

COOPERATIVE AGREEMENT FOR PAYMENT OF FUNDS FROM
CITY OF KANSAS CITY, MISSOURI TO CITY OF INDEPENDENCE, MISSOURI
FOR THE PURPOSE OF COMPLETION OF NORTH KENTUCKY AVENUE BRIDGE OVER
ROCK CREEK IMPROVEMENT PROJECT

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 "Kansas City"), and the City of Independence, Missouri, a municipal corporation (hereinafter referred to as "Independence").

WHEREAS, Independence and Kansas City both desire for bridge improvements to be designed and completed on North Kentucky Avenue Bridge over Rock Creek (hereinafter referred to as "the Project"); and

WHEREAS, the city limit line shared by Kansas City and Independence runs lengthwise approximately down the centerline of North Kentucky Avenue Bridge; and

WHEREAS, Kansas City wishes to have Independence manage the design and construction of the Project since the intent is for Kansas City to transfer ownership responsibilities for the North Kentucky Avenue Bridge to Independence; and

WHEREAS, Work on the Project will be funded by each city with Kansas City paying \$1,200,000.00, subject to appropriation, and Independence paying the remainder of the Project costs; and

WHEREAS, the Project would not be realized absent a cooperative effort between Kansas City and Independence;

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereby mutually agree as follow:

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 Independence whereby Kansas City will reimburse Independence for an amount not to exceed One Million Two Hundred Thousand dollars (\$1,200,000.00), payable in amounts of \$400,000 per year over three years and are subject to appropriation, for the work undertaken by Independence for the design and construction of the Project. Upon final payment by Kansas City to Independence, Kansas City will convey any ownership interest, and thereby maintenance, it may have in the North Kentucky Avenue Bridge to Independence.

2. **Cost Sharing.** The total cost of the Project which includes design, right-of-way, utility relocation, construction, inspection, construction management, and material testing is currently estimated at \$1,625,000.00. Kansas City agrees to reimburse a maximum amount of \$1,200,000.00, payable in amounts of \$400,000 per year over three years and are subject to appropriation, towards the Project. Independence agrees to pay the remaining \$425,000.00 towards the Project and also pay for all cost increases that may occur.

If the cost of the Project exceeds the estimated total project cost, Kansas City shall not be obligated to reimburse more than the agreed upon \$400,000 per year for three years and Independence shall allocate supplemental funding for the same as may be necessary to complete the Project.

3. **Definitions.** Unless otherwise specified in this Agreement, the following words have the meanings indicated herein, which are applicable to both the singular and plural thereof:

Contractor means any construction company hired by Independence and approved in writing by Kansas City, including any of said construction company's sub-contractors, to perform construction services for the Project.

Construction means removing the existing bridge on North Kentucky Avenue and constructing a new structure (bridge or reinforced concrete box culvert) to allow for two drive lanes and shoulders at this location to be determined during the design process by evaluating and comparing cost estimates. The work also includes pavement markings, signing, work zone traffic control, site restoration, erosion control, permitting, easement acquisition and customer service interaction.

4. **Obligations of Kansas City.** Kansas City agrees to:

- A. Review and either accept or reject plans associated with the Construction of the Project within fourteen (14) days of receipt of the plans from Independence. Plans shall be deemed accepted if not rejected in writing and delivered to Independence within fourteen (14) days.
- B. Review and either accept or reject the selection of the Contractor for the Project within fourteen (14) days of being notified of Independence's selection. Selection of the contractor shall be deemed accepted if not rejected in writing and delivered to Independence within fourteen (14) days.
- C. Upon receipt of the request for payment referenced in Section 5.M of this agreement, Kansas City shall reimburse Independence within three (3) years from the execution of this Cooperative Agreement. Kansas City's total reimbursement amount shall not to exceed One Million Two Hundred Thousand dollars (\$1,200,000.00) payable over three years. Kansas City shall submit a request for payment to City Council in each of the following years to appropriate funds and reimburse Independence as follows:
 - Year 1 (ending April 30, 2022) – \$400,000.00
 - Year 2 (ending April 30, 2023) – \$400,000.00
 - Year 3 (ending April 30, 2024) – \$400,000.00

Kansas City shall make every reasonable effort to appropriate \$400,000.00 each fiscal year as stated above. Notwithstanding decisions on appropriations as stated above, Kansas City shall pay any remaining balance due to Independence no later than April 30, 2024.

D. Comply with all other requirements applicable to Kansas City as set forth in this

Cooperative Agreement.

5. **Obligations of Independence.** Independence agrees to:

- A. Perform any needed design work and obtain any needed permits in order to bid and construct the Project. The design work will be completed by Independence and is not part of this Agreement.
- B. Obtain any needed right-of-way or easements needed in order to construct the Project.
- C. Bid the Project pursuant to Independence's competitive bid processes and procedures, and all applicable federal laws and regulations and the laws and regulations of the state of Missouri.
- D. Enter into a contract with the successful bidder(s) to perform Construction services for the Project.
- E. Keep all project plans and costs associated with work to be done in Kansas City for Kansas City's review, if requested. Records will be kept in accordance with Independence's Records Retention Policy.
- F. Require Contractor to perform all work in connection with the Project in accordance with all applicable federal, state, and local laws.
- G. Require all work done to adhere to design standards acceptable to both parties.
- H. Inspect and oversee all Project activities.
- I. Require Contractor performing work in connection with the Project to maintain payment, performance and maintenance bonds in accordance with applicable law, and require that the names of both Independence and Kansas City appear as co-obligee on any bond(s) securing performance, and payment with regard to any contract which includes work pursuant to the Project. Independence shall require Contractor performing work pursuant to this agreement to procure and maintain in effect insurance as required by this Agreement and shall require Contractor to indemnify Kansas City as required by this Agreement.
- J. Require Contractor to comply with all laws regarding the payment of prevailing wages.
- K. Be responsible for promptly paying Contractor for work on the Project.
- L. Upon completion of the Project, submit to Kansas City two sets of as-built plans for the bridge and the final accounting of all costs and expenses incurred for the Project.
- M. Upon completion of the Project, provide documentation to Kansas City sufficient to identify costs paid by Independence on the project and a request for reimbursement which shall be due to Independence pursuant to the terms of this Agreement.
- N. Submit change order requests to Kansas City for review and approval.

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 without giving effect to Missouri's choice of law provisions. The parties (1) shall submit exclusively to the jurisdiction of the state and federal courts located in Jackson County, Missouri; (2) shall waive any and all objections to jurisdiction and venue; and (3) shall not raise forum non convenience as an objection to the location of any litigation.

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. Kansas City and Independence 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.** Kansas City hereby grants to Independence, its representatives, employees, engineers, consultants, Contractor, and surveyors 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 and shall expire at the time Kansas City accepts the Project deliverables from Independence. The grant of a license by Kansas City to Independence 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.** Kansas City shall have the right to audit this Agreement and all books, documents and records relating thereto. Independence shall maintain all its books, documents, plan sets, record drawings and records in hard copy and electronic version relating to this Agreement during the contract period and for three (3) years after the date of final reimbursement by Kansas City. The

books, documents and records shall be made available to Kansas City within ten (10) days after the written request is made. Independence shall require its Contractor to comply with this provision in connection with services performed on the Project.

8. **Assignment.** Neither Kansas City nor Independence 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.** Independence and its Contractor shall certify that no officer or employee of Independence or Kansas City has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no officer or employee of Independence or Kansas 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 Independence, Kansas City or the selected 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.** Kansas City and Independence 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. **Records of Agreement.** The City Clerk's office for each respective city will be provided a copy of the executed agreement.

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:

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

INDEPENDENCE: City Manager
Independence City Hall
111 E. Maple Ave
Independence, MO 64050

All notices are effective two (2) business days after the date postmarked 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.** Independence's contracts with every person or entity receiving any portion of the funds provided by Kansas City herein shall require such persons or entities to defend, indemnify, and hold harmless Kansas 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 Kansas City, its agencies, officials, officers or employees.

16. **Indemnification for Professional Negligence.** If Independence hires any architect or engineer in connection with the Construction of the Project, including but not limited to any design professional required by this Agreement to be retained, then Independence's contracts with its architects or engineers shall cause each such architect, and engineer to indemnify and hold harmless Kansas 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 architect or engineer, its employees, agents or others for whom such architect or engineer is legally liable, in the performance of professional services.

17. **Insurance.** Independence shall require every person or entity with whom it contracts, and shall require those contractors to require its subcontractors, who will receive any portion of the funds provided by Kansas 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. Independence shall further require, and shall ensure that, Kansas City is named as an additional insured and shall provide to Kansas City a certificate of insurance, or its equivalent, demonstrating the same.

1. Worker's Compensation coverage as required by statute.
2. Contractor's General Liability which shall include completed operations and product liability coverage and eliminate the exclusion with respect to property under the care, custody and control of Contractor.
 - a. General Aggregate: In an amount equal to the current Missouri sovereign immunity monetary liability for all claims arising out of a single occurrence as set forth in Missouri Revised Statutes section 537.610.
 - b. Products-Completed Operations Aggregate: \$1,000,000
 - c. Personal and Advertising Injury: \$1,000,000
 - d. Each Occurrence (Bodily Injury and Property Damage): In an amount equal to the current Missouri sovereign immunity monetary liability limit as set forth in Missouri Revised Statutes section 537.610.
 - e. Property Damage liability insurance will provide Explosion, Collapse and

Underground coverages where applicable.

f. Excess or Umbrella Liability

i. General Aggregate: \$2,000,000

ii. Each Occurrence: \$2,000,000

3. Automobile Liability: In an amount equal to the current Missouri sovereign immunity monetary liability limit as set forth in Missouri Revised Statutes section 537.610 for all claims arising out of a single accident or occurrence and for any open person in a single accident or occurrence.

Regardless of any approval by Kansas City, it is the responsibility of Independence and every person or entity receiving any portion of the funds provided by Kansas 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 Independence of any contractual obligation or responsibility. In the event Independence fails to ensure that the required insurance is maintained in effect, Kansas 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. **Compliance with Laws.** Independence and its Contractor shall comply with all federal, state and local laws, ordinances and regulations applicable to the Project.

19. **Term.** This Agreement shall begin upon its execution and shall continue until all the services to be provided are completed subject to the terms and conditions set forth in this Agreement and acceptance by Kansas City of the Kansas City controlled portion of the Project.

20. **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.

21. **Future appropriations.** Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by any party except as expressly identified in this Agreement.

22. **Default and Remedies.** If a party shall be in default or breach of any provision of this Agreement, the 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.

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 _____

Director of Public Works

ATTEST:

By _____

City Clerk

Ordinance No. _____

Approved as to Form:

By _____

Assistant City Attorney

State of Missouri)
)ss
County of Jackson)

BE IT REMEMBERED, that on this ____ day of _____, 2021 before me, the undersigned, a notary public in and for Kansas City, Missouri (Jackson County) and state aforesaid, came _____, **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, _____, 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:

CITY OF INDEPENDENCE, MISSOURI

By _____

City Manager

ATTEST:

By _____

City Clerk

Approved as to form:

By _____

City Counselor

Ordinance No. _____

State of Missouri)
)ss
County of Jackson)

BE IT REMEMBERED, that on this ____ day of _____, 2021 before me, the undersigned, a notary public in and for Independence, Missouri (Jackson County) and state aforesaid, came **Zachery Walker, City Manager** of Independence, Missouri, a municipal corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Missouri, and, Becky Behrens, City Clerk, of Independence, 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:
