

AGREEMENT BETWEEN THE CITY OF OVERLAND PARK, KANSAS, AND THE CITY OF MERRIAM, KANSAS, AND THE CITY OF SHAWNEE, KANSAS, FOR THE PUBLIC IMPROVEMENT OF 75<sup>TH</sup> STREET, SWITZER ROAD TO FRONTAGE ROAD

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF OVERLAND PARK, KANSAS (hereinafter “OVERLAND PARK”), the CITY OF MERRIAM, KANSAS (hereinafter “MERRIAM”), and the CITY OF SHAWNEE (hereinafter “SHAWNEE”) each party having been organized and now existing under the laws of the State of Kansas (hereinafter OVERLAND PARK, MERRIAM, and SHAWNEE may be referred to singularly as the “Party” and collectively as the “Parties”).

WITNESSETH:

WHEREAS, the Parties hereto have determined it is in their best interest to make the public improvement to 75<sup>th</sup> Street, between Switzer Road and Frontage Road as such improvement is hereinafter described; and

WHEREAS, K.S.A. 12-2908 and K.S.A. 68-169 authorize 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 MERRIAM did approve and authorize its mayor to execute this Agreement by official vote of the Body on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; and

WHEREAS, the Governing Body of SHAWNEE did approve and authorize its mayor to execute this Agreement by official vote of the Body on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_; 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 \_\_\_\_\_, 20\_\_\_\_.

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 75<sup>th</sup> Street, between Switzer Road and Frontage Road as heretofore described by performing the following work:

- a) Milling and asphalt overlay on 75<sup>th</sup> Street, removal and replacement of concrete pavement, construction of concrete bridge approach slabs near bridges and all work contemplated hereunder shall be constructed to OVERLAND PARK standards (the "Improvement");
- b) Constructing other incidental items associated and integral to the above referenced Improvement.

2. ESTIMATED COST OF PROJECT.

- A. The estimated cost of construction for the Improvement covered by this Agreement, exclusive of the cost of right-of-way or easement acquisition, is **FOUR MILLION EIGHT HUNDRED AND ONE THOUSAND FOUR HUNDRED AND 00/100 DOLLARS (\$4,801,400.00)**
- 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 expenses include but are not limited to design, project administration, construction inspection, material testing and utility relocations.
- C. The Parties anticipate receipt of CARS Funding of **TWO MILLION ONE HUNDRED TWENTY EIGHT THOUSAND AND 00/100 DOLLARS (\$2,128,000.00)** to help pay a portion of the cost of the Improvement.
- D. The remaining cost of making the said Improvement shall be distributed between the Parties as follows:
  - (1) MERRIAM shall pay **52%** of the local share of said Improvement (estimated to be **ONE MILLION THREE HUNDRED NINETY TWO THOUSAND FIVE HUNDRED FIFTEEN WITH 50/100 DOLLARS (\$1,392,515.50)**). This amount includes 100% of the cost to design and replace a safety fence along the north edge of the 75<sup>th</sup> Street Bridge over the Burlington Northern Santa Fe Railroad and Turkey Creek.
  - (2) SHAWNEE shall pay **3%** of the local share of said Improvement (estimated to be **EIGHTY ONE THOUSAND FOUR HUNDRED FORTY ONE WITH 00/100 DOLLARS (\$81,441)**).
  - (3) OVERLAND PARK shall pay **45%** of the local share of said Improvement (estimated to be **ONE MILLION ONE HUNDRED NINETY NINE THOUSAND FOUR HUNDRED FORTY THREE WITH 50/100 DOLLARS (\$1,199,443.50)**).
  - (4) Each Party shall acquire and pay all costs associated with the right-of-way or

easement acquisition for that portion of the project located within its respective boundary. Additionally, each Party shall pay the cost of financing and/or bonding its share of the project cost.

3. FINANCING. OVERLAND PARK, MERRIAM, and SHAWNEE shall each 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 three separate entities included within the proposed Improvement, one of the entities should be designated as being “in charge” of the project to provide for its orderly design and construction. However, all entities 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 Improvement shall be constructed and the job administered by OVERLAND PARK acting by and through the OVERLAND PARK Director of Public Works (hereinafter the “PW Director”), who shall be the principal public official designated to administer the Improvement; provided, that the PW Director shall, among his several duties and responsibilities, assume and perform the following:
  - A. 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 most favorable bid shall be determined by OVERLAND PARK administering the project, the Governing Body of MERRIAM, and the Governing Body of SHAWNEE approving the lowest responsible bidder for the project, except that the Governing Body of MERRIAM and SHAWNEE reserve 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 either OVERLAND PARK, MERRIAM or SHAWNEE shall have the right to reject the bid. In such case, the project shall rebid at a later date.
  - B. Submit to MERRIAM and SHAWNEE 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 MERRIAM and SHAWNEE 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.
  - C. Upon completion of the Improvement, the PW Director shall submit to MERRIAM and SHAWNEE a final accounting of all costs incurred in making the Improvement for the purpose of apportioning the same among the Parties as provided herein.
  - D. MERRIAM and SHAWNEE shall be named as additional insured on all applicable certificates of insurance issued by the contractor (the “Contractor(s)”) for this project.

- E. 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. OVERLAND PARK shall require that any Contractor provide a two-year performance and maintenance bond for the Improvement. As administrator, OVERLAND PARK will, upon request of either MERRIAM or SHAWNEE, 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 bond.
  - G. OVERLAND PARK shall include in contracts for construction a requirement that the Contractor defend, indemnify and save OVERLAND PARK, MERRIAM and SHAWNEE 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 except for the obligations of OVERLAND PARK which may arise after completion of the Improvement as set forth in Paragraph 4 (F), above, 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.
6. PLACING AGREEMENT IN FORCE. 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 or amendment shall be binding on the Parties unless it shall have been agreed to in writing and signed by both Parties. Each City shall be solely responsible for any increase in cost resulting from the issuance and approval of change orders for work to be performed within the city limits of such City, or if a change order results in work benefiting each of the cities, such cost shall be paid by each City in the same proportion as provided herein for payment of project costs. However, no change order for work to be done within the city limits of a City shall be approved or issued without the prior written consent of the Director of Public Works of such City.

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.

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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 MERRIAM, KANSAS

By \_\_\_\_\_  
KEN SISSOM, MAYOR

ATTEST:

\_\_\_\_\_  
JULIANNA PINNICK, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
MICHELLE DAISE, CITY ATTORNEY

CITY OF SHAWNEE, KANSAS

By \_\_\_\_\_  
JEFF MEYERS, MAYOR

ATTEST:

\_\_\_\_\_  
STEPHEN POWELL, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
MARVIN E. RAINEY, CITY ATTORNEY