



Public Works Department

Right of Way Services

18th Floor, City Hall
414 East 12th Street
Kansas City, Missouri 64106

Office: (816) 513-2888
homer.janssens@kcmo.org

Release Letter Communication No. TMP-01592

To: Brian Platt, City Manager
Date: February 14th, 2022
Department: City Manager's Office

Subject: Release of a Cooperative Agreement affecting Barry Road from North Oak west to a point +/- 600 feet west of Green Hills Road

Requested by: Homer Janssens – Public Works, Right of Way Reviewer

Releasing the “Cooperative Agreement for Public Improvement” encumbering properties along NE and NW Barry Road from the east line of North Oak Street, west to a point 600, feet plus or minus, west of Green Hills Road; requesting the City Manager approve the release; and upon the effective date of this communication, the City Clerk is hereby directed to record this Letter of Communication in the Office of the Recorder of Deeds for Platte County and Clay County, Missouri.

That a “Cooperative Agreement for Public Improvement” between Kansas City, Missouri and I. I. Ozar, Walker LaBrunerie, Frank Morgan M Morgan (Doing Business As Serf Company), and William D. Kimpton, all individuals, and Barry Associates, a partnership composed of Walker LaBrunerie, James G. Birt and William M. Birt (hereinafter referred to as "Barry Associates ") in Kansas City, Clay County and Platte County, Missouri, said agreement recorded in Clay County, Missouri and in Platte County as:

Clay County, Missouri

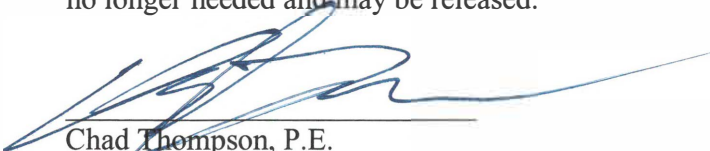
Document No.	D 28750
Book	1219
Pages	94 – 105
Index No.	41211
Date	June 15 th , 1976

Platte County


Book	407
Page	337
Date	February 26 th , 1973
Time	10:40 AM

be released by the City of Kansas City, Missouri.

LCF The above mentioned "Cooperative Agreement for Public Improvement" between Kansas City, Missouri and I. I. Ozar, Walker LaBrunerie, Frank Morgan M Morgan (Doing Business As Serf Company), and William D. Kimpton, all individuals, and Barry Associates, a partnership composed of Walker LaBrunerie, James G. Birt and William M. Birt (hereinafter referred to as "Barry Associates ") in Kansas City, Clay County and Platte County, Missouri is no longer needed and may be released.




Chad Thompson, P.E.
Project Manager



Nicolas Bosonetto, P.E.
City Engineer

Upon the effective date of this Communication, the City Clerk is hereby directed to record this Letter of Communication in the Office of the Recorder of Deeds for Platte County and Clay County, Missouri.



Homer Janssens
Right of Way Services
Department of Public Works

Accepted as written:



Brian Platt
City Manager

COOPERATIVE AGREEMENT FOR PUBLIC IMPROVEMENT

THIS COOPERATIVE AGREEMENT, made and entered into by between and among KANSAS CITY, a Missouri Municipality, (hereinafter called "City"), and I.I. OZAR, WALKER LaBRUNERIE, FRANK MORGAN (doing business as Serf Company), and WILLIAM D. KIMPTON, all individuals, and BARRY ASSOCIATES, a partnership composed of Walker LaBrunerie, James G. Birt and William M. Birt (hereinafter referred to as "Barry Associates") and collectively as "Parties" as more specifically hereafter defined, all parties of the second part,

WITNESS, that

WHEREAS, City through its Director of Public Works proposes to improve N.E. and N.W. Barry Road in Kansas City, Clay and Platte Counties, Missouri from the east line of N. Oak Street to 600 feet more or less west of AA Highway (in Green Hills Road) as a trafficway improvement whereby said road will be graded and a four (4) lane paved roadway together with curbing and guttering and all storm sewers and appurtenances are to be made all in accordance with the amended declaration of necessity No. 4084 adopted and entered June 13, 1972, and

WHEREAS, said City at the time of entering into this agreement declares that it does not have available sufficient funds to construct the aforesaid trafficway improvement either by bond funds or by the levying of special assessments and other fund accounts available for such purpose, except that City does declare that it is able and willing to pay the City's contractor in special tax bills instead of cash secured by liens upon private real property lying within the benefited area as prescribed and authorized by the Charter of said City, and

WHEREAS, Parties owning in excess of two-thirds of the frontage abutting on or along the proposed trafficway improvement determines that it is in the best interest to have said

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STATE OF MISSOURI
COUNTY OF CLAY
FILED FOR RECORDING
WILLIAM S. ELDRIDGE
RECORDER OF DEEDS
Katee Porter
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improvement constructed at the earliest possible moment by City, and in that regard desires to participate in the cost thereof as hereafter set forth, NOW, THEREFORE,

THE CITY AND PARTIES HERETO AGREE BY, BETWEEN AND AMONG THEMSELVES AS FOLLOWS:

Section 1. Scope, purpose and intent. The City and Parties declare that the scope, purpose and intent of this Cooperative Agreement which is made within the purview of §70.210 et seq., R.S.Mo. 1969, is to construct a four-lane trafficway improvement between the east line of N. Oak Street to 600 feet more or less west of AA Highway (N. Green Hills Road) in Kansas City, Clay and Platte Counties, Missouri; that said City shall cause the successful contractor bidding upon City's contract for the work of the public improvement to be paid wholly in special tax bills instead of in cash, said tax bills to be issued in said contractor's favor or to its designated assigns as full compensation for the work to be performed; that the aforesaid improvement shall be of no cost to City, except as hereafter provided for incidental costs; that Parties shall make certain arrangements for guarantee of payment of the portions of certain special tax bills in excess of Thirty-five Dollars (\$35.00) per front foot for the private real property other than lands under Parties ownership or otherwise beneficially held lying within the benefited area abutting N.E. and N.W. Barry Road, as shown on Exhibit C attached, and all grading assessments for such lands which do not abut the roadway improvement, and that Parties shall guarantee by payment of said amounts severally, but not jointly (except in the case of the corporate surety upon the guaranty bond hereinafter provided for, which surety shall be liable for 100 percent of all defalcations in said bond provisions and agreement) in a proportion which the frontage of real property owned, or otherwise beneficially held, by each individual party bears to the total frontage of real property owned by or otherwise beneficially held; that said total project shall be divided between the "east section" and the "west section" as more specifically hereafter

defined.
Katee Porter, Recorder of Deeds

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Section 2. Project and Parties. City and Parties hereby declare that within the scope, purpose and intent as aforesaid the total project shall be divided into the "east section" which shall be that portion from the east line of N. Oak Street to the center line of Baughamm Road (County Line) and the "west section" to be from the center line of Baughamm Road (County Line) to 600 feet more or less west of AA Highway (N. Green Hills Road), Platte County; that the Parties shall be liable and responsible for their respective participation in the cost of said improvement in contemplation of this agreement

ement
as follows:

<u>East Section</u>		<u>West Section</u>	
<u>Parties</u>		<u>Parties</u>	
I. I. Ozar	25.55%	I. I. Ozar	61.60%
Frank Morgan		Barry Associates	4.92%
d/b/a Serf Company	61.35%	Walker LaBrunerie	4.90%
Walker LaBrunerie	<u>13.10%</u>	William D. Kimpton	<u>28.58%</u>
Total	100.00%	Total	100.00%

Section 3. Duties of City. City, in order to carry out the scope, purpose and intent of this agreement, through its Director of Public Works, has held a public hearing upon a Declaration of Necessity (Resolution), a copy of same being attached (as amended), as required by §243 of Article VIII of the Charter of Kansas City, whereby such proposed improvement was instituted. Said declaration, as amended, which is attached hereto and made a part hereof and identified as Exhibit A, included a description of the nature of the improvement and provided how the costs of said improvement shall be paid and how the City's contractor shall be paid, and as provided aforesaid, said contractor is to be paid in special tax bills instead of cash, with the number of installments, said tax bills shall contain and be payable and with the rate of interest thereon including any charge of delinquency. From and after the effective date of this agreement and the approval by the Director of Public Works, the Council of City shall make provisions by ordinance in accord with

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said declaration, as amended, by said director to authorize said improvement and to proceed to call for bids and confirm a contract with the lowest and best bidder for the work to be performed.

Section 4. Duties of Parties. After the approval of the declaration of necessity, as amended, by the Director of Public Works in contemplation of §243 of Article VIII of the Charter of Kansas City, Parties shall deposit within one week of notification of the lowest and best bidder a guaranty bond substantially in the form as attached and made a part hereof identified as Exhibit B, said bond to be in a sum which will be the difference between the lowest and best bid and Thirty-five Dollars (\$35.00) per front foot of all the frontage chargeable against properties not owned or beneficially held by the Parties abutting on and along N.E. and N.W. Barry Road as herein provided, in addition to the estimated cost of relocation of water facilities, whereby Parties will guarantee the installment payments as they become due for all those special tax bills issued to City's contractor in constituting liens upon private properties other than those owned by Parties for an amount all over what would be calculated as Thirty-five Dollars (\$35.00) per front foot abutting upon said proposed improvement held in ownership other than by Parties. Said bond shall represent the estimated amount parties agree to be liable for and assume and agree to pay as a portion of all those special tax bills to be issued to City's contractor in constituting liens upon private properties other than those held in Parties' ownership or otherwise beneficially held by Parties, said private owners to be liable not to exceed for what would constitute Thirty-five Dollars (\$35.00) per front foot abutting upon the proposed improvement contemplated herein. The Parties shall pay upon an installment basis at their election all that amount over and above said \$35 per front foot portion of the special tax bills. Such excess over said \$35 per front foot shall apply to those properties identified in Exhibit C attached hereto and made a part hereof, said Exhibit C describing both the "east section" and the "west section" of the proposed improvement. Said guarantee by Parties pursuant to said guaranty

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bond shall be several and not joint, with each Party guaranteeing payment in the proportion which the frontage of real property owned, or otherwise beneficially held, by each individual Party bears to the total frontage of real property owned, or otherwise beneficially held, by all parties, as shown on Exhibit D attached and made a part hereof as follows:

<u>East Section</u>		<u>West Section</u>	
<u>Parties</u>		<u>Parties</u>	
I. I. Ozar	25.55%	I. I. Ozar	61.60
Frank Morgan		Barry Associates	4.92%
d/b/a Serf Company	61.35%	Walker LaBrunerie	4.90%
Walker LaBrunerie	<u>13.10%</u>	William D. Kimpton	<u>28.58%</u>
Total	100.00%	Total	100.00%

Said guaranty bond shall run in favor of City but shall be considered as a third party beneficiary guaranty to all owners of lands (as shown on Exhibit C) other than Parties' lands abutting the proposed improvement or lands chargeable for a proportion of costs of the improvement. The amount of bond mentioned aforesaid is declared by the City and Parties to be an estimate only, but shall stand to pay the annual installments with interest and penalties, if any, of Parties' share of the excess as herein provided, as they become due under the special tax bills issued against the private properties other than those held by Parties. That in addition to the special tax bills issued against the properties fronting and abutting N.E. and N.W. Barry Road, Parties understand that the grading benefit district will extend back in instances for a distance of 300 feet from the right of way line to include private properties not abutting upon said Barry Road which may receive special assessments by reason of the grading of said trafficway, and in that regard Parties shall be liable for any of the cost to such properties as evidenced by the special tax bills issued to City's contractor for such grading cost attributed to such lands.

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Section 5. Engineering and Supervision Costs. Since time is of the essence of this contract for public improvement Parties agree to advance the cost of all design engineering (plans and specifications) for the construction of the improvement, and for which City will include as part of the cost of the project. Surveying, staking, construction inspection, supervision and administrative costs and other related costs shall be paid for by City and shall not be included in and made a part of the special tax bills to be issued to City's contractor instead of cash as and for the consideration of the work to be performed by contractor.

Section 6. Right of Way and Grading (Condemnation). In the event City must bring condemnation proceedings (and grading) pursuant to Articles VI and VII of its Charter, City will provide for a benefit district for the acquisition of all trafficway right of way and all necessary grading easements or other easements required to construct the project. If the verdict of the jury of freeholders determines any part of the cost (damages) of acquisition or grading damages are assessed by the jury to be general and assess the same against the City at large and the public generally, Parties shall severally, but not jointly, pay to City such amount so assessed. Parties shall severally, but not jointly, also pay all the court costs, jury fees and cost of publication, exclusive of attorney fees performed by City Attorneys, to make the lands and easements available for the proposed improvement. These costs shall be in addition to any special assessments made by the jury of freeholders, or other tribunal, against all or part of Parties' lands lying within the condemnation and grading benefit district, any payment to be made under this section shall be within ten (10) days following the satisfaction by City of the compensation and other costs determined.

Section 7. Water Main Relocation. In the event all or a part of the water main presently located within the proposed

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additional right of way of N.E. and N.W. Barry Road, or within a separate water main easement in the name of City to be included within the new widened right of way of N.E. and N.W. Barry Road, must be relocated, adjusted as to grade, or any other modification, then the cost of the same shall be at the expense of the Parties and not at the expense of the City's Water Fund or other appropriate fund available for that purpose. Such cost, while it will be included in City's contract for the proposed public improvement, the same will be separately bid and shall be at the expense of Parties, severally, but not jointly, the same to be included in and as an estimate of the amount of the guaranty bond deposited by Parties. Parties shall not be bound to pay for the relocation or adjustment of water mains presently located within the right of way of N.E. and N.W. Barry Road, as that cost will be borne by the Water Fund or other available fund of the City.

Section 8. Guaranty Bond. That prior to City's Council passing an ordinance providing for and authorizing the aforesaid improvement, Parties will furnish the guaranty bond provided for in Section 3 substantially in the form attached as Exhibit "B", the terms of which are incorporated by reference and made a part hereof. Said bond to be furnished within the time limit as provided for hereinabove. The terms of said bond shall be such together with the provisions of this agreement, that in the event of the sale or other alienation in whatever form or substance whereby an interest in the lands and improvements are conveyed by Parties, whether such interest be a fee simple title or a lesser interest, any purchaser, lessee, successor, assign or grantee of Parties, or any of them, shall be bound to perform as follows: At the time of the closing of any sale of all or part of lands under ownership or beneficial control of Parties, any outstanding balance of the excess over and above said \$35 per front foot shall be paid in full including interests and penalties, if any, or any purchaser may with the agreement of the corporate or banking surety assume and agree to pay any outstanding obligation upon

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the installment basis, provided that the liability of Parties shall be limited to the percentages set forth hereinabove. Said bond shall also include a provision that in the event all or any of the Parties become bankrupt, insolvent or for any reason whatever, default in the payment of their respective percentage shares, the surety shall be absolutely liable therefor.

Section 9. Effective Date. This Agreement shall become effective upon the latter most date of execution by the City and Parties hereto, provided that said Agreement shall be approved by Ordinance passed by City's Council. Failure by Parties to furnish the guaranty bond timely as herein provided shall be grounds for termination of the Agreement at the election of the City. That upon the effective date said Agreement shall be recorded in the office of the Recorder of Deeds for Clay and Platte Counties, Missouri, and a copy thereof sent to the Secretary of State of Missouri, in compliance with Section 70.300, R.S.Mo. 1969, said recording costs to be paid for by City, and this Agreement shall be considered a covenant running with the land for all lands herein mentioned or affected hereby.

IN WITNESS WHEREOF, the City and Parties hereto have executed the Agreement in five originals the dates and year set forth in the acknowledgements.

KANSAS CITY, a Missouri Municipality

By [Signature]
City Director of Public Works

ATTEST:

[Signature]
City Clerk

Dated: January 29, 1973

Percentage Guaranteed

<u>East Section Parties</u>		<u>West Section Parties</u>	
<u>[Signature]</u> I. I. Ozar	25.55%	<u>[Signature]</u> I. I. Ozar	61.60%
<u>[Signature]</u> Frank Morgan, AN Individual d/h/a Serf Company	61.35%	Barry Associates, A Partnership	
		By: <u>[Signature]</u>	4.92%

Katee Porter, Recorder of Deeds

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Walker LaBrunerie 13.10%
Walker LaBrunerie

Walker LaBrunerie 4.90%
Walker LaBrunerie

100.00%

William D. Kimpton 28.58%
William D. Kimpton

100.00%

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

On this 29th day of January, 1977, before me, the undersigned Notary Public in and for said County and State, personally appeared Myron D. Calkins, who by me being duly sworn did say that he is the lawfully appointed Director of Public Works for Kansas City, a Missouri municipality; that he executed the foregoing Cooperative Agreement for Public Improvement on behalf of said City pursuant to the provisions of Ordinance of Kansas City, Missouri, No. 42107, passed January 9, 1973; that the seal affixed to said Agreement is the corporate seal of said municipality, and that he acknowledged he executed the same as the free act and deed of said municipality.

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

[Signature]
Notary Public in and for said
County and State

My Commission Expires: December 14, 1973

STATE OF MISSOURI)
) ss.
COUNTY OF Jackson)

On this 26 day of December, 1972, before me, the undersigned Notary Public in and for said County and State, personally appeared I. I. Ozar, who by me being duly sworn did say that he executed the foregoing Cooperative Agreement for Public Improvement as a joint venture, pursuant to agreement by, between and among the aforementioned parties for the purpose therein mentioned and subject to the limitations for participation; and that he executed the same as his free act and deed.

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

[Signature]
Notary Public In and for said
County and State

My Commission expires: Dec 30, 1974

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STATE OF MISSOURI)
) ss.
COUNTY OF)

On this _____ day of _____, 1972, before me, the undersigned Notary Public in and for said County and State, personally appeared Walker LaBrunerie, who by me being duly sworn did say that he executed the foregoing Cooperative Agreement for Public Improvement as a joint venture, pursuant to agreement by, between and among the aforementioned parties for the purpose therein mentioned and subject to the limitations for participation: and that he executed the same as his free act and deed.

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

Notary Public In and For Said
County and State

My Commission Expires: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

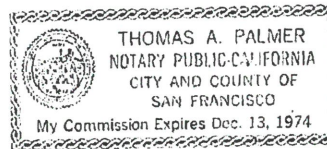
On this 11 day of December 1972, before me, the undersigned Notary Public in and for said County and State, personally appeared William D. Kimpton, who by me being duly sworn did say that he executed the foregoing Cooperative Agreement for Public Improvement as a joint venture, pursuant to agreement by, between and among the aforementioned parties for the purpose therein mentioned and subject to the limitations for participation: and that he executed the same as his free act and deed.

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

Thomas A. Palmer

Notary Public In and For Said
County and State

My Commission Expires: _____



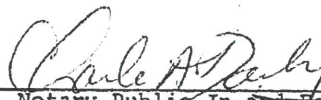
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STATE OF MISSOURI)
COUNTY OF Jackson) ss.

On this 26th day of December, 1972, before me, the under-
signed Notary Public in and for said County and State, personally
appeared Frank Morgan, who by me being duly sworn did say
that he is an individual doing business as Serf Company and that
he executed the foregoing Cooperative Agreement for Public
Improvement as a joint venture, pursuant to agreement by, between
and among the aforementioned parties for the purpose therein mentioned
and subject to the limitations for participation; and that he
executed the same as his free act and deed.

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



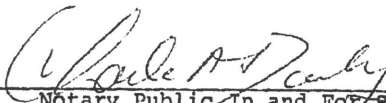
Notary Public In and For Said
County and State

My Commission Expires: Dec. 30, 1974

STATE OF MISSOURI)
COUNTY OF Jackson) ss.

On this 26th day of December, 1972, before me, the under-
signed Notary Public in and for said County and State, personally
appeared William M. Birt, who by me being duly sworn did say
that he is a partner in the general partnership of Barry Associates
composed of himself and Jame, G. Birt, and
that he executed the foregoing Cooperative Agreement for Public
Improvement on behalf of said partnership with full power and
authority of said partnership as a joint venture, pursuant to
agreement by, between and among the aforementioned parties for the
purpose therein mentioned and subject to the limitations for
participation; and that he executed the same as his free act
and deed.

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



Notary Public In and For Said
County and State

My Commission Expires: Dec. 30, 1974

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JUN 15 1876
RECORDED

STATE OF MISSOURI }
County of Platte } ss.
I, Leslie E. Dyer, Clerk of the Circuit Court and ex-officio Recorder of said County, do hereby certify that the within instrument of writing was, on the 26th day of Feb, A.D. 1913 at 10 o'clock AM minutes A. At duly filed for record in this office and is recorded in the Records of this office in Book 107 at page 337.

IN WITNESS WHEREOF, I have hereunto set my hand and caused my official seal to be placed
City, Mo. this 26th day of Feb, A.D. 1913
Leslie E. Dyer
Recorder
By Arthur L. Johnson
Deputy

Filed for Record this 26th day of Feb
A.D. 1913 at 10 o'clock AM minutes 10
and Recorded in Book 107 on Page 337
Wm. R. BRIDGEMAN, Recorder
Deputy

\$12.50

Return
Clay County Dist. C.
per John
city Clerk's Office
L.C.M.