

COOPERATIVE AGREEMENT FOR PAYMENT OF FUNDS FROM CITY OF KANSAS CITY, MISSOURI TO JACKSON COUNTY TO SUPPLEMENT C.U.R.S. FUNDS FOR THE PURPOSE OF AMENDING PRELIMINARY DESIGN CONTRACT WITH TAPANAM TO INCLUDE RIGHT-OF-WAY ACQUISITIONS, NEGOTIATIONS AND FINAL DESIGN OF 135TH STREET FROM HOLMES ROAD TO MISSOURI HIGHWAY 150

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

THIS AGREEMENT, made and entered into this 13th day of September, 2011 by and between Kansas City, Missouri, hereby referred to as "City", and Jackson County, Missouri, herein referred to as "County".

WHEREAS, the City and the County entered into an agreement on June 2, 1976, relating to the allocation and expenditure of road and bridge tax funds on County Urban Road System (C.U.R.S.) within Kansas City; and

WHEREAS; the City by Council Resolution 060707, passed on July 06, 2006, recommended that the County proceed with the preliminary design of 135th Street improvements utilizing County Urban Road System (C.U.R.S.) funds; and

WHEREAS, these improvements are being partially funded by available County Urban Road System (CURS) funds; and

WHEREAS, the additional final design services, including County's expenses to administer the amended contract through the preparation of final plans, will require \$269,430.18 in additional funding; and

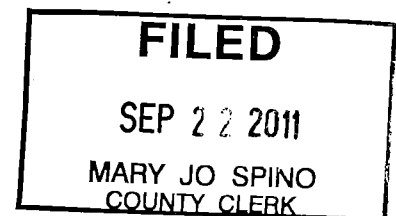
WHEREAS, City has appropriated \$100,000.00 within the 2011 GO Bond Fund for the additional design work (Ordinance #100692); and

WHEREAS, Martin City CID has agreed to contribute up to \$169,430.18 to City by a separate agreement upon City's execution of this agreement with the County; and

WHEREAS, the residents of City have an interest in ensuring that the project is completed and will be benefited thereby; 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 City will supplement CURS funds, subject to the terms and conditions set forth herein, in an amount not to exceed \$269,430.18 (two hundred sixty-nine thousand, four hundred and thirty dollars and eighteen cents) for the purpose of amending the design contract with TapanAm to include final design of 135th Street, from M-150 highway to Holmes Road, such improvements lying wholly within the corporate limits of City.

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:

Design Professional means any architect or engineer hired by County to perform design services for the project.

Project means the design of the transportation improvements described more specifically in Section I.4.B.

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

A. Remit to County, within 120 days of approval of this agreement by City's Director of Finance, up to the sum of \$269,430.18 (two hundred sixty-nine thousand, four hundred thirty dollars and eighteen cents), provided however that if County fails to fulfill its obligations as set forth or incorporated in paragraph 4 of this Cooperative Agreement, City shall be entitled to withhold in full, or recover in full if already remitted to County, said remittance.

B. Comply with all other requirements applicable to City as set forth in this Cooperative Agreement.

C. If eminent domain / condemnation is required as part of the Right-of-Way Acquisitions & Negotiations process, then the City will have to do those acquisitions.

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

A. Accept up to the sum of \$269,430.18 (two hundred sixty-nine thousand, four hundred thirty dollars and eighteen cents) from City and maintain the same intact to be spent exclusively on the final design of the specific project set forth in this agreement, and none others.

- B. Use the sum contributed by City to perform Right-of-Way Acquisitions, Negotiations and final design of the following specific improvements located within the corporate limits of City Improvements of 135th Street from its present condition to three 12' lanes with curbing, sidewalk, grade revisions to improve visibility, and drainage (including curb inlets), street lights, signal improvement at Inverness and ROW engineering from M-150 Highway to Holmes Road.
- C. Exercise general supervision over the Right-of-Way Acquisition, Negotiations and design of the improvements.
- D. 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.
- E. Provide to City copies of any plans, drawings and specifications for City's review and comment, and require the design professional to address any concerns raised by City to City's satisfaction.
- F. Provide to City, within 10 business days of any request by City, an accounting sufficient to satisfy City that the funds contributed by City herein were spent in accordance with the terms of this Cooperative Agreement, and provide such additional supporting documentation as may be required by City to establish County's compliance with all other terms and conditions of this Cooperative Agreement.
- G. Comply with all other requirements applicable to County as set forth in this Cooperative Agreement.
- H. Should the additional design services, including County's expenses to administer its amended contract with TapanAm through the presentation of final plans, require less than \$269,430.18 in additional funding, the County to return unused portion of funds back to the City to be shared pro rata with Martin City CID.

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.
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 any and all of its rights and remedies under this Agreement irrespective of any waiver granted.

3. License to use right-of-way. City hereby grants to County, its representatives, employees, engineers, consultants and contractors 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. The grant of a license by City to County 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. City shall have the right to audit this Agreement and all books, documents and records relating thereto. County 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 City 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.

8. 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.

9. **Conflicts of Interest.** County and its design professional and contractor shall certify that no officer or employee of County has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no officer or employee of County, 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 County or its design professional and contractor 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.** 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.

13. **Recording.** Upon the effective date of this Agreement, this Agreement shall be recorded by County in the Office of the Department of Records, Jackson County, Missouri.

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:

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

COUNTY: Director of Public Works
 303 W. Walnut Street
 Independence, MO 64050

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. **Indemnification for Professional Negligence.** County'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.** County 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. County 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.

1. 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:

- a. Severability of Interests Coverage applying to Additional Insured's
- b. Contractual Liability
- c. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
- d. No Contractual Liability Limitation Endorsement
- e. Additional Insured Endorsement, ISO form CG2010, current edition, or its equivalent.

2. Workers' Compensation Insurance: as required by statute, including Employers Liability with limits of:

Workers' Compensation

Statutory

Employers' Liability with limits of: \$100,000 each accident
\$500,000 disease –policy limit
\$100,000 disease - each employee

3. Commercial Automobile Liability Insurance: with a limit of \$2,000,000 per occurrence, covering owned, hired, and non-owned automobiles. Coverage provided shall protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Project.

4. 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 County and every person or entity receiving any portion of the funds provided by City herein to 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 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.

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

[SIGNATURES BEGIN ON NEXT PAGE]

ATTEST TO:

KANSAS CITY, MISSOURI

Vickie Thompson-Carr
By: _____
City Clerk

By: *Sherril K. McIntyre*

Sherril McIntyre, P.E.
Acting Director of Public Works

Approved as to form:

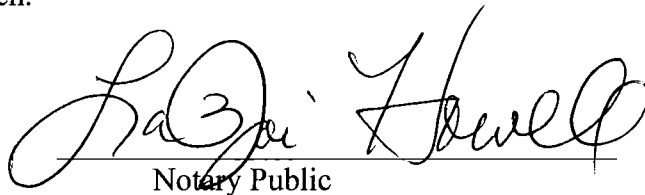
By: 

Assistant City Attorney

State of Missouri)
)ss
County of Jackson)

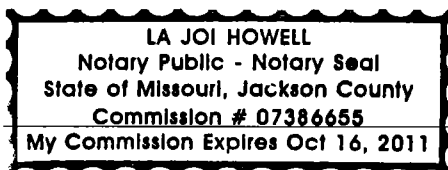
BE IT REMEMBERED, that on this 9th day of September, 2011 before me, the undersigned, a notary public in and for the county and state aforesaid, came **Sherri McIntyre PE., Acting Director of Public Works** of Kansas City, Missouri, a municipal corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, and, Vickie Thompson, 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:




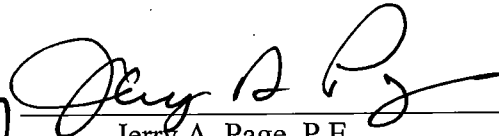
Revenue Certificate

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.

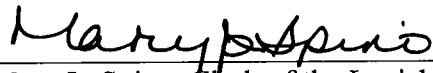
By: 

Director of Finance

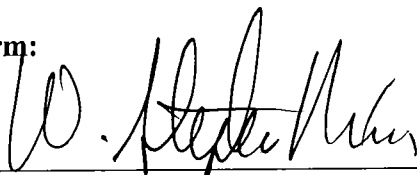
JACKSON COUNTY, MISSOURI

By  BY: 
Michael D. Sanders, County Executive Jerry A. Page, P.E.
Director of Public Works

ATTEST:


Mary Jo Spino, Clerk of the Legislature

Approved as to form:

BY: 
W. Stephen Nixon, County Counselor

State of Missouri)
)ss
County of Jackson)

BE IT REMEMBERED, that on the 1 day of Sept. , 2011 before me, the undersigned notary public in and for the county and state aforesaid, came **Jerry A. Page, Director of Public Works, Jackson County, 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.

Patria Marie Murillo

Notary Public

My commission expires:



PATRICIA MARIE MURILLO
My Commission Expires
September 16, 2012
Clay County
Commission #08409001

Jackson County, Missouri
Department of Public Works -Engineering Division
303 W. Walnut
Independence, MO. 64050



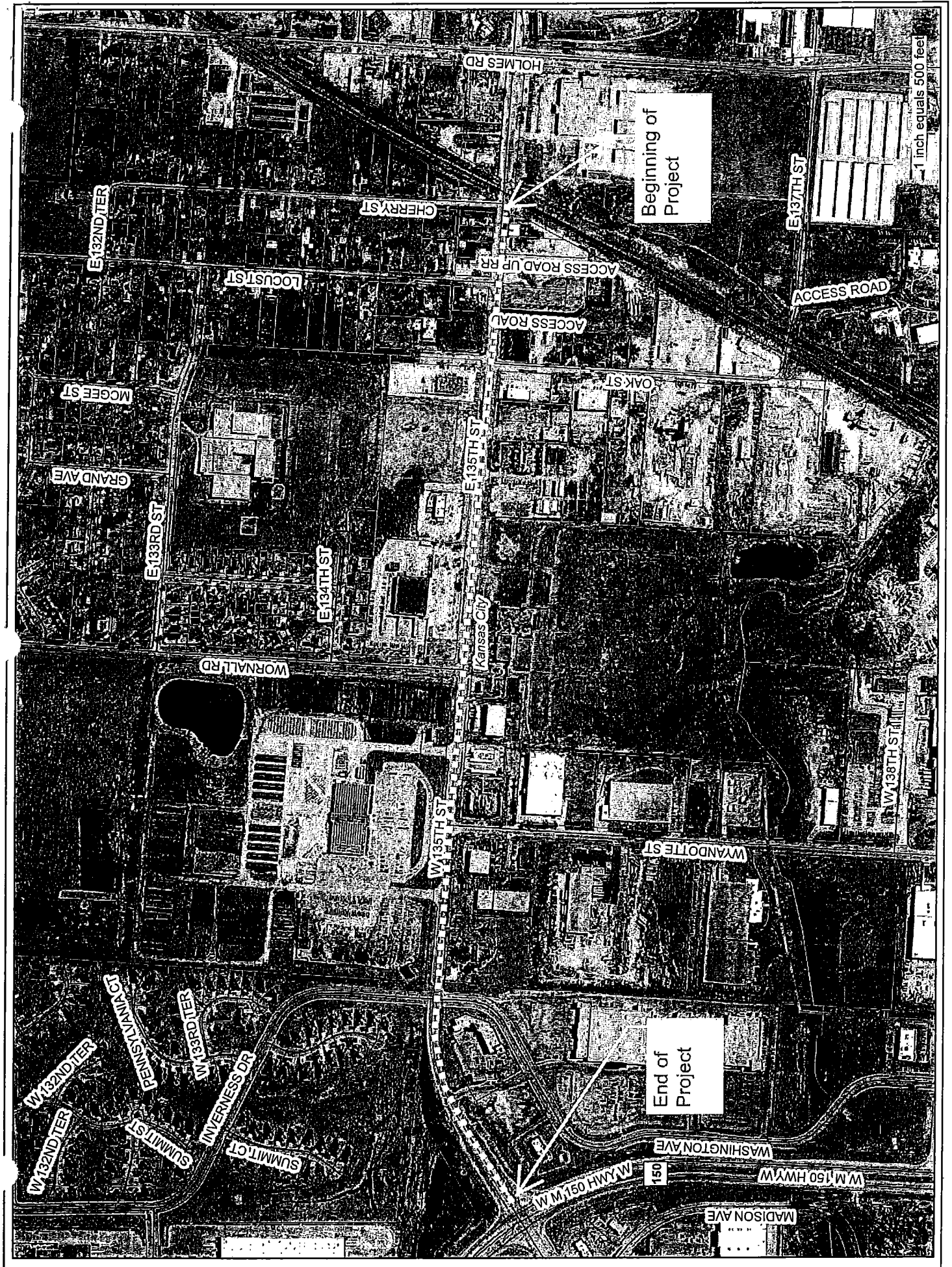
Addendum 1 Right-of-Way Acquisition, Negotiations, and Final Design: Funding Breakdown

Project Name: 135th Street Improvements
Project Number: 3084
City: Kansas City
Prepared by: Chris Jenkins, Project Manager for JCPW
Date: 8/5/2011

Right-of-Way Negotiations and Acquisitions	\$66,907.00
Final Design	\$161,068.73
On-Street Parallel Parking additional design	\$28,500.00
Estimate of JCPW Staff Time	\$12,954.45
Total =	\$269,430.18

Source of Funding

2011 GO Bond from Kansas City	\$100,000.00
Martin City CID	\$169,430.18
Total =	\$269,430.18



Beginning of Project

End of Project

1 inch equals 500 feet