

FUNDING AGREEMENT

THIS FUNDING AGREEMENT (the "Agreement") is entered into this October ____, 2008, between MC Prairiefire, L.L.C. (the "Applicant"), and the City of Overland Park, Kansas (the "City").

RECITALS

- A. The City is a municipal corporation and political subdivision duly organized and existing under the laws of the State of Kansas and authorized by K.S.A. 12-17,160 *et seq.*, as amended (the "STAR Bonds Financing Act"), to provide financing for certain qualified projects upon compliance with the procedures set forth in the STAR Bonds Financing Act.
- B. The Applicant is a Kansas limited liability company.
- C. The Applicant has requested that the City consider the establishment of a STAR Bond Project District (as defined in the STAR Bonds Financing Act), prepare a STAR Bond Project Plan (as defined in the STAR Bonds Financing Act), consider the STAR Bond Project Plan in accordance with the STAR Bonds Financing Act, and, if approved, implement and administer the STAR Bond Project Plan through its completion. In order to do so, the City must retain administrative and professional staff, outside counsel and consultants, and incur expenses, and the City requires that the Applicant pay and reimburse the City for the payment of such reasonably incurred costs.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter expressed, the parties mutually agree as follows:

1. Services to be Performed by the City.

The City shall retain administrative and professional staff, outside counsel and consultants, and incur expenses which it, in its sole discretion, deems necessary to:

(a) Consider the establishment of a STAR Bond Project District in accordance with the provisions of the STAR Bonds Financing Act, give all notices, make all publications, prepare any studies and analyses necessary or appropriate in connection with the establishment of the STAR Bond Project District, hold all hearings as required by the STAR Bonds Financing Act and prepare the required resolutions and ordinances to establish the STAR Bond Project District;

(b) If the Governing Body establishes the STAR Bond Project District, prepare and consider the STAR Bond Project Plan in accordance with the provisions of the STAR Bonds Financing Act, give all notices, make all publications, prepare a feasibility study and any other studies and analyses necessary or appropriate in connection with the STAR Bond Project Plan, hold all hearings as required by the STAR

Bonds Financing Act and prepare the required resolutions and ordinances to approve the STAR Bond Project Plan;

(c) Prepare and negotiate a definitive agreement between the parties for implementation of the STAR Bond Project Plan; and

(d) If a definitive agreement is entered into, administer the STAR Bond Project Plan and definitive agreement until terminated or completed.

2. **Payment.**

The Applicant shall pay the City for its reasonable fees and expenses as the City may from time to time deem appropriate; all charges for the City's outside counsel and consultants; and all other expenses incurred by the City in providing the services set forth in **Section 1** (the "Charges"), subject to the following conditions:

(a) In order to insure the prompt and timely payment of the Charges, the Applicant shall establish a fund (the "Fund") by paying the initial amount of \$20,000 to the City contemporaneously with the execution of this Agreement, receipt of which is hereby acknowledged. Thereafter, the City shall pay all Charges from monies on deposit in the Fund and shall provide an itemized statement thereof to the Applicant on a monthly basis. If, in the judgment of the City, there are insufficient amounts on deposit in the Fund to pay for the projected Charges expected to be incurred, the Applicant shall make a subsequent deposit or deposits into the Fund in an amount equal to the initial deposit or such other amount which in the judgment of the City is required to provide sufficient funds to pay the projected Charges.

(b) If the amount in the Fund is insufficient to pay the outstanding Charges payable hereunder, the Applicant shall pay such Charges within 30 days of receipt of a statement from the City of the amount required to pay such Charges.

(c) All statements shall be reasonably itemized and shall be payable within thirty (30) days of receipt thereof. If not so paid, the City shall be relieved of its obligations hereunder until paid, and the unpaid balance shall be subject to a penalty of two percent (2%) per month until paid, but in no event shall such penalty exceed eighteen percent (18%).

(d) The City's Bond Counsel, Kutak Rock LLP, shall be paid on an hourly basis for legal services rendered in support of the services performed by the City hereunder, other than for legal services rendered in connection with the issuance of any bonds that may be issued to implement the STAR Bond Project Plan.

(e) The Applicant will not be billed for the time of the City's administrative and professional staff under this Agreement. If the STAR Bond Project Plan is adopted, those costs may be included in City expenses, the payment and reimbursement of which will be provided for in a separate agreement between the parties.

(f) If the STAR Bond Project Plan is adopted, all payments made hereunder are eligible costs under the STAR Bonds Financing Act and as such are reimbursable from the proceeds of special obligation bonds or any uncommitted funds derived from sources set forth in K.S.A. 12-17,169 pursuant to the STAR Bonds Financing Act, subject, however, to any provisions of the STAR Bonds Financing Act to the contrary.

3. Feasibility Study.

The City and the Applicant agree that Canyon Research Southwest, Inc. may be retained to prepare the feasibility study referenced in Section 1(b). The City and the Applicant further agree that a museum consultant may be retained as appropriate to provide supporting materials for the feasibility study. The Applicant agrees to pay the cost of the feasibility study in full, including the fees and expenses of the provider thereof and of any other firm or entity which provides supporting materials for the feasibility study.

4. Termination.

(a) The City may terminate this Agreement upon ten (10) days' written notice in the event the Applicant fails to make any payments when due.

(b) The Applicant may terminate this Agreement in the event it determines not to proceed further to complete the STAR Bond Project Plan upon written notice to the City thereof.

(c) If either party terminates this Agreement, the City shall apply the balance of the Fund, if any, to outstanding Charges pursuant to this Agreement and any monies due and owing to the City pursuant to any other agreement and shall pay the remaining balance, if any, to the Applicant within thirty (30) days of such termination. In the event the balance of the Fund, if any, is insufficient to pay the outstanding Charges payable hereunder, the Applicant shall pay such Charges within 30 days of receipt of a statement from the City of the balance required to pay such Charges.

5. No Obligation to Proceed with STAR Bond Project Plan.

The Applicant acknowledges that the City is not obligated by the execution of this Agreement to establish a STAR Bond Project District or to approve a STAR Bond Project Plan and that the establishment of the STAR Bond Project District and the approval of a STAR Bond Project Plan are subject to the sole discretion of the Governing Body of the City and the requirements of the STAR Bonds Financing Act.

6. Notice.

Any notice, approval, request or consent required by or asked to be given under this Agreement shall be deemed to be given if it is in writing and mailed by United States mail, postage prepaid, or delivered by hand, and addressed as follows:

To the City:

Kristy Stallings, Deputy City Manager
Overland Park, Kansas
City Hall
8500 Santa Fe
Overland Park, Kansas 66212

With a copy to:

Kathryn P. Peters
Kutak Rock LLP
1010 Grand Boulevard
Suite 500
Kansas City, Missouri 64106-2220

To the Applicant:

MC Prairiefire, L.L.C.
Attention: Fred L. Merrill, Jr.
6240 W. 135th Street
Overland Park, Kansas 66223

With a copy to:

Greg Musil
Shughart Thomson & Kilroy, PC
9225 Indian Creek Parkway
Suite 1100, Building #32
Overland Park, Kansas 66210

Katie Logan
Lathrop & Gage, L.C.
10851 Mastin
Suite 1000
Overland Park, KS 66210

Each party may specify that notice be addressed to any other person or address by giving to the other party ten (10) days prior written notice thereof.

7. Governing Law.

This Agreement shall be construed in accordance with the laws of the state of Kansas.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

MC Prairiefire, L.L.C.

By: _____
Name: _____
Title: _____

CITY OF OVERLAND PARK, KANSAS

By: _____
Carl Gerlach, Mayor

(SEAL)

ATTEST:

By: _____
Marian Cook
City Clerk

APPROVED AS TO FORM:

By: _____
Tammy M. Owens
Senior Assistant City Attorney