

**Interlocal Agreement between Johnson County, Kansas,
and the City of Overland Park, Kansas,
for the Public Improvement of
One Hundred Twenty-Seventh Street from
Switzer Road to Antioch Road**

THIS AGREEMENT, made and entered into this _____ day of _____, by and between the Board of County Commissioners of Johnson County, Kansas ("Board") and the City of Overland Park, Kansas, ("City").

WITNESSETH:

WHEREAS, the parties have determined that it is in the best interests of the general public in making certain public improvements to One Hundred Twenty-Seventh Street from Switzer Road to Antioch Road (the "Project"); and

WHEREAS, the laws of the State of Kansas authorize the parties to this Agreement to cooperate in undertaking the Project; and

WHEREAS, the governing bodies of each of the parties have determined to enter into this Agreement for the purpose of undertaking the Project, pursuant to K.S.A. 12-2908 and K.S.A. 68-169, and amendments thereto; and

WHEREAS, the Project has been approved, authorized, and budgeted by the Board as an eligible project under the County Assistance Road System ("CARS") Program; and

WHEREAS, the Board has, by County Resolution No. 106-90, authorized its Chairman to execute any and all Interlocal Agreements for County participation in any CARS Program project which has been approved and authorized pursuant to the Policies and Guidelines adopted by the Board and for which funding has been authorized and budgeted therefore; and

WHEREAS, the City has executed this Agreement on the 31ST day of OCT, 2003 by its Director of Public Works, who is authorized to approve and execute such agreements by Charter Ordinance No. 78, Ordinance No. CM-2290, and COP 247.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, and for other good and valuable consideration, the parties agree as follows:

1. **Purpose of Agreement.** The parties enter into this Agreement for the purpose of undertaking the Project to assure a more adequate, safe, and integrated roadway network in the developing and incorporated areas of Johnson County, Kansas.

2. **Estimated Cost and Funding of Project**
 - A. The estimated cost of the Project ("Project Costs"), a portion of which is reimbursable under this Agreement, is Six Hundred Twenty-Two Thousand Dollars (\$622,000).
 - B. Project Costs include necessary costs and expenses of labor and material used in the construction of the Project and construction inspection and staking for the Project.
 - C. The Project Costs shall be allocated between the parties as follows:
 - (1) The Board shall provide financial assistance for the Project in an amount up to but not exceeding Fifty Percent (50%) of the Project Costs. However, the Board's financial obligation under this Agreement shall be limited to an amount not to exceed Three Hundred Eleven Thousand Dollars (\$311,000). For purposes of this Agreement, Project Costs shall not include any portion of costs which are to be paid by or on behalf of any state or federal governmental entity or for which the City may be reimbursed through any source other than the general residents or taxpayers of the City. Further, it is understood and agreed by the parties hereto that the Board shall not participate in, nor pay any portion of, the Costs incurred for or related to the following:
 - (a) Land acquisition, right-of-way acquisition, or utility relocation;
 - (b) Legal fees and expenses, design engineering services, Project administration, or financing costs;

- (c) Taxes, licensing or permit fees, title reports, insurance premiums, exactions, recording fees, or similar charges;
- (d) Project overruns;
- (e) Project scope modifications or major change orders which are not separately and specifically approved and authorized by the Board; and
- (f) Minor change orders which are not separately and specifically approved and authorized by the Director of Infrastructure & Transportation of Johnson County, Kansas ("Infrastructure Director"). Minor change orders are those which do not significantly alter the scope of the Project and which are consistent with the CARS Program Policies and Guidelines and administrative procedures thereto adopted by the Board.

It is further understood and agreed that notwithstanding the designated amount of any expenditure authorization or fund appropriation, the Board shall only be obligated to pay for the authorized percentage of actual construction costs incurred or expended for the Project under appropriate, publicly bid, construction contracts. The Board will not be assessed for any improvement district created pursuant to K.S.A. 12-6a01 et seq., and amendments thereto, or any other improvement district created under the laws of the State of Kansas.

- (2) The City shall pay One Hundred Percent (100%) of all Project Costs not expressly the Board's obligation to pay as provided in this Agreement.

3. **Financing**

- A. The Board shall provide financial assistance, as provided in Paragraph 2.C. above, towards the cost of the Project with funds budgeted, authorized, and appropriated by the Board and which are unencumbered revenues that are on-hand in deposits of Johnson County, Kansas. This paragraph shall not be construed as limiting the ability of the Board to finance its portion of the costs and expenses of the Project through the issuance of bonds or any other legally authorized method.

B. The City shall pay its portion of the Project Costs with funds budgeted, authorized, and appropriated by the governing body of the City.

4. **Administration of Project.** The Project shall be administered by the City, acting by and through its designated representative who shall be the City public official designated as Project Administrator. The Project Administrator shall assume and perform the following duties:

- A. Cause the making of all contracts, duly authorized and approved, for retaining consulting engineers to design and estimate the Project Costs.
- B. Submit a copy of the plans and specifications for the Project to the Johnson County Infrastructure Director for review, prior to any advertisement for construction bidding, together with a statement of estimated Project Costs which reflects the Board's financial obligation under the terms of this Agreement. The Infrastructure Director or his designee shall review the copy of the plans and specifications for the Project and may, but shall not be obligated to, suggest changes or revisions to the plans and specifications.
- C. If required by applicable state or federal statutes, solicit bids for the construction of the Project by publication in the official newspaper of the City. In the solicitation of bids, the appropriate combination of best bids shall be determined by the City.
- D. Cause the making of all contracts and appropriate change orders, duly authorized and approved, for the construction of the Project.

- E. Submit to the to the Infrastructure Director a statement of actual costs and expenses in the form of a payment request, with attached copies of all invoices and supporting materials, on or before the tenth day of each month following the month in which costs and expenses have been paid. The Infrastructure Director shall review the statement or payment request to determine whether the statement or payment request is properly submitted and documented and, upon concurrence with the Finance Director of Johnson County, Kansas, ("Finance Director") cause payment to be made to the City of the Board's portion of the Project Costs within thirty (30) days after receipt of such payment request. In the event federal or state agencies require, as a condition to state or federal participation in the Project, that the Board make payment prior to construction or at times other than set forth in this subsection, the Infrastructure Director and the Finance Director may authorize such payment.
- F. Cause a sign to be erected in the immediate vicinity of the Project upon commencement of construction identifying the Project as part of the CARS Program. The form and location of the sign shall be subject to the review and approval of the Infrastructure Director.

Upon completion of the construction of the Project, the Project Administrator shall submit to each of the parties a final accounting of all Project Costs incurred in the Project for the purpose of apportioning the same among the parties as provided in this Agreement. It is expressly understood and agreed that in no event shall the final accounting obligate the parties for a greater proportion of financial participation than that set out in Paragraph 2.C. of this Agreement. The final accounting of Project Costs shall be submitted by the Project Administrator no later than sixty (60) days following the completion of the Project construction.

It is further understood and agreed by the City of Overland Park to indemnify and hold the Board harmless for and from any costs, expenses or liabilities which result from actions or omissions of the City of Overland Park or its employees relating to or in connection with the administration or construction of the Project.

In addition, the City shall, and hereby agree to, insert as a special provision of its contract with the general contractor ("Contractor") chosen to undertake the Project construction as contemplated by this Agreement the following paragraphs:

The Contractor shall defend, indemnify and save the Board of County Commissioners of Johnson County, Kansas and the City of Overland Park harmless from and against all liability for damages, costs, and expenses arising out of any claim, suit, action or otherwise for injuries and/or damages sustained to persons or property by reason of the acts or omissions of the Contractor, his or her sub-contractors, agents or employees in the performance of this contract.

The Board of County Commissioners of Johnson County, Kansas shall be named as an additional insured on all policies of insurance issued to the Contractor and required by the terms of his/her agreement with the City.

5. Acquisition of Real Property for the Project

- A. The Board shall not pay any costs for acquisition of real property in connection with the Project.
- B. The City shall be responsible for the acquisition of any real property, together with improvements thereon, located within the City's corporate boundaries, which is required in connection with the Project; such real property acquisition may occur by gift, purchase, or by condemnation as authorized and provided by the Eminent Domain Procedure Act, K.S.A. 26-201 et seq. and K.S.A. 26-501 et seq., and any such acquisition shall comply with all federal and state law requirements.

6. **Duration and Termination of Agreement**

A. The parties agree that this Agreement shall remain in full force and effect until the completion of the Project, unless otherwise terminated as provided for in Paragraph 6.B. herein below. The Project shall be deemed completed and this Agreement shall be deemed terminated upon written certification to each of the parties by the Project Administrator that the Project has been accepted as constructed. The City shall provide a copy of the Project Administrator's certification to both the Infrastructure Director and the Finance Director within thirty (30) days of the Project Administrator's determination that the Project is complete.

B. It is understood and agreed that the Infrastructure Director shall review the status of the Project annually on the first day of March following the execution of this Agreement to determine whether satisfactory progress is being made on the Project by the City. It is further understood and agreed that the Board shall have the option and right to revoke funding approval for the Project and terminate this Agreement should the Board find, based upon the determination of the Infrastructure Director, that satisfactory progress is not being made on the Project. Should the Board exercise its option as provided herein, it shall send written notice of the same to the City and the Board shall have no further liability or obligation under this Agreement.

7. **Placing Agreement in Force.** The attorney for the City shall cause sufficient copies of this Agreement to be executed to provide each party with a duly executed copy of this Agreement for its official records.

IN WITNESS WHEREOF, the above and foregoing Agreement has been executed by each of the parties hereto and made effective on the day and year first above written.

Board of County Commissioners of
Johnson County, Kansas

City of Overland Park, Kansas

Annabeth Surbaugh, Chairman

Bob Lowry, P.E.
Director of Public Works

Attest:

Attest:

John A. Bartolac
County Clerk

City Clerk

Approved as to form:

Approved as to form:

Robert A. Ford
Assistant County Counselor

City Attorney