

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

A RESOLUTION authorizing the County Executive to execute a Cooperative Agreement with the City of Kansas City, MO, for the City to supplement CURS funding for the Intersection Improvements, Gregory Boulevard and Lee's Summit Road Project, No. 3083.

RESOLUTION #16750, November 3, 2008

INTRODUCED BY Bob Spence, County Legislator

WHEREAS, the County and the City of Kansas City desire to enter into a Cooperative Agreement for the purposes of supplementing City CURS funding for the Intersection Improvements, Gregory Boulevard and Lee's Summit Road Project, No. 3083; and,

WHEREAS, the Director of Public Works and the City of Kansas City both recommend this Agreement; and,

WHEREAS, this agreement provides for City payments totaling \$500,000.00 to the County; and,


WHEREAS, this Agreement is in the best interest of the health, welfare, and safety of the citizens of the County; now therefore,

BE IT RESOLVED by the County Legislature of Jackson County, Missouri, that the County Executive be and hereby is authorized to execute the attached Cooperative Agreement with the City of Kansas City, Missouri.

Effective Date: This Resolution shall be effective immediately upon its passage by a majority of the Legislature.

APPROVED AS TO FORM:


Chief Deputy County Counselor


County Counselor

Certificate of Passage

I hereby certify that the attached resolution, Resolution #16750 of November 3, 2008, was duly passed on November 10, 2008 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 8

Nays 0

Abstaining 0

Absent 1

11.12.08
Date


Mary Jo Spino Clerk of Legislature

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 ADDITIONAL DESIGN TO INTERSECTION OF LEE'S SUMMIT ROAD AND GREGORY BOULEVARD TO EXTEND SOUTH TO CITY LIMITS OF CITY OF LEE'S SUMMIT MISSOURI

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 "City"), and Jackson County, Missouri (hereinafter referred to as "County").

WHEREAS County is overseeing the design and construction of certain improvement of intersection of Lee's Summit Road and Gregory Boulevard; and

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

WHEREAS, the City plans to design an additional section of Lee's Summit Road from the end of intersection improvement to extend to City of Lee's Summit's city limits in which the additional design of the project will exceed the available CURS funds for this project; and

WHEREAS, the improvements to be designed lie within the corporate limits of City; 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 \$500,000.00 (five hundred thousand dollars) for the purpose of additional design to Lee's Summit Road from the end of intersection improvements to city limits of Lee's Summit, Missouri, such improvements lying wholly with 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.

Contractor means any person or business entity hired by county to perform construction services for the project.

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

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

- A. Remit to County, upon approval of this agreement by City's Director of Finance, the sum of \$500,000.00 (five hundred thousand dollars), 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, City's contribution.
- B. Comply with all other requirements applicable to City as set forth in this Cooperative Agreement.

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

- A. Accept the sum of \$500,000.00 (five hundred thousand dollars) from City and maintain the same intact to be spent exclusively on the additional design of the specific project set forth in this agreement and none others.
- B. Use the sum contributed by City to perform design of the following specific improvements located within the corporate limits of City:

Add design of Lee's Summit Road to the current design and construction of intersection of Lee's Summit Road and Gregory Boulevard from end of this improvement to Lee's Summit's city limits.

- C. Solicit proposals and, with concurrence from Kansas City, select a qualified firm for design of Lee's Summit Road. The design year shall be 2030 and deliverables will include:
 - Complete Right of Way plans for segment between the intersection of Little Blue Boulevard and Lee's Summit City Limits.
 - Construction plans for interim improvements from Little Blue Boulevard to Strother Road.
- D. Exercise general supervision over the design of the new improvements.

- E. 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.
- F. 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.
- G. Allow City the final determination as to whether to approve or deny the plans, drawings and specifications prior to construction of the improvement.
- H. 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.
- I. Comply with all other requirements applicable to County 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.
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: Jerry A Page, P.E.
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. **General Indemnification.** County's contracts with every person or entity receiving any portion of the funds provided by City herein shall require such persons or entities to defend, indemnify, and hold harmless City and any of its agencies, officials, officers and employees from and against all claims, damages, liability, losses, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from any acts or omissions caused in whole or in part by such person's or entities' employees, agents, or contractors, or others for whom such person or entity is legally liable, regardless of whether or not caused in part by any act or omission of City, its agencies, officials, officers or employees.

16. **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.

17. **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 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.

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.

18. **Bonding.** 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 furnish Performance and Maintenance and Payment Bonds, each in an amount at least equal to their respective contract price as security for the faithful performance and payment of all contractors' and design professionals' obligations. The bonds shall remain in effect at least until one (1) year after the date when final payment of the respective contract becomes due. All such bonds shall be obtained from surety or insurance companies that are duly licensed in the State of Missouri to issue bonds or insurance policies for the limits and coverage's so required. The surety and insurance company shall meet the following minimum requirements:

- (1) Surety for contracts in excess of \$200,000, A.M. Best rating of B+, V, or better;
- (2) Surety for contracts less than or equal to \$200,000, qualified to issue bonds to amounts specified in the U.S. Department of Treasury Circular 570;
- (3) For companies providing insurance, A.M. Best rating of B+, V, or better.

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

[SIGNATURES BEGIN ON NEXT PAGE]

CITY OF KANSAS CITY, MISSOURI

By _____
Stanley J. Harris
Title Director of Public Works

ATTEST:

By _____
Vickie Thompson
Title City Clerk

Ordinance No. _____

Approved as to Form:

By _____
Brian Rabineau
Title Assistant City Attorney

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, and a cash balance, otherwise unencumbered, in the Treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Director of Finance Date

State of Missouri)
County of Jackson)ss

BE IT REMEMBERED, that on this ____ day of _____, 2008 before me, the undersigned, a notary public in and for the county and state aforesaid, came **Stanley J. Harris PE., 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:

JACKSON COUNTY, MISSOURI


RECOMMENDED BY:


Jerry A. Page, Director of Public Works


APPROVED BY:


Michael D. Sanders, County Executive

ATTEST:


Mary Jo Spino, Clerk of the Legislature

Approved as to form:

BY: 
Mark S. Jones, County Counselor

State of Missouri)
County of Jackson)ss

BE IT REMEMBERED, that on the ____ day of _____, 2008 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.

Notary Public

My commission expires:

**Cooperative Agreement Between Jackson County and Kansas City
Lee's Summit Road, Gregory Blvd to Lee's Summit City Limits
Project No 3114**

EXHIBIT B

