

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH THE MONARCH-CHESTERFIELD LEVEE DISTRICT TO PROVIDE FOR IMPROVEMENTS TO THE MONARCH-CHESTERFIELD LEVEE; CONDITIONALLY AUTHORIZING THE ISSUANCE OF A TAX INCREMENT REVENUE NOTE IN A MAXIMUM PRINCIPAL AMOUNT NOT TO EXCEED \$13,344,651 FOR THE PURPOSE OF PAYING A PORTION OF THE REDEVELOPMENT PROJECT COSTS IN CONNECTION WITH SAID LEVEE IMPROVEMENTS; PRESCRIBING THE FORM AND DETAILS OF SAID NOTES AND THE COVENANTS AND AGREEMENTS MADE BY THE CITY TO FACILITATE AND PROTECT THE PAYMENT THEREOF; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City Council of the City, by ordinance, (i) established a Tax Increment Financing Commission (the "*TIF Commission*") pursuant to the Real Property Tax Increment Allocation Redevelopment Act, § 99.800, *et seq.*, RSMo (1994) (the "*TIF Act*"), (ii) upon recommendation of the TIF Commission, designated the Chesterfield Valley Area within the City as a "redevelopment area" and approved a "redevelopment plan" (as amended, the "*Redevelopment Plan*") pursuant to the TIF Act, and (iii) established the Chesterfield Valley Special Allocation Fund (the "*Special Allocation Fund*") for the payment of redevelopment project costs and obligations incurred in the payment thereof; and

WHEREAS, the Redevelopment Plan approves certain redevelopment project costs including reconstruction of and improvements to the existing Monarch-Chesterfield Levee (the "*Levee*") as needed to provide 500-year flood protection from the Missouri River; and

WHEREAS, the Monarch-Chesterfield Levee District (the "*Levee District*") has jurisdiction over the construction, maintenance, oversight and improvement of the Levee and drainage system which protects the Chesterfield Valley Area; and

WHEREAS, the City has responsibility to provide for the general health, safety and welfare of that portion of the Chesterfield Valley Area within the City. Further, the City has been designated by the Federal Emergency Management Agency ("*FEMA*") as flood plain manager and, to that end, has certain responsibilities to the entire flood plain within the Chesterfield Valley Area; recognizing that a breach of a portion of the Monarch-Chesterfield Levee (as occurred in 1993) imperils the property and persons of the City, the City desires to protect existing property and persons and enhance the economic viability of the Chesterfield Valley Area for the overall betterment of the City by undertaking certain obligations with the Levee District consistent with its obligations as defined under state and federal law; and

WHEREAS, the City and the Levee District entered into an Intergovernmental Cooperation Agreement on September 12, 1996, which was amended November 18, 1997 (collectively, the "*1996 Agreement*"). The 1996 Agreement provided for the issuance of three series of TIF Notes (the "*Prior Notes*") by the City to the Levee District to pay a portion of the costs of (i) bringing a portion of the Monarch-Chesterfield Levee up to the 500-year flood elevation (the "*Phase II Levee Improvements*"), (ii) installing internal storm water pumping stations, and (iii) providing wetland mitigation, and the 1996 Agreement is still being performed by both parties; and

WHEREAS, in coordination with the United States Army Corps of Engineers (the "*Corps*"), the Levee District proposes to make certain improvements to the Levee, including (i) the improvement of the Levee north of Interstate 64 to the 500-year flood protection level generally including (a) the improvement

of the existing Levee from Station 170 + 00 to 320 + 00 and from 380 + 00 to 467 + 00 to increase the Levee height by four to five feet, (b) the installation of seepage berms up to 300 feet in width, placement of a four-foot clay blanket on the riverside of the Levee and installation of stability berms on the river side and the protected side of the Levee, (c) the construction and realignment of the Levee to provide protection to Interstate 64 amounting to 3,400 feet of new levee including the construction of a new levee with a height of 20 to 25 feet and the installation of stability berms on the riverside and the protected side of the Levee, (d) acquisition of materials, borrow areas and easements, (e) the improvement of pump stations to accommodate Levee construction, and (f) the relocation of the electric lines at the sand plant; (ii) the construction of a toe access road for maintenance and monitoring; and (iii) the construction of additional improvements in connection with the Phase II Levee Improvements at a cost in excess of the \$3.4 million allotted for the Phase II Levee Improvements (collectively the "*Phase III Levee Improvements*" or the "*Project*"); and

WHEREAS, the City and the Levee District desire to cooperate and to take the reasonable steps necessary to facilitate the prompt design, commencement and completion of the Phase III Levee Improvements; and

WHEREAS, the City and the Levee District desire to jointly finance the costs incurred in connection with the Phase III Levee Improvements by the issuance by the Levee District of approximately \$17,000,000 principal amount Levee District Improvement Bonds, Series 1999 (the "*Series 1999 Bonds*") and by the issuance by the City of the hereinafter-approved TIF Note, all in accordance with the terms and conditions set forth in the herein-approved Intergovernmental Cooperation Agreement (the "*Agreement*"); and

WHEREAS, the City Council hereby determines that the fulfillment generally of the Agreement are in the best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes specified in the Redevelopment Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, MISSOURI, AS FOLLOWS:

Section 1. Definitions of Words and Terms. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement. In addition to the foregoing and other words and terms defined elsewhere in this Ordinance, the following capitalized words and terms, as used in this Ordinance, shall have the following meanings:

"*Act*" means Sections 99.800 to 99.865, inclusive, of the Revised Statutes of Missouri, as amended.

"*Additional TIF Obligations*" means any additional parity TIF Obligations described in and issued pursuant to **Section 9** of this Ordinance.

"*Agreement*" means the Intergovernmental Cooperation Agreement between the City and Levee District authorized by this Ordinance in substantially the form of **Exhibit A**.

"*Approving Ordinance*" means Ordinance numbered 953 of the City dated October 17, 1994, pertaining to the approval of the Redevelopment Plan and creation of the Redevelopment Project Area for Chesterfield Valley Tax Increment Financing District.

“*Business Day*” means a day on which (i) the New York Stock Exchange is not closed and (ii) none of the following are required or authorized to close: banks or savings and loan associations located in the City.

“*City*” means the City of Chesterfield, Missouri, and its successors or assigns.

“*City Engineer*” means the City Engineer of the City of Chesterfield, Missouri, or any other officer as may be assigned, from time to time, to the duties of that office.

“*Deficiency*” means the difference between the interest and principal payment scheduled to be paid on a Payment Date and the amount then available in the Special Allocation Fund to satisfy the amount owed by the City.

“*Finance Director*” means the City's Director of Finance and Administration or such other officer of the City authorized, from time to time, to act as the chief financial officer and treasurer by the City.

“*Fund Ordinance*” means Ordinance numbered 954 of the City dated October 17, 1994, adopting tax increment financing.

“*Future Priority TIF Obligations*” shall have the meaning given that term in **Section 6** of this Ordinance.

“*Levee District*” means the Monarch-Chesterfield Levee District, a public corporation duly authorized and existing under the laws of the State of Missouri.

“*Maturity Date*” means the earlier of: (i) the date of repayment of this Note, (ii) the date of payment in full of the Levee District's Series 1999 Bonds or any bonds refunding the same, or (iii) December 31, 2017.

“*Net Proceeds*” on deposit in the Special Allocation Fund are those payments in lieu of taxes (as that term is defined in section 99.805(10) of Missouri Revised Statutes) attributable to the increase in the current equalized assessed valuation of each taxable lot, block, tract, or parcel of real property in the area of the Project and any applicable penalty and interest over and above the certified total initial equalized assessed value (as that term is used and described in sections 99.845.1 and 99.855 of Missouri Revised Statutes) of each such unit of property in the area of the Project and as paid to the City's Finance Director by the St. Louis County Collector of Revenue during the term of the Plan and the Project; and, subject to annual appropriation, fifty percent (50%) of the total additional revenues from taxes, penalties and interest which are imposed by the City or other taxing districts (as that term is defined in section 99.805(16) of Missouri Revised Statutes) and which are generated by economic activities within the area of the Project over the amount of such taxes generated by economic activities within the area of the Project in the calendar year 1993 and paid into the Special Allocation Fund, but excluding personal property taxes, taxes imposed on sales or charges for sleeping rooms paid by transient guests of hotels and motels, taxes levied pursuant to section 70.500 Missouri Revised Statutes, or for the purpose of public transportation taxes levied pursuant to section 94.660, Missouri Revised Statutes, licenses, fees or special assessments, other than payments in lieu of taxes and penalties and interest thereon, and less the costs of collection; and fifty percent (50%) of the net new revenues from the utility tax imposed by the City and generated by utility use within the area of the Project over the amount of such revenues generated within the

area of the Project in the calendar year 1993; and to the extent available under the Act, up to fifty percent (50%) of the new state revenues (as that term is defined in section 99.845.8 Missouri Revised Statutes), estimated for the businesses within the area of the Project and identified by the City in the application required by section 99.845.10 Missouri Revised Statutes, if any, over and above the amount of such taxes reported by businesses within the area of the Project in the calendar year 1993. Net Proceeds do not include any such amount paid under protest until the protest is withdrawn or resolved against the taxpayer, nor do Net Proceeds include 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 sums or their payment to the Levee District or its successors in interest.

"Note" or *"TIF Note"* means the Tax Increment Revenue Note (Chesterfield Valley Redevelopment Project), Series 200__ of the City, in an aggregate principal amount not to exceed \$13,344,651, authorized and issued pursuant to this Ordinance.

"Original Purchaser" means the Levee District.

"Owner", when used with respect to the TIF Note, means the holder of the TIF Note.

"Payment Dates" means each February 15 and August 15, commencing on the first February 15 or August 15 following the date that is three years after the date of issuance of the Levee District's Series 1999 Bonds, or if any such day is not a Business Day, the first Business Day thereafter.

"Prior Notes" shall have the meaning given that term in the Agreement.

"Project" means the acquisition, construction and installation of the Phase III Levee Improvements, as that term is defined in the Agreement and described in Exhibit A of the Agreement and the recitals hereto.

"Redevelopment Plan" means the Redevelopment Plan for Chesterfield Valley Tax Increment Financing District, City of Chesterfield, Missouri, dated August 17, 1994, as amended.

"Redevelopment Project Area" means that area legally described as a redevelopment project area in the Redevelopment Plan approved pursuant to the Approving Ordinance.

"Redevelopment Project Costs" means those redevelopment project costs, as defined in the Act, that may be paid financed through tax increment financing and which the City has provided for under the Redevelopment Plan.

"Series 1999 Bonds" means the Levee District's approximately \$17,000,000 principal amount Levee District Improvement Bonds, Series 1999, the proceeds of which shall be used to fund the Phase III Levee Improvements as described in the Agreement.

"Special Allocation Fund" means the fund by that name created by Section 4 of the Fund Ordinance.

"State" means the State of Missouri.

"TIF Obligations" shall have the meaning given that term in Section 6 of this Ordinance.

Section 2. Ratification of Plan. The City Council hereby ratifies and confirms its approval of the Redevelopment Plan. The City Council further finds and determines that it is necessary and desirable to enter into the Intergovernmental Cooperation Agreement with the Levee District in order to continue implementation of the redevelopment of the Chesterfield Valley Area and in fulfillment generally of the Plan.

Section 3. Authorization of Agreement. The City Administrator is hereby authorized and directed to execute, on behalf of the City, the Intergovernmental Cooperation Agreement between the City and the Levee District, and the City Clerk is hereby authorized and directed to attest to the Agreement and to affix the seal of the City thereto. The Agreement shall be in substantially the form attached hereto as **Exhibit A**, which form is hereby approved by the City Council, with such changes therein as shall be approved by the officers of the City executing the same.

Section 4. Authorization of TIF Note. There is hereby authorized and directed to be issued the Tax Increment Revenue Note (Chesterfield Valley Redevelopment Project), Series 200__ of the City (the "TIF Note") in an aggregate original principal amount not to exceed Thirteen Million Three Hundred Forty-Four Thousand Six Hundred Fifty-One and No/100 Dollars (\$13,344,651.00) for the purpose of paying a portion of those Project costs determined to be Redevelopment Project Costs in connection with the Redevelopment Plan, as provided in this Ordinance and the Agreement. Upon the fulfillment of the conditions precedent set forth in the Agreement, the Mayor is authorized and directed to execute and deliver on behalf of the City the TIF Note in substantially the form set forth in **Exhibit B** to the Agreement, and the City Clerk is hereby authorized and directed to attest to said Note and to affix the seal of the City thereto.

Section 5. Security for TIF Note. The TIF Note shall be a special obligation of the City payable solely from, and, subject to the terms of the Agreement, secured as to the payment of principal and interest by a pledge of, the Net Proceeds deposited in the City's Special Allocation Fund, and the taxing power of the City is not pledged to the payment of the TIF Notes either as to principal or interest. The TIF Note shall not be or constitute a general obligation of the City, nor shall it constitute an indebtedness of the City within the meaning of any constitutional, statutory or charter provision, limitation or restriction. EXCEPTED AS PROVIDED IN SECTION 15 HEREOF, THE OBLIGATIONS OF THE CITY WITH RESPECT TO THE TIF NOTE SHALL TERMINATE ON DECEMBER 31, 2017, WHETHER OR NOT THE PRINCIPAL AMOUNT HAS BEEN PAID IN FULL.

Section 6. Description of TIF Note. Upon fulfillment of the conditions set forth in the Agreement, the TIF Note shall be issued in an aggregate principal amount not to exceed \$13,344,651, subject to abatement in accordance with the Agreement. The TIF Note shall be dated the date of its execution and delivery, and, subject to prepayment, shall mature and expire on the Maturity Date. Simple interest shall accrue on unpaid principal of the TIF Note at a rate equal to the net interest cost of the Series 1999 Bonds. Payments of the principal of and interest on the TIF Note shall be made by the City solely from funds on deposit in the City's Special Allocation Fund and from no other source semi-annually on February 15 and August 15, but in no event shall the City be obligated, by the terms of the TIF Note or otherwise, to make such payments of principal and interest in an amount in excess of the funds available for such payments from the Special Allocation Fund. The TIF Note shall be subordinate to (i) the Prior Notes, (ii) all other tax increment financing obligations of the City ("*TIF Obligations*") outstanding as of the date of this Agreement (including any future TIF Obligations refunding the such currently outstanding TIF Obligations), and (iii) any future TIF Obligations in an aggregate principal amount of up to Eighteen Million Dollars (\$18,000,000) ("*Future Priority TIF Obligations*").

Section 7. Method and Place of Payment of TIF Note. The principal of and interest on the TIF Note shall be payable in any coin or currency which, on the respective dates of payment thereof, in legal tender for the payment of debts due the United States of America. Payment shall be made by the Finance

Director at the offices of the City on each Payment Date upon presentation of the TIF Note by a duly authorized representative of Owner. Upon payment of interest and principal and the notation upon the payment ledger of the TIF Note, the Finance Director shall enter the amount paid and outstanding balance on its books which shall be rebuttably presumptive evidence of the principal amount outstanding on the TIF Note.

Section 8. Transfer and Assignment. The TIF Note is being issued to the Original Purchaser pursuant to the Agreement. The TIF Note is not transferable or assignable except upon the express written permission of the City and only upon such terms and conditions the City, in its sole discretion, places upon any such transfer or assignment.

Section 9. Authorization of Additional TIF Obligations. Subject to the limitations set forth in the Agreement, the City may issue, in addition to Future Priority TIF Obligations, TIF Obligations on a parity with the TIF Note ("*Additional TIF Obligations*") under the following circumstances:

(a) Before any Additional TIF Obligations shall be issued under the provisions of this Section, the City shall adopt an ordinance authorizing the issuance of such Additional TIF Obligations, fixing the amount and terms thereof pursuant to the Agreement; and

(b) Such Additional TIF Obligations shall be executed substantially in the form and manner set forth herein; and

(c) The City provides the Levee District with fifteen days' written notice of its election to issue the Additional TIF Obligations; AND EITHER

(ii) At the time of issuance of such Additional TIF Obligations, the ratio of (x) all sums deposited to the Special Allocation Fund over the twelve-month period ending on the date of issuance of such Additional TIF Obligations to (y) the aggregate amount of principal and interest the City is obligated to pay on all then-outstanding TIF Obligations (including the TIF Note) during the twelve-month period commencing on the date of issuance of such Additional TIF Obligations is equal to or greater than 1.2:1 ($x:y \geq 1.2:1$); OR

(iii) Additional TIF Obligations are issued in connection with a redevelopment project consisting of the construction of at least one hundred thousand square feet of building improvements on a parcel or parcels under common ownership or control; *provided that* interest on said Additional TIF Obligations shall not be payable from the Special Allocation Fund until such time that monies attributable to said redevelopment project are deposited in the Special Allocation Fund.

Section 10. Funds and Accounts. The creation and establishment in the treasury of the City of the following funds and accounts is hereby ratified: Chesterfield Valley Special Allocation Fund of the City of Chesterfield (the "*Special Allocation Fund*"), and within the Special Allocation Fund, a PILOTs Account and an Economic Activity Tax Account.

Section 11. Administration of Funds and Accounts. The funds and accounts established, or the establishment of which was ratified, pursuant to Section 4 of the Fund Ordinance and Section 10 hereof shall be maintained and administered by the City solely for the purposes and in the manner as provided in this Ordinance so long as any portion of the TIF Note remains outstanding hereunder.

Section 12. Special Allocation Fund. Pursuant to the Act and this Ordinance, the Finance Director shall deposit all Net Proceeds into the Special Allocation Fund.

Section 13. Application of Moneys in the Special Allocation Fund. So long as any of the TIF Obligations remain outstanding, the Finance Director shall, on Payment Dates administer and allocate the moneys held in the PILOTs Account and, subject to annual appropriation by the City, the Economic Activity Tax Account as follows:

(a) *Fees and Expenses.* There shall first be paid to the City or its payees any fees and expenses incurred by the City incidental to the Redevelopment Plan or the TIF Obligations; *provided that* such amount shall not exceed the sum of \$100,000 during any calendar year.

(b) *Payment of TIF Notes.* There shall next be paid to the Owner an amount equal to the interest and principal then due pursuant to the TIF Note.

(c) *Payment of Deficiency.* There shall next be paid to the Owner of the TIF Note amounts owed on all outstanding Deficiencies.

(d) *Prepayment of TIF Notes.* At the City's sole discretion, the City may prepay any portion of or the entire principal amount owed on the TIF Note.

(e) *Payment on Maturity Date.* If not repaid in full sooner, the entire outstanding balance of the TIF Note together with all interest thereon, shall be paid on December 31, 2017, but only to the extent that Net Proceeds are available in or then due to the Special Allocation Fund as of December 31, 2017. Except as provided in **Section 15** hereof, the City shall have no further obligations under this Ordinance or the TIF Note after December 31, 2017.

Except as provided in **Section 15** hereof, all moneys remaining in the Special Allocation Fund after December 31, 2017, shall be treated as "surplus" as defined in the Act, and distributed in the manner provided by law.

Section 14. Levy and Collection of Net Proceeds. The City hereby ratifies and confirms its obligation to levy and collect Net Proceeds pursuant to the Act for deposit in the Special Allocation Fund for the purpose of paying the TIF Note.

Section 15. Payments Due on Saturdays, Sundays and Holidays. In any case where the date of maturity of principal or interest on the TIF Note is a Saturday, a Sunday or a legal holiday or other day that is not a Business Day, then payment of principal or interest need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

Section 16. Notices, Consents and Other Instruments. Any notice, consent, request, direction, approval, objection or other instrument required by this Ordinance to be signed and executed by the Owner of the TIF Note may be in any number of concurrent writings of similar tenor and may be signed or executed by such Owner in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of the TIF Note, if made in the following manner, shall be sufficient for any of the purposes of this Ordinance, and shall be conclusive in favor of the City with regard to any action taken, suffered or omitted under any such instrument, namely:

(a) The fact and date of the execution by any person of any such instrument may be proved by a certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the person signing such instrument acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution.

(b) The fact of ownership of the TIF Note, the amount or amounts and other identification of the TIF Note, and the date of holding the same shall be proved by the registration books of the City.

Section 17. Execution of Documents. The City is hereby authorized to enter into and the Mayor is hereby authorized and directed to execute and deliver, for and on behalf of and as the act and deed of the City, the TIF Note and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Ordinance.

Section 18. Further Authority. The officers of the City, including the Mayor, City Administrator, the City Clerk and the Finance Director, shall be, and they hereby are, authorized and directed to execute all documents and take such actions as they may deem necessary or advisable in order to carry out and perform the purposes of this Ordinance and to make ministerial alterations, changes or additions in the foregoing agreements, statements, instrument and other documents herein approved, authorized and confirmed which they may approve and the execution or taking of such action shall be conclusive evidence of such necessity or advisability.

Section 19. Severability. If any section or other part of this Ordinance, whether large or small, shall for any reason be held invalid, the invalidity thereof shall not affect the validity of the other provisions of this Ordinance.

Section 20. Governing Law. This Ordinance shall be governed exclusively by and constructed in accordance with the applicable laws of the State of Missouri.

Section 21. Effective Date. This Ordinance shall take effect and be in full force from and after its passage of the City Council and approval by the Mayor; *provided that* the Levee District delivers to the City at least two fully executed copies of the Agreement authorized herein on or before _____, 1999.

PASSED AND APPROVED THIS 18TH DAY OF OCTOBER, 1999.

(SEAL)

Attest:

Martin R. He May
City Clerk

Amy Greenwood
Mayor

EXHIBIT A

INTERGOVERNMENTAL COOPERATION AGREEMENT

THIS INTERGOVERNMENTAL COOPERATION AGREEMENT ("*Agreement*") is made and entered into as of the ___ day of October, 1999, by and between the City of Chesterfield, Missouri (the "*City*") and Monarch-Chesterfield Levee District (the "*Levee District*").

RECITALS

A. The Missouri River flood plain includes an area along a five-mile length of Interstate 64/U.S. 40 bounded by Bonhomme Creek on the east and south, the Missouri River on the north and west, Eatherton Road and the Missouri River on the west and St. Louis Southwestern Railroad tracks on the south (as described, the "*Chesterfield Valley Area*").

B. The City Council of the City, by ordinance, (i) established a Tax Increment Financing Commission (the "*TIF Commission*") pursuant to the Real Property Tax Increment Allocation Redevelopment Act, § 99.800, *et seq.*, RSMo (1994) (the "*TIF Act*"), (ii) upon recommendation of the TIF Commission, designated the Chesterfield Valley Area within the City as a "redevelopment area" and approved a "redevelopment plan" (the "*Redevelopment Plan*") pursuant to the TIF Act, and (iii) established the Chesterfield Valley Special Allocation Fund (the "*Special Allocation Fund*") for the payment of redevelopment project costs and obligations incurred in the payment thereof.

C. The Redevelopment Plan approves certain redevelopment project costs including reconstruction of and improvements to the existing Monarch-Chesterfield Levee (the "*Levee*") as needed to provide 500-year flood protection from the Missouri River.

D. The Levee District has jurisdiction over the construction, maintenance, oversight and improvement of the Levee and drainage system which protects the Chesterfield Valley Area.

E. The City has responsibility to provide for the general health, safety and welfare of that portion of the Chesterfield Valley Area within the City. Further, the City has been designated by the Federal Emergency Management Agency ("*FEMA*") as flood plain manager and, to that end, has certain responsibilities to the entire flood plain within the Chesterfield Valley Area. Recognizing that a breach of a portion of the Monarch-Chesterfield Levee (as occurred in 1993) imperils the property and persons of the City, the City desires to protect existing property and persons and enhance the economic viability of the Chesterfield Valley Area for the overall betterment of the City by undertaking certain obligations with the Levee District consistent with its obligations as defined under state and federal law.

F. The City and the Levee District entered into an Intergovernmental Cooperation Agreement on September 12, 1996, which was amended November 18, 1997 (collectively, the "*1996 Agreement*"). The 1996 Agreement provides for the issuance of three series of TIF Notes (the "*Prior Notes*") by the City to the Levee District to pay a portion of the costs of (i) bringing a portion of the Monarch-Chesterfield Levee up to the 500-year flood elevation (the "*Phase II Levee Improvements*"), (ii) installing internal storm water pumping stations, and (iii) providing wetland mitigation. The 1996 Agreement is still being performed by both parties.

G. In coordination with the United States Army Corps of Engineers (the "*Corps*"), the Levee District proposes to make certain additional improvements to Chesterfield Valley Area, including (i) the

improvement of the Monarch-Chesterfield Levee north of Interstate 64 to the 500-year flood protection level generally including (a) the improvement of the existing Levee from Station 170 + 00 to 320 + 00 and from 380 + 00 to 467 + 00 to increase the Levee height by four to five feet, (b) the installation of seepage berms up to 300 feet in width, placement of a four-foot clay blanket on the riverside of the Levee and installation of stability berms on the river side and the protected side of the Levee, (c) the construction and realignment of the Levee to provide protection to Interstate 64 amounting to 3,400 feet of new levee including the construction of a new levee with a height of 20 to 25 feet and the installation of stability berms on the riverside and the protected side of the Levee, (d) acquisition of materials, borrow areas and easements, (e) the improvement of pump stations to accommodate Levee construction, (f) the relocation of the electric lines at the sand plant; (g) the construction of a toe access road for maintenance and monitoring all in accordance with the preliminary plans and specifications prepared by Sverdrup Civil, Inc., titled Phase 3B Levee Improvements, Monarch-Chesterfield Levee District, dated July 9, 1999, attached hereto as Exhibit A and incorporated herein (the "*Levee Improvement Plans*"); (collectively (a) through (g) are referred to herein as the "*Phase III Levee Improvements*" or the "*Project*") and the construction of additional improvements in connection with the Phase II Levee Improvements at a cost in excess of the \$3.4 million allotted for the Phase II Levee Improvements under the 1996 Agreement

H. The City and the Levee District desire to cooperate and to take the reasonable steps necessary to facilitate the prompt design, commencement and completion of the Phase III Levee Improvements.

I. The City and the Levee District desire to share certain of the costs and other obligations to be incurred in connection with the Phase III Levee Improvements on the terms and conditions as set forth in this Agreement and in accordance with and pursuant to the provisions of Article VI, § 16 of the Missouri Constitution, the TIF Act and Sections 70.210 through 70.325 of the Revised Statutes of Missouri, as amended.

NOW, THEREFORE, in consideration of the premises and promises set forth herein, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Phase III Levee Improvements.** The City and the Levee District hereby covenant and agree to contribute and expend such sums and take such actions toward the completion of the Phase III Levee Improvements as are described below, subject to the limitations otherwise set forth in this Agreement. The Phase III Levee Improvements shall be made as follows:

A. **Issuance of Levee District Improvement Bonds, Series 1999.** Within one hundred and twenty (120) days after the date of the City ordinance authorizing this Agreement, the Levee District shall issue approximately \$17,000,000 principal amount Levee District Improvement Bonds, Series 1999 (the "*Series 1999 Bonds*"), the proceeds of which shall be used primarily to fund the Phase III Levee Improvements as described herein.

B. **Construction of Phase III Levee Improvements.** The Levee District shall be responsible for acquiring all approvals and permits necessary to construct the Phase III Levee Improvements, and shall construct the Phase III Levee Improvements in accordance with the final Levee Improvement Plans.

C. **The City's Phase III Contribution.** The City shall cause to be made contributions to reimburse the Levee District for Reimbursable Project Costs, as hereinafter defined, incurred by the Levee District in completing the Phase III Levee Improvements, said contributions to be made only upon the

satisfaction of the conditions and in the manner hereinafter set forth (the “Phase III Levee Contribution”).

2. **Limitations on City Obligations.** Subject to the satisfaction of the conditions and terms hereinafter set forth, the City shall cause the Phase III Levee Contribution to be made as follows:

A. **City's Obligation to Make Contributions to be Evidenced by a TIF Note.** The Phase III Levee Contribution shall be made by the City exclusively pursuant to a note in substantially the form of **Exhibit B** hereto (the “TIF Note”).

B. **TIF Note Terms.** Payment of principal and interest shall be made by the City from the Special Allocation Fund semi-annually on February 15 and August 15 (each, a “Payment Date”) in accordance with **Sections 2.C.** and **2.D.** below and the terms of the TIF Note and the City Ordinance authorizing this Agreement (the “Note Ordinance”), but in no event shall the City be obligated, by the terms of the Note Ordinance, the TIF Note or otherwise, to make such payments of principal and interest in an amount in excess of the funds available for such payments from the Special Allocation Fund. The TIF Note shall be for a term to expire upon the earlier of (i) payment in full of the TIF Note (as adjusted by any abatement hereunder), (ii) payment in full of the Series 1999 Bonds (including any subsequent Levee District obligations refunding the Series 1999 Bonds), or (iii) December 31, 2017. The TIF Note shall be subordinate to (i) the Prior Notes, (ii) all other tax increment financing obligations of the City secured by the Special Allocation Fund (“TIF Obligations”) outstanding as of the date of this Agreement (including any future TIF Obligations refunding such currently outstanding TIF Obligations), and (iii) any TIF Obligations issued after the date of this Agreement up to an aggregate principal amount of Eighteen Million Dollars (\$18,000,000) (“Future Priority TIF Obligations”).

C. **Computation of Interest on the TIF Note.** Interest shall accrue on unpaid principal of the TIF Note at a rate equal to the Net Interest Cost of the Series 1999 Bonds, except as provided in the last sentence of this **Subsection C.** For purposes of this Section, “Net Interest Cost” (“NIC”) shall be expressed as a percentage computed, with respect to the Series 1999 Bonds, by dividing (a) the total interest payments, as increased by (b) any original issue discount and as reduced by (c) any premium or accrued interest, by the product of (x) the issue price (not including any accrued interest) and (y) the weighted average maturity (which shall be the sum of the products of the issue price of each maturity and the number of years to each maturity, determined separately for each maturity and by taking into account mandatory redemptions, divided by the issue price of the entire issue). Thus:

$$NIC = \frac{a + b - c}{xy}$$

If the Levee District purchases a bond insurance policy for the Series 1999 Bonds which results in total interest payment savings in an amount greater than the premium for such bond insurance policy, such premium shall not constitute a Reimbursable Project Cost hereunder, but commencing on the date that is three years after the date of issuance of the Series 1999 Bonds, interest shall accrue on the unpaid principal of the TIF Note at a rate equal to $NIC + r$, where “r” equals a percentage rate expressed in ten-thousandths of a percent (e.g., 01.9561%), computed as follows:

$$r = \frac{237,215 + (237,215 \cdot NIC)}{13,344,651}$$

D. Computation of Principal Payments on the TIF Note. Except as otherwise provided in this Agreement, on each Payment Date after the issuance of the TIF Note until and including the date upon which the City accepts (in the reasonable exercise of its discretion) a Certificate of Substantial Completion from the Levee District in substantially the form of **Exhibit C** hereto certifying that the Phase III Levee Improvements are substantially complete and constructed in accordance with this Agreement, the City shall pay a portion of the principal of the TIF Note (plus accrued interest as provided in **Section 2.C.** above) in an amount equal to $1/x$ of the outstanding principal amount of the TIF Note calculated as of the date that is 30 days prior to such Payment Date, where x is the number of Payment Dates between the date of issuance of the TIF Note and December 31, 2017. Beginning with the Payment Date that falls immediately after the date upon which the City accepts such Certificate of Substantial Completion and on each Payment Date thereafter, the City shall pay a portion of the principal (plus accrued interest as provided in **Section 2.C.** above) of the TIF Note according to a schedule prepared by the City that amortizes the outstanding principal amount of the TIF Note as of the date of such Certificate of Substantial Completion in equal semi-annual installments through and including August 15, 2017.

E. Limitation on Principal Amount of TIF Note and Source of Payment. Notwithstanding any provision herein to the contrary, (i) the aggregate principal amount of the TIF Note shall not exceed Thirteen Million Three Hundred Forty-Four Thousand Six Hundred Fifty-One Dollars (\$13,344,651) as reduced by any abatement hereunder, and (ii) the TIF Note shall be payable solely from funds on deposit in the Special Allocation Fund and from no other source.

3. Reimbursable Project Costs

A. Reimbursable Project Costs Defined. As used herein, the term “Reimbursable Project Costs” means, subject to the limitations set forth in **Section 3.B.** hereof, only those costs set forth in **Exhibit D** actually incurred by the Levee District in the implementation and construction of the Project as evidenced by documentation reasonably satisfactory to the City, in a maximum aggregate amount not to exceed Thirteen Million Three Hundred Forty-Four Thousand Six Hundred Fifty-One Dollars (\$13,344,651).

B. Additional Limitations on Reimbursable Project Costs. Notwithstanding anything herein to the contrary, Reimbursable Project Costs shall not include any funds paid by the Levee District for professional fees in excess of the \$800,000 limitation set forth in Category G. of **Exhibit D**; or

C. Reimbursements Limited to Reimbursable Projects Costs. Nothing in this Agreement shall obligate the City to reimburse the Levee District for any cost that is not incurred in accordance with this Agreement and pursuant to Section 99.820.1 of the TIF Act, and that does not qualify as a “redevelopment project cost” under Section 99.805(11) of the TIF Act. The Levee District shall, in addition to its obligations under **Section 4.(A)** hereof, provide itemized invoices, receipts or other information, if any, requested by the City to confirm that any such cost is so incurred and does qualify.

D. Levee District’s Right to Substitute. In the event that (i) any Reimbursable Project Cost is determined not to be a “redevelopment project cost” under Section 99.805(11) of the TIF Act, or (ii) a Reimbursable Project Cost incurred by the Levee District in any category of costs set forth in **Exhibit D**

is less than the amount for that category of costs set forth in **Exhibit D**, then the Levee District shall have the right to substitute other Reimbursable Project Costs such that the aggregate of all Reimbursable Project Costs for the Project may equal but shall not exceed the maximum aggregate amount for Reimbursable Project Costs set forth in **Exhibit D**; *provided, however*, that no such substitution with respect to transferring any Reimbursable Project Costs to Category G. from any other category in **Exhibit D** shall be permitted, and Reimbursable Project Costs with respect to said Category G. are expressly limited to the corresponding amounts set forth for said Category G

E. Acquisition Costs. The City may, in its sole discretion and upon request by the Levee District, allocate not more than \$385,000 in additional funds from the Special Allocation Fund in the event that Reimbursable Project Costs in Category E exceed \$4,900,000.

4. Conditions Giving Rise to the City's Obligation to Issue the TIF Note. The City shall have no obligation to issue the TIF Note until each of the following conditions are satisfied:

A. Certificate of Reimbursable Project Costs. The Levee District shall submit to the City a Certificate of Reimbursable Project Costs substantially in the form of **Exhibit E** hereto evidencing that the Levee District has incurred at least Two Million (\$2,000,000) in Reimbursable Project Costs constituting the costs of acquiring real property and/or payments to third party contractors in connection with the Project. Thereafter, additions to the principal of the TIF Note may be endorsed on the TIF Note periodically by the City's Director of Finance and Administration, but no more frequently than every calendar quarter, upon the City's acceptance of additional Certificates of Reimbursable Project Costs, up to the maximum aggregate principal amount set forth herein.

B. Storm Water Improvements.

(i) As of the date of this Agreement, the Levee District shall have accepted title to and shall continue to repair and maintain the storm water pumps and drainage system constructed pursuant to the plans and specification prepared by Booker Associates, titled Chesterfield Valley, Chesterfield, Missouri, Storm Water Pump Stations, Project Number T-3872, dated August 30, 1996, and more specifically described in the associated specifications of the same date. The City covenants and agrees that it will cooperate with the Levee District in pursuing any and all claims and warranties against contractors, subcontractors, and/or manufacturers in connection with any defects in any Phase I Levee Improvements.

5. Abatement of TIF Note. Notwithstanding anything herein to the contrary, the outstanding principal amount of the TIF Note shall be subject to abatement as follows:

A. Definitions. As used in this section, the following terms shall have the following meanings:

"Aggregate Tax Rate" means the sum of the rates of the Maintenance Tax and the Installment Tax.

"Installment Tax" means the tax referred to in Section 245.185 of the Missouri Revised Statutes as the "installment tax" or any other tax or taxes levied by the Levee District for similar purposes.

"Maintenance Tax" means the tax authorized by Section 245.195 of the Missouri Revised Statutes or any other tax or taxes levied by the Levee District for similar purposes.

“*Total Assessed Benefits*” means the aggregate assessed benefits on all tracts and parcels of land within the Levee District as determined from time to time in accordance with Chapter 245 of the Revised Statutes of Missouri.

B. Maintenance of Tax Rate.

(i) If the Levee District reduces its Aggregate Tax Rate, as hereinafter defined, below 1.2% of Total Assessed Benefits within the District, the outstanding principal amount of the TIF Note shall be permanently abated by an amount equal to the Levee District’s aggregate loss of revenue resulting from the lower tax rate during the period in which said Aggregate Tax Rate is below 1.2% of Total Assessed Benefits.

(ii) If the Levee District reduces the Installment Tax rate below .75% of Total Assessed Benefits, the outstanding principal amount of the TIF Note shall be permanently abated by an amount equal to the Levee District’s aggregate loss of revenue from the Installment Tax resulting from the lower Installment Tax rate during the period in which said Installment Tax rate is below .75% of Total Assessed Benefits.

C. Receipt of Grant. To the extent that the Levee District receives a grant or grants or is reimbursed for any expenses incurred in connection with the Project from any federal, state or local government, other than the City, or from any other agencies, departments and bureaus, the outstanding principal amount of the TIF Note shall be permanently abated in the dollar amount of such grant(s) or reimbursement(s). For purposes hereof, the incremental increase in revenues from and any proceeds from grants or other reimbursements are collectively referred to as “*Additional Revenues.*”

D. Failure to Timely Construct Project. If the Project is not completed within five (5) years of the date of this Agreement, the outstanding principal amount of the TIF Note shall be permanently abated by the amount of Five Million Dollars (\$5,000,000), unless otherwise agreed to by the City.

E. Limitations on Abatement. Notwithstanding anything herein to the contrary, the TIF Note shall not be abated by operation of Section 5.C. above (i) to the extent of any Additional Revenues that are used to fund costs incurred in obtaining associated grant(s) or reimbursement(s), including fees and professional consulting fees, in an amount not to exceed one percent (1%) of the aggregate amount of the grant(s) and/or reimbursement(s), or (ii) to the extent of any Additional Revenues that are used to fund improvements outside the scope of the Project which have been approved in advance in writing by the City.

F. Books and Records. To facilitate verification and enforcement of the abatement provisions herein, the Levee District shall provide to the City for inspection such books and records as the City deems necessary, in the City’s sole discretion, to perform such verification and enforcement.

6. Issuance of Parity TIF Obligations. The City may issue, in addition to Future Priority TIF Obligations, TIF Obligations on a parity with the TIF Note (“*Additional TIF Obligations*”) if:

(i) at the time of issuance of such Additional TIF Obligations, the ratio of (x) all sums deposited to the Special Allocation Fund over the twelve-month period ending on the date of issuance of such Additional TIF Obligations to (y) the aggregate amount of principal and interest the City is obligated to pay

on all then-outstanding TIF Obligations (including the TIF Note) during the twelve-month period commencing on the date of issuance of such Additional TIF Obligations is equal to or greater than 1.2:1 ($x:y \geq 1.2:1$); OR

(ii) the Additional TIF Obligations are issued in connection with a redevelopment project consisting of construction of at least 100,000 square feet of taxable improvements.

7. Representations and Warranties. In order to induce the City to enter into this Agreement, the Levee District makes the following representations and warranties, each of which shall survive closing:

A. Acquisition of Property. The Levee District has acquired marketable fee title to (i) the property formerly owned by Dorothy Mahaffey Moore, Trustee of the Dorothy M. Moore Revocable Trust, and containing approximately 54.33 acres, a legal description of which is attached hereto as **Exhibit F-1**, and (ii) the property formerly owned by Marjorie Jo Fitzgerald, containing approximately 34.40 acres, a legal description of which is attached hereto as **Exhibit F-2** (the Moore parcel and the Fitzgerald parcel are collectively referred to as the "*Parcels*"). The Levee District shall extract sufficient borrow material from the non-Levee protected side of the *Parcels* for the construction of the Phase III Levee Improvements, and within ninety (90) days of substantial completion, shall convey the *Parcels* to the City by Special Warranty Deed subject to levee and/or underseepage berm easements, as determined by the Levee District.

B. Prior Levee Agreement. The Levee District acknowledges that the City is a third party beneficiary to a certain agreement dated November 21, 1997, by and between THF Chesterfield Development, L.L.C. ("THF") and the Levee District, as amended by a First Addendum dated September 1, 1998, and a Second Addendum dated October __, 1999 (collectively, the "Levee Agreement") attached hereto and incorporated herein as **Exhibit G**. Accordingly, the Levee District shall not enter into any subsequent amendments to the Levee Agreement without obtaining the prior written consent of the City, which consent shall not be unreasonably withheld.

C. Improvements to Edison Road. The Levee District acknowledges that the City has entered into a certain Redevelopment Agreement wherein THF agreed to construct that portion of Edison Road that extends from Long Road to Baxter Road in accordance with the plans and specifications prepared by Wolverton & Associates, Inc., titled Improvement Plans for Edison Avenue, and thereafter dedicate and convey same to the City. In addition, the Levee District acknowledges that a portion of Edison Road shall be constructed over the seepage berm as shown on the aforementioned plans and specifications. Accordingly, the Levee District hereby represents and warrants to the City that theseepage berm was built in accordance with the Phase IB Levee Improvements, Monarch-Chesterfield Levee District Plans and further represents and warrants that it will grant to the City all temporary and permanent transferable easements deemed reasonably necessary by the City for the construction, maintenance and usage of the Edison Road right-of-way. Any easements granted pursuant to this **Section 7(C)** shall be subject to all Levee District and/or underseepage berm restrictions. The Levee District hereby agrees and covenants to cooperate with the City and with THF regarding the construction and maintenance of Edison Road.

D. Easement. The Levee District shall identify any easements to be located on any City park or other City-owned property in the Chesterfield Valley Area that the Levee District reasonably determines are necessary for it to acquire in furtherance of the construction and implementation of the Project. Within sixty (60) days of the identification of the easements, the City shall convey such easements to the Levee District and the Levee District shall pay the City the fair market value of such easements. Fair market value shall be determined by comparison to sales of similar interests in comparable property in the immediate area of said easements as mutually agreed upon by the City and the Levee District.

E. Execution of documents. Upon request by the City, the Levee District will join in the execution and recording of the following documents:

i. Final Subdivision Plat of the Chesterfield Commons Shopping Center. The Subdivision Plat, among other things, subdivides THF's property into new lots and dedicates RHL Drive and THF Boulevard, and a portion of Edison Avenue, to the City.

ii. Permanent Underseepage Berm Protective Restrictions in substantially the form attached hereto as **Exhibit H** and incorporated herein by reference (the "Protective Restrictions"). The Protective Restrictions will be recorded contemporaneously with the Subdivision Plat.

iii. An easement for the Pond and stormwater drainage system ("Drainage Facilities Easement") in substantially the form attached hereto as **Exhibit I** and incorporated herein by reference. The Drainage Facilities Easement will be recorded contemporaneously with the Subdivision Plat.

F. The Levee District shall accept an easement and dedication for maintenance of the storm water detention pond and ancillary improvements located in Chesterfield Commons in the Chesterfield Valley Area built in accordance with the plans and specifications prepared by Wolverton & Associates, Inc., titled Improvement Plans for Chesterfield Commons Chesterfield Airport Road at Chesterfield Commons Crossing, dated June 17, 1999, and revised August 25, 1999, and beginning at the western edge of the access road at approximately station 360, as depicted on **Exhibit L** of the Redevelopment Agreement between the City and THF, dated November 24, 1997, as amended by a First Amendment to the Redevelopment Agreement, dated _____ (the "Redevelopment Agreement") then Westerly to RHL Boulevard as depicted on **Exhibit L** of the Redevelopment Agreement and referenced in **Section 7(C)** herein (the "*Pond*"). The Levee District covenants and agrees, that upon acceptance of the Pond, it shall commence to install an inverted filter blanket and related rock as referenced in **Exhibit M** of said Redevelopment Agreement.

G. In addition to other stormwater drainage improvements that the Levee District is required to accept and thereafter repair and maintain pursuant to this Agreement, the Levee District shall accept the primary stormwater conveyance ditch and ancillary improvements beginning at the West edge of an access drive at approximately station 360, as depicted in **Exhibit L** of the Redevelopment Agreement then Easterly to approximately station 386 as depicted on **Exhibit L** of the Redevelopment Agreement upon completion of the ditch which includes an inverted filter blanket and related rock in accordance with the specifications set forth in **Exhibit M** of the Redevelopment Agreement.

I. Upon request by the City, the Levee District shall execute such instruments in recordable form, evidencing the Levee District's acceptance of the dedication of the improvements and corresponding obligations to repair and maintain the stormwater detention ponds, channels, drainage facilities, stormwater lines and related drainage improvements referenced in **Section 7(F)** and **(G)** as depicted in the shaded area set forth in **Exhibit J** attached hereto and incorporated herein by reference.

H. The Levee District covenants and agrees that upon completion it shall accept easements and dedication for maintenance in accordance with the Corps' standards all other storm water systems and facilities and primary conveyance ditches constructed pursuant to that certain plan prepared by Development Strategies titled "Phase III of the Chesterfield Valley Master Development Plan and