

REVISED COST-SHARING AGREEMENT

THIS REVISED COST-SHARING AGREEMENT is made this 5th day of April, 2016, by and between the City of Lawrence, Kansas, a municipal corporation, and HERE Kansas Property Owner, LLC, a Delaware limited liability company, or its assigns.

RECITALS

- A.** The City of Lawrence, Kansas, a municipal corporation ("City"), is the holder of those Rights of Way on which 11th Street and Mississippi Street are located in Lawrence, Douglas County, Kansas.
- B.** HERE Kansas Property Owner, LLC, a Delaware limited liability company, or its assigns, ("HERE"), owns that real property, located in Lawrence, Douglas County, Kansas, and commonly known as 1101 and 1115 Indiana Street (the "HERE Property"), which real property is adjacent to the 11th Street and Mississippi Street Rights of Way.
- C.** HERE wishes to redevelop the HERE Property, has submitted to the City a Development Plan, a Public Improvement Plan, and has entered into a Development and License Agreement, dated December 9, 2014, with the City and Kansas University, setting forth certain rights and obligations of the parties regarding the proposed redevelopment of the HERE Property.
- D.** On September 9, 2015, the City and HERE entered into a Cost-sharing Agreement, with respect to the redevelopment of the HERE Property, wherein they agreed to share certain infrastructure costs. The parties now wish to revise that Cost-sharing Agreement. This document memorializes the terms of that Revised Cost-sharing Agreement and supersedes, in its entirety, the September 9, 2015, Cost-sharing Agreement.

TERMS

NOW THEREFORE, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, the parties agree as follows:

- 1. Former Agreement Superseded.** This Revised Cost-sharing Agreement supersedes that Cost-sharing Agreement, dated September 9, 2015 ("Former Agreement"), by and between the City and HERE. The parties agree that the Former Agreement is hereby null and void and that the terms of this Revised Cost-sharing Agreement supersede, in their entirety, all terms of the Former Agreement subject to execution of this new agreement.

2. **The Mississippi Street Project.** The City and HERE agree to share all costs on an equal basis, except as otherwise provided in Paragraph 6, *infra*, related to the reconstruction of the traveling lanes (approximately 31-foot wide) of Mississippi Street and the relocation of the sanitary sewer from the intersection of 11th Street and Mississippi Street south a distance of approximately 300 feet. HERE shall be solely responsible for all costs of constructing parking spaces, curbs, and sidewalks. HERE shall also be solely responsible for the costs of all design and engineering plans related to the Mississippi Street Project.
3. **The 11th Street Project.** The City and HERE agree to share all costs on an equal basis, except as otherwise provided in Paragraph 6, *infra*, related to the reconstruction of the traveling lanes from 11th Street from the intersection of 11th Street and Mississippi Street to the intersection of 11th Street and Indiana Street. The City and HERE also agree to share the costs of all design and engineering plans related to the 11th Street Project. The City shall be responsible for the costs of constructing curbing and sidewalks on the north side of the 11th Street Project. HERE shall be responsible for the costs of constructing curbing and sidewalks on the south side of the 11th Street Project.
4. **HERE's Private Project.** In addition to the shared Mississippi Street Project and the shared 11th Street Project, HERE also seeks to bid its private project ("HERE's Private Project"). HERE's Public Improvement Plan, which sets forth the details of HERE's Private Project, is affixed hereto as Exhibit A and is incorporated herein by reference. HERE shall be solely responsible for all costs of HERE's Private Project
5. **Bids.** The City agrees to bid the Mississippi Street Project, the 11th Street Project, and HERE's Private Project as one project. HERE shall have the right to review the bids after the close of bids, but before the bids are awarded, and shall have input as the City assesses and determines the lowest responsible bidder on both projects.
6. **City's Costs.** As stated in Paragraphs 2 and 3, the City shall be responsible for an equal share of of the Mississippi Street Project and the 11th Street Project. However, in no event shall the City's share exceed the sum of \$258,439.50 excluding change orders due to unforeseen conditions and adjustments in scope as directed by the city. That sum is the amount of the City's share under bids received under the Former Agreement for the Mississippi Street Project and the 11th Street Project. The parties agree that the City shall only be responsible in this Revised Cost-sharing Agreement for the costs the City would have been responsible under the Former Agreement and no more. By the close of bidding, the City shall provide HERE with evidence that the City has budgeted and appropriated \$258,439.50 as its share of the costs of the Mississippi Street Project and the 11th Street Project.

7. HERE's Costs, Payment, and Change Orders.

- (a)** After the close of bidding, but before the City awards the bid and enters into a contract with the lowest qualified bidder, HERE shall remit to the City the actual contract price of the Mississippi Street Project, the 11th Street Project, and HERE's Private Project, less the \$411,352.50 already remitted to the City by HERE and less the City's share of the Mississippi Street Project and the 11th Street Project. The City shall not award the bid or enter into any contract until HERE has remitted the correct sum to the City. The City agrees to hold HERE's share of the costs in trust solely for use in connection with the projects.
- (b)** After the completion of the Projects, the parties agree to settle up as the result of any change orders to the contract. In the event that there are change orders, HERE agrees that it shall be responsible for any increased costs as the result of change orders.

8. Completion of the Projects. The City shall undertake to let the projects for bid no later than April 30, 2016, and, assuming HERE has remitted the correct amount under Paragraph 7(a), *supra*, shall enter into a contract with the lowest qualified bidder no later than May 13, 2016. The City shall ensure that the lowest responsible bidder contractually agrees that construction of the Mississippi Street Project, the 11th Street Project, and HERE's Private Project will commence no later than May 16, 2016, and be completed no later than August 12, 2016. The construction schedule attached hereto as Exhibit B shall be included in the City's request for bids and shall be incorporated into the construction contract for the projects. However, if those projects are not completed in that time-frame and such does not affect the habitability of HERE's redevelopment, assuming of course that HERE's redevelopment passes final inspection and otherwise qualifies for the issuance of an occupancy permit under the City Code, HERE shall not be prohibited from obtaining a certificate of occupancy under the City Code. If HERE passes inspection and obtains its certificate of occupancy under the City Code, then it shall not have any additional recourse against the City if the contractor fails to complete any of the projects in a timely fashion.

9. Inspections. The City shall provide all inspections of the Mississippi Street Project, the 11th Street Project, and HERE's Private Project at no cost to HERE.

10. Term. This Revised Cost-sharing Agreement shall expire after the Mississippi Street Project, the 11th Street Project, and HERE's Private Project are completed and the parties have completed all cost sharing necessary for compliance with the terms of this Revised Cost-sharing Agreement.

- 11. Authorization.** Each of the persons executing this Revised Cost-sharing Agreement, in behalf of their respective parties, represent and warrant that they have the authority to bind the party in behalf of whom they have executed this Revised Cost-sharing Agreement, and that all acts requisite to the authorization to enter into and to execute this Revised Cost-sharing Agreement have been taken and completed.
- 12. Binding Effect.** This Revised Cost-sharing Agreement shall, at all times, be binding upon the City and HERE, and all parties claiming by, through, or under them, and shall run with the land, and shall be for the benefit of and shall oblige all future owners of the HERE Property; provided, however, that the rights, duties, and obligations of the parties, as set forth herein, shall cease with the termination of his, her, or its ownership of their respective property, or portion thereof, except for those duties and obligations arising during the period of his, her, or its ownership. HERE may assign any rights or obligations under this Revised Cost-sharing Agreement to any third-party in its sole discretion and upon such assignment shall be fully released from any obligations hereunder that may arise after the effective date of any such assignment, unless any proposed assignee assumes this Revised Cost-sharing Agreement, at which point HERE shall be irrevocably released for all obligations hereunder whether arising before or after the assignment.
- 13. Kansas Cash Basis Law.** This Revised Cost-sharing Agreement must comply with the applicable provisions of the Kansas Cash-Basis Law of 1933, codified as amended at K.S.A. 10-1101 *et seq.* The City is obligated only to make payments under this Revised Cost-sharing Agreement as may be lawfully made from funds budgeted and appropriated for the purposes set forth in this Revised Cost-sharing Agreement during the City's current budget year. In the event that the City does not so budget and appropriate funds, the parties acknowledge and agree that they shall be relieved of all obligations under this Revised Cost-sharing Agreement without penalty. To the extent that the City does so budget and appropriate funds for the purposes set forth in this Revised Cost-sharing Agreement, the obligations of the parties shall remain as provided herein.

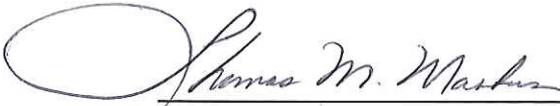
In the event that the City does not budget and appropriate the funds necessary to fulfill the City's funding obligations under this Revised Cost-sharing Agreement or such appropriate lapses, then any amounts paid by HERE to the City, as set forth in paragraph 4, *supra*, that remain, at the time that either **(a)** the City does not budget and appropriate the funds or **(b)** such appropriation lapses, shall be immediately returned to HERE.

- 14. Indemnification.** During the time that this Revised Cost-sharing Agreement is in effect, the parties agree to indemnify, defend, save, and hold harmless the other party, including the other party's officers, commissioners, agents, employees, grantees, and assigns, from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, which relate to, arise out of, or are in any way related to the Mississippi Street Project, the 11th Street Project, or the HERE Private Project on account of any injury to persons or damage to property.
- 15. Force Majeure.** Neither party shall be deemed to be at default under this Revised Cost-sharing Agreement to the extent that any delay in performance results from any cause beyond its reasonable control and without its intentional act or negligence.
- 16. Independent Contractor.** In no event, while performing under this Revised Cost-sharing Agreement, shall HERE be deemed to be acting as an employee of the City; rather, HERE shall be deemed to be an independent party. Nothing expressed herein or implied herein shall be construed as creating between HERE and the City the relationships of employer and employee, principal and agent, a partnership, or a joint venture.
- 17. Severability.** If any section, sentence, clause, or phrase of this Revised Cost-sharing Agreement is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this Revised Cost-sharing Agreement.
- 18. Governing Law.** This Revised Cost-sharing Agreement shall be construed and enforced in accordance with and shall be governed by the laws of the State of Kansas.
- 19. Adoption of Recitals.** The above-stated recitals are incorporated herein by reference, are hereby made a part of this Revised Cost-sharing Agreement, and shall be as effective as if repeated verbatim.
- 20. Entire Agreement.** This Revised Cost-sharing Agreement represents the entire agreement between the City and HERE and supersedes all prior negotiations, representations, or agreements, either written or oral. This Revised Cost-sharing Agreement may be amended only by written instrument signed by both the City and HERE

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the City and HERE have executed this Cost-sharing Agreement with the full intent to bind themselves and their successors and assigns.

**CITY:
CITY OF LAWRENCE, KANSAS, a
municipal corporation**



THOMAS M. MARKUS
City Manager

ACKNOWLEDGMENT

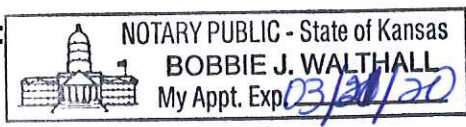
THE STATE OF KANSAS)
)
THE COUNTY OF DOUGLAS) ss:

BE IT REMEMBERED, that on this 14 day of April, 2015, before me the undersigned, a notary public in and for the County and State aforesaid, came Thomas M. Markus, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

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



Notary Public

My Appointment Expires: 

**HERE:
HERE LAWRENCE PROPERTY
OWNER, LLC, a Delaware limited
liability company**



JJ Smith
Authorized Signatory

ACKNOWLEDGMENT

THE STATE OF ILLINOIS)
)
THE COUNTY OF COOK) ss:

BE IT REMEMBERED, that on this 9th day of April, 2015, before me the undersigned, a notary public in and for the County and State aforesaid, came JJ Smith, as an authorized signatory of HERE Lawrence Property Owner, LLC, a Delaware limited liability company, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

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





Notary Public

My Appointment Expires: *1-15-17*

