

**REQUEST FOR PROPOSALS**

REAL ESTATE DEVELOPMENT PROJECT  
AT 5<sup>TH</sup> & MAIN

DATE OF ISSUANCE:  
September 4, 2020

## SECTION I. INSTRUCTIONS AND CONDITIONS

### INTRODUCTION

The Port Authority of Kansas City, Missouri (“**Port KC**”), a political subdivision authorized under Chapter 68, RSMo, is inviting professional, qualified real estate development entities (each a “**Developer**”) to submit their proposals (each a “**Proposal**”) for the development of a mixed-income multi-family residential/office/retail/mixed-use structured parking project (the “**Development Project**”) on approximately 1-acre of real property located at 5<sup>th</sup> & Main in the historic River Market neighborhood in Kansas City, Missouri (the “**Development Site**”). The Development Site currently serves as a public surface parking lot and is legally described and depicted on **Exhibit A**, attached hereto and incorporated herein. The Development Site is currently owned by the City of Kansas City, Missouri (“**City**”), but Port KC and the City are parties to a certain Intergovernmental Cooperative Agreement, attached hereto and incorporated herein as **Exhibit B**, which provides for Port KC’s acquisition and development of the Development Site. Any Developer electing to submit a Proposal must also 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 located in the Berkley Riverfront Development area. A Developer may propose that the LIHTC project, or an otherwise substantively comparable project, alternatively be located in the River Market area, but is advised that any location outside of the Berkley Riverfront Development Area would be subject to additional approval by City and Port KC makes no representations as to the acceptability of such alternative location.

### PORT KC BACKGROUND

Port KC’s mission is to grow the economy of Kansas City’s port district through transportation, global commerce and development.

Port KC possesses broad governmental and business enterprise powers for promoting economic development and job creation. The most important of these powers include the following:

- To acquire, own, construct, redevelop, lease, maintain, and conduct land reclamation, residential, commercial and mixed-use development, industrial parks, facilities, terminals, terminal facilities and any other type of port facility;
- To promote and expand inland and river port commercial throughput of cargo and freight;
- To identify and pursue redevelopment opportunities at blighted and historic preservation sites;
- To redevelop the Downtown Kansas City Riverfront to promote and develop new opportunities for residence, commerce and leisure; and
- To promote the full integration of multi-modal transportation assets to increase commercial opportunities locally, nationally and internationally.

More information on Port KC may be found at [www.portkc.com](http://www.portkc.com)

### INVITATION

Port KC is seeking the services of a professional, qualified real estate development entity to provide comprehensive services related to the financing, design, construction, operation and maintenance of the Development Project on the Development Site. This Request for Proposals (“**RFP**”) is an invitation

by Port KC for Developers to submit an offer, which may be subject to subsequent discussions and negotiations. It is not a request for a competitive bid. By submitting a Proposal, the Developer agrees that the Developer does not obtain any right in or expectation to a contract with Port KC or a vested interest or a property right in a contract with Port KC, regardless of the amount of time, effort and expense expended by the Developer. A Developer shall be solely responsible and liable for any and all costs incurred by the Developer.

This RFP consists of the following sections and all exhibits attached thereto:

SECTION I.	INSTRUCTIONS AND CONDITIONS
SECTION II.	BUSINESS / FIRM PROFILE AND LEGAL STRUCTURE
SECTION III.	EXPERIENCE
SECTION IV.	MANAGEMENT
SECTION V.	DEVELOPMENT APPROACH
SECTION VI.	REFERENCES
SECTION VII.	SUSTAINABILITY
SECTION VIII.	DEVELOPMENT FINANCE INFORMATION
SECTION IX.	PUBLIC INCENTIVES
SECTION X.	LIHTC
SECTION XI.	ENVIRONMENTAL INFORMATION

#### **EXAMINATION OF ALL RFP DOCUMENTS AND REQUIREMENTS**

Each Developer shall carefully examine all RFP documents and thoroughly familiarize themselves with all RFP requirements prior to submitting a Proposal to ensure that Developer's Proposal meets the intent and requirements of this RFP.

Before submitting a Proposal to Port KC, each Developer shall be responsible for making all investigations and examinations that are necessary to ascertain any and all conditions and requirements that affect the requirements of this RFP. Failure to make such investigations and examinations shall not relieve the Developer from Developer's obligation to comply, in every detail, with all provisions and requirements of the RFP.

By submitting a Proposal to Port KC, Developer certifies that Developer has provided Port KC with written notice of all ambiguities, conflicts, mistakes, errors or discrepancies that Developer has discovered in the RFP.

#### **TIMELINE**

The following timeline shall be applicable unless modified by Port KC pursuant to addendum to this RFP:

- RFP Issued: **September 4, 2020**
- Appraisal of Development Site/Survey/Phase One provided via addendum: **October 1, 2020**
- Deadline for questions: **October 21, 2020 at 5:00 PM (CT)**
- Questions/Answers posted via addendum: **No later than October 26, 2020**
- Due Date for Proposals: **November 4, 2020 at 12:00 PM (CT)**
- Port KC provides all Proposals to Selection Committee: **November 5, 2020**
- Selection Committee Shortlists the Proposals: **November, 2020**

- Interviews of Shortlisted Developers (if desired by Selection Committee): **November, 2020**
- Shortlisted Developers Ranked by Selection Committee and delivered to Port KC: **November, 2020**
- Contract Negotiations Commence: **November, 2020**
- Port KC acquires ownership of Development Site: **February, 2021**
- Development Project Commences: **Spring 2021**

Site Visit. Any Developer wishing to visit or otherwise perform inspections of the Development Site must contact Port KC's project manager, Krishan Purvis, at [kpurvis@portkc.com](mailto:kpurvis@portkc.com) prior to entering the Development Site and shall be required to execute an access agreement in such form as Port KC and City may elect to require. Any such Developer shall be obligated, as a condition thereof, to defend, indemnify and hold harmless Port KC and City from and against any and all claims, losses, liabilities, demands, suits, and actions (including reasonable attorney's fees) for property damage, bodily injury (including death), or any other loss or liability caused or arising from the negligence or willful misconduct of Developer, its representative, agents, and contractors in the performance of their respective activities on the Development Site.

Questions. Any general questions, requests for clarification or notices of ambiguities, conflicts, mistakes, errors or discrepancies in this RFP must be submitted to [info@portkc.com](mailto:info@portkc.com) before **October 21, 2020 at 5:00 PM (CT)**. Developers shall not contact individual Port KC staff members or members of the Selection Committee for purposes of discussing the Development Project, RFP, or any matter related to the foregoing. Unless otherwise specified, any and all inquiries must be directed to [info@portkc.com](mailto:info@portkc.com). Such questions will then be routed to the appropriate Port KC staff member(s) without further action by the inquirer. Failure to follow this procedure may result in a Developer's disqualification. All questions and answers will be posted anonymously in the form of an addendum to this RFP on Port KC's website at [www.portkc.com/rfpsrfqs](http://www.portkc.com/rfpsrfqs).

Submittal. Developers shall submit one (1) electronic copy and six (6) hard copies of their Proposal. Proposals will be accepted by Port KC at 110 Berkley Plaza, Kansas City, Missouri, 64120, until **November 4, 2020 at 12:00 PM (CT)**. Any proposals, modifications, or revisions received by Port KC after that date and time will not be considered. It is the Developer's responsibility to ensure timely receipt by Port KC at the location designated herein.

Notwithstanding anything herein to the contrary, Port KC reserves the right to change or extend any and all dates including the due date for Proposals for any reason and at any time, including after the Due Date for Proposals shall have expired.

## **MINIMUM PROJECT STANDARDS**

The primary component of the Development Project must be mixed-income multi-family residential and include on-site structured parking and/or surface parking in close proximity to the Development Site. Projects that also include mixed-use office and ground-floor retail components are strongly preferred and will be more favorably regarded.

Proposals must address the following Development Project elements:

1. Total number of multi-family residential units planned.
2. Total number of affordable housing units planned.
3. Total number of on-site parking stalls and/or proximate surface parking planned.
4. Total square footage of commercial office space planned, if any.

5. Total square footage of ground floor retail space planned, if any.
6. Total square footage of any other proposed use.

Affordable Housing. At least fifteen percent (15%) of the total number of residential units being constructed on the Development Site (but not less than 45 residential units) must be made available for lease at a rate that would be 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 Development Site, including an allowance for utilities. This is a minimum and projects that include additional affordable housing units and/or affordable housing units for those with median family incomes below the 70% threshold will be more favorably regarded. All affordable housing units shall be:

- (i) Located on the Development Site;
- (ii) Mixed with, and not clustered together or segregated in any way from, market-rate units;
- (iii) Allocated amongst units types so as not to be limited to one unit type;
- (iv) Developed concurrently with market rate units;
- (v) Similar in exterior appearance and quality to market-rate units; and
- (vi) Income verified.

DEVELOPERS SHOULD CAREFULLY REVIEW SECTION X OF THIS RFP WITH RESPECT TO AFFORDABLE HOUSING. IN THE EVENT THE SELECTED DEVELOPER AND PORT KC ARE UNABLE TO SECURE A LIHTC OR SUBSTANTIVELY COMPARABLE PROJECT ON A PARCEL WITHIN PORT KC'S MASTER PLANNED DEVELOPMENT AT BERKLEY RIVERFRONT OR AN ALTERNATIVE LOCATION IN THE RIVER MARKET AREA DEEMED ACCEPTABLE TO CITY, ADDITIONAL AFFORDABLE HOUSING UNITS, I.E., UNITS IN EXCESS OF THE MINIMUMS, WILL BE REQUIRED ON THE DEVELOPMENT SITE IN AN AMOUNT TO BE JOINTLY DETERMINED BY PORT KC AND THE CITY. DEVELOPERS MAY FIND IT BENEFICIAL TO ALLOW FOR THAT POSSIBILITY AT THE OUTSET BY PROVIDING FOR ADDITIONAL AFFORDABLE UNITS IN THEIR PROPOSALS FOR THE DEVELOPMENT SITE.

Parking. Proposals must provide for the construction of not less than one hundred sixty (160) parking stalls within a structured parking facility to be constructed by the selected Developer on the Development Site and/or at another nearby off-site location, sufficiently close to service the City Market. These spaces shall be dedicated to transient public parking for a period of not less than twenty-five (25) years (the "**Public Parking**"). The selected Developer will bear all management, operations and maintenance costs of the Public Parking and may impose charges for the use of the Public Parking, but such charges must not exceed the rates charged to tenants of the Development Site, if converted to a short-term use on an hourly basis. Port KC and the City have not yet determined whether day-to-day management, operations and maintenance of the Public Parking will be handled by the selected Developer or another entity, but this will not relieve the selected Developer of the financial obligations with respect to such costs. Any decision with respect to management, operations and maintenance of the Public Parking will be made jointly by the selected Developer, Port KC and the City at a future date.

THE PUBLIC PARKING WILL BE MADE AVAILABLE SOLELY FOR TRANSIENT PARKERS AND MAY NOT BE REGARDED AS PARKING AVAILABLE TO TENANTS ON THE DEVELOPMENT SITE OR TENANTS' EMPLOYEES. DEVELOPERS ARE ADVISED THAT ANY PROPOSED DEVELOPMENT PROJECT MUST PROVIDE SUFFICIENT PARKING, WHETHER ON-SITE OR OFF-SITE, FOR THE TENANTS AND THE TENANTS' EMPLOYEES.

The affordable housing and parking obligations will be material terms of any development structure negotiated by Port KC with the selected Developer and are non-negotiable.

## **SELECTION PROCESS**

Proposals will be evaluated by a selection committee of five (5) members (the “**Selection Committee**”). One (1) member will be a mayoral appointed board member currently serving on Port KC’s Board of Commissioners (delegated by the Board’s Chairman), one (1) member will be appointed by the River Market Community Association (“RMCA”), one (1) member will be appointed by the City Market Oversight Committee (“CMOC”), one (1) member will be appointed from Port KC’s staff, and one (1) member will be a City employee appointed by the City Manager. In the event that the RMCA or CMOC elect not to appoint members to the selection committee, the vacancies will be filled by additional City employee(s) delegated by the City Manager.

Upon receipt of the Proposals, the Selection Committee will review each Proposal to determine consistency with the requirements of this RFP, and may summarily reject any Proposals that are deemed non-responsive by virtue of their non-compliance or non-conformity. The Selection Committee will then evaluate both the Developer’s qualifications and proposed Development Project.

The Selection Committee will develop a shortlist of the best Proposals. The Selection Committee may determine that interviews with one or more Developers is necessary, but no Developer will be entitled to an interview except upon request of the Selection Committee. During any interviews, the Developer will present their Proposal in keeping with the goals and criteria described in this RFP. The Selection Committee will then rank the shortlisted Proposals and provide its rankings to Port KC.

Port KC will enter into negotiations with the top ranked Developer. In the event they are unable to agree upon terms, Port KC will proceed down the list by ranked order until such time as the terms of the Development Project has been successfully negotiated or Port KC elects, in its sole discretion, to terminate the RFP and its efforts to pursue the Development Project on the Development Site.

Any evaluation criteria or weighting of criteria is used only as a tool to assist in selecting the best Proposal. Evaluation scores or ranks do not create any right in or expectation to a contract with Port KC regardless of any score or ranking given to any Proposal. In other words, even if the Selection Committee gives a Proposal the highest rank, the Developer still has no expectation of a contract with Port KC and Port KC may choose to contract with any other Developer regardless of the score or rank of the other Developer.

Port KC will develop the criteria for scoring and ranking Proposals and may change criteria and criteria weights at any time including after the due date for Proposals.

## **RESERVATION OF RIGHTS IN SELECTION PROCESS**

The Selection Committee, in reviewing and ranking Proposals, and Port KC, in negotiating the terms of any contract with the ranked Developers, may do any or all of the following:

- Interview none, one, some or all of the Developers who submit Proposals;
- Discuss and negotiate anything and everything with any Developer or Developers at any time;

- Request additional information from any or all Developers;
- Request a Developer or Developers to submit a new Proposal;
- Request one or more best and final Proposals from any or all Developers;
- Accept and reject any Proposal in whole or in part;
- Require a Developer or Developers to make modifications to their initial Proposals;
- Reject all Proposals.

Without limiting the foregoing, Port KC reserves the absolute and unconditional right to reject any or all Proposals received in response to this RFP at any time prior to the execution of any contract for the Development Project. No Developer obtains any right in or expectation to a contract with Port KC or a vested interest or a property right in a contract with Port KC, regardless of the amount of time, effort and expense expended by the Developer, and regardless of ranking. Developer shall be solely responsible and liable for any and all costs incurred by Developer.

### **DISPOSITION OF PROPOSALS**

Port KC reserves the right to reject any and all Proposals, to accept portions of any Proposal(s), and to negotiate the terms of any Proposal(s) in determining whether to award any contract.

### **WAIVER OR MODIFICATION OF RFP REQUIREMENTS**

Port KC, in its sole discretion, may waive or modify everything or anything contained in this RFP at any time including after the Proposal due date, except with regards to the Minimum Project Standards, which may only be waived or changed with the consent of the City. If Port KC modifies the RFP after the due date for Proposals, Port KC may, in its sole discretion, solicit new Proposals in an amended RFP from anyone or everyone regardless whether a person submitted a Proposal in response to the original RFP.

Port KC reserves the right to waive informalities or irregularities in Proposals, to accept or reject any or all Proposals, to cancel this RFP in part or in its entirety, and to re-solicit Proposals if it is in the best interest of Port KC as determined by Port KC in its sole discretion.

### **CONDITIONS PRECEDENT**

Developers are reminded that Port KC does NOT currently hold title to the Development Site and that this RFP is being issued on assumptions as to future events which may or may not occur, and the outcome of which cannot be ascertained at this time. Port KC makes no representations as to such matters in releasing this RFP and is not liable to any Developer for any costs incurred by any Developer, regardless of the amount of time, effort and expense expended by the Developer.

DEVELOPERS ARE STRONGLY ENCOURAGED TO REVIEW THE INTERGOVERNMENTAL COOPERATIVE AGREEMENT, ATTACHED HERETO AS EXHIBIT B, TO IDENTIFY AND WEIGH ALL FACTORS THAT MAY BEAR UPON THEIR PROPOSAL.

### **EVALUATION CRITERIA**

The Selection Committee will evaluate the Proposals with regards to the merits of the proposed Development Project, the extent to which it would fulfill various stakeholder's objectives with regards to the development of the Project Site, the Developer's experiences with respect to LIHTC and affordable housing, and the Developer's capacity to successfully deliver the Development Project.

### Project Evaluation Criteria

Criteria include, but are not limited to, the following:

1. Extent to which the Proposal supports the City's overall planning recommendations for the River Market area;
2. Extent to which the Proposal provides added business and economic activity to the River Market area;
3. Extent to which the Proposal supports existing business and community activities in the River Market area;
4. The amount of private equity proposed to be contributed and non-public funding sources leveraged;
5. Extent to which the Proposal supports and encourages broader redevelopment efforts throughout the River Market area;
6. How the Proposal relates to the existing facilities and/or land uses in close proximity to the Development Site;
7. Extent to which the affordable housing component on the Development Site includes housing for those households making less than seventy percent (70%) of the median family income for the Kansas City MO-KS Metropolitan area using annually published HUD Income Limits and/or includes affordable units in excess of the required minimum; and
8. Extent to which the Proposal addresses public parking needs.

### Project Developer Evaluation Criteria

Criteria include, but are not limited to, the following:

1. The Developer's financial capability and administrative capacity to undertake the proposed Development Project;
2. Overall quality of the Developer's team as shown by their previous experience, as well as that of their principals and participants;
3. The Developer's expertise in catalytic redevelopment and executing high quality projects of similar scope and scale;
4. The Developer's caliber of proposed design professionals;
5. The Developer's experience in successfully structuring and implementing innovative public/private partnerships;
6. The Developer's provision of written materials to Port KC documenting its experience, knowledge, partnerships, successes, cap rates, and any other relevant factors with LIHTC and any other tools and



programs that have resulted in significant affordable housing successes for the Developer; and

7. The Developer's proof of project financing (financing commitment letter or letter of interest).

#### **FORM AND CONTENT OF PROPOSAL**

Proposals shall be limited to no more than seventy-five (75) pages, inclusive of any attachments, shall utilize Times New Roman 12-point font, and shall be organized and tabbed as follows:

TAB A	Development Project Details
TAB B	Business / Firm Profile and Legal Structure
TAB C	Experience
TAB D	Management
TAB E	Development Approach
TAB F	References
TAB G	Sustainability
TAB H	Development Finance Information
TAB I	Public Incentives
TAB J	LIHTC

All information requested or required to be provided by this RFP shall be provided under the applicable Tab.

#### **SUBMITTAL OF PROPOSAL**

Any incomplete Proposal may be rejected by Port KC or the Selection Committee.

By submitting a Proposal, Developer agrees that Developer's Proposal shall constitute a firm irrevocable offer to Port KC that Developer shall not withdraw or modify without Port KC's approval for one hundred eighty (180) days after the Proposal due date. Developer agrees that even if Port KC negotiates or makes a counter offer to Developer on Developer's original Proposal or any subsequent Proposal submitted by Developer, Developer grants to Port KC, in Port KC's sole discretion, the unconditional right for Port KC to accept Developer's original Proposal and Port KC's negotiation or counter offer shall not be deemed to be a counter offer.

#### **LEGAL STRUCTURE**

Should the selected Developer desire to pursue the Development Project without public incentives, Port KC and the selected Developer will negotiate and execute a "Purchase and Sale Agreement" and "Development Agreement" in such forms as they may mutually agree upon and which will provide for the transfer of the Development Site to and its development by the selected Developer.

Should the selected Developer desire to pursue the Development project with public incentives, Port KC and the selected Developer will negotiate and execute a "Purchase and Sale Agreement" and "Development Agreement" in such forms as they may mutually agree upon and which will provide for the transfer of the Development Site to and its development by the selected Developer. The selected Developer will also be required to follow, execute such documents and pay such fees as are required by Port KC's policies, processes and procedures for a bond-financed sale-leaseback structure under Chapter 68, RSMo, and the failure to do so will result in the selected Developer being rejected for the next ranked

Developer.

All costs of the Development Project will be paid by the selected Developer and reimbursed with proceeds from a taxable revenue bond issued by Port KC, which shall be purchased by and privately placed with the selected Developer or the selected Developer's lender.

The unique nature of the Development Project will necessitate the inclusion of specific terms in the Development Agreement including, without limitation, the following:

1. That the selected Developer fund a traffic study for purposes of analyzing the impact to the streetcar system created by vehicles traveling to and from the Development Site from 5<sup>th</sup> Street and 3<sup>rd</sup> Street. Such traffic study must be reviewed by the Kansas City Streetcar Authority and no construction will be permitted to commence unless and until the Kansas City Streetcar Authority has granted its consent, which shall not be unreasonably withheld.
2. That the selected Developer tender the purchase price for the Development Site to Port KC at such time as the Development Site is conveyed to selected Developer, with Port KC holding the purchase proceeds and utilizing the same to offset the construction of the Public Parking through a single disbursement upon issuance of a certificate of occupancy for the completed Development Project.
3. That the selected Developer, if requested by the City and Port KC, execute a parking agreement for purposes of preserving the Public Parking obligation and defining the standards to which the Public Parking will be managed, operated and maintained for the duration of the Public Parking obligation.

#### **PORT KC POLICIES**

The selected Developer will 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, Payment Bonds, Prompt Pay, OSHA 10-hour certification, E-Verify, Public Procurement, Annual Reporting and, to the extent applicable, Prevailing Wage requirements. The policies can be found at <https://portkc.com/development-finance/> and are incorporated herein by reference.

#### **OWNERSHIP OF PROPOSALS**

By submitting its Proposal, Developer hereby agrees that Developer's Proposal and any supplementary material submitted by the Developer shall become property of Port KC.

#### **DISCLOSURE OF PROPRIETARY INFORMATION**

A Developer may attempt to restrict the disclosure of scientific and technological innovations in which the Developer has a proprietary interest, or other information that is protected from public disclosure by law, which is contained in the Proposal by marking each response of each such document prominently with the words "**PROPRIETARY INFORMATION**" in red, bold 20-point font.

After either a contract is executed pursuant to the RFP, or all submittals are rejected, if access to documents marked "**PROPRIETARY INFORMATION**", as provided above, is requested under the Missouri Sunshine Law, Port KC will notify the Developer of the request, and it shall be the burden of the Developer to establish that such documents are exempt from disclosure under the law.

If the Developer elects to challenge a formal request for such information made to Port KC and if the Developer is unsuccessful in keeping such information closed, the Developer shall pay for any and all costs, attorney fees and fines that are a result of Developer's attempt to keep the information closed.

Notwithstanding the foregoing, in response to a formal request for information, Port KC reserves the right to release any documents if Port KC determines that such information is a public record pursuant to the Missouri Sunshine Law. Port KC shall have no liability to any Developer or anyone else for releasing any Proprietary Information of a Developer even if Port KC is negligent in releasing or disclosing any Proprietary Information of any Developer.

### **CLOSED RECORDS**

All Proposals including interviews, presentations and documents, and meetings relating thereto may remain closed records or meetings under the Missouri Sunshine Law until a contract is executed or until all Proposals are rejected by Port KC. If Port KC amends this RFP, Proposals submitted in response to the original RFP may remain closed records until a contract is executed or all Proposals submitted in response to the amended RFP are rejected.

## **SECTION II. BUSINESS/FIRM PROFILE AND LEGAL STRUCTURE**

The Proposal must include the following information as listed below:

1. Legal Name, address, phone, fax, e-mail, Federal ID#, and website address.
2. Brief history of business/firm including date the business/firm was established under the current name.
3. List all services provided by the business/firm.
4. Number of total employees including number of total employees in Kansas City, Missouri and number of employees in Greater Kansas City Area.
5. Type of ownership, or legal structure of business/firm.
6. Has the business/firm ever failed to complete work for which a development contract was executed? If yes, explain the circumstances.
7. Are there any civil or criminal actions pending against the business/firm or any key personnel related in any way to contracting? If yes, explain in detail. Are there any current unresolved disputes/allegations?
8. Provide a brief history of the business/firm's contractual litigation, arbitration, and mediation cases for the last five (5) years.
9. Has the business/firm ever been disqualified from working for the any public or quasi-public entity? If yes, explain the circumstances.
10. Proof of financial capacity to complete the Development Project, such as Dun and Bradstreet,

audited financial statements, and bonding capacity.

### SECTION III. EXPERIENCE

Describe the five (5) most relevant or comparable developments completed by your business/firm during the past five (5) years.

For each listed development, provide a narrative that includes:

- Assigned project personnel
- Development scope
- Development cost
- Contracting entity's contact person, e-mail address, cell phone number, and telephone number
- Summary of how your business/firm delivered services
- Pricing and contractual compensation terms

Provide materials to Port KC documenting your business/firm's experience, knowledge, partnerships, successes, cap rates, and any other relevant factors with respect to LIHTC and any other tools and programs that have resulted in significant affordable housing successes.

### SECTION IV. MANAGEMENT

The Proposal must include the following information as listed below:

1. Listing of all partners and their respective roles.
2. The proposed capital ownership structure.
3. Organizational chart for the assigned project personnel.

### SECTION V. DEVELOPMENT APPROACH

The Proposal must include the following information as listed below:

1. A preliminary site program and design demonstrating a development that addresses the issues detailed throughout this RFP. Proposals that do not achieve each component of the program must include a detailed explanation of such deviation.
2. A description of and conceptual drawings for the proposed development program inclusive of, but not limited to, the following: total gross building area, footprint of specific uses, description of appropriate urban design elements including street level pedestrian orientation/activation and connections to adjacent River Market properties.
3. Unique services and management tools and benefits of them to Port KC and the City.
4. Approximate date the development team is available to begin work on the Development Project.

Although there is no obligation to do so, each Developer should feel free to provide a description of other factors not accounted for in the RFP that will underscore the Developer's qualifications to undertake the Development Project and identify what is "unique" about their development concept.

## SECTION VI. REFERENCES

Developers are required to provide three (3) client references, including contact information, for similar projects that the Developer has completed within the past five (5) years.

It is preferred that at least one (1) client reference be a government sector client.

## SECTION VII. SUSTAINABILITY

Port KC supports a greater use of "green solutions" or enhanced sustainability measures that consider environmental quality, social equity and economic vitality.

Developers should incorporate sustainability and efficiency into the planning, design, construction, operation and maintenance of the proposed Development Project. Developers should highlight each component of the Development Project that they feel deserves consideration in this context, and demonstrate how sustainability and efficiency are integrated are proposed to be integrated.

If it is not possible to comprehensively integrate significant sustainability measures, Developers should highlight elements they feel deserve consideration in this context.

Proposals must include a concise summary of the Developer's policies, strategies, and actions that demonstrate a philosophy and commitment to sustainability.

## SECTION VIII. DEVELOPMENT FINANCE INFORMATION

All Developers shall submit a preliminary financial proposal consistent with the issues detailed throughout this RFP. Proposals shall include, but shall not necessarily be limited to:

1. 10 year operations pro forma.
2. 10 year cash flow pro forma detailing all sources and uses of cash, including distributable incomes.
3. Project capital sources and uses.
4. Term sheets for all debt and equity to be secured by private financing.
5. Evidence of the Developer's ability to obtain or provide the necessary financing proposed. Developers should secure the participation of financial institutions in the preparation and submission of their Proposal.
6. A description of how the Developer will secure the completion of the Development Project to the

satisfaction of Port KC. For example, completion guarantees, surety bonds, letters or credit, etc.

7. A preliminary development budget detailing both soft and hard costs.

As stated above, financial Information should include term sheets for all sources, types and terms of anticipated financing, construction and permanent, debt and equity. Developers with letters from lenders and, if applicable, equity investors, stating an intention to provide funding will be viewed more favorable.

ALL COSTS INCURRED BY THE CITY AND PORT KC WITH RESPECT TO THE PRE-TRANSFER ACTIONS, CONVEYANCE AND ACQUISITION OF THE DEVELOPMENT SITE TO PORT KC AS PROVIDED IN SECTION 3.7 OF THE INTERGOVERNMENTAL COOPERATIVE AGREEMENT AND THOSE CERTAIN OTHER SECTIONS REFERENCED THEREIN, AND ALL COSTS INCURRED BY PORT KC WITH RESPECT TO THE CONVEYANCE AND ACQUISITION OF THE DEVELOPMENT SITE BY THE SELECTED DEVELOPER WILL BE PAID IN THEIR ENTIRETY BY THE SELECTED DEVELOPER AT SUCH TIME AS IT ACQUIRES TITLE TO THE DEVELOPMENT SITE FROM PORT KC. DEVELOPERS ARE ENCOURAGE TO ALLOW FOR THOSE EXPENSES IN STRUCTURING THEIR DEVELOPMENT FINANCING.

WHILE THE PURCHASE PRICE FOR THE DEVELOPMENT SITE WILL BE RETURNED TO THE SELECTED DEVELOPER UPON COMPLETION OF THE DEVELOPMENT PROJECT FOR PURPOSES OF ASSISTING IN THE CONSTRUCTION OF THE PUBLIC PARKING, DEVELOPERS SHOULD CONSIDER THAT THIS SUM WILL BE PAID BY THEM TO PORT KC UPON ACQUISITION OF THE DEVELOPMENT SITE, AND WILL BE RETAINED BY PORT KC FOR THE DURATION OF THE CONSTRUCTION OF THE DEVELOPMENT PROJECT. DEVELOPERS ARE ENCOURAGED TO ALLOW FOR THOSE EXPENSES IN STRUCTURING THEIR DEVELOPMENT FINANCING AND ARE ADVISED THAT THE PURCHASE PRICE MUST BE EQUAL TO OR GREATER THAN THE FAIR MARKET VALUE AS DETERMINED BY THE APPRAISAL PROCURED BY PORT KC.

## SECTION IX. PUBLIC INCENTIVES

All Developers shall identify any and all public assistance they intend to request in conjunction with the Development Project, both as to types and amounts. The assistance with the construction of the Public Parking via the return of the purchase price for the Development Site upon completion of the Development Project is assumed for purposes of this RFP and any Developer electing to decline that incentive, in whole or in part, should state as much in its Proposal.

Any incentives in the form of property tax relief would be provided, if approved by Port KC's governing body, in the form of tax exemption with offsetting payments to the affected taxing jurisdictions pursuant to a bond-financed sale-leaseback structure under Chapter 68, RSMo. Port KC will not entertain any Proposal that proposes to utilize any other mechanism or agency for purposes of abating or exempting real property taxes.

Any and all incentives that may be extended to the Development Project, including incentives conveyed by Port KC, shall be subject to the provisions of Ordinance 160383 as adopted by the City of Kansas City, Missouri, and shall be substantiated by a qualified financial analysis that measures the impact to the affected taxing jurisdictions. This project will follow the approved Port KC Development Finance process as attached in **Exhibit C**, 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

determine that incentives exceeding those provided in Ordinance 160383 are necessary to facilitate the development of the affordable housing on the Development Site. 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.

In the event a Developer intends to seek assistance from the City in the form of the redirected sales, utility or earnings taxes, the Developer will identify the source and amount thereof. The selected Developer will be required to pursue the award of such incentives with the City pursuant to its processes and procedures for considering the same, and Port KC shall not be obligated to assist in those efforts.

Proposals that minimize any reliance on incentives will be regarded more favorably.

## SECTION X. LIHTC

The selected Developer will 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>). While a Developer may propose that the LIHTC project, or an otherwise substantively comparable project, alternatively be located in the River Market area, Developers are advised that any location outside of the Berkley Riverfront Development Area would be subject to additional approval by City and Port KC makes no representations as to the acceptability of such alternative location.

All affordable housing units shall be:

- (i) Located on the same parcel;
- (ii) Mixed with, and not clustered together or segregated in any way from, market-rate units, if any;
- (iii) Allocated amongst units types so as not to be limited to one unit type;
- (iv) Developed concurrently with market rate units, if any;
- (v) Similar in exterior appearance and quality to market-rate units, if any; and
- (vi) Income verified.

Port KC is committed to the development of affordable housing and has been actively engaged with multiple developers interested in pursuing a LIHTC project at Berkley Riverfront. Pursuant to Resolution adopted by Port KC's Board of Commissioners on August 24, 2020, Port KC's President & CEO has been empowered to grant option agreements on parcels identified by him for purposes of demonstrating the site control necessary to secure a LIHTC allocation.

Any Developer wanting to pursue a LIHTC allocation in calendar year 2020 must immediately contact Port KC. Port KC will work with any Developer to identify a parcel, or portion of a parcel, in Port KC's Master Planned Development and negotiate and execute an option agreement prior to the application deadline. Any such Developer must inform Port KC whether it intends to pursue the LIHTC project irrespective of its selection for the Development Project, or whether its pursuit of a LIHTC project is wholly contingent on its selection for the Development Project. A Developer declaring a commitment to pursue a LIHTC project

irrespective of its selection for the Development Project will be given priority status and the parcel, or portion of a parcel, selected by it and Port KC will not be made available to any other Developer during the calendar year 2020 allocation process. Port KC may also elect, in its sole discretion, to grant any Developer making said commitment the right to extend its option with respect to the parcel, or portion of a parcel, should the Developer be unsuccessful in its pursuit of an allocation in 2020 and wish to reapply at the next available opportunity.

While a Developer's experiences with respect to prior LIHTC projects will be factored in the scoring and ranking of Proposals, the decision to pursue or not pursue a LIHTC allocation in calendar year 2020 and any election with respect to continuing or abandoning any pursuit based on the outcome of this RFP will **NOT** be factored in the scoring and ranking of Proposals. Simply stated, a Developer is not required to make application in calendar year 2020 or commit itself to continue the pursuit of a LIHTC project should it not be the selected Developer under this RFP. Any Developer electing not to pursue a LIHTC allocation in calendar year 2020 will instead be required to do so at the next available opportunity and to pursue the same in good faith should it be selected and awarded the Development Project. Port KC will negotiate and execute an option agreement with the selected Developer on a parcel, or portion of a parcel, to be identified by Port KC at a future date.

Discussion with Port KC staff for purposes of pursuing a LIHTC project at Berkley Riverfront may occur during the pendency of this RFP and are not prohibited communications under this RFP, anything to the contrary herein notwithstanding.

IN THE EVENT THE SELECTED DEVELOPER AND PORT KC ARE ULTIMATELY UNABLE TO SECURE A LIHTC OR SUBSTANTIVELY COMPARABLE PROJECT, ADDITIONAL AFFORDABLE HOUSING UNITS, I.E., UNITS IN EXCESS OF THE MINIMUMS, WILL BE REQUIRED ON THE DEVELOPMENT SITE IN AN AMOUNT TO BE JOINTLY DETERMINED BY PORT KC AND THE CITY. DEVELOPERS MAY FIND IT BENEFICIAL TO ALLOW FOR THAT POSSIBILITY BY PROVIDING FOR ADDITIONAL AFFORDABLE UNITS IN THEIR PROPOSALS AT THE OUTSET.

## SECTION XI. ENVIRONMENTAL INFORMATION

The Development Site will be offered for sale on an "AS IS" basis and without any representations or warranties.



## EXHIBIT A

Lots 165 through 169, Block 17, TOWN OF KANSAS (commonly called OLD TOWN), a subdivision, not in Kansas City, Jackson County, Missouri, according to the recorded plat thereof, refiled for record July 28, 1896.



**EXHIBIT B**

**INTERGOVERNMENTAL COOPERATIVE AGREEMENT**

## **INTERGOVERNMENTAL COOPERATIVE AGREEMENT**

This Intergovernmental Cooperative Agreement (the "**Agreement**") is entered into the 8/26/2020 day of August, 2020 (the "**Effective Date**"), by and among the CITY OF KANSAS CITY, MISSOURI ("**City**"), a constitutionally chartered municipal corporation, 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**").

WHEREAS, City owns certain real property in the River Market, a portion of which is described on **Exhibit A**, attached hereto and incorporated herein (the "**Subject Property**"); and

WHEREAS, City has leased said real property, including portions of the Subject Property, to the Planned Industrial Expansion Authority of Kansas City, Missouri (the "**PIEA**") since September 1, 1989, and that lease arrangement is currently governed by the terms of that certain Amended and Restated City Market Site Lease dated September 1, 1998, as subsequently modified by that certain First Amendment to Amended and Restated City Market Site Lease dated April 1, 2010 (collectively, the "**Lease**"), the term of which expires at midnight on April 15, 2025; and

WHEREAS, the PIEA caused said real property to be redeveloped as a market for the sale of fruits, vegetables, and other farm or dairy products, *i.e.*, the "City Market," pursuant to the provisions of a redevelopment plan adopted under the Planned Industrial Expansion Law, and the Subject Property currently provides public parking in support of the City Market; and

WHEREAS, the PIEA issued its \$11,530,000 Taxable Lease Revenue Bonds (City Market Project) Series 1989 (the "**Series 1989 Bonds**") to finance a portion of the City Market project, which Series 1989 Bonds were subsequently refunded and defeased by the PIEA's \$14,980,000 Taxable Lease Revenue Refunding Bonds, Series 1998 (City Market Project) (the "**Series 1998 Bonds**"), which Series 1998 Bonds were subsequently refunded and defeased by a discrete portion of the City's Taxable Special Obligation Refunding Bonds (Kansas City, Missouri, Projects) Series 2010C (the "**Allocated Series 2010C Bonds**") (collectively, the "**Bonds**"); and

WHEREAS, the PIEA's leasehold interest in the Subject Property was pledged as security for the repayment of the Series 1998 Bonds and Allocated Series 2010C Bonds pursuant to a certain Leasehold Deed of Trust and Security Agreement dated September 1, 1998, as subsequently modified by that certain First Amendment to First Leasehold Deed of Trust and Security Agreement dated April 1, 2010 in favor of First Bank of Missouri ("**First Bank**") (collectively, the "**Deed of Trust**"); and

WHEREAS, the Bonds have been refunded and defeased or otherwise retired, such that the PIEA's leasehold interest in the Subject Property no longer serves as security for the Bonds; and

WHEREAS, the development of the Subject Property serves a predominantly public municipal purpose because, without limitation, vertical development will (i) enhance the tax base of Subject Property and surrounding area; (ii) retain and generate jobs; (iii) promote economic development in the area of the City in which the Subject Property is located; (iv) result in generation of tax revenues to the City from the conduct of business and other activities in the City that would not otherwise occur; (v) serve as a catalyst for additional investment in and further redevelopment and rehabilitation of the area of the City in which the Subject Property is located;

(vi) further the City's policy of encouraging economic stability and growth; and (vii) preserve and enhance public parking in a strategic area of the City; and

WHEREAS, City will convey the Subject Property to Port KC, to be used by Port KC in compliance with the terms of this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth herein, the Parties hereby mutually agree as follows:

## **ARTICLE I**

### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 1.1 Representations, Warranties and Covenants of City. City represents, warrants and covenants that:

(a) City is a constitutionally chartered city validly existing under the laws of the State of Missouri and has lawful power and authority to enter this Agreement and to carry out its obligations under this Agreement. City by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(b) No officer or employee of City shall have any personal interest in the subject matter of or transactions contemplated by this Agreement.

Section 1.2 Representations, Warranties and Covenants of Port KC. Port KC represents, warrants and covenants that:

(a) Port KC is a political subdivision of the State of Missouri, validly existing under the laws of the State of Missouri and has lawful power and authority to enter this Agreement and to carry out its obligations under this Agreement. Port KC by all necessary action has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(b) No officer or employee of Port KC shall have any personal interest in the subject matter of or transactions contemplated by this Agreement.

Section 1.3 Survival of Representations, Warranties and Covenants. All representations, covenants and warranties of City and Port KC contained in this Agreement, in any certificate or other instrument delivered by City or Port KC pursuant to this Agreement, or otherwise made in conjunction with the transactions contemplated by this Agreement shall survive the execution and delivery of this Agreement. Pursuant to Article IV, Port KC has obligations and commitments to the City that are intended to survive the transfer of the Subject Property by the City to Port KC and such obligations and commitments are not intended to merge into or be extinguished by the execution of the deed from the City and its acceptance by Port KC.

## **ARTICLE II**

### **PRE-TRANSFER OF SUBJECT PROPERTY**

Section 2.1 Pre-Transfer Actions.

A. Port KC shall undertake, at its initial expense, the following pre-development due diligence activities prior to final transfer of the Subject Property from the City to Port KC: Any and all documents resulting from such pre-development due diligence activities shall be promptly provided by Port KC to the City no later than three (3) business days of Port KC's receipt of same. Such activities include:

(i) Engage a licensed real estate appraiser for purposes of determining the market value of the Subject Property.

(ii) Engage a title company to prepare a title commitment for the Subject Property and to provide all documents listed as exceptions upon such title commitment. Specifically, the title company shall provide the vesting deeds into the City and any recorded documents to which the City took subject to as a restriction to its title.

(iii) Engage a surveyor licensed by the State of Missouri to prepare an ALTA/NSPS survey, which survey shall depict and describe the easement areas upon the Subject Property needed to be reserved by the City for existing municipal utilities, and their maintenance, repair and replacement, with the understanding that there are existing utilities adjoining and placed in existing right of way and alleys located at a depth that the easement area needed will extend unto and encumber the Subject Property for safety purposes for future maintenance, repair and replacement ("Survey"). Such surveyor will consult with the City's Department of Water Services, and the width and location of such proposed easement area shall be determined and controlled by such Department.

(iv) Engage an environmental consulting firm for a Phase I environmental assessment, if deemed needed by the Port KC.

B. City shall:

(i) Engage the PIEA for purposes of further amending the Lease to exclude the Subject Property from the PIEA's leasehold, and shall request the PIEA to engage First Bank for purposes of further modifying the Deed of Trust to formally document the removal of the Subject Property therefrom through a partial release if other assets remain pledged as collateral for the obligations secured by the Deed of Trust, or a termination of the Deed of Trust, the form of which shall be approved by counsel on the Bonds; and

(ii) Terminate any right, that can lawfully be done so, currently residing with any third party to develop any portion of the Subject Property subject to the appropriation of any funds necessary to execute a termination of such rights.

(iii) Effective upon transfer of the Subject Property from the City to Port KC, terminate any contracts with respect to parking management and parking rights on the Subject Property and identify and make available alternative parking to the extent it is required to do so by any existing agreement with respect to the Subject Property

subject to the appropriation of any funds necessary to execute a termination of such contracts or to acquire interests in such alternative parking.

- (iv) In accordance with Committee Substitute for Ordinance No. 200227, take such further actions as are required by its Charter and Code of Ordinances with respect to the surplussing of the Subject Property to enable the Subject Property to be transferred to Port KC pursuant to the provisions of this Agreement and to collaborate with Port KC to surplus the Subject Property in conformity to Article IV to comply with the City surplus property process.

(v)

Section 2.2 Timing of Pre-Transfer Actions. The actions to be taken pursuant to Section 2.1 of this Agreement shall be completed not later than ninety (90) calendar days following the Effective Date of this Agreement unless the Parties shall agree, in writing, upon a longer period of time.

Section 2.3 Due Diligence Materials. Within ninety (90) calendar days following the Effective Date of this Agreement, or such longer period of time as the Parties may agree upon in writing, City will deliver to Port KC all documents, records and information relating to the Subject Property in City's possession or within City's control and available to City for review and evaluation by Port KC or its respective agents and designees, including, but not limited to: (i) existing title insurance policies, commitments, surveys and utility maps covering the Subject Property or any part thereof; (ii) bills for real estate taxes and assessments; (iii) operating agreements and other agreements affecting the Subject Property, recorded and unrecorded; (iv) soil and engineering reports and information; (v) information and reports concerning the environmental condition of the Subject Property and any underground structures or utilities which may be present on the Subject Property, including any environmental assessments, reports or test results, tank permits or tank registrations, and (vi) any notices, claims or government proceedings regarding the Subject Property.

Section 2.4 Costs. All costs incurred by City pursuant to this Article II shall be reimbursed as provided in Article V.

Section 2.5 Termination Resulting from Pre-Transfer Actions. Should the title commitment required pursuant to this Article II contain exceptions or encumbrances that the City is unable or unwilling to reasonably remove without incurring costs, the City shall have the right to terminate this Agreement within fourteen (14) calendar days of receiving the title commitment from Port KC. If the City elects to terminate this Agreement due to title conditions which is unable or unwilling to cure, then the City will, subject to appropriation of funds reimburse Port KC for the termination fee and search fees assessed by the Title Company, and for the cost of the Survey.

### ARTICLE III

#### TRANSFERS OF SUBJECT PROPERTY

Section 3.1 Conveyance. City hereby agrees to convey to Port KC, and Port KC agrees to acquire from City, the Subject Property pursuant to a special warranty deed in substantially the form of **Exhibit B**, attached hereto and incorporated herein (the “**Deed**”). The conveyance of the Subject Property and the consummation of the transactions contemplated by this Agreement are being undertaken by City and Port KC in furtherance of their mutual goals and public purposes. In transferring the Subject Property to Port KC, City shall be entitled to reserve any easement whether or not of record with respect to any utilities that may be located on or adjoining the Subject Property which require an area within the Subject Property to adequately and safely maintain, repair and replace such existing or future replacement utilities. There are known utility lines (including sanitary sewers) in areas west and east of the Subject Property for which a portion of the Subject Property will be needed to maintain, repair and replace such utilities, and those areas are intended to be in the reserved easement area to a width as determined appropriate by the City’s Water Services Department. Section 3.2 Timing. Upon the completion of the pre-transfer activities specified in Section 2.1, including without limitation, the City obtaining an amendment of the Lease with the PIEA, the closing will take place upon a date determined by the Parties, which shall in no event be later than one hundred eighty (180) calendar days following the Effective Date of this Agreement, unless the Parties shall agree, in writing, upon a longer period.

Section 3.3 Closing. The following actions shall be taken at closing (the “**Closing**”):

A. City shall:

- (i) Execute and deliver the Deed with such additional easements reserved therein as deemed necessary by the City; and
- (ii) Deliver to title company a certified copy of Committee Substitute for Ordinance No. 200227, for purposes of recording, authorizing the execution and delivery of this Agreement and Deed and all other writings, affidavits, documents, consents, certificates, and instruments as title company may reasonably require in connection with: (a) the closing; (b) the issuance to Port KC of an owner’s policy of title insurance (but not including any indemnification obligations); and (c) closing instructions to the title company, the form of which shall be reasonably acceptable to Port KC.

B. Port KC shall:

- (i) Execute the acceptance of the Deed; and
- (ii) Deliver to City or title company certified copies of resolutions authorizing the execution and delivery of this Agreement and Deed and all other writings, affidavits, documents, consents, certificates, and instruments as City or title company may reasonably require in connection with: (a) the closing; (b) the issuance to Port KC of an owner's policy of title insurance; and (c) closing instructions to the title company, the form of which shall be reasonably acceptable to City.
- (iii) Deliver to City or title company the purchase price of Ten Dollars and 00/100 cents (\$10.00).

Section 3.4 Transfer of Possession. Port KC shall have immediate and exclusive possession of the Subject Property upon the Closing, and shall hold title to the Subject Property for purposes of developing the same in compliance with the terms of this Agreement. Notwithstanding the foregoing, Port KC will grant to City a license as of the Closing to use the Subject Property for transient public, City Market and neighborhood parking until such time as title thereto has been transferred to a developer for purposes of commencing the development thereof or the Subject Property is reconveyed to City pursuant to Section 3.5 of this Agreement.

Section 3.5 Reconveyance of Subject Property to City. In the event that Port KC shall not have transferred the Subject Property to a developer or otherwise caused the development of the same to be commenced within twelve (12) months from Closing, City may elect to (a) require that the Subject Property be returned to City, in which event Port KC shall re-convey the Subject Property to City without any encumbrances or liens arising on and after the Closing from either Port KC or any developer working with Port KC, and this Agreement shall thereafter be deemed null and void, or (b) allow Port KC to retain title to the Subject Property for the purpose of pursuing development alternatives for the Subject Property, in which event this Agreement shall remain in effect. Port KC may elect to request that City affirm this reconveyance obligation has not triggered prior to the expiration of the allotted time period. The City Manager shall have the sole right to make such determination on behalf of City and his written determination shall conclusively establish the same.

Section 3.6 Condition of Subject Property. The Parties acknowledge that the Subject Property will be conveyed "AS IS," and without any representations or warranties, except as specifically provided in this Agreement and related instruments.

Section 3.7 Closing Costs. All costs of City associated with its conveyance of the Subject Property to Port KC shall be paid by Port KC, including without limitation those set forth in Section 2.1A. All costs of Port KC associated with its acquisition of the Subject Property from City shall be paid by Port KC. However, such costs may be imposed upon, or otherwise collected by Port KC from the developer ultimately selected as specified in Section 5.1F.

## **ARTICLE IV**

### **DEVELOPMENT OF SUBJECT PROPERTY**



Section 4.1 Developer Engagement. The Parties acknowledge that there may be multiple developers interested in the Subject Property and they are committed to ensuring that any selection is made through an open, fair and transparent process. The Parties will ensure this by vesting the selection in a committee, the majority of which shall be comprised of public officials appointed by the Mayor and community stakeholders.

There shall be a selection committee of five (5) members (the “**Selection Committee**”). One (1) member will be a mayoral appointed board member currently serving on Port KC’s Board of Commissioners (delegated by the Board’s Chairman), one (1) member will be appointed by the River Market Community Association (“RMCA”), one (1) member will be appointed by the City Market Oversight Committee (“CMOC”), one (1) member will be appointed from Port KC’s staff, and one (1) member will be a City employee appointed by the City Manager. In the event that the RMCA or CMOC shall elect not to appoint members to the selection committee, the vacancies shall be filled by additional City employee(s) delegated by the City Manager.

Following the formation of the Selection Committee, Port KC shall prepare and issue, or cause its respective agents and designees to prepare and issue, a Request for Proposals (“RFP”) by which is shall solicit proposals for the development of the Subject Property in compliance with this Agreement. The RFP shall remain open for a period of not less than sixty (60) calendar days and shall require that any developer purchase the Subject Property from Port KC for an amount not less than the market value of the Subject Property as determined pursuant to Section 2.1 of this Agreement.

The Selection Committee will review and rank any proposals, conducting interviews if necessary. Port KC will thereafter attempt to negotiate a contract with the top ranked proposer. In the event that Port KC and the top ranked proposer are unable to negotiate the terms of a contract within a reasonable period of time, Port KC will engage the next ranked proposer, and so on, until such time as a development agreement is successfully negotiated.

Section 4.2 Roles of the Parties in Development. Port KC shall contract with the developer and City shall not be a party to any development agreement executed by Port KC, Port KC shall be solely responsible for the development of the Subject Property following the transfer of the same to Port KC by City, but in conformity with the terms and conditions of this Agreement, which survive and do not merge into the Deed, or not deemed extinguished by acceptance of the Deed.

## ARTICLE V

### SPECIAL DEVELOPMENT TERMS

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 within a structured parking facility to be constructed by the Developer on the Subject Property and/or at another nearby off-site location, sufficiently close to service the City Market, but in any event mutually agreed upon

by the City and PortKC, 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 a parking agreement for purposes of preserving the Public Parking obligation and defining the standards to which the Public Parking will be managed, operated and maintained for the duration of the Public Parking obligation. 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.
- C. The Developer shall fund a traffic study for purposes of analyzing the impact to the streetcar system created by vehicles traveling to and from the Subject Property from 5<sup>th</sup> Street and 3<sup>rd</sup> Street. Such traffic study must be reviewed by the Kansas City Streetcar Authority and no construction will be permitted to commence unless and until the Kansas City Streetcar Authority has granted its consent, which shall not be unreasonably withheld.
- D. 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 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 than 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 publish HUD Income Limits (<https://www.huduser.gov/portal/datasets/il.html>) .

For purposes of this agreement, affordable housing shall comply with the following criteria:

- (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.

E. 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 C, 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 .

- F. 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.
- G. 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.
- H. 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 and his 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.

## **ARTICLE VI**

### **MISCELLANEOUS PROVISIONS**

Section 6.1 Choice of Law. This Agreement shall be construed and governed in accordance with the laws of the State of Missouri.

Section 6.2 No Waiver. No consent or waiver, express or implied, by any party to this Agreement to or of any breach or default by any other party in the performance by such other party of its obligations under this Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of any party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights under this Agreement.

Section 6.3 Modification of Agreement. This Agreement may not be amended, modified, terminated or waived orally, but only by a writing signed by the Parties.

Section 6.4 Force Majeure. For the purpose of any of the provisions of this Agreement, no party shall be considered in breach of or default in any of its obligations in the event of Force Majeure. The Parties agree that in the event of the occurrence of any delays as a result of Force Majeure, the time or times for the performance of the covenants, provisions, and agreements of

this Agreement shall be extended for the period of the enforced delay (including any time reasonably required to recommence performance due to such enforced delay). The affected party shall use reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its agreements; provided, however, that the settlement of strikes, lockouts, and other industrial disturbances shall be entirely within the discretion of the affected party, and the affected party shall not be required to make settlement of strikes, lockouts, and other industrial disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the affected party, unfavorable to the affected party. Notwithstanding the above, (a) no party may rely on its own acts or omissions as grounds for delay in its performance, and (b) the absence of immediately available funds shall not be grounds for delay.

Section 6.5 Entire Agreement. This Agreement incorporates all prior negotiations and discussions between the Parties regarding its subject matter and represents the entire agreement of the Parties.

Section 6.6 Severability of Provisions. Except as specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with, and so dependent upon, the invalid provision(s) that it cannot be presumed that the Parties could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the Parties.

Section 6.7 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns; provided, however, that except as otherwise provided herein, no party shall assign this Agreement without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld.

Section 6.8 No Partnership. It is expressly understood that the Parties are not now, nor will they be, engaged in a joint venture, partnership or any other form of business relationship except as expressly set forth herein, and that no party shall be responsible for the conduct, warranties, guarantees, acts, errors, omissions, debts, obligations or undertaking of any kind or nature of another in performance of this Agreement.

Section 6.9 No Third Party Beneficiaries. The provisions of this Agreement shall not be deemed to create any third party benefit hereunder for any member of the public or to authorize anyone not a party hereto to make a claim or file any action in connection with the execution hereof or the performance or non-performance of the terms hereof.

Section 6.10 Execution in Counterparts. This Agreement may be executed by the Parties on separate counterparts, which, when taken together, shall constitute one and the same instrument. This Agreement may be executed at different times and in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signed pdf or electronic versions of this Agreement shall be treated as originals and shall be fully binding on and enforceable against the Parties. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought.

Section 6.11 Notices. All notices hereunder shall be in writing and shall be sent either by certified mail, return receipt requested, personal messenger or overnight delivery via a reputable overnight service. Any notice sent by (i) certified mail, return receipt requested shall be deemed delivered two (2) days after deposited in the United States mail; (ii) personal messenger shall be deemed delivered when actually received; and (iii) an overnight delivery service shall be deemed delivered on the business day following the date the notice is deposited with the overnight delivery service addressed as specified below:

To City: City of Kansas City, Missouri  
414 E. 12<sup>th</sup> St., 29<sup>th</sup> Floor  
Kansas City, MO 64106  
Attention: City Manager

With a copy to: City of Kansas City, Missouri  
414 E. 12<sup>th</sup> St., 23<sup>rd</sup> Floor  
Kansas City, MO 64106  
Attention: City Attorney

To Port KC: Port KC  
110 Berkley Plaza  
Kansas City, MO 64120  
Attention: President & CEO

With a copy to: Port KC  
110 Berkley Plaza  
Kansas City, MO 64120  
Attention: General Counsel

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' prior written notice thereof.

Section 6.12 Further Acts and Assurances. The Parties will do, execute, acknowledge and deliver such further acts, instruments and assurances as may reasonably be required for accomplishing the purposes of this Agreement.

Section 6.13 Representatives Not Individually Liable. No member, official, representative, or employee of City shall be personally liable to Port KC in the event of any default or breach by City of any obligations under the terms of the Agreement. No member, official, representative, or employee of Port KC shall be personally liable to City in the event of any default or breach by Port KC of any obligations under the terms of the Agreement.

Section 6.14 Payment or Performance on Saturday, Sunday, or Holiday. Whenever the provisions of this Agreement call for the performance of any act on or by a date that is a Saturday, Sunday, or legal holiday of the City, as specified in Section 2-1098, Code of Ordinances, then such payment or such performance shall be required on or by the immediately succeeding day that is

not a Saturday, Sunday, or legal holiday of the City, as specified in Section 2-1098, Code of Ordinances.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement to be effective as of the day and year first above written.

**CITY OF KANSAS CITY, MISSOURI**

DocuSigned by:

*Earnest Rouse*

E8B9CCB4F1BB4EC...

Interim City Manager

Approved as to form:

DocuSigned by:

*Katherine Chandler*

744884086A244FA...

Associate City Attorney

**PORT AUTHORITY OF KANSAS CITY,  
MISSOURI**

DocuSigned by:

*Jon Stephens*

9261A9C70CA94B7...

Jon D. Stephens

President & CEO

Approved as to form:

DocuSigned by:

*Brian T. Rabineau*

1EB84A63C16348D...

Brian T. Rabineau

Deputy General Counsel



**EXHIBIT A**

Lots 165 through 169, Block 17, TOWN OF KANSAS (commonly called OLD TOWN), a subdivision, not in Kansas City, Jackson County, Missouri, according to the recorded plat thereof, refiled for record July 28, 1896.

**EXHIBIT B**

**DEED**

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(Space Above Reserved For Recorder of Deeds Certification)

**MISSOURI SPECIAL WARRANTY DEED**

THIS SPECIAL WARRANTY DEED is made as of \_\_\_\_\_, 2020, by and between the CITY OF KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation ("Grantor"), with an address of 414 E. 12<sup>th</sup> Street, Kansas City, Missouri, 64106, and the PORT AUTHORITY OF KANSAS CITY, MISSOURI, a political subdivision of the State of Missouri ("Grantee"), with an address of 110 Berkley Plaza, Kansas City, Missouri 64120.

WITNESSETH, that Grantor, for and in consideration of the sum of TEN DOLLARS (\$ 10.00) and other good and valuable consideration, to Grantor paid by Grantee (the receipt of which is hereby acknowledged) does by these presents, SELL AND CONVEY, unto Grantee and Grantee's successors and assigns, the following described lots, tracts or parcels of land, lying, being and situate in the County of Jackson and State of Missouri, to wit:

See Exhibit A attached hereto and incorporated herein by reference.

SUBJECT TO: (a) encumbrances, easements, restrictions, declarations, reservations, agreements, instruments and other matters of record, if any; (b) taxes and assessments, general and special; and (c) rights of the public in and to the parts thereof in streets, roads or alleys, if any.

TO HAVE AND TO HOLD the premises aforesaid, with all and singular the rights, privileges, appurtenances and immunities thereto belonging or in anywise appertaining unto Grantee and Grantee's successors and assigns, forever; Grantor hereby covenanting that the said premises are free and clear from any encumbrance done or suffered by Grantor, except as set forth herein; and that Grantor will warrant and defend the title to said premises unto Grantee and Grantee's successors and assigns, forever, against the lawful claims and demands of all persons claiming under Grantor, but none other, and except as set forth herein.

IN WITNESS WHEREOF, Grantor has executed these presents as of the day and year first above written.

THE CITY OF KANSAS CITY, MISSOURI

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title:  
\_\_\_\_\_

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_

) SS.

COUNTY OF \_\_\_\_\_

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is the \_\_\_\_\_ of the City of Kansas City, Missouri, and that said instrument was signed on behalf of said city and is the free act and deed of said city.

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

\_\_\_\_\_

[SEAL]

My Commission Expires: \_\_\_\_\_

GRANTEE ACCEPTANCE

Grantee, the PORT AUTHORITY OF KANSAS CITY, MISSOURI, a political subdivision of the State of Missouri created pursuant to Section 68 010 et seq., RSMo, hereby accepts the foregoing Missouri Special Warranty Deed, effective as of \_\_\_\_\_.

# PORT AUTHORITY OF KANSAS CITY, MISSOURI

By: \_\_\_\_\_

Name: Jon D. Stephens

Title: President and CEO

STATE OF MISSOURI )  
COUNTY OF JACKSON ) SS.

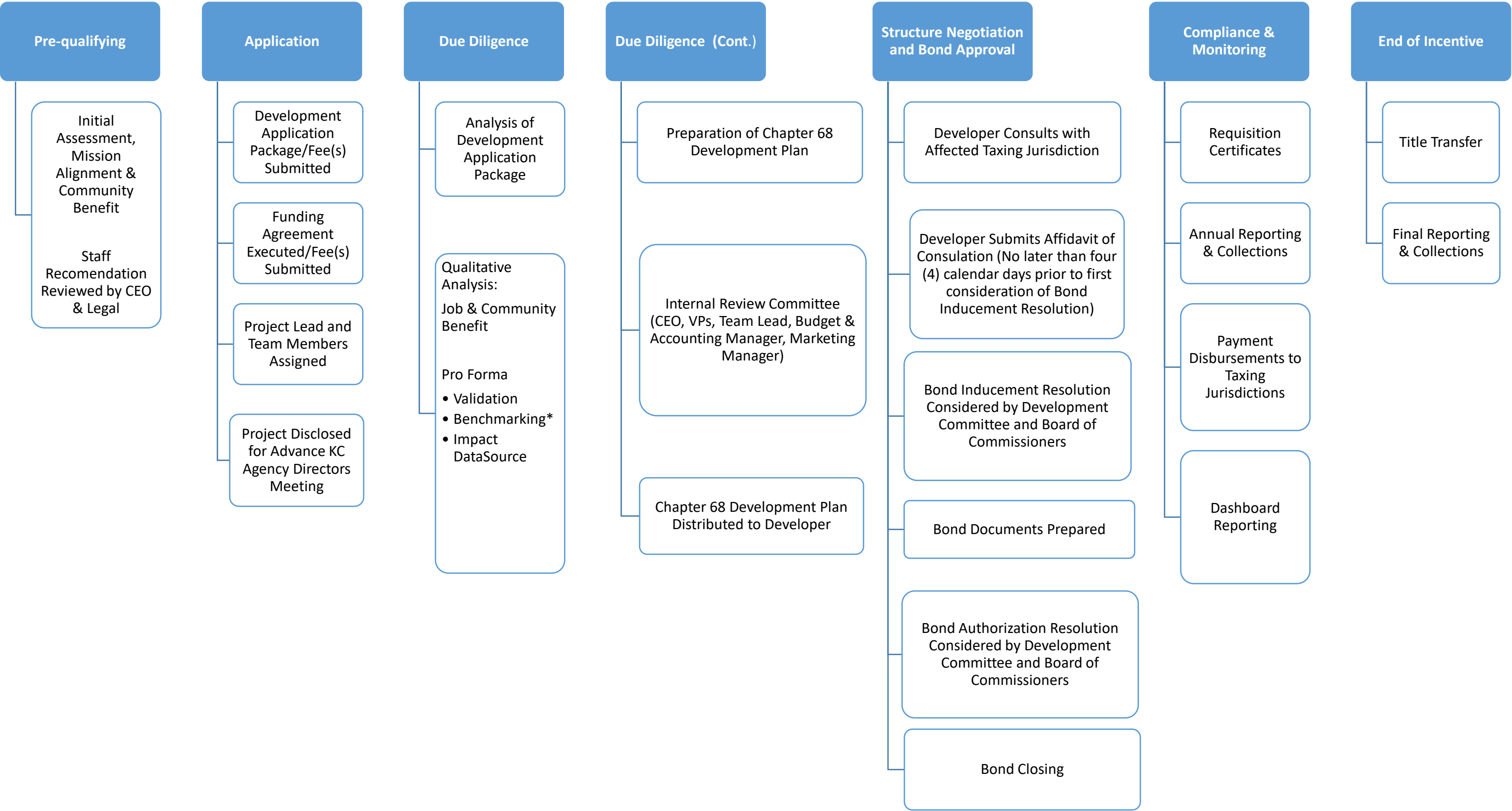
On this day of \_\_\_\_\_, 2020, before me, the undersigned, personally appeared Jon D. Stephens, to me personally known, who being by me duly sworn did say that he is the President and CEO of the Port Authority of Kansas City, Missouri, a political subdivision of the State of Missouri created pursuant to Section 68.010 et seq., RSMo, and that the within instrument was signed on behalf of said Port Authority pursuant to due authority, and said Jon D. Stephens acknowledged said instrument to be the free act and deed of said Port Authority.

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

[SEAL]

My Commission Expires: \_\_\_\_\_

EXHIBIT C - Development Finance Process Model

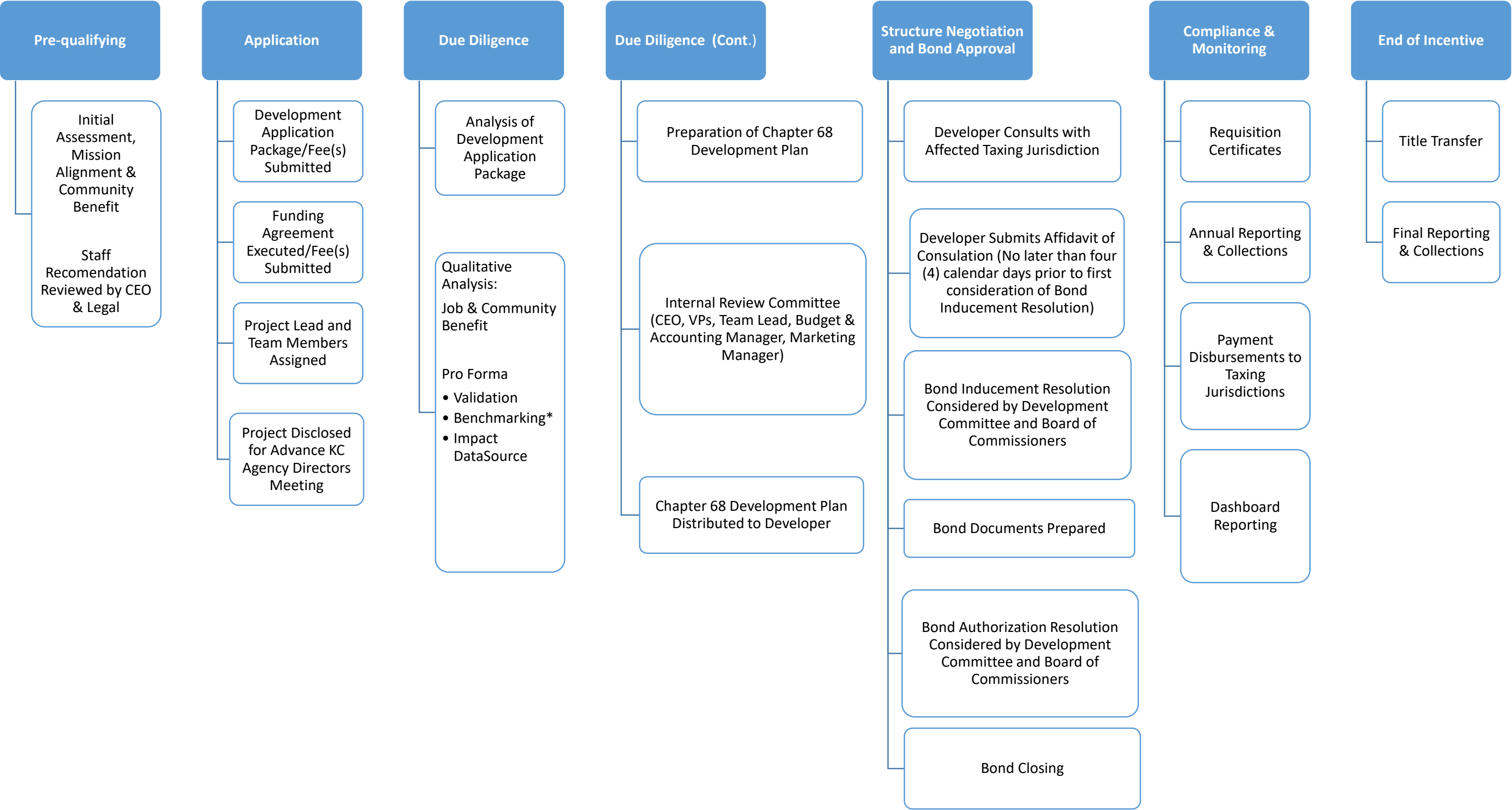


\*When available

**EXHIBIT C**

**DEVELOPMENT FINANCE PROCESS MAP**

Development Finance Process Model



\*When available