

**Interlocal Agreement between  
Johnson County and the City of Overland Park  
for Construction of a Stormwater Management Project known as  
Improvements on Rock Creek at  
Glenwood to Walmer Street, south of 67th  
RC-10-005**

This agreement is entered into by and between the Board of County Commissioners of Johnson County, Kansas (the "County") and the City of Overland Park (the "City") pursuant to K.S.A. 12-2908.

**Recitals**

1. Pursuant to K.S.A. 19-3311, by Resolution No. 38-90, the County has established a county-wide retailers sales tax for the purpose of providing funds for stormwater management projects, and by Resolution No. 76-90, created a Stormwater Management Advisory Council to identify and recommend projects for inclusion in the Stormwater Management Program.
2. The County has established a Stormwater Management and Flood Control Fund for the purpose of funding Stormwater Management Program projects.
3. The County, by Resolution No. 66-92, as modified by Resolution No. 034-94, adopted the Johnson County Stormwater Management Policy and the Administrative Procedures for the Johnson County Stormwater Management Program ("Policy and Procedures") to promote interlocal cooperation between the County and the participating municipalities in stormwater management activities.
4. The County has established a Five-Year Master Plan consisting of a list of proposed stormwater management projects that meet the established criteria for funding from the Stormwater Management and Flood Control Fund. The County, upon the recommendation of the Stormwater Management Advisory Council, has selected certain projects from the Five Year Master Plan to be included in the County's Project Priority List which contemplates the timely design and construction of those selected projects.
5. In accordance with the Policy and Procedures, the City has requested that the County participate in the funding for the construction of the stormwater management project identified as Improvements on Glenwood to Walmer Street, south of 67th (the "Project"), which Project is on the County's Project Priority List, and the County is willing to provide such funding upon the terms and conditions set forth in this agreement.

## Agreement

In and for the consideration of the mutual covenants contained in this agreement and the mutual benefits to be derived from the Project, the City and the County agree as follows:

1. **Policy and Procedures.** The City acknowledges receipt of the Policy and Procedures. The City and County agree that the Project shall be undertaken, constructed, and administered in accordance with the terms and provisions of the Policy and Procedures provided, however, in the event a conflict exists between any provision of the Policy and Procedures and any provision of this agreement, the terms and conditions of this agreement shall control.
2. **Estimated Project Cost.** The parties acknowledge and agree that this agreement obligates the parties to proceed with the construction phase of the Project. For budget and accounting purposes, the total project cost including the design engineering, estimated construction engineering and construction costs of the construction phase of the Project is Two Hundred Eighty-Nine Thousand Forty-Three Dollars (\$289,043) based upon engineering and design assumptions which the construction contract bid prices and construction inspection contract prices may or may not confirm.
3. **Option to Terminate.** Upon receiving construction bids for the Project, the City shall determine the total engineering and construction costs for the construction phase of the Project based upon contract bid amounts. Within seven days of the construction contract bid date, the City shall notify the County, in writing, of the total engineering and construction costs for the construction phase of the Project. In the event total estimated construction engineering and construction costs for the construction phase of the Project exceed the Stormwater Management Program's estimated construction phase cost of the Project, the City and the County each shall have the option of terminating this agreement as set forth in this Paragraph.

The City agrees to notify the County whether it desires to terminate this agreement within thirty days following the bid date of the contract. Within thirty days after the City gives its notice of intent to terminate this agreement to the County, the County may, at its option, elect to contribute additional funds to the Project in an amount sufficient to cover any and all additional expenditures over and above the design and estimated construction cost of Two Hundred Eighty-Nine Thousand Forty-Three Dollars (\$289,043) in which event this agreement shall not terminate but shall continue in full force and effect except that the County's obligation for Project costs shall be increased accordingly.

Should the total engineering and construction costs for the construction phase of the Project exceed the amount of this agreement, the County agrees to either:

- A. Notify the City of the County's intent to terminate this agreement and re-prioritize the Project within thirty days of the receipt of the notification of total engineering and construction costs for the construction phase of the Project, or;
- B. Authorize the City to proceed with the construction of the project.

Within thirty days after the County gives its notice of intent to terminate this agreement to the City, the City may, at its option, elect to contribute additional funds to the Project in an amount sufficient to cover any and all additional expenditures over and above the amount of this agreement in which event this agreement shall not terminate but shall continue in full force and effect except that the City's obligation for the Project costs shall be increased accordingly.

Within sixty days from the date of the termination of this agreement as provided in this Paragraph, the City shall provide the County with a final accounting of Project costs and the County's share of such costs whereupon the County shall reimburse the City subject to the limitations set forth in the Policy and Procedures and in this agreement.

Upon the termination of this agreement as provided in this Paragraph, the Project shall be re-prioritized according to the Policy and Procedures.

- 4. **Project Construction.** The City agrees to select a responsible and qualified contractor or contractors to undertake and complete the construction of the Project according to the Final Plans and Specifications ("Project Contractor"). The parties agree that it shall be the City's obligation to comply with and, to extent reasonably practical, to require the Project Contractor complies with, all applicable laws and regulations governing public contracts, including all applicable non-discrimination laws and regulations.
- 5. **Administration of Project.** It is acknowledged and agreed that the City shall enter into all contracts relating to the Project in its own name and not as the agent of the County. The City agrees to be solely responsible for the administration of all construction and other contracts for the Project. Any contract disputes shall be resolved by the City at the City's sole cost and expense.

The City shall be responsible for requiring adequate performance and payment bonds for the Project from the Project Contractor. The City shall discharge and satisfy any mechanic's or materialman's lien that encumbers the Project and the costs thereof shall not be considered a reimbursable cost under this agreement. Notwithstanding the foregoing, costs and expenses, including reasonable attorneys' fees, incurred by the City to enforce a contract of indemnity under a performance or payment bond shall be reimbursable, subject

to any limitations on reimbursement set forth in the Policy and Procedures or this agreement.

The City shall require adequate indemnity covenants and evidence of insurance from the general contractors for loss or damage to life or property arising out of the contractor's negligent acts or omissions. The required insurance coverage and limits shall be established by the City but shall not, in any event, be less than \$1,000,000 on a per occurrence basis for general liability coverage for the general contractor. The City may, in the exercise of its reasonable judgment, permit any insurance policy required by this agreement to contain a reasonable and customary deductible or co-insurance provision.

The City shall submit to the Finance Director, upon execution of this agreement, a monthly projection of cash flow expenditures for the Project, in substantially the form set out in Exhibit B attached hereto.

6. **County Contribution Toward Project Costs.** The County shall reimburse the City from the Stormwater Management and Flood Control Fund for expenditures made by the City for the Project as follows:

Not more than once each calendar month, the City shall submit to the County a request for payment, invoice, or statement satisfactory in form and content to the County Stormwater Engineer detailing total Project costs and expenses, in line-item detail, for the preceding calendar month ("Payment Request") and for year-to-date.

The City's Payment Request shall list, by category, those particular expenditures that are reimbursable according to the Policy and Procedures. The City represents and warrants that each Payment Request shall seek reimbursement for only those expenditures that the City determines, in good faith, to be reimbursable by the County. The County Stormwater Engineer may require the City to supplement the Payment Request as needed to satisfy the County Stormwater Engineer, at his discretion, that the Payment Request accurately reflects properly reimbursable costs and expenses.

The County agrees to make payment to the City within thirty days following the County Stormwater Engineer's approval and acceptance of a properly documented Payment Request in an amount equal to seventy-five percent (75%) of the Payment Request.

Within sixty days from the date of the completion of the Project, the City shall provide the County with a final accounting of Project costs and the County's share of such costs, whereupon the County shall make a final reimbursement to the City as provided in this agreement. For purposes of this agreement, the Project shall be deemed complete on the earliest date upon which any of the following events occur:

- A. The City notifies the County that the Project is complete, subject to usual and customary "punch list" items.
- B. The Project architect or construction engineer issues to the City a certificate of substantial completion for the Project.
- C. The date the County Stormwater Engineer certifies, in good faith, that the Project is substantially complete following an inspection of the Project by the County Stormwater Engineer who shall be accompanied by a City representative.
7. **Limitation of Liability.** To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the City agrees to and shall indemnify and hold the County, its officials, and agents harmless from any cost, expense, or liability not expressly agreed to by the County which result from the negligent acts or omissions of the City, its employees, or agents, or which result from the City's compliance with the Policy and Procedures.
- In addition, the City shall require that the general contractor take out, pay for, and deliver to the County, a General and Auto Liability insurance policy written on an occurrence basis and naming the County as named insured. Limits of protection shall be \$1,000,000 Combined Single Limits, Bodily Injury, and Property Damage, and shall contain no exclusion relative to any function performed by the County, its officials, or agents, in connection with the Project.
8. **Notice Addresses.** Any notice required or permitted by this agreement shall be deemed properly given upon deposit in the U.S. mail, postage prepaid and addressed as follows:
- |   |                          |
|---|--------------------------|
| <b>If to the County:</b>                    | <b>If to the City:</b>   |
| Mac Andrew, P.E.                            | Bob Lowry, P.E.          |
| Director of Infrastructure & Transportation | Director of Public Works |
| Johnson County Public Works                 | City of Overland Park    |
| 1800 West 56 Highway                        | 8500 Santa Fe Drive      |
| Olathe, Kansas 66061                        | Overland Park, KS 66212  |
- In addition, any notice required or permitted by this agreement may be sent by telecopier or hand delivered and shall be deemed properly given upon actual receipt by the addressee.
9. **Effective Date.** Regardless of the date(s) the parties execute the agreement, the effective date of this agreement shall be 3-16-04 provided the agreement has been fully executed by both parties.

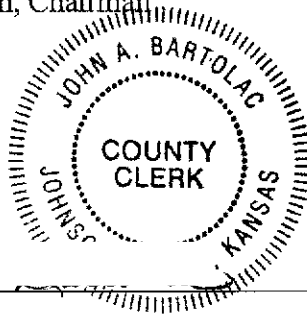
**Board of County Commissioners  
Of Johnson County, Kansas**

**City of Overland Park**

Annabeth Surbaugh, Chairman

Bob Lowry, P.E.  
Director of Public Works

Attest:



Attest:

Approved as to Form

Approved as to Form:

Robert A. Ford  
Assistant County Counselor

City Attorney