

AGREEMENT BETWEEN THE CITY OF OVERLAND PARK, KANSAS, AND THE CITY OF MISSION, KANSAS, FOR THE PUBLIC IMPROVEMENT OF MARTWAY STREET FROM BROADMOOR TO WOODSON

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THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and between the CITY OF OVERLAND PARK, KANSAS (hereinafter "OVERLAND PARK"), and the CITY OF MISSION, KANSAS (hereinafter "MISSION"), 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 MARTWAY STREET FROM BROADMOOR TO WOODSON 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 \_\_\_\_\_, 2012; and

WHEREAS, the governing body of MISSION did approve and authorize its mayor to execute this Agreement by official vote of the body on the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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 Martway Street by performing the following

work:

- A. Mill and Overlay Martway Street from Broadmoor to approximately 300 feet west of Lamar Avenue.
- B. Re-construct Martway Street in asphaltic concrete from approximately 300' west of Lamar Avenue to approximately 100' east of Woodson Road.
- C. Re-construct Lamar Avenue from approximately 100' north of Martway Street to approximately 100' south of Martway Street.
- D. Re-construct Beverly Avenue and Dearborn Street, each from approximately 100' north to Martway Street.
- E. Construct a new storm drainage system under the intersection of Martway Street and Woodson Road.
- F. Re-construct storm drainage systems along the entire project length to Mission standards.
- G. Construct a continuous street lighting system along the entire project length to Mission standards.
- H. Provide traffic control.
- I. Place permanent pavement marking and signing.
- J. Sod or seed all disturbed areas.
- K. Construct other incidental items associated and integral with the above referenced construction.

(hereinafter the "Improvement").

2. ESTIMATED COST OF PROJECT.

- A. The estimated cost for construction of the Improvement covered by this Agreement, exclusive of the cost of right-of-way or easement acquisition, is **THREE MILLION, THREE HUNDRED SEVENTY THOUSAND AND 00/100 DOLLARS (\$3,370,000)**
- B. The cost of making the Improvement shall include:
  - (1) Labor and material used in making the Improvement; and
  - (2) Such other expenses which are necessary in making the Improvement,

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

C. The Cities anticipate receipt of Federal Transportation Funding of One Million Two Hundred Two Thousand Eight Hundred Ten and 00/100 Dollars (\$1,202,810) to help pay a portion of the cost of the Improvement.

D. The Cities anticipate receipt of County Assistance Road System funding of Eight Hundred Fifty Thousand and 00/100 Dollars (\$850,000) to help pay a portion of the cost of the Improvement.

E. The remaining cost of making the said Improvement (the "Local Share") shall be distributed between the Cities as follows:

- (1) MISSION shall pay 100% of the Local Share of said Improvement.
- (2) OVERLAND PARK shall pay 0% of the Local Share of said Improvement.
- (3) MISSION shall acquire and pay all costs associated with the right-of-way or easement acquisition for the project. Additionally, MISSION shall pay the cost of financing and/or bonding the project cost.

3. FINANCING. OVERLAND PARK and MISSION shall each pay their portion of the cost with monies budgeted and appropriated funds.

4. OVERLAND PARK ADMINISTRATION OF PROJECT. The Improvement shall be constructed and the job administered by OVERLAND PARK acting by and through the Director of Public Works for OVERLAND PARK (the "PW Director"), who shall be the principal public official designated to administer the Improvement. The PW Director shall, among his several duties and responsibilities, assume and perform the following:

A. Provide for both entities to have right of review and comment on project decisions at any time throughout duration of this Agreement, including a recommendation to accept or reject bids, and any subsequent agreements hereto.

- B. Make all contracts for the 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 governing body of OVERLAND PARK, except that the governing body of MISSION 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 Improvement, then MISSION shall have the right to reject the bid. In such case, the project shall rebid at a later date.
- C. Provide administration services outlined in this Agreement and submit these costs, using hourly rates plus a direct expense cost of 25% of the hourly total, to MISSION, with the total administration amount not to exceed Ninety Thousand Dollars (\$90,000).
- D. Follow State and Federal requirements in preparing contract documents and monitoring compliance of contractor(s), including but not limited to payment of prevailing wage rates, and construction inspection in accordance with the approved Project Development Procedures for Non-NHS Projects/Project Procedures Manual/KDOT Project Procedures Manual-City of Overland Park, Kansas.
- E. Submit to MISSION on or before the 10th day of each month, or as received, estimates of accrued costs of constructing the Improvement for the month immediately preceding the month the statement of costs is received; provided that MISSION 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.
- F. Upon completion of the Improvement, the PW Director shall submit to MISSION a final accounting of all costs incurred in making the Improvement for the purpose of apportioning the same among the parties as provided herein.
- G. MISSION shall be named as additional insured on all applicable certificates of

insurance issued by the contractor (the "Contractor(s)") for this project.

- H. 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.
- I. OVERLAND PARK shall require that any Contractor provide a two year maintenance bond for the Improvement. OVERLAND PARK will, upon request of MISSION, 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, and this obligation shall survive termination of this Agreement and shall be in force and effect for the full term of the performance and maintenance bond.
- J. OVERLAND PARK shall include in contracts for construction a requirement that the Contractor defend, indemnify and save OVERLAND PARK, MISSION, and the Secretary of Transportation, Kansas Department of Transportation 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 acts 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 Improvement, which shall be deemed completed upon certification to each of the parties hereto by the PW Director advising that the Improvement has been accepted by him as constructed; provided that upon the occurrence of such certification by the PW Director, this Agreement shall be deemed terminated and of no further force or effect. Should a party hereto desire to terminate this Agreement prior to completion of the aforesaid Improvement, said party shall provide written notice to the other party of its desire to terminate this Agreement. Within ten (10) days from the date of said notice, representatives for each party hereto shall meet to negotiate in good faith the termination of this Agreement. If either party

terminates this Agreement prior to completion of the aforesaid Improvement, Overland Park will submit a final statement of accrued costs within thirty (30) days of termination and Mission shall remit payment for the accrued costs within thirty (30) days of receipt of final statement of costs.

6. PLACING AGREEMENT IN FORCE. OVERLAND PARK 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:

\_\_\_\_\_  
TAMMY M. OWENS  
DEPUTY CITY ATTORNEY

CITY OF MISSION, KANSAS

By \_\_\_\_\_  
LAURA MCCONWELL, MAYOR

ATTEST:

\_\_\_\_\_  
MARTHA SUMRALL, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY