

AGREEMENT BETWEEN THE CITY OF OVERLAND PARK, KANSAS, AND THE CITY OF MERRIAM, KANSAS, FOR THE PUBLIC IMPROVEMENT OF ANTIOCH ROAD FROM 67TH STREET TO 75TH STREET.

THIS AGREEMENT, made and entered into this _____ day of _____, 2008, by and between the CITY OF OVERLAND PARK, KANSAS, and the CITY OF MERRIAM, KANSAS, 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 to Antioch Road from 67th Street to 75th Street 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 the CITY OF OVERLAND PARK, KANSAS, did approve and authorize its mayor to execute this Agreement by official vote of the body on the _____ day of _____, 2008; and

WHEREAS, the governing body of the CITY OF MERRIAM, KANSAS, did approve and authorize its mayor to execute this Agreement by official vote of the body on the _____ day of _____, 2008.

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 constructing the public improvement on Antioch Road as heretofore described by performing the following work: The street improvement of Antioch Road from 67th Street to 75th Street including microsurfacing the existing street and repair of asphalt pavement, pavement markings and other items incidental to the street reconstruction.

2. ESTIMATED COST OF PROJECT.

A. The estimated cost of construction for the public improvement covered by this agreement is SIXTY FOUR THOUSAND FIVE HUNDRED FORTY DOLLARS (\$64,540.00).

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, exclusive of the cost of acquiring real property and any improvement thereon for the location of the public improvement. These costs include but are not limited to project administration, construction inspection, material testing and utility relocations.

C. The local share of the cost for construction of said public improvement, as described hereinabove, shall be distributed within each CITY as follows:

- (1) The CITY OF MERRIAM, KANSAS shall pay 50% of the local share of said public improvement (estimated to be \$32,270.00).
- (2) The CITY OF OVERLAND PARK, KANSAS shall pay 50% of the local

share of said public improvement (estimated to be \$32,270.00).

3. FINANCING. THE CITIES OF OVERLAND PARK, KANSAS, and MERRIAM, KANSAS, shall pay their portion of the cost with monies budgeted and appropriated funds.
4. OVERLAND PARK ADMINISTRATION OF PROJECT. It is acknowledged and understood between the parties that since there are two separate cities included within the proposed improvement, one of the cities should be designated as being “in charge” of the project to provide for its orderly design and construction. However, both cities shall have the right of review and comment on project decisions at any time throughout duration of this Agreement, and any subsequent agreements hereto. The public improvement shall be constructed and the job administered by the CITY OF OVERLAND PARK, KANSAS, acting by and through the Director of Public Works for Overland Park, Kansas, 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, Kansas. In the solicitation of bids, the appropriate combination of best bids shall be determined by the aforesaid governing body administering the project, except that the governing body of the CITY OF MERRIAM, KANSAS reserves the right to reject the successful bidder in the event that the bid price exceeds the engineer’s estimate. If all bids exceed the estimated cost of the public improvement, then either CITY shall have the right to reject the bid. In such case, the project shall rebid at a later date.

- B. Submit to the CITY OF MERRIAM 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 the CITY OF MERRIAM shall within thirty (30) days after receipt of a statement of costs as aforesaid, remit their portion of the accrued costs to the CITY OF OVERLAND PARK as herein agreed.
- C. Upon completion of the public improvement, the Director of Public Works shall submit to the CITY OF MERRIAM 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. The CITY OF MERRIAM 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 require performance and completion bonds for the improvement from all contractors and require that all contractors discharge and satisfy any mechanics or materialman's liens that may be filed.
- F. The CITY OF OVERLAND PARK shall require that any contractor provide a two-year performance and maintenance bond for the Improvement. As Administrator, the CITY OF OVERLAND PARK will, upon request of MERRIAM, make any claim upon the maintenance bond or performance bond and require that the contractor fully perform all obligations under the performance and maintenance bonds.
- G. The CITY OF OVERLAND PARK shall include in contracts for construction a requirement that the contractor defend, indemnify and save OVERLAND PARK and MERRIAM harmless from and against all liability for damages, costs, and expenses

arising out of any claim, suit or action for injuries or damages sustained to persons or property by reason of the act or omissions of the contractor and the performance of his or her contract.

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.
7. AMENDMENTS. This Agreement cannot be modified or changed by any verbal statement, promise or agreement, and no modification, change nor amendment shall be binding on the parties unless it shall have been agreed to in writing and signed by both parties.
8. JURISDICTION. This Agreement shall be construed according to the laws of the State of Kansas and may be enforced in any court of competent jurisdiction.

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.

CITY OF OVERLAND PARK, KANSAS

By _____
CARL GERLACH, MAYOR

ATTEST:

MARIAN COOK, CITY CLERK

APPROVED AS TO FORM:

JANE NEFF-BRAIN
SENIOR ASSISTANT CITY ATTORNEY

CITY OF MERRIAM, KANSAS

By _____
CARL WILKES, MAYOR

ATTEST:

STEPHANIE DAWKINS, CITY CLERK

APPROVED AS TO FORM:

MICHELLE DAISE, CITY ATTORNEY