

COOPERATIVE AGREEMENT
between the
County of Platte and the City of Kansas City
for the
Design and Development, and
Management of the Milray-Stoddard Storm water Improvements

This Cooperative Agreement, made and entered into this ____ day of _____, 2023, is by and between Platte County, Missouri, a county of the first classification, hereinafter referred to as “County” and the City of Kansas City, Missouri, hereinafter referred to as “City”.

WHEREAS, Walnut Creek, a tributary of Rush Creek which generally parallels Stoddard Ave, has been impacted by increased runoff and surrounding development patterns; and

WHEREAS, the creek runs north to south and is bounded on the north NW 83rd Street and the south and the by NW 73rd Street; and

WHEREAS, the City completed an initial phase of the project in the mid-2000’s but did not complete the entire flood control mitigation due to a lack of funding; and

WHEREAS, neighbors along this section of creek complain of stream bank erosion, property flooding, roadway flooding, and damage to utilities; and

WHEREAS, multiple studies have been completed to look at possible solutions to the problems along this section of creek with the most recent being the NW Stoddard Detention Preliminary Engineering Study completed by Wilson and Company for the City dated June 13, 2019; and

WHEREAS, with the approval for Committee Substitute for Resolution 220937, the 2024-2028 Citywide Business Plan was approved which included the Submitted FY 2024-2025 GOKC Bond Five Year Plan which included funding in FY 2025-2026 to complete the remaining flood control mitigation for the Milray-Stoddard area of Walnut Creek; and

WHEREAS, parties seek to address these issues via an agreed upon project which addresses, as best possible, the impacts of stormwater runoff along this section of creek and the County is willing to help accelerate the engineering for the improvements with a contribution from its parks and storm water tax

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereby mutually agree as follows:

Agreement

PART I : SPECIFIC TERMS AND CONDITIONS

1. **Scope of Agreement.** The purpose of this Agreement is to provide for a cooperative effort between CITY and COUNTY whereby COUNTY will provide Parks and Storm water sales tax funds, subject to the terms and conditions set forth herein, in an amount

not to exceed \$300,000.00 (three hundred thousand dollars) for the purpose of preparing construction design documents for mitigating flooding impacts along Walnut Creek.

2. **Definitions.** Unless otherwise specified in this Agreement, the following words have the meanings indicated herein, which are applicable to both the singular and plural thereof:

- A. DESIGN PROFESSIONAL means any architect or engineer hired by CITY to perform design services for the project.
- B. PROJECT means the design and construction of the improvements described more specifically in Section I.4.B.

3. **Obligations of COUNTY.** COUNTY agrees to:

- A. FINANCIAL. COUNTY shall remit to CITY, within 90 days upon approval of this Agreement a portion of the COUNTY'S ten-year quarter-cent sales tax for stormwater, parks and recreation, subject to appropriation, ½ of the total cost of Design Professional Contract and easement acquisition. The COUNTY'S contribution for design or easement acquisition shall not exceed \$300,000.
- B. COOPERATION. Comply with all other requirements applicable to CITY as set forth in this Cooperative Agreement.
- C. PLAN REVIEW. The COUNTY shall have two weeks to review plans and make comments to CITY upon receipt of the plans at the following stages of completion:
 - i. Preliminary
 - ii. Draft
 - iii. Draft Final
 - iv. Final for Construction
- D. COUNTY FEES. COUNTY shall assess no fees, taxes, levies or any other costs associated with this project to the COUNTY or any engineer, CONTRACTOR or representative employed by the COUNTY for any project related services pursuant to this Agreement.

4. **Obligations of CITY.** CITY agrees to:

- A. FINANCIAL. CITY, upon approval of this Agreement shall:
 - i. Agree to accept the sum of \$300,000.00 (three hundred thousand dollars) from COUNTY and maintain the same intact to be spent exclusively on the additional design and the management of the specific design project and any easement acquisitions set forth in this Agreement. The City will manage the project and pay all costs, including any cost overruns, not funded by the County.
 - ii. Use the sum contributed by COUNTY to enter into Agreement with Wilson and Company, Inc, (hereinafter referred to as "WILSON"), previously selected by CITY, to complete the engineering design for the

Project. Negotiate an appropriate scope of services and fee with WILSON and approve a contract for services. The County and the City will agree to a project scope prior to executing the DESIGN PROFESSIONAL contract.

- iii. The deliverables will include the necessary construction documents for the CITY or the COUNTY, if funds are available to construct the improvements, to amend this Agreement to bid the project.
- iv. Return to the County the sum of \$300,000.00 if the construction of the project is not completed May 1, 2027. The City will complete the refund by August 1, 2027.

- B. **PLAN DEVELOPMENT.** CITY shall provide project management over the design of the following specific improvements located within the corporate limits of CITY:
 - Improvements to reduce flooding along Walnut Creek which potentially includes a regional stormwater detention basin at roughly 8199 NW Milray Drive and replacement or improvements to culvert crossings at NW 80th Street, NW 77th Terrace, NW Belvidere Parkway, NW 75th Terrace, and NW 75th Street including with the goal of reducing the flooding endangering homes along North Milray Drive and North Stoddard Avenue north of NW 73rd Street.
- C. **DESIGN STANDARDS.** Ensure that all plans, drawings and specifications conform to CITY'S standards for storm sewers and street and utility design, subject to CITY'S right to issue variances to these standards as it deems necessary with regard to the improvements.
- D. **DESIGN APPROVAL.** Allow COUNTY opportunity to approve or deny the plans, drawings and specifications prior to construction of the improvement.
- E. **PROJECT ACCOUNTING.** Upon completion of the project, CITY shall provide to COUNTY an accounting of engineering invoices identifying that the funds contributed by COUNTY herein were spent in accordance with the terms of this Cooperative Agreement.
- F. **ADDITIONAL RIGHT-OF-WAY.** CITY shall be responsible for acquiring additional right-of-way as needed to construct improvements located within CITY.
- G. **MAINTENANCE OF IMPROVEMENTS AND RIGHT-OF-WAY.** Upon both parties final acceptance of the project, CITY shall be responsible for maintenance of all stormwater related improvements and of all right-of-way located within the City limits of CITY.

Part II GENERAL TERMS AND CONDITIONS

1. **Governing Law.** This Agreement shall be construed and governed in accordance with the laws of the State of Missouri. The parties submit to the jurisdiction of the courts of the State of Missouri and waive venue.
2. **Waiver.** No consent or waiver, express or implied, by any party to this Agreement or of any breach or default by any other party in the performance by such other party of its obligations under this Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such party hereunder. Failure on the part of any party to complain of any act or failure to act of any of the other parties or to declare any of the other parties in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights under this Agreement. CITY and the COUNTY reserve the right to waive any term, covenant, or condition of this Agreement; provided, however, such waiver shall be in writing and shall be deemed to constitute a waiver only as to the matter waived and the parties reserve the right to exercise all its rights and remedies under this Agreement irrespective of any waiver granted.
3. **Modification.** This Agreement shall not be amended, modified or canceled without the written consent of the parties to this Agreement.
4. **Headings; Construction of Agreement.** The headings of each section of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.
5. **Severability of Provisions.** Except as specifically provided in this Agreement, all the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.
6. **Audit.** CITY and COUNTY shall have the right to audit this Agreement and all books, documents and records relating thereto. CITY and COUNTY shall maintain all their respective books, documents and records relating to this Agreement during the contract period and for three (3) years after the date of final payment. The books, documents and records shall be made available to the CITY or COUNTY within ten (10) days after the

written request is made. COUNTY shall require its CONTRACTOR to comply with this provision in connection with services performed on the Project.

7. **Assignment.** Neither CITY nor COUNTY shall sell, assign, transfer, or otherwise convey any of their rights under this Agreement without the prior and expressed written consent of the other party. Each party may, at its sole discretion, refuse to consent to any proposed sale, assignment, transfer, or other conveyance. Any attempted sale, assignment, transfer, or conveyance in violation of this paragraph shall be void and shall relieve the non-consenting party of any further liability under this Agreement but shall not relieve the violating party of any liability. If a party consents in writing to a sale, assignment, transfer, or conveyance, unless specifically stated to the contrary in the consent, it shall not release or discharge the party receiving consent from any duty or responsibility set forth in the Agreement.
8. **Conflicts of Interest.** CITY, COUNTY, WILSON and any DESIGN PROFESSIONAL to the CITY shall certify that no officer or employee has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of CITY or COUNTY or its design professional in this Agreement.
9. **No Partnership.** It is expressly understood that the parties are not now, nor will they be, engaged in a joint venture, partnership or any other form of business relationship except as expressly set forth herein, and that no party shall be responsible for the conduct, warranties, guarantees, acts, errors, omissions, debts, obligations or undertaking of any kind or nature of the other in performance of this Agreement.
10. **Binding Effect.** This Agreement shall be binding upon the parties hereto and upon their assigns, transferees and successors in interest, provided neither party may assign this Agreement or the rights or obligations hereunder without the express written consent of the other party.
11. **Representations.** CITY and COUNTY certify that they have the power and authority to execute and deliver this Agreement, to use the funds as contemplated hereby and to perform this Agreement in accordance with its terms.
12. **Recording.** Upon the effective date of this Agreement, this Agreement shall be recorded by CITY in the Office of the Recorder, Platte County, Missouri.
13. **Notices.** All notices required by this Cooperative Agreement shall be in writing sent by regular U.S. mail, postage prepaid, or delivered by courier to the following:
CITY: Director of Water Services
4800 E. 63rd Street
Kansas City, MO 64130

COUNTY: Director of Planning and Zoning
Platte County Administration Building
415 Third St., Room 016
Platte City, MO 64079

All notices are effective on the date mailed or upon receipt if delivered by a courier. Either party may provide the other party a change of address which change shall be effective ten (10) days after delivery.

14. **General Indemnification.** CITY'S contracts with every person or entity receiving any portion of the funds provided by CITY herein shall require such persons or entities to defend, indemnify, and hold harmless CITY and any of its agencies, officials, officers and employees from and against all claims, damages, liability, losses, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from any acts or omissions caused in whole or in part by such person's or entities' employees, agents, or CONTRACTORS, or others for whom such person or entity is legally liable, regardless of whether or not caused in part by any act or omission of CITY, its agencies, officials, officers or employees.
15. **Indemnification for Professional Negligence.** CITY'S contracts with every design professional(s) shall cause such design professional(s) to indemnify and hold harmless CITY and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys' fees, but only to the extent caused by the negligent acts, efforts, or omissions of such design professional(s), their employees, agents or others for whom such design professional(s) are legally liable, in the performance of professional services rendered in conjunction with the Project. Such design professional(s) are not obligated under this section to indemnify CITY for the negligent acts of CITY and any of its agencies, officials, officers, or employees.
16. **Insurance.** CITY shall require every person or entity with whom it contracts and who will receive any portion of the funds provided by CITY herein to procure and maintain, in effect throughout the duration of this Cooperative Agreement, insurance coverage not less than the types and amounts specified below. CITY shall further require, and shall ensure that, CITY is named as an additional insured and shall provide to CITY a certificate of insurance, or its equivalent, demonstrating the same.
 - A. Commercial General Liability Insurance: with limits of \$2,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
 - i. Severability of Interests Coverage applying to Additional Insured's
 - B. Contractual Liability:
 - i. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
 - ii. No Contractual Liability Limitation Endorsement
 - iii. Additional Insured Endorsement, ISO form CG2010, current edition, or its equivalent.

- C. Workers' Compensation Insurance: as required by statute, including Employers Liability with limits of:
 - i. Workers' Compensation: Statutory
 - ii. Employers' Liability with limits of: \$100,000 each accident
 - iii. 500,000 disease –policy limit
 - iv. \$100,000 disease each employee
- D. Commercial Automobile Liability Insurance: with a limit of \$2,000,000 per occurrence, covering owned, hired, and non-owned automobiles. Coverage provided shall be on an "any auto" basis and written on an "occurrence" basis. This insurance will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Project.
- E. If applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$ 2,000,000.

Regardless of any approval by CITY, it is the responsibility of CITY and every person or entity receiving any portion of the funds provided by CITY herein to maintain the required insurance coverage in force always. The failure to ensure that the proper insurance is maintained in effect will not relieve COUNTY of any contractual obligation or responsibility. In the event COUNTY fails to ensure that the required insurance is maintained in effect, CITY may order that the Project immediately stop and, upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Cooperative Agreement as provided for herein and by law.

- 17. **Bonding.** CITY shall require every person or entity with whom it contracts and who will receive any portion of the funds provided by COUNTY herein to furnish Performance and Maintenance and Payment Bonds, each in an amount at least equal to their respective contract price as security for the faithful performance and payment of all CONTRACTOR's and design professional's obligations. The bonds shall remain in effect at least until one (1) year after the date when final payment of the respective contract becomes due. All such bonds shall be obtained from surety or insurance companies that are duly licensed in the State of Missouri to issue bonds or insurance policies for the limits and coverage's so required. The surety and insurance company shall meet the following minimum requirements:
 - A. Surety for contracts in excess of \$200,000, A.M. Best rating of B+, V, or better;
 - B. Surety for contracts less than or equal to \$200,000, qualified to issue bonds to amounts specified in the U.S. Department of Treasury Circular 570;
 - C. For companies providing insurance, A.M. Best rating of B+, V, or better.

IN WITNESS WHEREOF, the parties hereto have duly executed this instrument the day and year first above written.

PLATTE COUNTY, MISSOURI

ATTEST TO:

GLADSTONE, MISSOURI

By: _____
Jera Pruitt, County Clerk

By: _____
Scott Fricker, Presiding Commissioner

Approved as to form:

By: _____
County Counselor

State of Missouri)
)ss
County of Platte)

BE IT REMEMBERED, that on this ____ day of _____, 2023 before me, the undersigned, a notary public in and for the county and state aforesaid, came **Scott Fricker, Presiding Commissioner** of Platte County, Missouri, a chartered county duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, and, **Jera Pruitt, County Clerk**, of Platte County, Missouri, who are personally known to me to be the same persons who executed, as officials, the within instrument on behalf of said municipal corporation, and such persons duly acknowledge the execution of the same to be the act and deed of said municipal corporation.

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

Notary Public

My commission expires:

CITY OF KANSAS CITY, MISSOURI

ATTEST TO:

By: _____
Marilyn Sanders, City Clerk

By: _____
Wes Minder, P.E.
Director of Water Services

Approved as to form:

By: _____
City Attorney

State of Missouri)
)ss
County of Jackson)

BE IT REMEMBERED, that on this ____ day of _____, 2023 before me, the undersigned, a notary public in and for the county and state aforesaid, came **Wes Minder P.E., Director of Water Services** of Kansas City, Missouri, a municipal corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, and, **Marilyn Sanders, City Clerk**, of Kansas City, Missouri, who are personally known to me to be the same persons who executed, as officials, the within instrument on behalf of said municipal corporation, and such persons duly acknowledge the execution of the same to be the act and deed of said municipal corporation.

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

Notary Public

My commission expires: