

AGREEMENT BETWEEN THE CITY OF OVERLAND PARK, KANSAS AND THE CITY OF LENEXA, KANSAS, FOR THE CONSTRUCTION OF IMPROVEMENTS TO THE INTERSECTION OF 95TH STREET AND QUIVIRA ROAD .

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THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between the City of Overland Park, Kansas (“Overland Park”), and the City of Lenexa, Kansas (“Lenexa”), 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 improve the intersection at 95th Street and Quivira Road, as such improvement is hereinafter described; and

WHEREAS, the intersection of 95th Street and Quivira Road is partially in each city; and

WHEREAS, K.S.A. 12-2908 and K.S.A. 68-169 authorize the parties hereto to cooperate in constructing the improvements to the intersection; 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 \_\_\_\_\_, 2013; and

WHEREAS, the governing body of Lenexa, did approve and authorize its mayor to execute this Agreement by official vote of the body on the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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 designing and constructing the intersection improvements at 95th Street and Quivira Road (the “Project”), a portion of said Project to be situated within the Cities of Overland Park and Lenexa, as heretofore described by performing the following work:

- a) The Project will consist of the design and construction of an eastbound right-turn lane, an additional eastbound left-turn lane, a southbound right-turn lane, sidewalk and ADA ramp reconstruction, median modifications, storm sewer improvements and an upgraded traffic signal. In addition to the improvements at the 95th Street and Quivira Road intersection, the Project will also include street lighting improvements and the installation of fiberoptic conduit from Quivira to Monrovia;
- b) The traffic signal at 95th and Quivira as well as the street lighting equipment mounted to the signal poles will be designed and constructed according to Overland Park standards. Overland Park will be responsible for the inspection of the traffic signal installation as well as the associated street lighting attached to the signal poles. All remaining aspects of the Project will be designed to Lenexa standards and will be inspected by Lenexa.

2. ESTIMATED COST OF PROJECT.

- a) The estimated cost of the engineering contract with HNTB is ONE HUNDRED FIFTY-ONE THOUSAND EIGHT HUNDRED AND 00/100 DOLLARS

(\$151,800.00) which includes FIFTEEN THOUSAND AND 00/100 DOLLARS (\$15,000.00) for the design of the traffic signal;

- b) The estimated cost of construction of the Project is NINE HUNDRED FIFTY-NINE THOUSAND TWO HUNDRED AND 00/100 DOLLARS (\$959,200.00) which includes TWO HUNDRED FORTY THOUSAND AND 00/100 DOLLARS (\$240,000.00) for the installation of the new traffic signal and FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000.00) for the temporary traffic signal to be used during construction;
- c) The Parties anticipate that Kansas Department of Transportation will pay 90% of the construction of the traffic signal and the temporary signal. The Cities will be responsible for the remaining 10% of the cost of the construction of the traffic signal and the temporary traffic signal (the "Local Share").
- d) The cost of design and construction of the Project shall be distributed between the Cities as follows:
  - (1) Overland Park shall pay 50% of the design of the traffic signal.
  - (2) Lenexa shall pay 50% of the design of the traffic signal and 100% of the remainder of the design contract.
  - (3) Overland Park shall pay 50% of the Local Share of construction of the traffic signal as well as the temporary signal.
  - (4) Lenexa shall pay 50% of the Local Share of construction of the traffic signal as well as the temporary signal and 100% of the remainder of the public improvements project.
  - (5) Each City shall pay the cost of financing and/or bonding its share of the project cost.

- (6) Subject to the reimbursement provision of this Section, the estimated design and construction cost for Overland Park is ONE HUNDRED FIFTY-TWO THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$152,500.00). The estimated design and construction cost for Lenexa is NINE HUNDRED FIFTY-EIGHT THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$958,500.00). However, if at any time during the Project Lenexa has reason to believe that the cost of the Project will be exceeded by more than ten percent (10%), then Lenexa shall notify Overland Park and either party may exercise a right to renegotiate this Agreement.
- (7) Lenexa shall pay Overland Park a monthly maintenance charge according to that certain Agreement Between The City of Overland Park, Kansas and Lenexa, Kansas for the Operation and Maintenance of Traffic Signal Systems dated December 11, 2006.
- (8) Each City shall pay all costs associated with any right-of-way or easement acquisition within their respective corporate limits which might be required for making said public improvement. Lenexa shall hire an appraiser to appraise the value of the easements in Lenexa and Overland Park necessary for the Project. Lenexa shall also hire an acquisition agent to acquire the easements in Overland Park. Overland Park will reimburse Lenexa for the costs of appraisals and acquisition within Overland Park. Additionally, each City will be responsible for proceeding and completing any condemnation for required easements within their respective corporate limits.

3. FINANCING. Overland Park and Lenexa shall pay their portion of the cost with monies budgeted and appropriated funds.

4. ADMINISTRATION OF PROJECT. The Project described herein shall be constructed and the job administered by Lenexa, acting by and through the Director of Community Development for Lenexa, who shall be the principal public official designated to administer the Project; provided, that the Director of Community Development shall, among her several duties and responsibilities, assume and perform the following:

- a) Contract for the design and construction of the Project.
- b) Upon completion of the Project, submit to Overland Park a final accounting of all costs incurred in design and construction of the Project for the purpose of apportioning the same among the parties as provided herein; provided that Overland Park shall within thirty (30) days after receipt of a statement of costs as aforesaid, remit their portion of the costs to Lenexa as herein agreed.
- c) Ensure that the City of Overland Park, Kansas is named as additional insured on all applicable certificates of insurance issued by their contractor for this Project.
- d) Require performance and completion bonds for the Project from all contractors and require that all contractors discharge and satisfy any mechanics or materialman's liens that may be filed.
- e) Require that all contractors provide a 2 year maintenance bond for the Project. As administrator of the Project, Lenexa will, upon request of Overland Park, 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 the termination of this Agreement and shall be in force and effect for the full term of the performance and maintenance bonds.

f) Include in contracts for construction a requirement that contractor(s) defend, indemnify and save Overland Park and Lenexa 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 public improvement, which shall be deemed completed upon certification to each of the parties hereto by the Director of Community Development advising that the Project has been accepted by her as constructed; provided that upon the occurrence of such certification by the Director of Community Development, 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 duplicate. 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 modifications, change or amendment shall be binding on the Parties unless it shall be 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.

*The remainder of this page has intentionally been left blank.*

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:

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

CITY OF LENEXA, KANSAS

By \_\_\_\_\_  
MICHAEL A. BOEHM, MAYOR

ATTEST:

\_\_\_\_\_  
DAVID F. BRYANT III, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
KEITH WHITEFORD  
ASSISTANT CITY ATTORNEY