

STREET CONSTRUCTION AGREEMENT

THIS AGREEMENT is entered into this 11th day of November, 2002, by and between CHRIST EVANGELICAL LUTHERAN CHURCH OF LENEXA, KANSAS, INC. (hereinafter "Christ Lutheran"), and the CITY OF OVERLAND PARK, KANSAS (hereinafter "City"), a municipal corporation.

WHEREAS, Columbian National Title Insurance of Johnson County, Inc. (hereinafter "Columbian"), and the City entered into a Development Agreement dated the 9th day of October, 1995, and filed of record with the Register of Deeds of Johnson County, Kansas, on November 10, 1995, at Book 4725, Page 61, in which Columbian, with certain stipulation, agreed to construct certain portions of Indian Creek Parkway and Nieman Road; and

WHEREAS, it was the desire of Columbian, Christ Lutheran and the City to reduce to writing their agreements with respect to development of the Christ Lutheran tract and to modify the Development Agreement accordingly, which was accomplished by the execution of the First Addendum of the Development Agreement dated December 1, 1997 and filed of record with the Register of Deeds of Johnson County, Kansas, on March 10, 1998 at Book 5492, Page 163, in which Columbian, with certain stipulations, agreed to construct certain portions of Indian Creek Parkway, and Christ Lutheran, with certain stipulations, agreed to construct certain portions of Nieman Road, and City, with certain stipulations, agreed to exercise its best efforts to complete the unfinished portions of Indian Creek Parkway and Nieman Road, although no timetable was established for the construction by City; and

WHEREAS, the Columbian, Christ Lutheran and the City extended the time frame for certain elements of the construction by execution of the Second Addendum of the Development Agreement dated June 1, 1998 and filed of record with the Register of Deeds of Johnson County, Kansas, on June 11, 1998 at Book 5626, Page 620; and

WHEREAS, Christ Lutheran desires to begin Phase II of its campus development, necessitating completion of the unfinished portions of Nieman Road and Indian Creek Parkway, which, by Agreement, are the financial responsibility of the City; and

WHEREAS, Christ Lutheran is willing to pay all non-construction costs of the project, in order to have the project constructed earlier than had been anticipated by the City.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Obligation of the Parties

- a. Christ Lutheran will have designed, approved, and constructed privately, the extension of Indian Creek Parkway, north of 119th Street, from its

current eastern terminus, thence northeast 1776 feet to its current southwestern terminus and the extension of Nieman Road, north of 119th Street, from its current southern terminus, thence south 437 feet to the intersection with Indian Creek Parkway. Indian Creek Parkway and Nieman Road will be two-lane collectors, thirty-six feet wide with curb and gutter located within a sixty foot right-of-way. The project also includes construction of sidewalks, storm sewers, streetlights, grading, restoration, and other items incidental to the street construction

- b. The City will reimburse Christ Lutheran for the construction cost of the project, which shall be performed in accordance with the plans as approved by the City.
- c. The City's obligation for the construction is now estimated to be \$466,730 as set forth in Exhibit A attached hereto and incorporated by reference.
- d. Upon completion of the construction in accordance with the plans, and acceptance of the same by the City, the City will promptly pay to Christ Lutheran the cost of the construction, upon submittal of an itemized statement acceptable to the City, along with written releases from all contractors, subcontractors and materialmen indicating that they have been paid-in-full (the "Deliverables"). The City agrees that such payment will be made within thirty (30) days of receipt of the Deliverables and acceptance of the street improvements.
- e. Christ Lutheran shall be responsible for all costs other than actual construction costs, including but are not limited to financing, plan review and inspection fees, project administration, design engineering, and material testing expenses not otherwise included in the contract between Christ Lutheran and Excel Contractors, attached as Exhibit B.

2. Indemnification

Christ Lutheran agrees that in contracting for the above-described improvements, it will have inserted into all contractor and subcontractor contracts the following indemnification agreement:

The Contractor shall indemnify and hold the City harmless from any and all damage, loss or liability of any kind whatsoever arising out of this Contract, including but not limited to, an loss occasioned by reason of damage or injury to persons or property caused, in whole or in part, by any act, omission, neglect or wrongdoing of the Contractor or any of its officers, agents, employees or subcontractors, or in connection with any claim based on lawful demands of subcontracts, workers, material persons or suppliers. In addition, the Contractor will pay all costs and expenses involved in defending all actions arising there from.

Should Christ Lutheran fail to have such language inserted in the appropriate documents, it will assume the obligations of the Contractor or subcontractor in defending and indemnifying the City. The language of Exhibit B is acceptable to the City and satisfies this requirement if executed by the Contractor.

3. Insurance

Christ Lutheran shall require its contractor to maintain during the life of this Agreement and during all phases of the road improvement work, comprehensive or commercial general liability and automobile liability in at least the amounts set forth herein. General liability and automobile insurance policies must name the City as an “**Additional Insured**”.

COMMERCIAL GENERAL LIABILITY POLICY

Limits –

General Aggregate:	\$ 1,000,000
Products / Completed Operations Aggregate:	\$ 1,000,000
Personal & Advertising Injury:	\$ 1,000,000
Each Occurrence:	\$ 1,000,000

Policy MUST include the following conditions:

- a) Explosion, Collapse & Underground
- b) Independent Contractors
- c) Pollution Liability (Applicable only to contracts involving pollutants such as asbestos & lead abatement, sludge or other waste abatement, etc.)

AND

UMBRELLA / EXCESS LIABILITY

Limits –

Each Occurrence:	\$1,000,000
General Aggregate:	\$1,000,000

The Umbrella / Excess Liability must be at least as broad as the underlying policy.

(c) Automobile Liability -

Policy shall protect the Contractor against claims for bodily injury and/or property damage arising from the ownership or use of any

owned, hired and/or non-owned vehicle and must include protection for either:

Any Auto

or

All Owned Autos;
Hired Autos; and
Non-Owned Autos.

Limits –

Combined Single Limits,
Bodily Injury and Property Damage - Each Accident:

Same as General Liability

(d) Workers' Compensation -

This insurance shall protect the Contractor against all claims under applicable state workers' compensation laws. The Contractor shall also be protected against claims for injury, disease or death of employees, which, for any reason, may not fall within the provisions of workers' compensation law. The policy limits shall not be less than the following:

Workers' Compensation: Statutory

Employer's Liability:

Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

(e) Industry Ratings -

The City will only accept coverage from an insurance carrier who offers proof that it:

- (1) Is licensed to do business in the State of Kansas;
- (2) Carries a Best's policy holder rating of B+ or better;
and
- (3) Carries at least a Class X financial rating.

(f) Subcontractors' Insurance -

If a part of the Contract is to be sublet, the Contractor shall either:

- (1) Cover all subcontractors in its insurance policies, **or**
- (2) Require each subcontractor not so covered to secure insurance, which will protect subcontractor against all applicable hazards or risks of loss as and in the minimum amounts designated.

Whichever option is chosen, contractor shall indemnify and hold harmless the City as to any and all damages, claims or losses, including attorney's fees, arising out of the acts or omissions of its subcontractors. . The language of Exhibit B is acceptable to the City and satisfies this requirement if executed by the Contractor.

4. Construction Commencement

Christ Lutheran may commence construction upon written approval by the City Engineer of the final improvement plans and, upon Christ Lutheran or the Contractor furnishing certification of the performance and maintenance bond, plan review and inspection fees, and all insurance required under this Agreement.

5. Construction Completion

If the City's approval to commence is received by November 15, 2002, then the improvements shall be completed by August 1, 2003 to coincide with the opening of the new educational wing of Christ Lutheran. If the City Approval is obtained after November 15, 2002, then the completion date shall be extended for a like period of time to permit completion. Time is of the essence in this Agreement.

6. Construction of Agreement

This Agreement shall be construed under the laws of the State of Kansas and shall inure to the benefit of the parties to the Agreement.

7. Filing

This Agreement shall be filed of Record with the Johnson County Register of Deeds and shall bind all parties and their agents, employees, representatives, officers, directors, shareholders, successors and assigns.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed the day and year first written above.

CITY OF OVERLAND PARK, KANSAS

By _____
Ed Eilert, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Jane Neff-Brain, Sr. Asst. City Attorney

CHRIST EVANGELICAL LUTHERAN
CHURCH OF LENEXA, KANSAS, INC.

Jerry Bengtson, President

STATE OF _____)
) SS.
COUNTY OF _____)

BE IT REMEMBERED, That on this _____ day of November, 2002, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Jerry Bengtson, President of Christ Evangelical Lutheran Church of Lenexa, Kansas, Inc., a not-for-profit corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Kansas, who is personally known to me to be such officer and who is personally known to me to be the same person who executed as such officer the within instrument on behalf of said Corporation, and such person duly acknowledged the execution of the same to the act and deed of said Corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

My Appointment Expires

Notary Public