

COOPERATIVE AGREEMENT
FOR THE DESIGN OF A STORMWATER MANAGEMENT SYSTEM
ALONG MILL STREET BETWEEN THE ENTRANCE TO
MANOR SQUARE PARKING GARAGE SOUTH TO 43RD STREET

THIS COOPERATIVE AGREEMENT is entered into this ____ day of _____, 2022, between the City of Kansas City, Missouri, a constitutionally chartered municipal corporation (the “City”) through its Water Services Department (hereinafter "Department"), and the Westport Regional Business League, a Missouri not-for-profit corporation (“WRBL”).

WITNESSETH:

The following recitals are an integral part of this Cooperative Agreement.

WHEREAS, the City previously commissioned the Westport Stormwater Management Plan (the “Plan”) which identified certain strategies to better manage stormwater in flood prone areas and to develop distributed green infrastructure where appropriate; and

WHEREAS, WRBL desires, in cooperation with City and in furtherance of the Plan, to engage a consultant for the purpose of providing preliminary design and engineering services for green infrastructure and distributing storage strategies to manage stormwater (the “Project”) along Mill Street between the entrance to Manor Square parking garage South to 43rd Street (the "Premises"); and

WHEREAS, by recommendation of its Public Improvement Advisory Committee, City has appropriated Five Hundred Ten Thousand and No/100 Dollars (\$510,000.00) in its Fiscal Year 2021-2022 budget and designated spending authority for said appropriation to the Department towards the cost of preliminary design and engineering services for the Project (the “Design Services”); and

WHEREAS, City and WRBL have determined that it is in the best interest of the parties to enter into a Cooperative Agreement for the management of the Design Services on the terms and conditions set forth in this Cooperative Agreement; and

WHEREAS, the Director of the Water Services Department (the “Director”) is authorized to exercise Department’s authority to execute this Agreement as delegated by the City Manager under the City Charter.

NOW THEREFORE, in consideration of the mutual covenants of the parties contained herein, the parties hereto do mutually agree as follows:

Sec. 1. Scope of Agreement. The purpose of this Cooperative Agreement is to provide for the transfer of appropriated City funds towards the cost of the Design Services.

Sec. 2. Obligations of City. City agrees to:

- a. contribute a sum not to exceed Five Hundred Ten Thousand and No/100 Dollars (\$510,000.00) towards the cost of the Design Services (the “Contribution”) in accordance with Sec. 4 of this Cooperative Agreement;
- b. designate in writing a person to act as City’s representative with respect to this Agreement; and
- c. comply with all other requirements applicable to City as set forth in this Cooperative Agreement.

Sec. 3. Obligations of WRBL. WRBL agrees to:

- a. prepare an RFQ/P for procurement of design professional services in accordance with all City requirements and oversight;
- b. engage and contract with selected design professionals and consultants (“Design Professional”) to provide the Design Services subject to the terms and conditions of this Agreement and in accordance with all City requirements and oversight;
- c. apply the funds contributed by City exclusively towards the costs of the Design Services;
- d. conduct community stakeholder meetings to receive input from interested stakeholders about the Project. These meetings shall include participants from the City and the Department and all stakeholders in the Westport Community Improvement District that seek to provide input on the Project;
- e. provide documentation to City in the form of notice of award, notice to proceed, invoices, and cancelled checks or other verification of payment acceptable to the City, in addition to any other requested documentation of the expenditure of City funds for Design Services;
- f. manage and coordinate design professional, as needed to secure the timely completion and performance of the Design Services no later than December 31, 2022; and
- g. comply with all other requirements applicable to WRBL as set forth in this Cooperative Agreement.

Sec. 4. City Funding. The maximum obligation of City towards the funding of the Design Services under this Agreement shall not exceed a total of Five Hundred Ten Thousand and No/100 Dollars (\$510,000.00), it being expressed, understood, and agreed to by the parties that WRBL shall be solely liable for any and all costs in excess of the City’s Contribution. Subject to City’s receipt and written acceptance of progressive invoices from WRBL, in a form reasonably acceptable to City, containing itemized documentation demonstrating the costs incurred by WRBL in connection with the Design Services, City shall remit payment to WRBL within thirty (30) days after said receipt and acceptance.

Sec. 5. License to Use Right-of-Way. City hereby grants to WRBL, its representatives, employees, consultants, contractors and agents, a license to use that portion of the public right-of-way on the Premises reasonably necessary for the completion of the Design Services. The grant of this license shall not constitute a conveyance of any interest in the public right-of-way.

Sec. 6. Required approval. Preliminary engineering evaluation result with project recommendations; hydraulic model; and detailed drawings, plans and specifications for the Project, which shall include the proposed location and any additional construction, deconstruction or fabrication required in connection with the construction of the Project (the “Plans and Specifications”), shall be prepared by a design professional selected by WRBL and submitted to the Director. Three (3) sets of the Plans and Specifications shall be filed with the Director for review and input. WRBL shall submit revised Plans and Specifications for review, as necessary.

Sec. 7. Notices. All notices required by this Agreement shall be in writing sent by regular U.S. mail, postage prepaid, commercial courier or e-mail to the following:

City: Director of Water Services Department
Wes Minder
4800 E. 63rd St.
Kansas City, MO 64130
Email: wes.minder@kcmo.org

WRBL: Westport Regional Business League
Attention: Executive Director
4050 Pennsylvania, Suite M-100
Kansas City, MO 64111
Email: kim@wrbl.org

With a courtesy copy to: Husch Blackwell, LLC
Attention: Charles Renner
4801 Main Street, Suite 1000
Kansas City, MO 64112
Email: Charles.renner@huschblackwell.com

All notices are effective on the date mailed 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 of written notice.

Sec. 8. General Indemnification. WRBL shall defend, indemnify, and hold harmless 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 in connection with the performance under this Cooperative Agreement, caused in whole or in part by WRBL’s employees, agents, or contractors, or others for whom WRBL is legally liable, regardless of whether or not caused in part by any act or omission of City, its agencies, officials, officers or employees. WRBL is not obligated under this Section to indemnify City for any claims, damages, liability, losses, costs and expenses cause by the willful misconduct or gross negligence of City or City’s agencies, officials, officers or employees.

WRBL's contracts with every consultant providing the Design Services shall require such consultants to defend, indemnify, and hold harmless the City and any of its agencies, officials, officers and employees to the same extent that WRBL is required by this section to defend, indemnify, and hold harmless City and any of its agencies, officials, officers and employees.

Sec. 9. Insurance. WRBL shall procure and maintain in effect throughout the duration of this Agreement, insurance coverage not less than the types and amounts specified below. WRBL shall ensure that City is named as an additional insured on WRBL's policy as well as on Design Professional's policy and all policies shall be on a primary basis. WRBL shall provide proof of such insurance to City prior to the commencement of this Agreement and at each subsequent policy renewal date. The certificate shall provide for not less than thirty (30) days' written notice to City prior to policy cancellation, non-renewal or material change.

1. Commercial General Liability Insurance with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis;

2. Workers' Compensation Insurance to the extent required by applicable laws and employer's liability coverage of at least \$500,000 per occurrence; and

3. Commercial Automobile Liability Insurance covering liability arising out of any auto (owned, hired and non-owned) with a combined single limit of not less than \$1,000,000.

Regardless of any approval by City, WRBL is responsible for ensuring that the required insurance coverage is procured and maintained in effect at all times. In the event the required insurance is not procured and/or maintained, City may order WRBL to immediately stop all Design Services. If the required insurance is not procured and/or effective within ten (10) days thereafter, City may, after written notice to WRBL, pursue its remedies for breach of this Cooperative Agreement as provided for herein and by law.

Sec. 10. Independent Contractor. WRBL and its Design Professionals are independent contractors and are not City's agents. WRBL and its Design Professional have no authority to take any action or execute any documents on behalf of City except as specifically provided for in this Cooperative Agreement.

Sec. 11. Governing Law. This Cooperative Agreement shall be construed and governed in accordance with the law of the State of Missouri. The parties submit to the jurisdiction of the courts of the State of Missouri and waive venue.

Sec. 12. Compliance with Laws. WRBL and its contractors shall comply with all federal, state and local laws, ordinances and regulations applicable to the Project. WRBL shall require its Design Professionals to secure all occupational and professional licenses and permits from public or private sources necessary for the fulfillment of their obligations under this Cooperative Agreement.

Sec. 13. Default and Remedies. If WRBL shall be in default or breach of any provision of this Cooperative Agreement, City may terminate this Cooperative Agreement, suspend City's

performance and invoke any other legal or equitable remedy after giving WRBL notice and reasonable opportunity to correct such default or breach.

If City shall be in default or breach of any provision of this Cooperative Agreement, WRBL may terminate this Cooperative Agreement, suspend its performance and invoke any other legal or equitable remedy after giving City notice and reasonable opportunity to correct such default or breach.

Sec. 14. Waiver. No consent or waiver, express or implied, by any party to this Cooperative Agreement or any breach or default by any other party in the performance of its obligations under this Agreement shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance of the same or any other obligations hereunder. Failure on the part of any party to complain of any act or failure to act 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 Cooperative Agreement. The parties reserve the right to waive any term, covenant, or condition of this Cooperative 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 their rights and remedies under this Cooperative Agreement irrespective of any waiver granted.

Sec. 15. Modification. This Cooperative Agreement shall not be amended, modified or canceled without the written consent of the parties to this Cooperative Agreement.

Sec. 16. Headings; Construction of Agreement. The headings of each section of this Cooperative Agreement are for reference only. Unless the context of this Cooperative 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.

Sec. 17. Severability of Provisions. Except as specifically provided in this Cooperative Agreement, all of the provisions of this Cooperative Agreement shall be severable. In the event that any provision of this Cooperative Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Cooperative Agreement shall be valid unless the court finds that the valid provisions of this Cooperative 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 Cooperative 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.

Sec. 18. Assignment. Upon City approval, WRBL may contract for the professional services to complete Design Services, but may not assign or transfer any part or all of their obligations or interests under this Cooperative Agreement without City's prior written approval. WRBL shall notify City, in writing, at least (30) days prior to any proposed assignment or transfer and shall provide with that notice, the proposed assignee's or transferee's written acceptance of the terms and conditions of this Cooperative Agreement. WRBL shall not be released from its obligations

under this Cooperative Agreement unless and until such time as it is released, in writing, by the Director.

Sec. 19. Conflicts of Interest. WRBL certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Cooperative Agreement, and that no officer or employee of City, or member of such officer's or employee's immediate family, has either negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of WRBL or its contractors under this Cooperative Agreement.

Sec. 20. 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 Cooperative Agreement.

Sec. 21. Reserved.

Sec. 22. Audit. City shall have the right to audit this Cooperative Agreement and all books, documents and records relating thereto. WRBL shall maintain all books, documents and records relating to this Cooperative Agreement for a period of three (3) years after the date of final payment by City. The books, documents and records shall be made available to City within ten (10) days after City's written request. WRBL shall contractually require that its Design Professional comply with this section.

Sec. 24. Further Acts. The parties agree to perform or cause to be performed any and all such further acts as may be reasonably necessary to fulfill the terms and conditions of this Cooperative Agreement.

Sec. 25. Cooperation. The parties shall cooperate in the implementation and performance of the acts, undertakings and obligations as set forth in this Cooperative Agreement.

Sec. 26. Binding Effect. This Cooperative Agreement shall be binding upon the parties hereto and upon their assigns, transferees and successors in interest.

Sec. 27. Representations. The parties certify that they have the power and authority to execute and deliver this Cooperative Agreement and to perform this Cooperative Agreement in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date and year first above written.

[Remainder of page intentionally left blank]

WESTPORT REGIONAL BUSINESS LEAGUE

By: _____

Name: Franklin D. Kimbrough

Title: Executive Director

KANSAS CITY, MISSOURI

Water Services Department

4800 East 63rd Street

Kansas City, Missouri 64130

By: _____

Name: Wes Minder

Title: Director

Approved as to form:

Assistant City Attorney

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Director of Finance

Date