

**AGREEMENT FOR PAYMENT OF FUNDS FOR THE PURPOSE OF
NW WAUKOMIS DRIVE COMPLETE STREETS UPGRADE
(NW ENGLEWOOD ROAD TO NW 62nd STREET)**

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

Recitals

WHEREAS on April 2, 2013, the voters of Platte COUNTY approved a COUNTY-wide sales tax (“the Tax”) for 10 years for the purpose of financing transportation-related projects, including but not limited to roads, bridges, drainage structures, and sidewalks; and

WHEREAS on September 6, 2016, the CITY and COUNTY entered into a cooperative agreement to identify transportation-related projects where the Tax would be utilized within the CITY limits; and

WHEREAS it is in the best interest of all of the citizens of COUNTY and of CITY to use a portion of the proceeds of the Tax to finance the construction of certain improvements of NW Waukomis Drive from NW Englewood Road to NW 62nd Street; and

WHEREAS the CITY is overseeing the construction of certain improvements of the Project; and

WHEREAS the improvements would not be realized absent a cooperative effort between CITY and COUNTY.

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 pay CITY for a portion of the construction work undertaken by CITY’s Contractor for Construction of the Project.
2. **Future Agreements.** This agreement covers only construction work for the Project.
3. **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. **CONTRACTOR** means CITY’s contractor and all Subcontractors.
 - B. **PROJECT** means the construction of the transportation improvements described more specifically in construction plans and specifications titled “NW Waukomis Drive Complete Streets Upgrade (NW Englewood Road to NW 62nd Street)”.
 - C. **CONSTRUCTION** means the constructing of NW Waukomis Drive as a 2 lane Roadway from NW Englewood Road to NW 62nd Street. The work includes, but is not limited to, water line relocation, sanitary sewer relocation, building reinforced concrete box culverts, bridges, storm

sewer construction, pavement marking, work zone traffic control, street lighting, fencing, site restoration, and erosion control.

- D. **PAYMENT BOND, PERFORMANCE BOND and MAINTENANCE BOND** mean the forms of security executed by CITY's Contractors and their Sureties.
- E. **SURETY** means the corporation, partnership or individual, duly licensed and authorized to do business in Missouri, bound with and for Contractor to guarantee and assume legal liability for payment of any and all obligations as provided in the CITY Charter and Section 107.170 R.S.Mo 1994, as amended, and to guarantee and assume legal liability for the faithful performance of this Agreement.
- F. **ESROW AGREEMENT** means the agreement entered into by CITY and COUNTY which establishes a project specific Escrow Account at UMB Bank, N.A.
- G. **ESCROW ACCOUNT** means a project specific account jointly funded, as directed via this Agreement, by the CITY and COUNTY that will be managed by an Escrow Agent of UMB Bank, N.A.
- H. **ESCROW AGENT** means the individual from UMB Bank, N.A. who will disburse payment to the CONTRACTOR only upon receiving joint approval from the Directors of Public Works for the CITY and COUNTY or their approved agents.

4. **Scope of Work.** In all respects, this Agreement is governed by the terms and conditions of the agreement between parties dated September 6, 2016 and the duties as further defined following:

- A. CITY shall continue to be responsible for any issues pertaining to project design, relocation of utilities that are in conflict with the project, Right-of-Way acquisition, negotiations with property owners, staking of all easements and Right-of-Way, etc. for which for which they were solely responsible for in the development of final drawings and specifications to be used for construction of the PROJECT. Additionally the CITY shall assume all post design duties to construct the PROJECT that shall include, but are not limited to, all pre-bid preparation, distribution of bid documents, advertisement for bids, receiving contractor bids, review of bids, recommendation of bid award, recommendation of contract, preparation of contractor contract, hiring of a consultant to perform third party inspection of construction work, day to day management of the construction process, preparation of closeout documents, delivery of significant project change information to the CITY's Consultant from which to prepare drafting revisions and Contractor redline drawings.

5. **Payment Conditions.** Both parties agree to the following:

- A. **ESTIMATE OF PROBABLE CONSTRUCTION COSTS OF THE PROJECT.** The portion of the PROJECT cost to be paid by COUNTY with proceeds from the Tax is approximately \$8,000,000.00. The portion of the PROJECT cost to be paid by CITY is approximately \$5,000,000.00. The contribution of these funds by CITY includes federal funds.
- B. **PAYMENT CONDITIONS.** Both COUNTY and CITY agree to the following:
 - 1. Within thirty (30) days of executing this Agreement, County shall deposit \$4,400,000.00, as shown in Section I.5.A, into ESCROW ACCOUNT.

2. Within thirty (30) days of initial deposit, the County shall make estimated monthly deposits of \$200,000, as shown in Section I.5.A, into the ESCROW ACCOUNT. Estimated monthly deposits by County shall only be made from funds derived from the proceeds of the Tax. County shall not be required to make any deposits consisting of funds derived by County from any source other than the proceeds of the Tax.
3. Within thirty (30) days of executing this Agreement, City shall deposit \$5,000,000, as shown in Section I.5.A, into ESCROW ACCOUNT. Subject to the appropriation of funds, City shall also be required to deposit sufficient funds to cover any shortfall from the estimated monthly deposits required of County due to a failure of the Tax to provide sufficient proceeds to meet the estimated monthly deposit requirements set forth in Part 1, Section 5.B.2.
4. Should the actual construction costs exceed the payments indicated in Section 5.B.1 and 5.B.2 above, CITY shall invoice COUNTY. Within thirty (30) calendar days of invoicing, COUNTY shall, subject to the availability of additional Tax funds, reimburse CITY one hundred (100) percent of such costs or an amount equivalent to the remaining Tax funds.
5. Should actual construction costs be less than the payment indicated in Section 5.B.1 and 5.B.2 above, CITY shall collect excess funds.
6. Contractor shall submit monthly pay applications to CITY. Upon receipt, CITY shall forward the pay application for review and approval by COUNTY. CITY and COUNTY shall submit signed approvals to ESCROW AGENT consistent with the provisions within ESCROW AGREEMENT. Upon approval of both CITY and COUNTY, ESCROW AGENT shall deliver payment to CONTRACTOR.
7. If CITY and COUNTY do not mutually approve a submitted pay application, the parties agree to settle the matter by mediation within thirty (30) days before resorting to arbitration, litigation, or some other dispute resolution procedure.

PART II: GENERAL TERMS AND CONDITIONS

1. General Indemnification.

- A. For purposes of this Section 1 only, the following terms shall have the meanings listed:
 - i. Claims mean all claims, damages, liability, losses, costs and expenses, including reasonable attorneys' fees.
 - ii. COUNTY's *Agents* means COUNTY's officers, employees, agents or subcontractors.
 - iii. CITY means the CITY OF KANSAS CITY, MISSOURI and its agents, officials, officers, employees and subcontractors.
- B. Nothing in this section shall apply to indemnification for professional negligence which is specified in a separate provision of this Agreement.

- C. CITY's contracts with CITY's Contractors in connection with the Project shall require such Contractors to defend, indemnify, and hold harmless COUNTY under the terms of this section. The obligations of CITY's Contractors under this section with respect to indemnification of COUNTY, its agencies, officials, officers, or employees shall be limited to the coverage and limits of insurance that CITY's Contractors are required to procure and maintain under this Agreement.

2. **Indemnification for Professional Negligence.** If CITY hires any Design Professional in connection with the Project, then CITY's contracts with its Contractors shall cause such Contractors to indemnify and hold harmless the COUNTY 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 Contractors, its employees, agents or others for whom such Contractors are legally liable, in the performance of professional services for the construction of the Project under this Agreement. CITY's Contractors are not obligated under this section to indemnify COUNTY for the negligent acts of the COUNTY's agencies, officials, officers, or employees.

The CITY's Design Professional, for design work performed prior to construction work beginning or design work performed during the construction period, shall indemnify and hold harmless the COUNTY and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorney's fees, but only to the extent caused by the negligent acts, efforts, or omissions of such Design Professional, its employees, agents, or others for whom such Design Professional are legally liable, in the performance of professional services for the construction of the PROJECT under this Agreement. CITY's Design Professionals are not obligated under this section to indemnify the COUNTY for negligent acts of the COUNTY's agencies, officials, or employees.

3. **Insurance.**

A. CITY's Contractors shall procure and maintain in effect throughout the duration of this Agreement insurance coverage not less than the types and amounts specified below. An Owner's Controlled Insurance Program shall be acceptable to CITY.

i. 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:

1. Severability of Interests Coverage applying to Additional Insureds
2. Contractual Liability
3. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
4. No Contractual Liability Limitation Endorsement
5. Additional Insured Endorsement, ISO form CG2010, current edition, or its equivalent.

ii. Workers' Compensation Insurance: as required by statute, including:

1. Employers Liability with limits of:

i. Workers' Compensation - Statutory

2. Employers' Liability with limits of:

i. \$100,000 each accident

ii. \$500,000 disease - policy limit

iii. \$100,000 disease - each employee

iii. 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 Agreement, by CITY or CITY's Contractors.

iv. If applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$ 2,000,000

B. The policies listed above may not be canceled until after thirty (30) days written notice of cancellation to COUNTY, ten (10) days in the event of nonpayment of premium. The Commercial General and Automobile Liability Insurance specified above shall provide that COUNTY and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insured's for the services performed under this Agreement. CITY or CITY's Contractor shall provide to COUNTY prior to the performance of the Project a certificate of insurance showing all required endorsements and additional insured's. The certificate shall be in CITY's furnished form or its equivalent.

C. All insurance coverage must be written by companies that have an A.M. Best's rating of "A-V" or better and are licensed or approved by the State of Missouri to do business in Missouri.

D. In the event of CITY's failure or the failure of its Contractors to maintain the required insurance in effect, the COUNTY may order CITY and its Contractors to immediately stop work.

4. **Governing Law.** This Agreement shall be governed by the law of the State of Missouri. The parties submit to the jurisdiction of the courts of the State of Missouri and venue shall be proper only in Platte COUNTY.

5. **Compliance with Laws.** CITY and all its Contractors shall comply with all federal, state and local laws, ordinances and regulations applicable to the Project. All references to "Code" shall mean CITY's Code of Ordinances, including any amendments thereto or recodification thereof.

6. **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. COUNTY and CITY 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.

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

8. **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.

9. **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.

10. **Audit.** COUNTY shall have the right to audit this Agreement and all books, documents and records relating thereto. CITY shall maintain all its 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 COUNTY within ten (10) days after the written request is made. CITY shall require its Contractor to comply with this provision in connection with services performed on the Project.

11. **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.

12. **Conflicts of Interest.** CITY and its Contractor shall certify that no officer or employee of CITY has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no officer or employee of CITY, 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 CITY or its Contractor in this Agreement.

13. **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.

14. **Bonds and Surety.**

- A. CITY's Contractors shall furnish a Payment Bond, Performance Bond and Maintenance Bond, to CITY, executed by a Surety, in the amount of any contract and the total amount of all contracts entered into between CITY and its Contractor's, workers, and material suppliers, guaranteeing Contractor's faithful performance of each and every term of such contracts and all authorized changes thereto, including those terms under which CITY or its Contractor agrees to pay legally required wage rates including the prevailing hourly rate of wages in the locality, as determined by the Department of Labor and Industrial Relations or by final judicial determination, for each craft or type of workman required to perform under this Agreement; guaranteeing the payment of all obligations as provided in Section 107.170 R.S.Mo., 1994, as amended; and guaranteeing the services and work against faulty workmanship and faulty materials for the period of time as prescribed by the Performance and Maintenance Bond. Surety must:
1. Be approved by CITY's Finance Department;
 2. Be qualified to issue bonds at amounts specified in the Department of the Treasury Circular 570;
 3. Be licensed by the State of Missouri to do business in the State of Missouri; and
 4. Retain an A.M. Best Rating of B+, class V for Bonds in excess of \$200,000.
- B. The bonds shall remain in full force and effect during the term of the Agreement as set forth in Section of this Agreement.

15. **Prevailing Wage.** CITY and its Contractor shall comply in all respects with the Prevailing Wage Laws of the State of Missouri, Section 290.210 to 290.340, R.S.Mo., 1994, as amended, and any federal prevailing wage laws that apply to the work. CITY agrees that the COUNTY shall not be responsible for assisting CITY and its Contractor in providing any required documentation necessary to demonstrate compliance with the Prevailing Wage Laws.

16. **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.

17. **Representations.** COUNTY and CITY 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.

18. **Buy American Policy.** It is the policy, on projects receiving Federal funding, that any manufactured goods or commodities used or supplied in the performance of contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible.

19. **Recording.** Upon the effective date of this Agreement, this Agreement shall be recorded by CITY in the Office of the Department of Records, Platte COUNTY, Missouri and a copy hereof shall be sent to the Secretary of State of Missouri, in compliance with Section 70.300 R.S.Mo.

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

[SIGNATURES BEGIN ON NEXT PAGE]

DRAFT

ATTEST TO: KANSAS CITY, MISSOURI

By: _____

City Clerk

By: _____

Michael Shaw
Director of Public Works

Approved as to form:

By: _____

Assistant City Attorney

State of Missouri)
)ss
County of Jackson)

BE IT REMEMBERED, that on this ___ day of _____, 20___ before me, the undersigned, a notary public in and for the 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:

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, sufficient to meet the obligation hereby incurred, and that there is a balance, otherwise unencumbered, and a cash balance sufficient to meet the obligation hereby incurred from which payment is to be made.

By: _____

Director of Finance

ATTEST TO: PLATTE COUNTY, MISSOURI

By: _____

County Clerk

By: _____

Presiding Commissioner

Approved as to form:

By: _____

County Counselor

State of Missouri)
)ss
County of Platte)

BE IT REMEMBERED, that on this ___ day of _____, 20___ before me, the undersigned, a notary public in and for the county and state aforesaid, came, to me personally known, who by me duly sworn did say that he/she is the **Presiding Commissioner of Platte County, a Missouri**, and 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:

Pursuant to Sections 50.660 and 55.160 RSMo., I certify that there is an unencumbered balance or anticipated revenue to be placed to the credit of the appropriation to which the foregoing expenditure is to be charged, and an unencumbered cash balance or anticipated revenue in the treasury to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Kevin Robinson, County Auditor Date