

KOZ PILOT EXTENSION AGREEMENT

This AGREEMENT made as of the _____ day of _____, 20__ by and among The City of Philadelphia and The School District of Philadelphia (collectively, the "City") and _____ (referred to herein as "Participant" regardless of the actual number of participants), regarding _____ Philadelphia, PA., BRT _____.

BACKGROUND

WHEREAS, the Pennsylvania General Assembly enacted Act No. 92 of 1998, known as the Keystone Opportunity Zone, Keystone Opportunity Expansion Zone and Keystone Opportunity Improvement Zone Act, as thereafter amended, authorizing certain exemptions, abatements, credits and deductions of certain state and local taxes in certain deteriorated areas of the Commonwealth, known as Keystone Opportunity Zones, Expansion Zones and Improvement Zones (collectively, "KOZ"), in order to promote economic development and job creation, and further, has enacted various amendments to the Keystone Opportunity Zone, Keystone Opportunity Expansion Zone and Keystone Opportunity Improvement Zone Act and the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, authorizing the City to designate certain additional deteriorated properties in the City as part of the KOZ and to extend the duration of certain previously designated areas as KOZ, including but not limited to Act 79 of 2008, Act 16 of 2012, Act 84 of 2016 and Act 43 of 2017 (collectively referred to as the "Act").

WHEREAS, the Act requires that all taxing authorities with jurisdiction over a proposed KOZ enact an ordinance or resolution, providing for exemptions, abatements, credits and/or deductions from certain local taxes within the proposed KOZ.

WHEREAS, Participant _____ certain real property located in the proposed KOZ. Participant desires to participate in the Agreement in order to promote the public interest and mitigate the impact that designated properties in the KOZ have on the City and to obtain and retain benefits attributable to the KOZ.

WHEREAS, the Agreement will automatically terminate if Participant fails to qualify under the applicable KOZ legislation as amended, or under the Philadelphia Ordinance designating the area (including the Property) as KOZ for a particular year.

NOW THEREFORE, the City and Participant, in consideration of the mutual undertakings set forth herein and for good and valuable consideration, receipt of which is hereby acknowledged, covenant and agree as follows:

1. Term. The term of this Agreement (the "Term") shall commence on _____ and shall continue for ____ () calendar years and conclude on _____ unless sooner terminated pursuant to the provisions hereof.

2. Properties Included in the Agreement. Participant _____ the real estate and improvements (collectively, the "Property") listed on the schedule ("Property Schedule") attached hereto and incorporated herein.

3. Adjustable Annual Contribution. During the Term of this Agreement, Participant shall make an annual contribution to the City of one hundred and ten percent (110%) of the equivalent amount of real property taxes payable for the tax year immediately prior. 73 P.S. § 820.310 (1).

- a. The Adjustable Annual Contribution for ____ is _____ which is based upon the ____ total certified assessed value of _____ which consists of _____ assessed land value and _____ assessed improvement value.
- b. Subsequent Adjustable Annual Contributions may vary each year depending on the tax rate and any change of the certified assessed value of the land as set by the Office of Property Assessment ("OPA") on March 31 of the preceding Calendar Year and will continue throughout the duration of the Term of this Agreement.
- c. The Adjustable Annual Contribution may increase by the percentage increase in the payments that would occur if the property was not exempt from local real property taxes. 73 P.S. § 820.310 (1).
- d. Payments may not be increased for the duration of the KOZ designation based on an increase in the assessed value of property due to improvements to the property made subsequent to the KOZ designation. 73 P.S. § 820.310 (3). However, any increase in land value, even when the increase is a direct result of improvements made to the property, shall result in an increase in payments.
- e. Participant will be notified in writing of the dollar amount of subsequent Adjustable Annual Contributions on or before January 31st of the Calendar Year for which each payment is due.
- f. Participant shall pay the City by check made payable to "The City of Philadelphia" and delivered to the City's Law Department located at 1401 JFK Blvd, Municipal Services Building, 5th Floor, Attention: Mary-Kate Martin, Esquire. Divisional Deputy City Solicitor of the Use & Occupancy & Transfer Taxes division.

4. Assessment Appeal Rights. The Parties hereby agree that each of the Parties, including the School District, shall retain any and all rights as provided under applicable law (whether statutory or common) to appeal the certified assessed value of the Property.

Further, any revision to the certified assessed value of the Property for a particular Calendar Year, including revisions that result from an assessment appeal by one or all parties, including the School District, is sufficient to cause the Adjustable Annual Contribution amount to be adjusted accordingly pursuant to 73 P.S. § 820.310.

5. Annual Contribution Schedule. Participant shall make the Adjustable Annual Contribution for the current Calendar Year within thirty (30) days of the execution of this agreement or the 31st day of March, whichever comes later. All subsequent payments shall be made no later than the 31st day of March of each Calendar Year.

6. City's Undertaking. As long as no Event of Default shall have occurred and be continuing, the City, during the Term of the Agreement, shall not

- a. seek to collect Real Estate taxes with respect to the Property, or
- b. seek to collect from Participant any Use and Occupancy Tax with respect to the Property, or
- c. seek to collect from Participant the reduction in taxes from certain credits against Business Income & Receipts Tax and Net Profits Tax available to Participant under the KOZ.

7. Late Contribution. Because of the City's reliance on the Annual Contribution in its budgetary matters, the City may impose a late charge on the Annual Contribution in the event that Participant fails to make all or any portion of the Annual Contribution as required by Paragraph 3 herein. The late charge shall accrue on the unpaid balance in the amount of nine percent (9%) per annum, accruing monthly.

8. Event of Default. Each of the following shall constitute an Event of Default hereunder, if it continues for a period of thirty (30) days after written notice to Participant providing details of such failure:

- a. Participant's failure to pay any sum due to the City hereunder on the date such sum is due, or
- b. Participant's failure to comply with any other provision of this Agreement, or
- c. Participant's failure to pay any tax to the City. This provision shall not apply to any tax with respect to which Participant is involved in good faith litigation with the City regarding the Participant's obligation to pay the tax or the amount of the tax, or
- d. Participant's failure to continue to qualify for the tax abatement under the applicable KOZ legislation as amended, or under the Philadelphia Ordinance designating the area, including the Property, as the KOZ. If Participant fails to qualify for a particular year, then Participant hereby agrees to pay the City the amount of local taxes foregone by the City and School District pursuant to this Agreement or the amount of the Annual Contribution for the year, whichever is greater.

9. Remedies. Upon the occurrence of an Event of Default, the City, at its option, may:

- a. terminate this Agreement; and/or
- b. bring action against the Participant or the Property to enforce the provisions of this Agreement and/or to collect any sums due hereunder, including but not limited to the amounts set forth in Section 8(d), above; and/or
- c. upon the occurrence of the Event of Default as described in Section 8(d) above, revoke Participant's participation in the KOZ prospectively, in which case Participant shall henceforth pay taxes to the City as due without the benefit from the KOZ designation; and/or
- d. pursue any other remedy in law or equity to which the City may be entitled.

10. No Assignment. Except with the written consent of the City, at the City's sole discretion, Participant shall have no right to assign their rights or obligations under this Agreement, and any other purported assignment shall be of no force or effect. Any such consent will require the assignee to enter into a similar agreement with the City.

11. No Admission. Nothing in this Agreement shall be construed as an admission on the part of the City or Participant that Participant does or does not qualify for tax exemptions, deductions, abatement, or credits provided to qualified businesses located in the KOZ.

12. Notice. All notices, requests and other communications under this Agreement shall be effectively given only if in writing and sent by United States registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized and receipted overnight courier service (such as Federal Express) guaranteeing next business day delivery, addressed as follows:

If intended for City:

Tax Law Unit
City of Philadelphia Law Department
Municipal Services Building
1401 John F. Kennedy Blvd., Room 580
Philadelphia PA 19102-1595
Attention: Divisional Deputy City
Solicitor
Use & Occupancy & Transfer Tax
Division Mary-Kate Martin, Esquire
Email: MaryKate.Martin@phila.gov

And Department of Commerce
City of Philadelphia
One Parkway Building
1515 Arch Street, 12th Floor
Philadelphia PA 19102-1595
Attention: Madeleine Gee
Email: madeleine.gee@phila.gov

If intended for Participant:

Name: _____
Address: _____
Attention: _____
Telephone: _____
Email: _____

13. Miscellaneous. This Agreement represents the entire agreement between the parties hereto and shall not be modified in any manner except by written instrument executed by the parties and attached hereto. The Agreement and all disputes arising under the Agreement shall be governed, construed, and decided in accordance with the laws of the Commonwealth of Pennsylvania. The parties do not intend to create, and nothing contained in the Agreement shall be construed as creating, a joint venture arrangement, or partnership between the City and Participant. Nothing in the Agreement expressed or implied, is intended or shall be construed to confer upon or given to any person, firm, corporation, or legal entity, other than the parties, any rights, remedies, or other benefits under or by reason of the Agreement. The Agreement may be executed simultaneously in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument. Time is of the essence in the performance of Participant's obligations under the Agreement. The headings in the Agreement are for convenience only and are not a part of the Agreement. The headings do not in any way define, limit, describe, or amplify the provisions of the Agreement or the scope or intent of the provisions.

[BALANCE OF PAGE LEFT INTENTIONALLY BLANK]
[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have caused these presents to be executed as of the date first above written.

The City of Philadelphia
The School District of Philadelphia

DATED: _____

By: _____
Divisional Deputy City Solicitor

PARTICIPANT

DATED: _____

By: _____

ADDENDUM 1: Property Schedule

Address	BRT	____ OPA Certified Assessed Value	110% of ____ Real Estate Tax bill