

**COOPERATIVE AGREEMENT
FOR TRAIL IMPROVEMENTS IN THE
LITTLE BLUE TRACE PARK**

Res. 17650

This Cooperative Agreement for construction road improvements is made by and between the City of Kansas City, Missouri, hereinafter referred to as "CITY", and Jackson County, Missouri, hereinafter referred to as "COUNTY".

Recitals

WHEREAS, County presently owns and holds for public use certain lands within the City limits of the City of Kansas City in connection with County's Little Blue Trace Park lying between Lee's Summit Road on the north and Longview Lake on the south; and

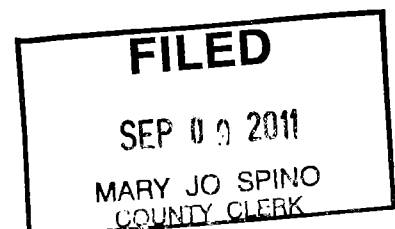
WHEREAS, City having the means available or potentially available to it to improve said lands with a multipurpose trail, desires to make such improvements as hereinafter described with County's permission;

WHEREAS, City is completing construction plans for the Little Blue Trace Trail from Longview Lake Dam to I-470 and from Little Blue Road to Lee's Summit Road; and

WHEREAS, City and County would like to construct phases of the Little Blue Trace Trail upon the availability of funds; and

WHEREAS, the purposes of this Agreement is to outline the roles and responsibilities of both the City and County for the long-range implementation of the Little Blue Trace Trail whereby City and County can work cooperatively to complete the Trail;

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 KANSAS CITY and COUNTY for the implementation of the Project in accordance with the terms and conditions set forth herein. The scope, purpose and intent of this agreement is to provide for a recreational trail to be built in phases and operated on certain lands owned by the County and held by County for public use for park and recreational purposes, said scope to be confined to park lands in the Little Blue Trace Park. It is the intent of the parties that this Agreement is framed pursuant to Sections 70.210, through 70.325, RSMo, relating to cooperative agreements between governmental units or agencies to provide a common service to the public, in this instance, public recreational facilities.

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. CONTRACTOR means COUNTY's contractor and all Subcontractors.
- B. DESIGN PROFESSIONAL means any architect or engineer hired by CITY or COUNTY to perform design services for the project.
- C. PROJECT means the design and construction of the Little Blue Trace Trail, a twelve foot wide aggregate multi-purpose trail, from Longview Lake Dam to Lee's Summit Road.
- D. PARK means land owned by COUNTY along the Little Blue River and referred to as the Little Blue Trace Park with a general description of said lands being as follows: All land being owned by Jackson County lying within; Section 36, T49N, R32W; and Sections 1, 11, 12, 14, 22, 23, 27, 32, 33, and 34, T48N, R32W.

E. PAYMENT BOND, PERFORMANCE BOND and MAINTENANCE BOND mean the forms of security executed by COUNTY's Contractors and their Sureties.

F. 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 RSMo, as amended, and to guarantee and assume legal liability for the faithful performance of this Agreement.

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 its 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 CITY accepts the PROJECT from COUNTY. The grant of a license by the CITY to COUNTY shall not constitute a conveyance of any interest in the public right-of-way.

4. **License to use COUNTY property.** COUNTY hereby grants to CITY, its representatives, employees, engineers, consultants and contractors a license to use that portion of the PARK in order to allow the performance of the Project its 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 CITY accepts the Project from COUNTY. The grant of a license by the COUNTY to CITY shall not constitute a conveyance of any interest of COUNTY property. This License shall extend only to the actual construction and maintenance of the Project and not to the holding or staging of any special event in the Park. If City intends to hold or stage any special

event in the Park, City shall apply and obtain the appropriate permit from the County's Parks and Recreation staff.

5. Obligations of CITY. CITY agrees to the following:

A. **FUNDING.** Subject to funding appropriation and authorization by CITY ordinance, CITY will transfer funds to COUNTY for construction of specific phases of the PROJECT as outlined in the CITY's authorizing ordinance.

B. **SELECTION OF DESIGN CONSULTANTS.** If needed, CITY will select design consultants using quality based selection procedures as outlined in the CITY charter, subject to approval by the County.

C. **PLAN DEVELOPMENT, REVIEW AND APPROVAL.** Any plans developed for the PROJECT shall conform to COUNTY and CITY standards for trail, storm sewer, street and utility design, although both COUNTY staff and CITY staff reserve the right to issue variances to these standards as deemed necessary. Once the construction plans and Technical Specifications are complete, CITY shall submit the plans and Technical Specifications to the COUNTY Parks Department for review and comment. Any COUNTY comments forwarded to CITY shall be addressed by the design consultant, and CITY shall then resubmit the construction plans to the COUNTY Parks Department for its final approval.

D. **ADDITIONAL RIGHT-OF-WAY AND EASEMENTS.** CITY shall be responsible for acquiring any additional right-of-way and easements needed for any trail related improvements constructed pursuant to this Agreement. All right-of-way and easements acquired by CITY which are located within the limits of CITY will be

conveyed to COUNTY, and COUNTY agrees to receive such conveyances, if in accordance with the final approved design.

E. **KANSAS CITY FEES.** Plan review and PROJECT coordination fees will not be assessed to COUNTY by CITY. In addition, CITY shall assess no permit fees associated with design or construction, road closure fees, land disturbance fees to COUNTY or any contractor employed by COUNTY pursuant to this Agreement.

F. **COUNTY PARTICIPATION.** CITY agrees to seek and encourage full participation and attendance from staff members of the COUNTY Parks Department in all meetings relating to the construction of the PROJECT, including, but not limited to design proposal solicitation, consultant selection, development of design plans, plan review, and right-of-way acquisition.

G. **UTILITY RELOCATION.** CITY agrees to cooperate with COUNTY as necessary to facilitate any utility relocation.

H. **FINAL ACCEPTANCE.** Upon completion of the PROJECT, CITY shall evidence its final acceptance of the PROJECT in writing to COUNTY.

5. **Obligations of the COUNTY.** COUNTY agrees to the following:

A. **COUNTY PLAN REVIEW.** The COUNTY Parks Department shall have two weeks to review the plans and provide comments to CITY.

B. **CONSTRUCTION CONTRACT.** Within three (3) months upon final approval of the construction plans by the CITY and COUNTY, COUNTY shall solicit bids from construction contractors in accordance with COUNTY's bidding procedures required by Missouri Law. After review of all bids, COUNTY shall award the construction contract to the lowest and best bidder, reserving the right to refuse any and all bids.

C. **MAINTENANCE OF IMPROVEMENTS AND RIGHT-OF-WAY.** Upon CITY'S final acceptance of the PROJECT, COUNTY shall be responsible for maintenance of all trail related improvements and of all right-of-way and easements acquired specifically pursuant to this PROJECT located within the municipal boundaries of CITY. COUNTY shall provide routine grounds maintenance, (general clean-up and mowing along the trail), for so long as this Agreement is in effect. Scheduling of routine grounds maintenance shall be by the COUNTY.

E. **RIGHT-OF-WAY.** COUNTY agrees to cooperate with CITY as necessary to facilitate the acquisition of right-of-way and easements.

F. **CONSTRUCTION PROCESS.** During the construction process, either COUNTY staff or an inspection contractor approved by both parties will perform and complete inspection of the construction of the Improvements. All inspection reports will be provided to the Street and Traffic Division of the CITY Public Works Department. COUNTY agrees that all work in constructing the PROJECT pursuant to this Agreement shall be open to inspection by CITY.

G. **CITY PARTICIPATION.** COUNTY agrees to seek and encourage full participation and attendance from staff members of the CITY Public Works Department in all meetings relating to the construction of the PROJECT, including, but not limited to design proposal solicitation, consultant selection, development of design plans, plan review, right-of-way acquisition, utility relocation and construction of trail related improvements.

6. **Obligations of CITY and COUNTY**

A. COUNTY and CITY agree that they shall not erect or maintain nor permit the erection or maintenance upon any part of the PARK any billboards or advertisements whatsoever, but that the parties contemplate that an appropriate sign or marker designating the trail may be erected and maintained upon approval of both parties.

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 CITY and its agents, officials, officers, employees and subcontractors.

B. To the extent allowed by law, each party shall defend, indemnify, and hold harmless the other party 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 in connection with the performance under this Agreement, caused in whole or in part by the indemnifying party, its employees, agents, or Contractors, or others for whom the indemnifying party is legally liable.

C. Nothing in this section shall apply to indemnification for professional negligence which is specified in a separate provision of this Agreement.

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

2. **Indemnification for Professional Negligence.** If either party hires any Design Professional in connection with the Project, then that party's contracts with its Contractors shall cause such Contractors to indemnify and hold harmless the other party 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. The indemnifying party and its Contractors are not obligated under this section to indemnify the other party for the negligent acts of the other party's agencies, officials, officers, or employees.

3. **Insurance.**

A. Each party'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 each party.

- 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:
 - a. Severability of Interests Coverage applying to Additional Insureds
 - 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.

- ii. 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

- 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 the contracting party'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 the insured party, ten (10) days in the event of nonpayment of premium. The Commercial General and Automobile Liability Insurance specified above shall provide that the insured party 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. The contracting party's Contractor shall provide to the insured party prior to the performance of the Project a certificate of insurance showing all required endorsements and additional insured's. The certificate shall be in the insured party's furnished form or its equivalent.
- C. All insurance coverage must be written by companies that have an A.M. Best's rating of "B+V" or better and are licensed or approved by the State of Missouri to do business in Missouri.
- D. Regardless of any approval by the insured party, it is the responsibility of the contracting party to maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of the contracting party's failure or the failure of its Contractors to maintain the required insurance in effect, the insured party may order the contracting party and its Contractors to immediately stop work and, upon ten (10) days notice and an opportunity to cure, may pursue its remedies for breach of this Agreement as provided for herein and by law.

4. **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 venue shall be proper only in Jackson County.

5. **Compliance with Laws.** COUNTY and all its Contractors shall comply with all federal, state and local laws, ordinances and regulations applicable to the Project with the exception that the trail surface will be an aggregate surface. COUNTY, at its own expense, shall secure all occupational and professional licenses and permits from public or private sources necessary for the fulfillment of its obligations under this Agreement. 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.** 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.

11. **Tax Compliance.** Upon request by the CITY, COUNTY shall furnish to CITY sufficient proof from CITY's Commissioner of Revenue that COUNTY and its Contractors, if any, are not

delinquent for any CITY earnings or occupational license taxes, including withholdings from their respective employees.

12. **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.

13. **Conflicts of Interest.** COUNTY 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 COUNTY or its Contractor in this Agreement.

14. **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.

15. **Bonds and Surety.**

A. COUNTY'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 COUNTY 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 COUNTY 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, RSMo, 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.

16. **Prevailing Wage.** COUNTY and its Contractor shall comply in all respects with the Prevailing Wage Laws of the State of Missouri, Section 290.210 to 290.340, RSMo, as amended, and any federal prevailing wage laws that apply to the work. COUNTY agrees that the CITY

shall not be responsible for assisting COUNTY and its Contractor in providing any required documentation necessary to demonstrate compliance with the Prevailing Wage Laws.

17. **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.

18. **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.

19. **Buy American Preference.** It is the policy of the CITY that any manufactured goods or commodities used or supplied in the performance of any CITY contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible.

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

21. **Term.** This Cooperative Agreement shall become effective upon that date when both parties are by law bound thereby, and shall remain in full force and effect until terminated by either party or by mutual agreement in accordance with the provisions for termination hereafter.

22. **Termination.** This Cooperative Agreement may be terminated by either party upon giving not less than six months notice to the other. If COUNTY elects to terminate this Agreement and phases of the improvements outlined in the CITY's authorizing ordinance have not been completed, then County shall return to the CITY all funding appropriated for the non-completed phases of improvements outlined in the CITY's authorizing ordinance. Should City

elect to terminate the Agreement at any time, all improvements shall become County property with no cost to County.

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

[SIGNATURES BEGIN ON NEXT PAGE]

KANSAS CITY, MISSOURI:

By: *Stanley J. Harris*
Stanley J. Harris, P.E.
Director of Public Works

ATTEST:



By: *Vickie Thompson-Carr*
Vickie Thompson-Carr
City Clerk

APPROVED AS TO FORM:

By: *Brian Rabineau*
Brian Rabineau
Assistant City Attorney

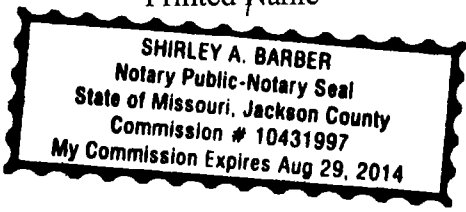
State of Missouri)
)ss
County of Jackson)

BE IT REMEMBERED, that on this 12th day of July, 2011 before me, the undersigned, a notary public in and for the county and state aforesaid, came **Stanley J. Harris P.E., 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, who are personally known to me to be the same person who executed the within instrument on behalf 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.

Shirley A. Barber
Notary Public
Shirley A. Barber
Printed Name

My Commission Expires



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JACKSON COUNTY, MISSOURI:

Michael D. Sanders

Michael D. Sanders
County Executive

APPROVED AS TO FORM:

W. Stephen Nixon

W. Stephen Nixon
County Counselor

ATTEST:

Mary Jo Spino

Mary Jo Spino
Clerk of the County Legislature

State of Missouri)
) ss
County of Jackson)

BE IT REMEMBERED, that on this ___ day of _____, 2011, before me, a Notary Public, personally appeared **Michael D. Sanders** and proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as County Executive on behalf of the County therein named, and acknowledged to me that the County executed it.

WITNESS my hand and official seal I the County and State aforesaid, the day and year first above written.

Notary Public

Printed Name

My Commission Expires
