

AGREEMENT BETWEEN THE CITY OF OVERLAND PARK, KANSAS, AND THE CITY OF MISSION, KANSAS, FOR THE PUBLIC IMPROVEMENT OF JOHNSON DRIVE FROM LAMAR AVENUE TO NALL AVENUE

THIS AGREEMENT, made and entered into this _____ day of _____, 2013, 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 JOHNSON DRIVE FROM LAMAR AVENUE TO 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 _____, 2013; 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 _____, 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 constructing the public improvement on Johnson Drive by performing the following work:

- A. Reconstruct Johnson Drive in asphaltic concrete from approximately 100 feet west of Lamar Avenue to approximately 100 feet west of Nall Avenue.
- B. Reconstruct, or mill and overlay, side street intersections as required.
- C. Construct concrete intersection at Woodson.
- D. Reconstruct Lamar Avenue from Johnson Drive approximately 150' south.
- E. Construct a new storm drainage interceptor system along the length of the project.
- 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. Construct streetscaping along the entire project length to Mission standards, including but not limited to sidewalks, planting beds, seat walls, tree wells, and decorative paving.
- I. Provide traffic control.
- J. Install permanent pavement marking and signing.
- K. Sod or seed all disturbed areas.
- L. 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 is **NINE MILLION, FIVE HUNDRED THIRTY NINE THOUSAND AND 00/100 DOLLARS (\$9,539,000.00)**

- 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 Two Million, Eight Hundred Thousand and 00/100 Dollars (\$2,800,000.00) to help pay a portion of the cost of the Improvement.
- D. The Cities anticipate receipt of County Assistance Road System funding of One Million, Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) 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. Prior to awarding the bid, OVERLAND PARK shall receive approval of the proposed award by the governing body of MISSION. 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 One Hundred Twenty Five Thousand and 00/100 Dollars (\$125,000.00).
- 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 (2) 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, the Secretary of Transportation, and 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. INDEMNIFICATION.

A. Definitions

For purposes of indemnification requirements, the following terms shall have the meanings set forth below:

1. "MISSION" means and includes the City of Mission, Kansas, all of its employees, agents and assignees, and all of its affiliates and subsidiaries, its subcontractors and/or assignees and their respective servants, agents and employees; and

2. "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this contract whether arising before or after the completion of the work required hereunder.

B. Indemnity

For purposes of this Agreement, MISSION hereby agrees to indemnify, defend and hold harmless OVERLAND PARK, its employees and agents from any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of MISSION. It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of Overland Park or any third party and, further notwithstanding any theory of law including, but not limited to, a characterization of Overland Park's or any third party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that the MISSIONS' obligation hereunder shall not include amounts attributable to the fault or negligence of OVERLAND PARK. Nothing in this section shall be deemed to impose liability on MISSION to indemnify OVERLAND PARK for loss when the OVERLAND PARK's negligence or other actionable fault is the sole cause of loss. With respect to OVERLAND PARK's rights as set forth herein, MISSION expressly waives all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the duty of MISSION to indemnify OVERLAND PARK

7. 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.
8. 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.
9. 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