

AGREEMENT BETWEEN THE OVERLAND PARK, KANSAS, AND THE CITY OF LEAWOOD, KANSAS, FOR THE PUBLIC IMPROVEMENT OF NALL AVENUE FROM APPROXIMATELY 145 METERS SOUTH OF 143RD STREET TO APPROXIMATELY 11 METERS SOUTH OF 135TH STREET, AND 143RD STREET FROM APPROXIMATELY 45 METERS WEST OF NALL AVENUE TO APPROXIMATELY 145 METERS EAST OF NALL AVENUE.

THIS AGREEMENT, made and entered into this _____ day of _____, 2002, by and between the City of Overland Park (“Overland Park”), and the City of Leawood, Kansas (“Leawood”), each party having been organized and now existing under the laws of the State of Kansas,

WITNESSETH:

WHEREAS, the parties hereto have determined it is in their best interest to make the public improvement on Nall avenue from approximately 145 meters south of 143rd street to approximately 11 meters south of 135th street, and 143rd Street from approximately 45 meters west of Nall Avenue to approximately 145 meters east of Nall Avenue as such improvement is hereinafter described; and

WHEREAS, K.S.A. 12-2908 authorizes the parties hereto to cooperate in making the public improvement; and

WHEREAS, the governing bodies of each of the parties hereto have determined to enter into this Agreement for the aforesaid public improvement, as authorized and provided by K.S.A. 12-2908 and K.S.A. 68-169; and

WHEREAS, the governing body of Overland Park, did approve and authorize its mayor to execute this Agreement by official vote of the body on the _____ day of _____, 2002; and

WHEREAS, the governing body of Leawood, did approve and authorize its mayor to execute this Agreement by official vote of the body on the _____ day of _____, 2002;

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants and agreements herein contained, and for other good and valuable considerations, the parties hereto agree as follows:

1. PURPOSE OF AGREEMENT. The parties hereto enter into this Agreement for the purpose of making the public improvement on Nall Avenue as heretofore described by performing the following work:

- a) Construct two parallel roadways, each 8.55 meters in width back-to-back of curb, separated by a 7.3 meter grass median, located within a total of 36.6 meters of public right-of-way for Nall Avenue north and south of 143rd Street;
- b) Construct two parallel roadways, each 8.55 meters in width back-to-back of curb, separated by a 7.3 meter grass median, located within a total of 36.6 meters of public right-of-way for 143rd Street east and west of Nall Avenue;
- c) Construct left turn lanes on Nall Avenue at 143rd Street, approximately 800 feet north of 143rd Street, 140th Street, 138th Street, 137th Street and 135th Street;
- d) Construct left turn lanes on 143rd Street at Nall Avenue;
- e) Construct right turn on Nall Avenue south of 135th Street;
- f) Construct tapered roadway sections at the ends of the proposed improvement on Nall Avenue and 143rd Street to transition from the proposed section to the existing roadway;
- g) Construct a single 1.5 meter sidewalk on each side of Nall Avenue;
- h) Construct a single 3.0 meter asphalt sidewalk on the north side of 143rd Street;
- i) Construct a single 1.5 meter sidewalk on the south side of 143rd Street;

- j) Construct storm drainage systems along the entire project length to Overland Park standards;
- k) Construct a continuous street lighting system along the entire project length to Overland Park standards;
- l) Modify the traffic signal system at the intersection of 135th Street and Nall Avenue, install conduit and junction boxes required for future signal installation at 137th Street, and install new traffic signal system at the intersection of 143rd Street and Nall Avenue;
- m) Provide traffic control;
- n) Place permanent traffic lane lines, pavement messages, stop bars and crosswalks;
- o) Sod or seed all disturbed areas;
- p) Restore landscaping and irrigation systems; and,
- q) Construct other incidental items associated and integral with the above referenced construction.

2. ESTIMATED COST OF PROJECT.

- A. The estimated cost of making the public improvement is TEN MILLION, FOUR HUNDRED THOUSAND DOLLARS (\$10,400,000).
- B. The cost of making the public improvement shall include:
 - (1) Labor and material used in making the public improvement; and
 - (2) Such other expenses, which are necessary in making the public improvement. These costs include but are not limited to design engineering, project administration, construction inspection, material testing and utility relocations.
- C. The Cities anticipate receipt of Transportation Equity Act of the 21st Century funding of TWO MILLION DOLLARS (\$ 2,000,000) and Johnson County CARS

funding of TWO MILLION, SIX HUNDRED FIFTY-EIGHT THOUSAND, SIX HUNDRED TWENTY-FIVE DOLLARS (\$2,658,625) to help pay a portion of the cost of the public improvement.

D. The remaining local share of the cost of making the public improvement shall be distributed between each City as follows:

- (1) Leawood shall pay 43.2% of the local share of the public improvement, subject to Section 2. D (4) below.
- (2) Overland Park shall pay 56.8% of the local share of the public improvement, subject to Section 2. D (4) below.
- (3) Each City shall acquire and pay all costs associated with the right-of-way or easement acquisition for that portion of the project located within its respective boundary. Additionally, each City shall pay the cost of financing and/or bonding its share of the project cost.
- (4) In addition to its payment set forth in Section 2, Paragraph D. (1) above, Leawood shall reimburse Overland Park that sum which is to be reimbursed to Overland Park by Leawood, as set forth in Section 2, Paragraph B. (4) (iv) of an Agreement between Overland Park and Leawood, dated January 7, 2000, which is attached hereto as Exhibit A.

In order to reimburse Overland Park, Leawood shall pay Overland Park's share of the cost of the improvement, beginning with the initial invoice from the design engineer, until such time as the amount due from Leawood is paid in full. In consideration of this payment, Overland Park waives any rights it may have to collect interest and financing costs on said amount due from Leawood, under Paragraph 2(B)(4)(iv) of such agreement or otherwise.

Payment by Leawood of such amounts shall constitute full satisfaction of the obligations of Leawood under the January 7, 2000, agreement.

Subject to the reimbursement provision of this Paragraph 2.D (4), the estimated local share of the cost of making the public improvement after distribution of federal and county funding is FIVE MILLION, SEVEN

HUNDRED FORTY-ONE THOUSAND, THREE HUNDRED SEVENTY-FIVE DOLLARS (\$5,741,375). The estimated project cost for the City of Overland Park is THREE MILLION, TWO HUNDRED SIXTY-ONE THOUSAND, ONE HUNDRED ONE DOLLARS (\$3,261,101). The estimated project cost for the City of Leawood is TWO MILLION, FOUR HUNDRED EIGHTY THOUSAND, TWO HUNDRED SEVENTY-FOUR DOLLARS (\$2,480,274).

3. FINANCING. THE CITIES OF OVERLAND PARK, KANSAS, and LEAWOOD, KANSAS, shall pay their portion of the cost with monies budgeted and appropriated funds.

4. ADMINISTRATION OF PROJECT. The public improvement described by items a) through q, paragraph 1 shall be constructed and the job administered by Overland Park, acting by and through the Director of Public Works for Overland Park, who shall be the principal public official designated to administer the public improvement; provided, that the Director of Public Works shall, among his several duties and responsibilities, assume and perform the following:

- A. Make all contracts for the public improvement, including the responsibility to solicit bids by publication in the official newspaper of Overland Park. In the solicitation of bids, the appropriate combination of best bids shall be determined by the aforesaid governing body administering the project. If all bids exceed the engineer's estimate, either City shall have the right to reject the bid.
- B. Submit to Leawood on or before the 10th day of each month, or as received, estimates of accrued costs of constructing the public improvement for the month immediately preceding the month the statement of costs is received; provided that Leawood shall within thirty (30) days after receipt of a statement of costs as aforesaid, remit their portion of the accrued costs to Overland Park as herein agreed.

- C. Upon completion of the public improvement, the Director of Public Works shall submit to Leawood a final accounting of all costs incurred in making the public improvement for the purpose of apportioning the same among the parties as provided herein.
- D. Leawood shall be named as additional insured on all applicable certificates of insurance issued by the contractor for this project.
- E. The City of Overland Park shall allocate net costs attributable to the Leawood's portion in such segments and phases as Leawood requests in order to establish costs attributable to benefit district financing of all or any portion of the improvement.

5. DURATION AND TERMINATION OF AGREEMENT. The parties hereto agree that this Agreement shall exist until the completion of the aforesaid public improvement, which shall be deemed completed upon certification to each of the parties hereto by the Director of Public Works advising that the public improvement has been accepted by him as constructed; provided that upon the occurrence of such certification by the Director of Public Works, this Agreement shall be deemed terminated and of no further force or effect.

6. PLACING AGREEMENT IN FORCE. The attorney for the administering body described in paragraph 4 hereof shall cause this Agreement to be executed in triplicate. Each party hereto shall receive a duly executed copy of this Agreement for their official records.

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

OVERLAND PARK, KANSAS

By _____
ED EILERT, MAYOR

ATTEST:

MARIAN COOK, CITY CLERK

APPROVED AS TO FORM:

JANE NEFF-BRAIN
ATTORNEY FOR CITY

CITY OF LEAWOOD, KANSAS

By _____
PEGGY J. DUNN, MAYOR

ATTEST:

MARTHA HEIZER, CITY CLERK

APPROVED AS TO FORM:

PATRICIA A. BENNETT
ATTORNEY FOR THE CITY