

INTERGOVERNMENTAL COOPERATIVE AGREEMENT
VALLEY GARDEN DRIVE/QUARRY PARK ROAD

THIS INTERGOVERNMENTAL COOPERATIVE AGREEMENT made this _____ day of _____, between the City of Kansas City (“KCMO”) and the City of Lee’s Summit (“LSMO”), both municipal corporations existing under the laws of the State of Missouri (the “Agreement”).

WHEREAS, due to the failure of Quarry Park Road within the boundaries of Lee’s Summit, which has prevented residents from accessing their properties through public right of way, LSMO seeks to provide access to these residents and properties through certain segments of Noland Road, Valley Garden Drive (currently a private roadway), and NW Quarry Park Road (the “Project”), most of which lies within the boundaries of Lee’s Summit;

WHEREAS, a portion of the Project lies within the boundaries of Kansas City;

WHEREAS, LSMO has requested that KCMO acquire five parcels of land for the Project, which may require the exercise of eminent domain pursuant to Chapter 523 of the Missouri Revised Statutes;

WHEREAS, LSMO intends to reimburse KCMO for its costs associated with the Project, including but not limited to those associated with acquisition, legal, and maintenance;

WHEREAS, LSMO has provided to KCMO appraisals using generally accepted appraisal practices from a licensed Missouri appraiser and title work for such parcels needed for the Project, which will need to be updated prior to KCMO taking action pursuant to this Agreement;

WHEREAS, LSMO and KCMO are authorized to enter into this agreement pursuant to Mo. Const. art. VI, § 16, Kansas City Ordinance No. _____, and Lee’s Summit Ordinance No. _____;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, KCMO and LSMO hereby agree as follows:

1. **PURPOSE.** The parties enter into this agreement for the purpose of acquiring, constructing, and maintaining portions of NW Valley Garden Drive and NW Noland Road, as depicted on Exhibit A, attached hereto and incorporated herein by reference The Project Parcels are described on Exhibit B attached hereto and incorporated herein by reference (the “Property”).

2. **PLANS; PROJECT-RELATED DOCUMENTS.** LSMO will provide all plans related to the Project and any documents needed for the acquisition to KCMO, including updated appraisals and title reports, before KCMO can begin its acquisition assistance.

3. **ACQUISITION.** KCMO, through its Law Department and Public Works, Right of Way Office will provide the acquisition assistance services listed below:
- a. KCMO will review the appraisal documents to confirm compliance with generally accepted appraisal practices.
 - b. KCMO will send to the relevant parties a certified, written notice of the intent to acquire the Property, in compliance with RSMo. § 523.250.
 - c. KCMO will send to the relevant parties a written offer and copy of the appraisal, all in accord with RSMo. § 523.253 (2007 Supp.). KCMO will make a good faith effort to acquire the Property by negotiation and purchase, without using the power of eminent domain.
 - d. KCMO will draft and present to the City Council an ordinance authorizing the City Attorney or his delegate to file an eminent domain suit, if necessary, to acquire the Property for the Project. If the City Council does not pass the ordinance, KCMO will stop at that point. If the City Council does pass the ordinance, KCMO will continue the process for acquiring the Property.
 - e. KCMO will prosecute an eminent domain suit, if necessary, in Jackson County Circuit Court. The scope of such suit to include ancillary pleadings and court appearances, for KCMO's attorney and witnesses.
 - f. If the eminent domain suit is necessary and successful, KCMO will see that the Commissioners' Report is recorded with the Recorder of Deeds. KCMO will also extinguish whatever real estate interests it acquires as part of this transaction, as shown on title work provided to KCMO by LSMO. KCMO will not participate in any appeal of the Commissioners' Award.

4. **PAYMENT TO KCMO.** LSMO shall pay the actual cost to KCMO for the services noted in Section 3 herein, including but not limited to fees associated with court filing, service of process, advertising, expert witnesses, recording, commissioners' fees, costs of acquisition, and any other costs associated with the eminent domain action or the acquisition of the Property interests. LSMO shall also reimburse KCMO for attorney fees at \$500.00 per hour and Public Works staff at \$100.00 per hour. KCMO shall provide periodic hourly billing statements to LSMO, approximately monthly.

5. **INDEMNIFICATION.** Subject to Missouri law and without waiving sovereign immunity, LSMO agrees to defend, indemnify and hold harmless KCMO and its officers, employees and elected officials as to any claim, cost, expense or lawsuit based upon services performed or to be performed by KCMO under the terms of this Agreement and with respect to any claim or lawsuit seeking additional benefits or services, or to contest the amount or provision of the services with respect to the implementation of this Agreement, and any claim or lawsuit related to LSMO's design, construction, or maintenance of the Project.

6. **PAYMENT OF CONDEMNATION AWARD AND COMMISSIONER FEES.**

- a. KCMO will provide LSMO with copies of the Commissioners' Award and the Commissioners' fee bill. The fee bill shall be paid to the court, or as otherwise ordered by the Court, within 10 days of receipt by LSMO and upon receipt of any required W-9 tax forms. The Award may be paid within 30 days. If the Award is not paid within 30 days, the acquisition will be considered

abandoned for a period of two years and KCMO shall be released from this Agreement.

- b. Any court ordered fees due the owner of the Property because the owner prevails at the jurisdictional hearing or because LSMO in its discretion does not pay the Award will be paid promptly by the LSMO.

7. MAINTENANCE. LSMO agrees to maintain the portions of right-of-way acquired by KCMO for the Project and improvements therewith consistent with right-of-way and roadway maintenance standards and practices of LSMO, for so long as the right-of-way and improvements both exist in public use. Such maintenance shall include snow and ice removal, keeping the roadway free of vegetation, trash, and debris; providing and maintaining adequate street lighting; and repairing the surface as needed due to normal wear and tear, accidental damage, weathering, vandalism, snow removal, or materials failure, including providing replacement of material and all other incidental materials. If LSMO fails to maintain the portions of right-of-way acquired by KCMO, KCMO may notify LSMO in writing. If LSMO fails to cure such deficiencies within thirty (30) days of notice, KCMO shall have the right, but not the obligation, to complete necessary work and LSMO shall reimburse KCMO for the same.

8. COMMENCEMENT OF SERVICES. Services under the terms of this Agreement shall commence as soon as possible following the execution of this Agreement by both parties.

9. AMENDMENTS. The terms, conditions and provisions of this Agreement cannot be modified, amended or eliminated except by written agreement between KCMO and LSMO.

10. TERMINATION.

- a. LSMO may terminate this Agreement at any time prior to City's acquisition of any portions of the Property for any reason but remains liable for expenses incurred by KCMO up to the date of termination.
- b. KCMO may terminate at any time prior to the filing of a petition in eminent domain, or upon a ruling from the Circuit Court denying the condemnation. If KCMO terminates prior to filing the petition, it will not be entitled to reimbursement for acquisition services. If KCMO terminates upon a ruling from the Circuit Court, KCMO is entitled to reimbursement for acquisition services.
- c. After the acquisition of any portions of the Property, the Parties may mutually terminate this Agreement in writing unless otherwise stated herein.

11. NOTICES.

If to the City of Kansas City:

Michael Shaw
Director, Public Works
414 East 12th Street, 18th Floor
Kansas City, Missouri 64106

(816) 513-2883
Michael.Shaw@kcmo.org

With a copy to: Matthew Gigliotti
City Attorney
414 East 12th Street, 23rd Floor
Kansas City, Missouri 64106
(816) 513-3142
Matthew.Gigliotti@kcmo.org

If to Lee's Summit:

Mark Dunning
City Manager
220 SE Green St.
Lee's Summit, MO 64063
(816) 969-1010
Mark.Dunning@cityofls.net

With a copy to: Scott Ison
Law Department
220 SE Green St.
Lee's Summit, MO 64063
(816) 969-1406
Scott.Ison@cityofls.net

Each party shall have the right to specify that notice, approval or consent be sent to any other address by giving the other party ten (10) days written notice thereof.

All notices shall be effective upon the date of receipt by the addressee as shown on the return receipt. Emails shall be considered received two days after being sent. Rejection or other refusal to accept, or the inability to deliver because of a changed address of which no notice was given, shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

12. NO INTENT TO BENEFIT THIRD PARTIES. The parties to this Agreement are KCMO and LSMO, no other individual or entity is a party to this Agreement and this is not an agreement for the benefit of any third party.

13. ENTIRE AGREEMENT. This Agreement, together with aforementioned exhibits, constitutes the entire agreement of the parties with respect to its subject matter hereof.

14. GOVERNING LAW. This Agreement was executed and made in Missouri and shall be construed in accordance with the laws of the State of Missouri.

15. EXECUTED IN COUNTERPARTS; ELECTRONIC SIGNATURES. KCMO and LSMO agree that this Agreement may be executed in counterpart and that a copy of the party's signature or an electronic signature shall have the same effect as an original.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

CITY OF KANSAS CITY, MISSOURI
A constitutionally Chartered Municipal
Corporation of the State of Missouri

BY: _____
Michael Shaw, Director of Public Works

APPROVED AS TO FORM

BY: _____
Assistant City Attorney

CITY OF LEE'S SUMMIT
A constitutionally Chartered Municipal
Corporation of the State of Missouri

BY: _____
William A. Baird, Mayor

APPROVED AS TO FORM

BY: _____
Assistant City Attorney