

**INTERGOVERNMENTAL COOPERATION AGREEMENT**

**between the**

**CITY OF COLUMBIA, MISSOURI**

**and the**

**DISCOVERY PARK TRANSPORTATION DEVELOPMENT DISTRICT**

**and**

**P1316, LLC**

**dated as of**

**\_\_\_\_\_, 2015**

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## INTERGOVERNMENTAL COOPERATION AGREEMENT

**THIS INTERGOVERNMENTAL COOPERATION AGREEMENT** (the “**Agreement**”) is made and entered into this \_\_\_\_\_, 201\_ by and between the **City of Columbia, Missouri** (the “**City**”), a municipal corporation and political subdivision of the State of Missouri, and its successors in interest and assigns, the **Discovery Park Transportation Development District** (the “**District**”), a political subdivision of the State of Missouri, and **P1316, LLC**, a Missouri limited liability company (the “**Developer**”).

### WITNESSETH:

**WHEREAS**, the District is a political subdivision of the State of Missouri, created and existing under the Missouri Transportation Development District Act, Sections 238.200 *et seq.* of the Revised Statutes of Missouri, as amended (the “**TDD Act**”), for the purpose of funding, promoting, planning, designing, constructing, improving, maintaining, and operating bridge, street, road, highway, access road, interchange, intersection, signing, signalization, parking lot, bus stop, station, garage, terminal, hangar, shelter, rest area, dock, wharf, lake or river port, airport, railroad, light rail, or other mass transit and any similar related improvement or infrastructure; and

**WHEREAS**, the City is a municipal corporation and political subdivision duly organized and existing under the laws of the State of Missouri and its charter and a local transportation authority as defined in the TDD Act; and

**WHEREAS**, the District was formed by the Developer pursuant to the TDD Act, by a petition (the “**Petition**”) filed with the Circuit Court of Boone County (the “**Circuit Court**”) seeking to form a transportation development district under the TDD Act and a Judgment Order and Decree entered by Hon. Gary Oxenhandler, Circuit Judge of the Circuit Court on October 3, 2013 (as defined herein, the “**TDD Order**”), for the purpose of paying costs (the “**Transportation Project Costs**”) to implement, maintain and operate the Transportation Project (as defined herein) to serve the District; and

**WHEREAS**, subject to and in accordance with the TDD Act, the Petition and the TDD Order, the Developer, as the owner of all real property in the District and the only qualified voter of the District, approved a sales tax not to exceed one percent (1%) (as defined herein, the “**TDD Sales Tax**”) on the receipts from the sale at retail of all tangible personal property or taxable services at retail within the District; and

**WHEREAS**, the City and the District are authorized under Section 238.260 of the TDD Act to enter into contracts in order for the City to assist the District in project funding, promotion, planning, design, right-of-way acquisition, relocation assistance services, construction, maintenance and operation; and

**WHEREAS**, the City, the Developer, and the District desire to provide for the planning, development, acquisition, construction, maintenance and financing of the Transportation Project to serve the District and the City, and

**WHEREAS**, pursuant to Ordinance No. \_\_\_\_\_ adopted by the City Council of the City on \_\_\_\_\_, 2015 (the “**TDD Ordinance**”) the City is authorized to enter into this Agreement to provide for the planning, development, acquisition, construction, maintenance and financing of the Transportation Project; and

**WHEREAS**, pursuant to a resolution adopted by the Board of Directors of the District on \_\_\_\_\_, 2015 (the “**TDD Resolution**”) the District is authorized to enter into this Agreement; and

**WHEREAS**, pursuant to the provisions of Section 238.227.4 of the TDD Act, the District and the City, in its capacity as the local transportation authority, are authorized to enter into a contract to provide for the deposit of all proceeds of the TDD Revenues into a special trust account to be used to fund the Transportation Project Costs (as defined herein), to pay District Administrative Costs (as defined herein) District Extraordinary Costs (as defined herein), City Administrative Costs (as defined herein), and to pay principal of and interest on TDD Obligations (as defined herein); and

**WHEREAS**, the parties to this Agreement desire to enter into an agreement to provide for the necessary highway and street improvements to serve the development and further provide a mechanism for the pledge of the TDD Revenues and the use of the same as provided herein;

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.1. Definitions of Words and Terms.** The words and terms as used in this Agreement and not otherwise defined in the Recitals or herein shall have the following meanings.

“**Agreement**” means this Intergovernmental Cooperation Agreement as from time to time amended in accordance with the terms hereof.

“**Business Day**” means any day other than a Saturday, Sunday or any other day in which banking institutions are required or authorized by law to close.

“**Circuit Court**” means the Circuit Court of Boone County.

“**City**” means the City of Columbia, Missouri, a municipal corporation and political subdivision duly organized and existing under the laws of the State of Missouri and its charter, and its successors in interest and assigns.

“**City Administrative Costs**” means extraordinary direct out-of-pocket expenses incurred by the City related to the performance of its obligations pursuant to this Agreement and permitted to be funded pursuant to the TDD Act up to an amount not in excess of \$50,000 in any single fiscal year, including without limitation the costs of outside legal counsel, financial advisors, Costs of Issuance to the extent not funded from the proceeds of TDD Obligations, costs of litigation and such other costs authorized as City Administrative Costs pursuant to the provisions of this Agreement.

“**City Representative**” means the Director of Public Works or his or her duly-authorized designee.

“**Commercial Development**” means the retail and commercial development, including land, buildings and improvements owned by the Owners within the District.

“**County**” means Boone County, Missouri.

**“Developer”** means P1316, LLC, and its successors in interest and assigns.

**“District”** means the Discovery Park Transportation Development District, which was established as a political subdivision of the State of Missouri pursuant to the Petition, the TDD Act and the TDD Order, and its successors in interest and assigns.

**“District Administrative Costs”** means overhead expenses of the District permitted to be funded pursuant to the TDD Act, including without limitation the following: (a) reimbursement of the board of directors of the District for actual expenditures in the performance of duties on the behalf of the District pursuant to Section 238.222 of the TDD Act; (b) expenses incurred in the exercise of the contractual powers of the District pursuant to Section 238.250 of the TDD Act; (c) the cost of insurance obtained by the District pursuant to Section 238.255 of the TDD Act; (d) the cost of any audit by the state auditor pursuant to Section 238.272 of the TDD Act or any other audit performed for the District; (e) expenses incurred by the District in the exercise of the powers granted under Section 238.252 of the TDD Act, which consist of compensation of employees or contractors, suits by or against the District, the purchase of personal property necessary or convenient for the District’s activities, and the collection and disbursement of funds for District activities; and (f) costs authorized as District Administrative Costs pursuant to the provisions of this Agreement.

**“District Extraordinary Costs”** means those costs of the District, other than District Formation Costs and District Administrative Costs, such as expenses associated with litigation and lobbying which in the reasonable judgment of the Board of Directors of the District and the City Council of the City are necessary for the ongoing operation of the District and the continued levy and collection of the TDD Revenues.

**“District Formation Costs”** means the costs incurred by the District to the date of this Agreement in connection with the formation and organization of the District and the approval of the TDD Sales Tax. District Formation Costs may include amounts incurred by the Owner in connection with the formation and organization of the District and the approval of the TDD Sales Tax and reimbursed by the District, provided all such costs reimbursed by the District shall be certified by the Owner by affidavit to have been actually expended and accompanied by documentation of such expenditures.

**“District Representative”** means the Executive Director of the District or such other person at the time designated to act on behalf of the District as evidenced by a written certificate furnished to the City containing the specimen signature of such person and signed on behalf of the District by the Chair of the Board of Directors of the District. Such certificate may designate an alternate or alternates, each of whom shall be entitled to perform all duties of the District Representative.

**“Event of Default”** means any Event of Default as described herein.

**“Owners”** means P1316, LLC, the Owners of all of the real property within the District, and each such entities successors in interest and assigns.

**“Petition”** means the petition filed with the Circuit Court seeking to form the District under the TDD Act.

**“TDD Act”** means the Missouri Transportation Development District Act, Sections 238.200 *et seq.* of the Revised Statutes of Missouri, as amended.

**“TDD Issuance Costs”** means all fees and expenses incurred in connection with the issuance of TDD Obligations, including those of the District’s financial advisors, the District’s legal counsel(s),

including bond counsel, if any, the costs of printing any TDD Obligations and any official statement relating thereto, underwriter's discount or placement agent's fee, if any, the fees and expenses of any trustee or paying agent, the costs of credit enhancement, if any, and the fees of any rating agency rating any TDD Obligations.

**"TDD Obligations"** means any bonds, notes, lease obligations or other evidence of indebtedness, issued or incurred by the District to pay Transportation Project Costs pursuant to the TDD Act and this Agreement.

**"TDD Order"** means the Judgment Order and Decree entered by Hon. Gary Oxenhandler, Circuit Judge of the Circuit Court on October 3, 2013 as the same may be amended from time to time, establishing the District as a transportation development district and political subdivision pursuant to the TDD Act.

**"TDD Ordinance"** means Ordinance No. \_\_\_\_\_ adopted by the City Council of the City on \_\_\_\_\_, 2015 authorizing the execution and delivery of this Agreement by the City.

**"TDD Resolution"** means the resolution adopted by the Board of Directors of the District on \_\_\_\_\_, 2015 authorizing the execution and delivery of this Agreement by the District.

**"TDD Revenues"** means all sales tax revenues deposited by the City (including investment earnings thereon) in the Discovery Park Transportation Development District Trust Fund, provided that such revenues do not include (i) any amount paid under protest until the protest is withdrawn or resolved against the taxpayer, and (ii) any sum received by the City which is the subject of a suit or other claim communicated to the City which suit or claim challenges the collection of such sum.

**"TDD Sales Tax"** means the sales tax not to exceed one percent (1%) imposed by the District on the receipts from the sale at retail of all tangible personal property or taxable services at retail within the District if such property and services are otherwise subject to sales tax under Missouri law.

**"Transportation Project Costs"** means all costs necessary or incidental to plan, acquire, finance, develop, design, construct and maintain the Transportation Project, including, without limitation, (a) costs of all estimates, studies, surveys, plans, drawings, reports, tests, specifications and other preliminary investigations of architects, appraisers, surveyors and engineers; (b) all professional service costs, including without limitation, architectural, engineering, legal, financial, planning or special services incurred; (c) costs of acquisition of right-of-way; (d) costs of demolition and clearing and grading of land; (e) costs of construction; (f) costs of maintaining, repairing and replacing the Transportation Project; and (g) costs of principal and interest on TDD Obligations, TDD Issuance Costs, capitalized interest on TDD Obligations and funding of debt service reserves or other reserves necessary to market the TDD Obligations.

**"Transportation Project"** means the improvements included in the TDD Project List attached as **Exhibit 1** and **Exhibit C** to the TDD Order. The City shall have no obligation to pay for or participate in the construction of a Transportation Project except as provided in this Agreement. The Transportation Project shall at all phases of the build out/construction of the project maintain a Level of Service "C" and shall satisfy all City and MoDOT requirements for adequate traffic circulation for the development at each stage of completion.

## **Section 1.2. Rules of Interpretation**

(a) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context indicates otherwise, words importing the singular number shall include the plural and vice versa, and words importing persons shall include firms, associations and corporations, including public bodies, as well as natural persons.

(b) All references in this Agreement to designated “*Articles*,” “*Sections*” and other subdivisions are, unless otherwise specified, to the designated Articles, Sections and subdivisions of this instrument as originally executed. The words “*herein*,” “*hereof*,” “*hereunder*” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) Whenever an item or items are listed after the word “*including*,” such listing is not intended to be a listing that excludes items not listed.

## **ARTICLE II**

### **REPRESENTATIONS**

**Section 2.1. Representations by the City.** The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) The City is a municipal corporation and political subdivision duly organized and existing under the laws of the State of Missouri and its charter.

(b) The City, acting in its capacity as a “local transportation authority” within the meaning of Section 238.202.1(4) of the TDD Act, has lawful power and authority to enter into this Agreement and to carry out its obligations hereunder. By proper action of its City Council, the City has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(c) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Agreement by the City will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the City is a party or by which it or any of its property is bound, or any order, rule or regulation applicable to the City or any of its property of any court or governmental body, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City under the terms of any instrument or agreement to which the City is a party.

(d) No official or employee of the City has any conflicting interest, financial or otherwise, in the Transportation Project or in the transactions contemplated hereby.

(e) There is no litigation or proceeding pending or, to the City’s knowledge, threatened against the City affecting the right of the City to execute or deliver this Agreement or the ability of the City to comply with its obligations under this Agreement.

(f) For purposes of the City administering its Zoning Code on property within the District, the City shall consider this Agreement to be in satisfaction of the obligation of the Owner to execute a “development agreement” as contained in Ordinance 18043, specifically Paragraph 6 of Exhibit



D, Paragraph 6 of Exhibit E, Paragraph 6 of Exhibit F, Paragraph 6 of Exhibit G, and Paragraph C of Exhibit H thereof.

**Section 2.2. Representations by the District.** The District makes the following representations as the basis for the undertakings on its part herein contained:

(a) The District is a political subdivision, duly organized and existing under the laws of the State of Missouri.

(b) The District has lawful power and authority to enter into this Agreement and to carry out its obligations hereunder. By proper action of its Board of Directors, the District has been duly authorized to execute and deliver this Agreement, acting by and through its duly authorized officers.

(c) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Agreement by the District will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the District is a party or by which it or any of its property is bound, or any order, rule or regulation applicable to the District or any of its property of any court or governmental body, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the District under the terms of any instrument or agreement to which the District is a party.

(d) The members of the Board of Directors and the officers of the District are all representatives of the Owner as required by Section 238.220.2(1) of the TDD Act. There is no litigation or proceeding pending or threatened against the District affecting the right of the District to execute or deliver this Agreement or the ability of the District to comply with its obligations under this Agreement.

**Section 2.3. Representations by the Developer.** The Developer makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Developer is a limited liability company, duly organized and existing under the laws of the State of Missouri.

(b) The Developer has lawful power and authority to enter into this Agreement and to carry out its obligations hereunder. By proper action of its members the Developer has been duly authorized to execute and deliver this Agreement.

(c) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the performance of or compliance with the terms and conditions of this Agreement by the Developer will not conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute a default under, any mortgage, deed of trust, lease or any other restriction or any agreement or instrument to which the Developer is a party or by which it or any of its property is bound, or any order, rule or regulation applicable to the Developer or any of its property of any court or governmental body, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Developer under the terms of any instrument or agreement to which the Developer is a party.

(d) There is no litigation or proceeding pending or, to the Developer's knowledge, threatened against the Developer affecting the right of the Developer to execute or deliver this Agreement or the ability of the Developer to comply with its obligations under this Agreement.

## ARTICLE III

### TDD REVENUES

**Section 3.1. Deposit of TDD Revenues.** The Missouri Department of Revenue will collect the TDD Sales Tax and remit it to the District. The District shall deposit TDD Revenues into a special trust account established in the custody of the District designated as the “*TDD Revenues Fund – Discovery Park Transportation Development District*” (the “**TDD Revenues Fund**”) and apply such funds as described herein. The District shall invest any or all of the moneys deposited into the TDD Revenues Fund in accordance with applicable laws relating to investment of District funds in such investments as determined by the District, in its sole discretion. All interest earned upon the balance in the TDD Revenues Fund shall be credited to the TDD Revenues Fund. The District shall keep accurate records of the amount of Discovery Park TDD Revenues remitted to it and such records shall be open to the inspection of officers of the City.

**Section 3.2. Application of TDD Revenues.** On the first day (and if such day is not a Business Day, the next succeeding Business Day) of each calendar month during the term of this Agreement, the District will disburse the proceeds of the TDD Revenues on deposit in the TDD Revenues Fund as follows:

- (a) First, to reimburse the District Formation Costs and
- (b) Second, to the treasurer of the District for deposit in an operating account for payment of District Administrative Costs in an amount, which together with the prior transfer for the calendar year, will equal no more than \$50,000 less the amount on deposit in the operating account at the close of the preceding calendar year; and
- (c) Third, the remainder shall be disbursed, in the following order of priority:
  - (i) transfer to the general fund of the City the amount necessary to fully reimburse the City for payment of City Administrative Costs, if any;
  - (ii) transfer to the treasurer of the District the amount necessary to reimburse the District Extraordinary Costs, if any; and
  - (iii) payment of Transportation Project Costs and payment of the scheduled principal and interest on any TDD Obligations.
- (d) Fourth, after payment in full of the District Formation Costs, Transportation Project Costs, the TDD Obligations, the City Administrative Costs, the District Administrative Costs and the District Extraordinary Costs all remaining funds shall be transferred to a segregated account of the District designated as the *Discovery Park TDD Project Maintenance Fund*, which funds shall be utilized to provide reimbursement of costs incurred by the District in providing maintenance of Transportation Projects until such time the City has assumed responsibility for maintenance of any Transportation Project as provided in this Agreement. After the City has assumed responsibility for maintenance of any Transportation Project, the *Discovery Park TDD Project Maintenance Fund* and any funds therein shall be transferred to the City, who shall utilize such fund for similar maintenance purposes.

The District has adopted (or will adopt within 15 days after execution of this Agreement) a budget for its current Fiscal Year which appropriates the TDD Revenues collected during such Fiscal

Year for application as provided in this Section. The District hereby covenants and agrees that the officer of the District at any time charged with the responsibility of formulating budget proposals is hereby directed to include in the budget proposal submitted to the District Board of Directors for each Fiscal Year a request for an appropriation of the TDD Revenues collected during such Fiscal Year for deposit in the TDD Revenues Fund. The District shall promptly deliver to the City a copy of its annual budget.

In the event the District Board of Directors has failed to adopt a budget by the first day of each fiscal year, the District shall be deemed to have adopted a budget for such fiscal year which provides for application of the TDD Revenues collected in such fiscal year in accordance with the budget for the prior fiscal year.

**Section 3.3. No Other Bonds or Uses of TDD Revenues.** During the term of this Agreement the District shall not issue any indebtedness or obligations secured by the Discovery Park TDD Revenues (except for TDD Obligations) and shall not pledge or otherwise encumber the Discovery Park TDD Revenues except as provided in this Agreement.

**Section 3.4. No Repeal or Reduction of Rate of TDD Sales Tax.** The Developer and District covenant and agree each will not cause or seek to cause the District to repeal or reduce the rate of the TDD Sales Tax during the term of this Agreement.

**Section 3.5. Termination of District.** Upon determination by the District that the costs of the Transportation Project, including Transportation Project Costs, the District Formation Costs, the District Administrative Costs, the City Administrative Costs, the District Extraordinary Costs, and the TDD Obligations, have been paid in full, or that sufficient funds are on deposit in the TDD Revenues Fund such that such will be paid in full, and all Transportation Projects have been transferred to the State of Missouri or City, as may be applicable, the District shall provide written notice of the termination of the District (a “**Notice of Termination**”) to the City. The District shall then proceed to follow and comply with all provisions of the TDD Act necessary to abolish the District.

**Section 3.6. Dedication of Transportation Project.**

(a) To the extent TDD Sales Tax, other TDD Revenues, or other sources of funds are available, Developer and District agree to construct the Transportation Project.

(b) Upon completion and submission for dedication of the local portion of the Transportation Project relating to the City’s street system, the City shall proceed with the necessary steps for acceptance of such portions of such project intended for dedication to the City in accordance with the ordinances and regulations of the City and the City’s normal procedures for acceptance of such project

(c) The City shall have no obligation to accept any Transportation Project, or portion thereof, submitted for dedication to the City until the District provides lien waivers and any other documentation necessary to show that the District is able to transfer free and clear title to any Transportation Project, or portion thereof, free of all claims and encumbrances.

**Section 3.7. Title to Transportation Project; Maintenance.**

(b) Title to the State portion of the Transportation Project (as designated by the Commission) and all real estate (or interests therein) upon which the State portion of the Transportation Project is or will be located shall be vested in the name of the State of Missouri.

(c) Upon dedication and acceptance of a Transportation Project to and by the City, title to the local portion of the Transportation Project and all real estate (or interests therein) upon which the local portion of the Transportation Project is or will be located shall be vested in the name of the City.

(d) After acceptance of a Transportation Project dedicated to the City, the City shall at all times be responsible for the maintenance of such accepted Transportation Project.

**Section 3.8. Limitation on Powers of the District.**

(a) The District shall not be permitted to collect business license taxes on its own behalf or to charge and collect tolls or fees for the use of the Transportation Project.

(b) The District may not limit and control access from adjacent property to the Transportation Project.

(c) The District may exercise such other implied powers necessary or convenient for the District to accomplish its purposes which are not inconsistent with its express powers, but subject to this Agreement.

**Section 3.9. Governmental Approvals.** The parties agree to use their best efforts to cooperate with each other to obtain all necessary permits from and approvals by the City and the Commission in connection with the Transportation Project.

**Section 3.10. Reimbursement of Owner for Transportation Project Costs.** The District may reimburse Owner for any amounts incurred by Owner which would be a Transportation Project Cost if expended by the District, provided all such costs reimbursed by the District shall be certified by the Owner by affidavit to have been actually expended and accompanied by documentation of such expenditures. For purposes of Section 3.2 of this Agreement, such reimbursements to Owner shall be considered a TDD Obligation, but shall be subordinate to all other TDD Obligations. Transportation Projects **and Transportation Project Costs**, which are reimbursed by the District under this Section, shall comply with all applicable laws and regulations regarding the design and construction of public works by a political subdivision.

**ARTICLE IV**

**COVENANTS REGARDING OPERATIONS OF THE DISTRICT**

**Section 4.1. Open Meetings and Records of the District.** The District will comply with (i) Chapter 610 of the Revised Statutes of Missouri, as amended, as it pertains to political subdivisions such as the District and (ii) the Open Meetings and Records Policy adopted by the District in compliance therewith. The District will provide notice of the time, date and place of each meeting and the tentative agenda of such meeting as provided in its Open Meetings and Records Policy to the City.

**Section 4.2. Records.** The City covenants that it will keep proper books of record and account in which full, true and correct entries will be made of all dealings or transactions of or in relation to deposits and payments of the TDD Revenues in accordance with generally accepted accounting principles consistently applied.

**Section 4.3. District Audit.** The District will cause to be performed, at the District's expense, an annual audit of the District and will, within 180 days of the end of the District's fiscal year (i)

present such audit at a regular or special meeting at the District for approval by the District and (ii) send a copy of such audit to the City. The City shall cooperate with the District regarding performance of such audit by the City's auditors.

**Section 4.4. District Budget.** Not later than 60 days prior to the beginning of the District's fiscal year, the District will prepare or cause to be prepared, at the District's expense, an annual budget for the District and present such budget, following review and comment by the Director of Finance of the City, not later than December 31 at a meeting of the District's board of directors for approval by the District. The District hereby directs the officer of the District at any time charged with the responsibility of formulating the budget proposal to include in the budget proposal submitted to the District Board of Directors for each Fiscal Year a request for an appropriation of the Discovery Park TDD Revenues collected during such Fiscal Year for application as provided in this Agreement.

**Section 4.5. City Advisory Member of the Board of Directors of the District.** Though Board members are required to be representatives of the Owner pursuant to Section 238.220.2[1] RSMo, the District shall permit the City to appoint at least one advisor to its board of directors having the authority and rights set forth in Section 238.220.4 of the TDD Act.

## ARTICLE V

### DEFAULTS AND REMEDIES

**Section 5.1. Remedies on Default.** Unless performance is waived by the party for whose benefit a condition or obligation is intended, if any party to this Agreement fails to satisfy its obligations under this Agreement, the non-defaulting party may, then or at any time thereafter, and while such default continues, take any one or more of the following actions:

(a) by mandamus or other suit, action or proceedings at law or in equity, to enforce its rights against the defaulting party and their officers, agents and employees, and to require and compel duties and obligations required by the provisions of this Agreement; or

(b) take any other action at law or in equity to enforce this Agreement;

provided that in no event shall the City shall have any liability in damages, costs (including attorneys' fees) or any other monetary liability to Owner or District or any affiliate of Owner or District, any person claiming through Owner or District, or to their respective successors, assigns, heirs and personal representatives in respect of any suit, claim, or cause of action arising out of this Agreement or any of the actions or transactions contemplated herein.

**Section 5.2. Rights and Remedies Cumulative.** The rights and remedies reserved hereunder and those provided by law shall be construed as cumulative and continuing rights. Not one of them shall be exhausted by the exercise thereof on one or more occasions. The City and the District shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity.

**Section 5.3. Waiver of Breach.** No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by the District of any covenant, agreement or undertaking by the District, the City may nevertheless accept from the District any payment or payments hereunder without in any way waiving the City's right to exercise any

of its rights and remedies as provided herein with respect to any such default or defaults of the District which were in existence at the time when such payment or payments were accepted by the City.

**ARTICLE VI**

**MISCELLANEOUS PROVISIONS**

**Section 6.1. Actions Contesting the Validity and Enforceability of the TDD Revenues.** In the event a third party brings an action against the District or the District's officials, agents, employees or representatives contesting the formation of the District, or the validity or legality of the TDD Sales Tax, or this Agreement, the City may, at its option, assume the defense of such claim or action with counsel of the City's choosing. The parties expressly agree that so long as no conflicts of interest exist between them with regard to the handling of such litigation, the same attorney or attorneys may simultaneously represent the City and the District in any such proceeding; provided, the District and its counsel shall consult with the City throughout the course of any such action and the District shall pay all reasonable and necessary costs incurred by the City in connection with such action as District Extraordinary Costs. All cost of any such defense, incurred by the City, shall be deemed to be City Administrative Costs.

**Section 6.2. Notices.** All notices or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when mailed by first class, registered or certified mail, postage prepaid, addressed as follows:

**To the City:**

City of Columbia, Missouri  
Finance Department  
701 East Broadway  
Columbia, MO 65201  
Attention: Finance Director

with a copy to:  
City of Columbia, Missouri  
Law Department  
701 East Broadway  
Columbia, MO 65201  
Attn: City Counselor

**To the District:**

Discovery Park Transportation Development District  
\_\_\_\_\_  
Columbia, MO 65203  
Attention: Chairman of the Board of Directors

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**To the Developer:**

P1316, LLC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All notices given by first class, certified or registered mail as aforesaid shall be deemed duly given as of the date they are so mailed. A duplicate copy of each notice or other communication given hereunder by any party hereto shall also be given to the other parties. The City and the District may from time to time designate, by notice given hereunder to the other such parties, another address to which subsequent notices or other communications shall be sent.

**Section 6.3. Immunity of Officers, Employees and Members of the City and the District.**

No recourse shall be had for the payment of the principal of or premium or interest on any TDD Obligations or for any claim based thereon or upon any representation, obligation, covenant or agreement in this Agreement contained against any past, present or future officer, member, employee, director or agent of the City or the District, or, respectively, of any successor public or private corporation thereto, as such, either directly or through the City or the District, or respectively, any successor public or private corporation thereto, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, employees, directors or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement.

**Section 6.4. Hold Harmless.** Any party constructing or who has constructed a Transportation Project, at its sole cost and expense, hereby agrees to indemnify, protect, release, defend (with counsel acceptable to the City) and hold harmless the City, its municipal officials, elected officials, boards, commissions, officers, employees, attorneys, and agents from and against any and all causes of action, claims, demands, all contractual damages and losses, economic damages and losses, all other damages and losses, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense, arising out of either such party's breach of this Agreement, violation of any law or regulation governing the construction of public works by a political subdivision or any action or inaction of such party, its agents, representatives, employees, contractors, subcontractors or any other person for whose acts such party may be liable, which results in injury to any third party, except to the extent such injury arises from or is caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. The indemnification, duty to defend and hold harmless obligations set forth in this Section shall survive for a period of five (5) years from the date of City acceptance of such Transportation Project.

**Section 6.5. Amendments.** This Agreement may be amended from time to time by the mutual agreement of the Board of Directors of the District and the City Council of the City and Owner.

**Section 6.6. Assignment.** Except as provided herein hereof, this Agreement may be assigned only with the prior written consent of the non-assigning parties.

**Section 6.7. Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 6.8. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri. In interpreting this Agreement, the provisions of the TDD Act shall prevail over any conflicting provisions of other Missouri laws.

**Section 6.9. Effective Date; Termination Date.** This Agreement shall be in effect from and after its execution by the parties hereto and shall remain in effect until abolishment of the District pursuant to the TDD Act and the provisions hereof.

**Section 6.10. Execution in Counterparts.** This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

[The remainder of this page left intentionally blank. Signature pages follow]



**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective officers or officials.

Executed by the City on \_\_\_\_\_, 2015.

**CITY OF COLUMBIA, MISSOURI**

By \_\_\_\_\_  
Name: Mike Matthes  
Title: City Manager

ATTEST:

\_\_\_\_\_  
Name: Sheela Amin  
Title: City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Name: Nancy Thompson  
Title: City Counselor

Executed by the District on \_\_\_\_\_, 2015.

**DISCOVERY PARK  
TRANSPORTATION DEVELOPMENT  
DISTRICT**

By \_\_\_\_\_  
Name:  
Title:

ATTEST:

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

Executed by the Developer on \_\_\_\_\_, 2015.

**P1316, LLC**

By \_\_\_\_\_  
Name:  
Title:

ATTEST:

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

**ACKNOWLEDGMENT**

STATE OF MISSOURI        )  
  ) SS.  
COUNTY OF BOONE        )

On this \_\_\_\_\_, 2015, before me appeared City Manager Mike Matthes to me personally known, who being by me duly sworn, did say that he is the City Manager of the **CITY OF COLUMBIA, MISSOURI**, a municipal corporation and political subdivision organized and existing under the laws of the State of Missouri, and that said instrument was signed in behalf of said City by authority of its City Council and said individual acknowledged said instrument to be the free act and deed of said City.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public - State of Missouri

(SEAL)

My commission expires: \_\_\_\_\_.

**ACKNOWLEDGMENT**

STATE OF MISSOURI        )  
  ) SS.  
COUNTY OF BOONE        )

On this \_\_\_\_\_, 2015, before me appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, did say that (s)he is the \_\_\_\_\_ of the **DISCOVERY PARK TRANSPORTATION DEVELOPMENT DISTRICT**, a political subdivision organized and existing under the laws of the State of Missouri, and that said instrument was signed in behalf of said District by authority of its Board of Directors and said individual acknowledged said instrument to be the free act and deed of said District.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public - State of Missouri

(SEAL)

My commission expires: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF MISSOURI        )  
  ) SS.  
COUNTY OF BOONE        )

On this \_\_\_\_\_, 2015, before me appeared \_\_\_\_\_ (name of manager or member), to me personally known, who being by me duly sworn, did say that (s)he is the \_\_\_\_\_ of **P1316, LLC**, a Missouri limited liability company, and that said instrument was signed in behalf of said limited liability company by authority of its members and said individual acknowledged said instrument to be the free act and deed of said company.

**IN TESTIMONY WHEREOF**, I have hereunto affixed my hand and notarial seal at my office in the State and County aforesaid, on the day and year hereinabove first written.

\_\_\_\_\_  
Notary Public - State of Missouri

(SEAL)

My commission expires: \_\_\_\_\_

**EXHIBIT 1**

**TRANSPORTATION PROJECT (Exhibit C to TDD Order)**

**EXHIBIT C  
TO  
JUDGMENT, ORDER, AND DECREE  
GRANTING PETITION FOR THE FORMATION OF  
DISCOVERY PARK TRANSPORTATION DEVELOPMENT DISTRICT  
P1316 LLC, PETITIONER, AND MISSOURI HIGHWAYS AND  
TRANSPORTATION COMMISSION,  
AND THE CITY OF COLUMBIA, RESPONDENTS**

**Transportation Projects to be Constructed by the District**

- | <u>Item No.</u> | <u>Description</u>  |
|-----------------|---|
| 1.              | Construction of Discovery Park Connector, which is a new access road that will run from the West side of Discovery Parkway, in a general Northerly direction through Discovery Park Subdivision Plat 1, and then connect to Ponderosa Street, and will also run from the South side of Discovery Parkway, in a general Southerly direction through the Discovery Park Subdivision located on the South side of Discovery Parkway. |
| 2.              | Construction of a new public street (currently unnamed and being called Public Street #1), which is a new access road that is located on the North side of Discovery Park Connector, and will connect to Discovery Park Connector at both ends of the street.   |
| 3.              | Construction of a new public street (currently unnamed and being called Public Street #2), which is a new access road that is located on the North side of Discovery Parkway and Discovery Park Connector, and will connect to Discovery Parkway on the West end, and connect to Discovery Park Connector on the East end.  |
| 4.              | Construction of two traffic circles along Discovery Park Connector.   |
| 5.              | Construction of surface water drainage collection facilities for surface water drainage from streets, roads, sidewalks, and parking lots surrounding and within the District;   |
| 6.              | Payment for traffic studies and traffic impact studies required in order to complete the documentation necessary for the improvements set forth herein, subsequent to the formation of the District and approval of the improvements by the local transportation authority;   |





**EXHIBIT C**  
**TO JUDGMENT, ORDER, AND DECREE**  
**(continued)**

- | Item No. | Description  |
|----------|--|
| 7.       | Payment for costs expended in connection with the design of the above-described improvements, subsequent to the formation of the District and approval of the improvements by the local transportation authority;  |
| 8.       | Construction of a 12" C900 PVC water main from the existing terminus at Nifong Park along Ponderosa Street, Discovery Park Connector, and Discovery Parkway to the existing terminus at the Regional Catholic High School, totaling approximately 6,300 feet, and related appurtenances; said construction is an "authorized project" under Section 238.202.1(5), RSMo., as it is a related improvement due to alleviating the necessity of removing and replacing said roads in the future to install improvements to underground water lines along said roads. |
| 9.       | Construction of surface water drainage structures made reasonably necessary by the improvements described above, including all environmental protection measures required in order to avoid environmental damage as a result of surface water drainage from roads, roadway ditches, drives, transportation improvements, and other related structures and improvements, including mitigation costs, retaining walls, channel preservation devices, bio swale detentions, abutments, pipes, and related structures;   |
| 10.      | Payments required in order to acquire rights, permits, or necessary easements for the construction of the above-referenced improvements and Projects, subsequent to the formation of the District and approval of the improvements by the local transportation authority;  |
| 11.      | Upgrading and improving traffic surveillance control equipment, computerized signal systems and motorists information systems to provide an integrated traffic control system which signal inter-connect to provide for better traffic progression where Discovery Parkway will intersect with Discovery Park Connector;   |
| 12.      | Payments for the acquisition of necessary rights-of-way easements, aesthetic improvements, signage, traffic signals, and specialty lighting reasonably required in order to construct and implement the projects described above, subsequent to the formation of the District and approval of the improvements by the local transportation authority;  |



**EXHIBIT C**  
**TO JUDGMENT, ORDER, AND DECREE**  
**(continued)**

- | Item No. | Description   |
|----------|---|
| 13.      | Construction of additional traffic related improvements, including sidewalks, pedways, traffic signals, traffic islands, median improvements, and turn lanes adjacent to and within the District;   |
| 14.      | Acquisition of rights of way and construction of curb cuts and other access points around the perimeter of the District and adjacent to Ponderosa Street, Discovery Park Connector, Discovery Parkway, Public Street #1, and Public Street #2;  |
| 15.      | Payment of necessary civil engineering fees, professional fees, permit costs, and costs of obtaining federal and state licenses and permits reasonably required for the construction of the projects described herein;  |
| 16.      | Payment of all other professional fees, licenses, and costs reasonably related to and authorized by the Board of Directors of the District to be paid in connection with the construction of the foregoing improvements, as well as the establishment and operation of the District, and as permitted by the Act; |
| 17.      | Construction of improvements to Ponderosa Street running from the North line of Lot 1, then moving in a Southeasterly direction along the boundary line of Discovery Park Subdivision Plat 1;   |
| 18.      | Payment to Ameren UE for natural gas lines within the right-of-way of Ponderosa Street, Discovery Parkway, Discovery Park Connector, Public Street #1, and Public Street #2;  |
| 19.      | Construction of an access entrance roadway to the A. Perry Phillips Park from Ponderosa Street;   |
| 20.      | Construction of a roadway connecting the access entrances of the A. Perry Phillips Park;  |
| 21.      | Payments to Missouri Department of Natural Resources and the Army Corps of Engineers required in order to acquire permits for off-site mitigation of wetlands;  |
| 22.      | Construction of an extension and improvements to Discovery Parkway, such that it will connect to Rolling Hills Road.  |
| 23.      | Construction of an extension and improvements to East Gans Road, such that it will connect to Providence Road.  |

