

**INTERLOCAL COOPERATIVE AGREEMENT
KENNETH ROAD BRIDGE IMPROVEMENTS**

THIS FOUR PARTY COOPERATIVE AGREEMENT (together with the attachments hereto, the "Agreement"), is made and entered into this 24 day of October, 2014 among the City of KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation of the State of Missouri ("~~Kansas City~~"), ~~JACKSON COUNTY, MO, ("Jackson County")~~, the City of OVERLAND PARK, KS, ("~~Overland Park~~"), and LOCH LLOYD COUNTRY CLUB, ("~~Loch Lloyd~~") (Kansas City, Jackson County, Overland Park and Loch Lloyd are hereinafter collectively referred to as the "Parties").

RECITALS

WHEREAS, the western city limit of Kansas City, which is also the western county limit of Jackson County, and the eastern city limit of Overland Park abut along the Kansas and Missouri border; and

WHEREAS, the Kansas and Missouri border is located across the west approach of the Kenneth Road Bridge (151st Street Bridge in Kansas) over Blue River; and

WHEREAS, Loch Lloyd owns properties adjacent to the Kenneth Road Bridge over Blue River; and

WHEREAS, the Kenneth Road Bridge is in very poor condition and is closed to traffic; and

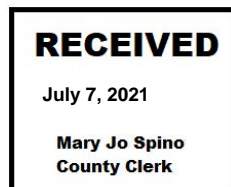
WHEREAS, the Parties hereto have determined it is in their best interest and the best interest of the traveling public to replace Kenneth Road Bridge over Blue River subject to the terms and conditions of this Agreement; and

WHEREAS, Overland Park is authorized by K.S.A. 12-2901 *et seq* to cooperate in making the public improvement.

NOW THEREFORE, in consideration of the above recitals, the mutual covenants and agreements herein contained, and for other good and valuable considerations, the Parties hereto agree as follows:

Sec. 1. Purpose of the Agreement. The Parties hereto enter into this Agreement for the purpose of constructing the public improvement of Kenneth Road Bridge over the Blue River (the "Improvement") by performing the following work:

- A. Replacing the existing bridge with an approximately 325 feet long 3-span pre-stressed concrete bridge on a new alignment. The bridge structure will be designed for 1% storm (100 year) event.
- B. Constructing approximately 900 feet of new two lane roadway with open ditches and transition into the existing cross section at each end. The design and construction shall be



in accordance with the specifications of Kansas City, and the Missouri Department of Transportation.

Sec. 2. Cost Sharing

- A. The total cost of the Improvement which includes design, right-of-way, utility relocation, construction, inspection, construction management, and material testing is currently estimated at \$4,040,000.00.
- B. The Parties agree to share the cost of the Improvement as follows:
 - 1. Jackson County agrees to authorize the release of \$3,000,000 in Bridge Off-system (BRO) funds in the custody of Missouri Department of Transportation and allocated to eligible projects located in Jackson County.
 - 2. Loch Lloyd agrees to contribute \$100,000.00 towards the construction of the Improvement.
 - 3. Subject to the appropriation of funds, Kansas City agrees to pay up to \$470,000.00 towards the construction of the Improvement.
 - 4. Subject to the appropriation of funds, Overland Park agrees to pay up to \$470,000.00 towards the construction of the Improvement.
 - 5. Kansas City and Overland Park shall share equally any cost of the Improvement that is in excess of the contributions by Jackson County and Loch Lloyd up to the amounts listed in subsections 3 and 4.
 - 6. Each party will be responsible for its own internal staff cost with the exception that Kansas City's construction management costs and lab testing costs are included in the total cost of the Improvement and shall be shared by the Parties as described above.
- C. Each party's estimated share is set out in in Exhibit A – Estimated Cost Sharing Sheet, attached hereto and incorporated by reference herein.
- D. If the lowest and best bid received by Kansas City for construction of the Improvement exceeds the estimated total project cost, this Agreement shall terminate and all Parties shall be relieved of their obligations under it, unless the Agreement is amended pursuant to Sec. 16.

Sec. 3. Responsibilities of Kansas City. Kansas City agrees to:

- A. Be responsible for administering design and construction of the Improvement by and through its Director of Public Works (the "PW Director") who shall be the principal public official designated to administer the construction of the Improvement.
- B. Be responsible for acquiring right-of-ways and easements that are located on the Missouri side of the Project.
- C. Donate right-of-ways and easements if needed within five (5) months after the right-of-ways plans are finalized.

- D. Provide preliminary (at 30% complete construction documents are hereinafter referred to as "Preliminary Design Plans") and draft final construction documents (at 95% complete construction documents are hereinafter referred to as "Draft Final") to Jackson County and Overland Park for a maximum of fourteen (14) days review, and then final construction documents (at 100% complete construction documents are hereinafter referred to as "Final") to Jackson County and Overland Park for a maximum of seven (7) days review prior to bidding of the Improvement.
- E. Prepare, review, and process all work change directives and change orders.
- F. Upon completion of the Improvement, submit to Overland Park, Jackson County, and Loch Lloyd each two sets of as-built plans and the final accounting of all costs and expenses incurred.
- G. Ensure that any and all third party contractors hired to perform work on the Improvement under this Agreement (the "Contractor(s)") name Jackson County and Overland Park as an additional insured on all applicable certificates of insurance issued by the Contractor(s) for this Improvement.
- H. Ensure that the Contractor(s) provide performance and payment bonds for the Improvement.
- I. Ensure that contracts for the construction of the Improvement include the requirement that the Contractor defend, indemnify and save Kansas City, Overland Park, Jackson County and Loch Lloyd harmless from and against all liability for damages, costs, and expenses arising out of any claim, suit or action for injuries or damages sustained to persons or property by reason of the acts or omissions of the Contractor in the performance under the agreement.
- J. Comply with all other requirements applicable to Kansas City as set forth in this Agreement including sharing in the cost of the Improvement as set forth in Section 2.

Sec. 4. Responsibilities of Overland Park. Overland Park agrees to:

- A. Be responsible for acquiring right-of-ways and easements that are located on the Kansas side of the Project.
- B. Donate right-of-ways and easements if needed within five (5) months after the right-of-way plans are finalized.
- C. Complete review of the Preliminary Design Plans, Draft Final and Final construction documents for the Improvement and provide any comments on them to Kansas City within fourteen (14) days from the date Overland Park receive such documents. Failure to respond within fourteen (14) days will cause Kansas City to deem the documents approved by Overland Park.
- D. Issue right-of-way permit for the work on the Improvement performed in Overland Park at no cost to Kansas City or its Contractors.
- E. Comply with all other requirements applicable to Overland Park as set forth in this Agreement including sharing in the cost of the Improvement as set forth in Section 2.

Sec. 5. Responsibilities of Jackson County. Jackson County agrees to:

- A. If a 6f permit is required, be responsible for completing all related requirements however any costs associated with the 6f permit shall be part of the total cost of the Improvement and shared as provided for in Section 2.
- B. Donate right-of-ways and easement if needed within five (5) months after the right-of-way plans are finalized.
- C. Complete review of the Preliminary Design Plans and Draft Final and Final construction documents for the Improvement and provide any comments on them to Kansas City within fourteen (14) days from the date Jackson County receive such documents. Failure to respond within fourteen (14) days will cause Kansas City to deem the documents approved by Jackson County.
- D. Comply with all other requirements applicable to Jackson County as set forth in this Agreement including sharing in the cost of the Improvement as set forth in Section 2.

Sec. 6. Responsibilities of Loch Lloyd. Loch Lloyd agrees to:

- A. Donate right-of-ways and easements if needed within 5 months after the right-of-way plans are finalized.
- B. Comply with all other requirements applicable to Loch Lloyd as set forth in this Agreement including sharing in the cost of the Improvement as set forth in Section 2.

Sec. 7. Ownership/Maintenance. Improvements on the Missouri side shall be owned and maintained by Kansas City. Improvements on the Kansas side shall be owned and maintained by Overland Park. A separate Maintenance Agreement will be entered into by Kansas City and Overland Park to address specific maintenance responsibilities of each party. No personal property will be acquired or held as a part of this Agreement.

Sec. 8. Termination. This Agreement shall begin upon its execution and shall continue until the obligations of the Parties have been satisfied and the Improvement has been completed as deemed by the PW Director who shall certify to each of the Parties that the Improvement has been accepted by Kansas City as constructed. Should a party hereto desire to terminate this Agreement prior to completion of the aforesaid Improvement, said party shall provide written notice to the other parties of its desire to terminate this Agreement, and except for the situation as described in Section 2.D., said party shall be solely responsible for all the accumulated project costs from the beginning of the project to the date of such notice. If any party terminates this Agreement prior to the completion of the Improvement, Kansas City will submit a final statement of accrued costs within sixty (60) days of termination to said party and said party shall process the payment within thirty (30) days of receipt of the final statement.

Sec. 9. Payments.

- A. The Jackson County funds (BRO funds) will be drawn down first for federally eligible items based on a 20% match. To draw down the BRO funds, Kansas City will submit

proof of payment on a monthly basis to MoDOT for reimbursement, until Jackson County's funding obligations as set forth in Section 2 are met. Jackson County will cooperate with Kansas City as necessary to obtain reimbursement of the BRO funds from MoDOT.

- B. Upon exhaustion of the Jackson County BRO funds or for items for which BRO funds cannot be applied, Loch Lloyd funds shall be applied for the 20% match until exhausted. Kansas City will submit invoices on a monthly basis to Loch Lloyd, until Loch Lloyd's funding obligations as set forth in Section 2 are exhausted.
- C. Thereafter, Kansas City will submit invoices for payment on a monthly basis to Overland Park to pay 50% of the cost accrued up to the maximum amount set forth in Section 2.
- D. Overland Park and Loch Lloyd shall pay Kansas City within thirty (30) days of receipt of each undisputed invoice from Kansas City. In the case of any disputed invoice, the party(ies) disputing the invoice and Kansas City shall act in good faith to negotiate the dispute.

Sec. 10. Notices. All notices required by this Agreement shall be in writing sent by regular U.S. mail, postage prepaid, commercial overnight courier, or facsimile to the following:

To Kansas City:

Sherri McIntyre, P.E.
Assistant City Manager and Director of Public Works
City of Kansas City, MO
20th Floor, City Hall, 414 E. 12th Street
Kansas City, MO 64106
Phone: (816) 513-6590

To Overland Park:

Daniel Miller, P.E.
City Engineer, Public Works Department
City of Overland Park
8500 Santa Fe Drive
Overland Park, KS 66212
Phone: 916-3-895-6032 Facsimile: 913-890-1032

With a copy to:

Tammy M. Owens
Deputy City Attorney
Law Department
8500 Santa Fe Drive
Overland Park, KS 66212

To Jackson County:

Shelley Kneuvean
Chief Operation Officer, County Executive's Office
Jackson County, Missouri

415 E. 12th Street, 2nd Floor
Kansas City, Missouri 64106
Phone: 816-881-3333

To Loch Lloyd:
Dale Brouk
LL North, LLK
P.O. Box 14146
Parkville, MO 64152
Phone: 816-777-2277x506

All notices are effective three (3) days after mailing if sent by U.S. mail or upon receipt if delivered by a courier or facsimile. Any party may provide the other parties a change of address which change shall be effective ten (10) days after delivery.

Sec. 11. Right to Audit. Each party shall have the right to examine and audit, upon reasonable written notice and, at each party's own expense, all records and documents related to this Agreement. The Parties agree to retain and maintain all such records and documents for at least three (3) years from the date of termination of this Agreement.

Sec. 12. Compliance with Laws. The parties shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this Agreement. Unless otherwise specified in this Agreement, each party, 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.

Sec. 13. Waiver. No consent or waiver, express or implied, by any party to this Agreement or any breach or default by any other party in the performance of its obligations under this Agreement shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance of the same or any other obligations hereunder. Failure on the part of any party to complain of any act or failure to act 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. The parties 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 their rights and remedies under this Agreement irrespective of any waiver granted. Waiver by either party of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition.

Sec. 14. Headings; Construction of Contract. 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. In the event of any conflict between this Agreement and any incorporated Attachments, the provisions of this Agreement shall control.

Sec. 15. Merger. This Agreement, including any referenced Attachments, constitutes the entire agreement among the Parties with respect to this subject matter, and supersedes all prior agreements among the Parties with respect to this subject matter, and any such prior agreement shall be void and of no further force or effect as of the date of this Agreement, except any separate Maintenance Agreement between Kansas City and Overland Park regarding the Improvements shall be valid and enforceable between those two parties.

Sec. 16. Modification. Unless stated otherwise in this Agreement, no provision of this Agreement may be waived, modified or amended except by written consent of all Parties to this Agreement.

Sec. 17. 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 intention of the parties.

Sec. 18. Further Acts. Subject to the appropriation of funds, the Parties agree to perform or cause to be performed any and all such further acts as may be reasonably necessary to fulfill the terms and conditions of this Agreement.

Sec. 19. Binding Effect. This Agreement shall be binding upon all Parties and their assigns, transferees, and successors in interest.

Sec. 20. Representations and Warranties. Each party certifies that it has the power and authority to execute and deliver this Agreement and to perform this Agreement in accordance with its terms.

Sec. 21. Force Majeure. The term "*Force Majeure Event*" means acts or omissions of any governmental authority (other than, with respect to Kansas City, Overland Park, or Jackson County), fires, storms, natural disasters, strikes, riots, terrorist attack, power failures and any other event or occurrence, irrespective of whether similar to the foregoing, that is beyond the reasonable control of the party claiming that the Force Majeure Event affects its ability to perform any of its obligations under this Agreement. No party shall be liable for any delay in performance of any obligation under this Agreement (other than the payment of money owned) or any inability to perform any obligation under this Agreement (other than the payment of money) if and to the extent that such delay in performance or inability to perform is caused by a Force Majeure Event, so long as the party claiming the Force Majeure Event is working diligently, to the extent reasonably possible, to terminate the Force Majeure Event. A party claiming a Force Majeure Event as an excuse for delay or nonperformance under this Agreement shall provide the other party with prompt notice of the initiation of the Force Majeure Event,

when it is expected to terminate, and of the termination of such Force Majeure Event. A Force Majeure Event shall be deemed to be terminated with respect to a particular delay or nonperformance when its effects on such future performance have been substantially eliminated. Notwithstanding the foregoing provisions, settlement of a strike or lockout shall be deemed beyond the control of the party claiming excuse thereby regardless of the cause of, or the ability of such party to settle, such strike or lockout.

Sec. 22. Counterparts. This Agreement may be executed in counterparts, each of which is deemed to be an original, and all such counterparts constitute one and the same instrument.

Sec. 23. Future appropriations. Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by any party.

Sec. 24. Default and Remedies. If a party shall be in default or breach of any provision of this Agreement, any other party may terminate this Agreement, suspend its performance and invoke any other legal or equitable remedy after giving the other party thirty (30) days written notice and opportunity to correct such default or breach. All rights and remedies granted to each party herein and any other rights and remedies which either party may have at law and in equity are hereby declared to be cumulative and not exclusive, and the fact that either party may have exercised any remedy without terminating this Agreement shall not impair that party's rights thereafter to terminate or to exercise any other remedy herein granted or to which that party may be otherwise entitled.

Sec. 25. Administration. Kansas City shall be the administrator of this cooperative undertaking.

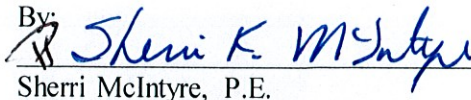
STATE OF KANSAS

Derek Schmidt
Attorney General

By: Cheryl J. Whelan
Assistant Attorney General

Date: December 8, 2014

KANSAS CITY, MISSOURI

By: 

Sherri McIntyre, P.E.

Assistant City Manager and Director of Public Works

Date:

Oct 24, 2014

APPROVED AS TO FORM:


Assistant City Attorney

OVERLAND PARK, KS

By: Carl Gerlach

Carl Gerlach, Mayor

7-7-14

Date:



ATTEST:

Marian Cook

Marian Cook, City Clerk

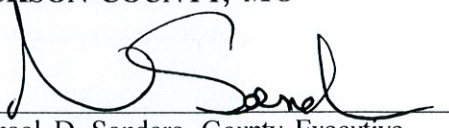
APPROVED AS TO FORM:

Tammy M. Owens

Tammy M. Owens
Deputy City Attorney

JACKSON COUNTY, MO

By:



Michael D. Sanders, County Executive

Date:

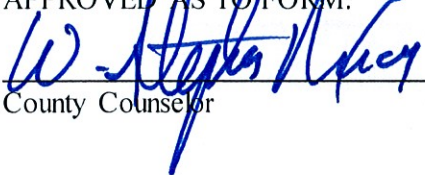
9/2/14

ATTEST:



Clerk of the Legislature

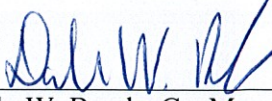
APPROVED AS TO FORM:



County Counselor

LOCH LLOYD NORTH LLC

By:



Dale W. Brouk, Co-Manager

Date:

8/29/14

Exhibit A**Kenneth Road Bridge over Blue River****Estimated Project Costs w/ Proposed Cost Sharing**

	Total	Jackson County (BRO)	Loch Lloyd	Overland Park	Kansas City
Design (15%)	\$500,000	\$400,000	\$100,000	\$0	\$0
ROW	\$20,000	\$0	\$0	\$10,000	\$10,000
Construction	\$3,200,000	\$2,560,000	\$0	\$320,000	\$320,000
Construction Management, Inspection, and Testing (10%)	\$320,000	\$40,000	\$0	\$140,000	\$140,000
Total Project Cost	\$4,040,000	\$3,000,000	\$100,000	\$470,000	\$470,000

Assumptions:

- Existing bailey bridge will be replaced with a 3-span prestressed concrete bridge on a new alignment as shown in attached conceptual drawing. New bridge will be approximately 325' long and will have two 12' lanes and two 2' shoulders. New roadway will be approximately 900 ft long, and will have two 12' lanes with open-channel ditches.
- Proposed alignment does not require relocation of the pump station on the Kansas side. Add \$250,000 to the project cost if this pump station and associated water mains need to be relocated.
- The archaeological sites in the project limits were not eligible for inclusion in the National Register of Historic Places according to the 2001 Supplemental Study, therefore no further Archaeological Mitigation expenses are included in this cost estimate. The 2001 Archaeological Study needs to be reviewed and updated.
- Aesthetic enhancements are not included. Any aesthetic issue needs to be covered by others.
- Kansas City's internal project management cost, estimated to be \$160,000, is not included in the total project cost.
- Estimated construction cost includes \$612,000 project contingency. Project contingency will be reduced to 10% of the construction cost after bids for construction of the improvements are received.
- Construction to begin in 2015.

Res. 18600

