

COOPERATIVE AGREEMENT
NW Prairie View Road/Route 9 Sidewalks
Kansas City Project No. 89060403
Federal Project No. STP 3301(483)

This Cooperative Agreement for transportation related improvements is made by and between the City of Kansas City, Missouri, a municipal corporation, (hereinafter referred to as "Kansas City"), and the Village of Platte Woods, Missouri, a municipal corporation (hereinafter referred to as "Platte Woods").

WHEREAS, Kansas City and Platte Woods wish to construct a sidewalk and other improvements (the Project) along NW Prairie View Road between NW 77th Terrace and Tower Drive and at the intersection of NW Prairie View Road and Route 9, as depicted on Attachment A.

WHEREAS, the Project lies partially within the corporate boundaries of Platte Woods and partially within the corporate boundaries of Kansas City; and

WHEREAS, Kansas City and Platte Woods wish to work cooperatively in the completion of the project by sharing the cost of the project; and

WHEREAS, Platte Woods, with assistance from Kansas City, submitted an application for sub-allocated federal funds and received the sum of \$450,000 to help pay for the construction of the project; and

WHEREAS, the estimated cost of the entire project is \$940,000 to be prorated between the Parties as specified in this Agreement; and

WHEREAS, the residents of Kansas City and Platte Woods have an interest in ensuring that the project is completed and will be benefited thereby; and

WHEREAS, the Project would not be realized absent a cooperative effort between Kansas City and Platte Woods;

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

PART I: SPECIFIC TERMS AND CONDITIONS

1. **Scope of Agreement.** The purpose of this Agreement is to define Kansas City's and Platte Woods' roles and responsibilities in the completion of the NW Prairie View Drive/Route 9 Sidewalk project.
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:

Contractor means any construction company hired by Kansas City, with concurrence of Platte Woods, responsible for the Construction of the project. The term includes any of said construction company's sub-contractors.

Construction means constructing improvements along long NW Prairie View Road between NW 77th Terrace and Tower Drive and at the intersection of NW Prairie View Road and Route 9, as depicted on Attachment A.

Construction Contract means the written Contract between Kansas City and Contractor governing the Work to be performed.

Construction Cost means the money payable by Kansas City to Contractor for completion of the Work in accordance with the Contract Documents.

Construction Engineering means the process of monitoring, observing, inspecting, reviewing the Contractor's work in or order to ensure compliance with the requirements of the Construction Contract and the Federal Grant.

Consultant means person, firm or corporation having a contract with Design Professional to furnish services as an independent professional associate or Consultant with respect to the Project.

Contingency means funds in the project budget allocated to provide for unforeseen conditions or circumstances.

Drawings means the drawings which graphically show the scope, extent and character of the Work to be furnished and performed by Contractor and which have been prepared by Design Professional and are included in the Construction Contract.

Design means the process of preparing and assembling Drawings and Specifications for the Project.

Design Cost means the money payable by Kansas City to Design Professional for completion of Design for the Project.

Design Professional means the Engineer or other licensed professional who has contracted with Kansas City, with concurrency by Platte Woods, to serve in a design capacity and whose Consultants, members, partners, employees or agents are responsible for preparing Drawings and Specifications.

Design Professional Contract means the written Contract between Kansas City and Design Professional governing the Design of the Project.

Federal Grant means Transportation Alternative Program funds in the amount of \$450,000 provided by the Federal Highway Administration and administered through the

Missouri Highways and Transportation Commission as project number STP 3301 (483). These funds can only be used for Construction or for Construction Engineering.

Project means the design and construction of sidewalks and related improvements along NW Prairie View Road between NW 77th Terrace and Tower Drive and at the intersection of NW Prairie View Road and Route 9, as depicted on Attachment A.

Project Management Cost means the cost of conducting project management activities.

Project Manager means the person designated by Kansas City to manage Design and Construction of the Project.

Project Cost means the cost of the Project, including the \$450,000 Federal Grant, which is estimated to be \$940,000.00

Pro Rata Share of Costs means the portion of the costs out of the total cost of the Work allocated to each party. Pro Rata Share of Costs shall be calculated by dividing the project length in each municipality by the sum of the project length. An estimate of the project length in each municipality is included in Table 1 of Attachment B. An estimate of each party's Pro Rata Share of Costs for Design, Construction, Project Management, Construction Engineering, and Contingency is provided in Table 3 of Attachment B.

Platte Woods Representative means the person designated by Platte Woods to act on behalf of Platte Woods.

Specifications means those portions of the Construction Contract consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Work means the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor, and furnishing and incorporating material and equipment into the construction, and furnishing documents, all as required by the Contract Documents

3. **Obligations of Kansas City.** Kansas City agrees to:

- A. Subject to appropriation of funds by the City Council of Kansas City, allocate the sum of \$254,800.00 to pay for its share of Project Costs. Table 3, Pro Rata Share of Costs by Activity and By Source, in Attachment B provides a detailed breakdown of estimated costs for the Project.
- B. Designate a Project Manager for the Project
- C. Assume responsibility for all Design Professional Contract(s) and Construction Contract(s) necessary for the completion of the Project and enter into said contracts, provided, however, that Kansas City shall not execute any Design Professional or

Construction Contracts without first obtaining concurrence of selection from Platte Woods for all contracts related to the Project.

- D. Assume responsibility for the administration of all Contracts related to the project, provided however, that Kansas City will request reimbursement from Platte Woods to pay for Platte Woods' Pro Rata Share of Costs with funds allocated by Platte Woods pursuant to Section 4.A. of this agreement.
- E. Conduct a qualification-based selection of a Design Professional to provide Design Professional services necessary for the Project.
- F. Cause Design to be completed by Design Professional and obtain approval of final Design from Platte Woods.
- G. Advertise the Project for bid pursuant to the requirements of the Federal Grant and in accordance with the Missouri Department of Transportation's Local Public Agency competitive bid processes and procedures and all applicable federal laws and regulations and the laws and regulations of the state of Missouri.
- H. Cause for construction of the Project to be completed by Construction Contractor and obtain acceptance of the work from Platte Woods.
- I. Execute a funding agreement with the Missouri Highways and Transportation Commission for Federal Grant No. STP 3301 (483) and administer the Federal Grant awarded to the Project. Proceeds from the Federal Grant shall be applied towards the Cost of Construction as shown on Table 3, in Attachment B.
- J. Acquire all temporary construction easements and right-of-way (if necessary) located within the city limits of Kansas City.
- K. Submit all project plans and costs associated with work to be done in Platte Woods for review and approval by Platte Woods.
- L. Require Contractor to perform all work in connection with the Project in accordance with all applicable federal, state, and local laws.
- M. Require Contractor performing work in connection with the Project to maintain performance and payment bonds in accordance with applicable law and require that the names of both Platte Woods and Kansas City appear as co-obligee on any bond(s) securing performance, and payment with regard to any contract which includes work pursuant to the Project.
- N. Require Design Professionals and Construction Contractor(s) performing work pursuant to this agreement to procure and maintain in effect insurance as required by this Agreement listing Platte Woods and Kansas City as additional insureds.
- O. Require Design Professional and Construction Contractor to indemnify Platte Woods.
- P. Submit copies of all invoices and applications for payment received for work done in connection with the Project for Platte Woods' review and approval, which approval shall not be unreasonably withheld.
- Q. Submit reimbursement requests to Platte Woods for invoices and applications of payment.
- R. Be responsible for paying Design Professional and Contractor for work on the Project.
- S. Submit to Platte Woods all Change Orders that affect Platte Woods' Pro Rata Share of Construction Costs for their review and approval.

4. **Obligations of Platte Woods.** Platte Woods agrees to:

- A. Subject to appropriation of funds by the City Council of Platte Woods, allocate the sum of \$235,200.00 to pay for its share of Project Costs. Table 3, Pro Rata Share of Costs by Activity and By Source, in Attachment B provides a detailed breakdown of estimated costs for the Project.
- B. Identify a Project Representative to serve as liaison to the Project Manager assigned by Kansas City.
- C. Review and provide concurrence of selection of Design Professional(s) and Contractor(s) for the project within 21 days of receipt of notice of selection from Kansas City.
- D. Review and approve scope of work and Design Costs of Design Professional Services Contract.
- E. Review and approve Drawings, Specifications, and Engineer's Estimate of Construction Costs for all Work to be completed within Platte Woods.
- F. Review and approve Design Professional invoices and Contractor's payment requests within 10 days of receipt for said documents from Kansas City.
- G. Reimburse Kansas City for Platte Woods' Pro Rata Share of Design Costs and Construction Costs within 30 days of receipt of a request for reimbursement from Kansas City.
- H. Review change orders and execute approved change orders for work in Platte Woods in a timely manner.
- I. Comply with all other requirements applicable to Platte Woods as set forth in this Cooperative Agreement.

PART II: GENERAL TERMS AND CONDITIONS

1. **Governing Law.** This Agreement shall be construed and governed in accordance with the law of the State of Missouri. The parties submit to the jurisdiction of the courts of the State of Missouri and waive venue, and shall not raise forum non conveniens as an objection to the location of any litigation.

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. Kansas City and Platte Woods 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 any and all of its rights and remedies under this Agreement irrespective of any waiver granted.

3. **License to use right-of-way.** Platte Woods hereby grants to Kansas City, its representatives, employees, engineers, consultants, Design Professional, Contractor and

surveyors a license to use that portion of the public right-of-way in order to allow the performance of the Project in accordance with the terms of this Agreement. The term of the license shall run concurrently with the term of this Agreement and shall expire at the time Platte Woods accepts the Project deliverables from Kansas City. The grant of a license by Platte Woods to Kansas City shall not constitute a conveyance of any interest in the public right-of-way.

4. **Modification.** This Agreement shall not be amended, modified or canceled without the written consent of the parties to this Agreement.

5. **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.

6. **Severability of Provisions.** Except as specifically provided in this Agreement, all of 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.

7. **Audit.** Platte Woods shall have the right to audit this Agreement and all books, documents and records relating thereto. Kansas City shall maintain all its books, documents, plan sets, record drawings and records in hard copy and electronic version 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 Platte Woods within ten (10) business days after the written request is made. Kansas City shall require its Contractor to comply with this provision in connection with services performed on the Project.

8. **Assignment.** Neither Kansas City nor Platte Woods 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.

9. **Conflicts of Interest.** Platte Woods, Kansas City and the City's Contractor shall certify that no officer or employee of Kansas City or Platte Woods has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no officer or employee of Kansas City or Platte Woods, or 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 Kansas City or Platte Woods or the selected Contractor or Design Professional in this Agreement.

10. **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.

11. **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.

12. **Representations.** Kansas City and Platte Woods 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.

13. **Records of Agreement.** The City Clerk's office for each respective city will be provided a copy of the executed agreement.

14. **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:

KANSAS CITY: Michael Shaw
Director of Public Works
20th Floor, City Hall
414 E. 12th Street
Kansas City, MO 64106

PLATTE WOODS: John Smedley
Mayor
6750 NW Tower Dr.
Platte Woods, MO 64151

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.

15. **General Indemnification.** Kansas City's contracts with every person or entity receiving any portion of the funds provided by Platte Woods herein shall require such persons or entities to defend, indemnify, and hold harmless Platte Woods 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 Kansas City or Platte Woods, its agencies, officials, officers or employees.

17. **Insurance.** Kansas City shall require every person or entity with whom it contracts and who will receive any portion of the funds provided by Platte Woods 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. Kansas City shall further require, and shall ensure that, Platte Woods is named as an additional insured and shall provide to Platte Woods a certificate of insurance, or its equivalent, demonstrating the same.

1. Worker's Compensation coverage as required by statute.
2. Contractor's General Liability which shall include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor:
 - a. General Aggregate: In an amount equal to the current Missouri sovereign immunity monetary liability limit for all claims arising out of a single occurrence as set forth in Missouri Revised Statutes section 537.610.
 - b. Products-Completed Operations Aggregate: \$1,000,000
 - c. Personal and Advertising Injury: \$1,000,000
 - d. Each Occurrence (Bodily Injury and Property Damage): In an amount equal to the current Missouri sovereign immunity monetary liability limit as set forth in Missouri Revised Statutes section 537.610.
 - e. Property Damage liability insurance will provide Explosion, Collapse and Underground coverages where applicable.
 - f. Excess or Umbrella Liability
 - 1) General Aggregate: \$2,000,000
 - 2) Each Occurrence: \$2,000,000
3. Automobile Liability: In an amount equal to the current Missouri sovereign immunity monetary liability limit as set forth in Missouri Revised Statutes section 537.610 for all claims arising out of a single accident or occurrence and for any one person in a single accident or occurrence.

It is the responsibility of Kansas City and every person or entity receiving any portion of funds pursuant to this agreement shall maintain the required insurance coverage in force at all times. The failure to ensure that the proper insurance is maintained in effect will not relieve Platte

Woods of any contractual obligation or responsibility. In the event Kansas City fails to ensure that the required insurance is maintained in effect, Platte Woods 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.

18. **Compliance with Laws.** Kansas City and its Contractor shall comply with all federal, state and local laws, ordinances and regulations applicable to the Project.

19. **Term.** This Agreement shall begin upon its execution and shall continue until all the services to be provided are completed subject to the terms and conditions set forth in this Agreement. This agreement may be terminated if the lowest and best bid received by Kansas City for construction of the Project exceeds the estimated total project cost, or by mutual agreement by both parties.

20. **Counterparts.** This Agreement may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

21. **Future appropriations.** Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by any party.

22. **Default and Remedies.** If a party shall be in default or breach of any provision of this Agreement, the other party may terminate this Agreement, suspend its performance and invoke any other legal or equitable remedy after giving the other party thirty (30) days written notice and opportunity to correct such default or breach. All rights and remedies granted to each party herein and any other rights and remedies which either party may have at law and in equity are hereby declared to be cumulative and not exclusive, and the fact that either party may have exercised any remedy without terminating this Agreement shall not impair that party's rights thereafter to terminate or to exercise any other remedy herein granted or to which that party may be otherwise entitled.

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

[SIGNATURES BEGIN ON NEXT PAGE]

CITY OF KANSAS CITY, MISSOURI

By _____
Michael Shaw
Title Director of Public Works

ATTEST:

By _____
Marilyn Sanders
Title City Clerk

Ordinance No. _____

Approved as to Form:

By _____
Nicole Rowlette
Title Assistant City Attorney

State of Missouri)
)ss
County of Jackson)

BE IT REMEMBERED, that on this ___ day of _____, 2021 before me, the undersigned, a notary public in and for Kansas City, Missouri (Jackson County) and state aforesaid, came **Michael Shaw, Director of Public Works** 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:

PLATTE WOODS, MISSOURI

BY: _____
John Smedley, Mayor

ATTEST:

_____, City Clerk

Approved as to form:

BY: _____
_____, Attorney

State of Missouri)
)ss
County of Jackson)

BE IT REMEMBERED, that on the ____ day of _____, 2021 before me, the undersigned notary public in and for Platte Woods, Missouri (Platte County) and state aforesaid, came _____ **Platte Woods, Missouri**, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors and acknowledged said instrument to be the free act and deed of said 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:

ATTACHMENT A
PROJECT MAP

ATTACHMENT B

Table 1: Estimated Project Length

	Kansas City	Platte Woods	Total
Project Length (Lineal Feet)	600	550	1150
% of Project Length	52%	48%	100%

Table 2: Estimated Project Costs

Design Costs	90,000.00
Construction Costs	720,000.00
Project Management Costs	18,000.00
Construction Engineering	40,000.00
Contingency	<u>72,000.00</u>
TOTAL COSTS	940,000.00

Table 3: Pro Rata Share of Costs by Activity and By Source

	Kansas City	Platte Woods	Federal Grant	Total
Design Costs	46,800.00	43,200.00		90,000.00
Construction Costs	140,400.00	129,600.00	450,000.00	720,000.00
Project Management Costs	9,360.00	8,640.00		18,000.00
Construction Engineering	20,800.00	19,200.00		40,000.00
Contingency	<u>37,440.00</u>	<u>34,560.00</u>	-	<u>72,000.00</u>
Total	254,800.00	235,200.00	450,000.00	940,000.00