



CC: Wayne

January 26, 2010

ML
Ms. Mary Lou McClanahan
City of Overland Park
8500 Santa Fe Drive
Overland Park, KS 66212

Re: Executed Interlocal Agreements for the 2010 CARS Program
Project Location: Antioch Road from I-435 to 119th Street
Project No: 320000781

Mary Lou
Dear Ms. McClanahan:

Enclosed, for your record, is a fully-executed Agreement for the referenced project.

There has been some uncertainty and inconsistency in the past, so I would like to highlight a few of the Program's policies and terms of the Interlocal Agreement. These policies and terms generally relate to the responsibilities of the project administrator designated by the City.

- Send a ½ size set of preliminary plans and specifications / contract book to:

Johnson County Public Works
Richard S. Frazier, Engineering Technician
1800 W. Old 56 Highway
Olathe, Kansas 66061

County personnel will review the preliminary documents, provide feedback, and will advise of any changes or comments to the preliminary plans. The plans and specifications must include:

1. Johnson County Indemnification Clause per the ILA
2. CARS Sign detail
3. A list of non-participating contract items highlighted in the contract or listed separately. If there are no non-participating items, then that should be stated in the letter accompanying the plans and specification book/contract.

- Prior to advertising for construction bidding, a set of final plans and contract documents must be submitted to the Johnson County's Director of Public Works and Infrastructure along with a title sheet to be signed by the Director of Public Works and Infrastructure. The title block will read: Mac Andrew, P.E. Johnson County Director of Public Works and Infrastructure. The title sheet, with the Director of Public Works and Infrastructure signature, must be on every copy sent out for bid.
- After the contract has been awarded, a copy of the executed plans and contract must be sent to Johnson County.
- After the project has been awarded, the City must send a letter to Johnson County's Director of Public Works and Infrastructure requesting a notice to proceed before construction begins. The County will verify that all documentation has been reviewed prior to issuing the "Notice To Proceed".
- Before construction begins on any CARS project, the City must erect the "CARS Sign" (per the County's detail) in the immediate vicinity of the project.
- The project administrator shall complete project status reports at the request of the Johnson County's Director of Infrastructure & Transportation. Project update forms are generally sent out to the city by fax one week prior to the end of each month.
- The City shall invoice Johnson County by providing a cover letter and an invoice recapitulation and/or CARS Project Summary that provides the following information respectively:

Cover Letter:

1. CARS Project No.
2. Project Location
3. Invoice Amount
4. Contact persons for Engineering and Accounting for the project

Invoice:

1. Total Amount invoiced to-date by listing each CARS payment received to-date
 2. Previous Invoice Amount
 3. Current Invoice Amount
 4. County Share of Current Invoice
 5. Bid Tab Sheets showing all items (any non-participating items should be noted)
 6. Construction Engineering bill for services from consultant
 7. If Construction Inspection is performed internally, summary sheet showing personnel and hours worked and cost (and other miscellaneous costs)
- The project administrator must receive prior written approval of Johnson County for change orders and project scope modifications if CARS program participation is anticipated in the change order cost.
 - The project administrator will submit certification of project acceptance to Johnson County within thirty days of project completion.
 - Final accounting and billing shall be submitted to Johnson County no later than sixty days following project completion. Please note on the last invoice – “**Final Billing**”.

Please reference the County Project Number on all project submittals, invoices, and correspondences.

Copies of the CARS Program’s Policies and Guidelines and Administrative Procedures should be on file at your office. Please call me if you need additional copies.

I look forward to working with you on this project through the CARS Program. Please let me know if you have questions concerning the Interlocal Agreement or the Program’s Policies and Administrative Procedures.

Thank you.

Sincerely,


Kent Lage, P.E.
Urban Services Manager

Encl.

1-29-10 orig - City Clerk
copy - PW file
TH0853

**Interlocal Agreement between Johnson County, Kansas,
and the City of Overland Park, Kansas,
for the Public Improvement of
Antioch Road from
I-435 to 119th Street**

THIS AGREEMENT, made and entered into this 20 day of January, 2010,
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 Antioch Road I-435 to 119th Street (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 of Overland Park has executed this Agreement on the 22 day
of December, 2009 by its Director of Public Works, who is authorized to approve and
execute such agreements by Charter Ordinance No. 84, 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 Thirteen Million Sixty Nine Thousand Dollars (\$13,069,000).

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 Million Five Hundred Thousand Dollars (\$3,500,000). 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 that, to the extent permitted by law and subject to the provisions of the Kansas Tort Claims Act, including but not limited to the exceptions and liability limits, it shall indemnify and hold the Board harmless for and from any costs, expenses or liabilities which result from negligent acts 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 of Overland Park 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 negligence or other actionable fault 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.

