, Design and Construction. The City will control, in its sole discretion, the scope, design, permitting, construction, development, operation and use of the Project and all improvements related thereto. The City covenants and agrees to use reasonable efforts to begin construction of the Project by June 30, 2013 and completion of the Project by March 15, 2018; provided, however, there shall be no default hereunder if the Project is not completed by such date and, provided, further, that if the City has not issued its bonds to finance the Project and has elected to finance the Project on a “pay-as-you-go” basis but has not completed the Project by March 15, 2018, the County shall have no further obligation to make Annual Payments. All costs related to the Project shall be borne by the City subject to the right of the City to use all funds deposited to the Project Account to defray such costs or pay debt service related to such costs. All development, construction, operation and use of the Project shall be conducted by the City pursuant to the City Charter and City ordinances. The City intends to make the Project available for public use consistent with the City Charter and City Ordinances.

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

7. Effective Date. This Agreement shall become effective on the date set forth herein, and shall remain in full force and effect until the earlier of (a) full payment of the amounts set forth in **Section 2** or (b) payment in full of all debt service on any bonds issued to finance the Project .

8. 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.

Any notice to the City shall be addressed to the City Manager of the City at:

Troy Schulte
City Manager
City of Kansas City, Missouri
414 East 12th Street, 15th Floor
Kansas City, Missouri 64106
E-mail: troy.schulte@kcmo.org

with a copy to:

William Geary, Esq.
City Attorney
Law Department Kansas City, Missouri
City Hall
414 East 12th Street, 28th Floor
Kansas City, Missouri 64106
E-mail: bill.geary@kcmo.org

Notices to the County shall be addressed to:

County Executive
Jackson County Courthouse, 2nd Floor
415 E 12th St.
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.

9. 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.

10. 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, 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.

11. 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.

12. Assignment. Except as provided herein relative to the assignment of Soccer Facility Funds to a trustee for bonds, the City and the County agree that this Agreement and the rights, duties and obligations hereunder may not and shall not be assigned, except upon terms and conditions agreeable to both parties and upon the prior written consent of the City and the County.

13. 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 City and the County, respectively, 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.

14. 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.

15. 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.

16. 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.

IN WITNESS WHEREOF, the parties execute this Agreement on the date set forth above.

CITY OF KANSAS CITY, MISSOURI

By: Troy M. Schulte
Name: TROY M. SCHULTE
Title: CITY MANAGER

ATTEST:

Marilyn Sanders
City Clerk Marilyn Sanders

Approved: Ben Baker
Assistant City Attorney

JACKSON COUNTY, MISSOURI

By: Michael D. Sanders
Michael D. Sanders,
County Executive

By: W. Stephen Nixon
W. Stephen Nixon,
County Counselor

ATTEST BY:

Mary Jo Spino
Mary Jo Spino,
Clerk of the County Legislature

EXHIBIT A

Project

The following are the major components of a Project which is generally to be located within Swope Park, Kansas City, Missouri and as depicted on the attached site map:

1. Development and construction of seven soccer fields, each with lighting and fencing (the “**Soccer Fields**”);
2. Development, construction and installation of champion field seats/bleachers to serve the Soccer Fields;
3. Construction of approximately 825 parking spaces and a playground to serve the Soccer Fields;
4. Additional signage within Swope Park, including an entry monument;
5. Support infrastructure for the Soccer Fields including new restroom, concession, locker room, and training facilities near the Soccer Fields (the foregoing being referred to as the “**Soccer Complex**”);
6. Public infrastructure improvements including site preparation (*i.e.*, grading and landscaping), roads, curbs and sidewalks to serve the Soccer Complex; and
7. Costs relative to developing the Soccer Complex such as architecture fees, engineering fees, audio and visual equipment, materials and labor.

Exhibit B

Schedule of County Soccer Facility Funds Payments

<u>Year</u>	<u>Annual Soccer Facility Fund Payment</u>
2014	\$117,400
2015	\$117,400
2016	\$117,400
2017	\$117,400
2018	\$117,400
2019	\$117,400
2020	\$117,400
2021	\$117,400
2022	\$117,400
2023	\$117,400
2024	\$117,400
TOTAL	\$1,291,400