

AGREEMENT BETWEEN THE CITY OF OVERLAND PARK, KANSAS, AND THE CITY OF OLATHE, KANSAS, FOR THE PUBLIC IMPROVEMENT OF PFLUMM ROAD FROM 119TH STREET TO 135TH STREET (MR-1574).

THIS AGREEMENT, made and entered into this ____ day of _____, 2014, by and between the CITY OF OVERLAND PARK, KANSAS (hereinafter "OVERLAND PARK"), and the CITY OF OLATHE, KANSAS (hereinafter "OLATHE"), each party having been organized and now existing under the laws of the State of Kansas (hereinafter OVERLAND PARK and OLATHE 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 Pflumm Road from 119th Street to 135th Street 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 OLATHE did approve and authorize its mayor to execute this Agreement by official vote of the Body on the ____ day of _____, 2014; 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 _____, 2014.

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 Pflumm Road from 119th Street to 135th Street as heretofore described by performing the following work:

The street improvement of Pflumm Road from 119th Street to 135th Street includes applying Chip Seal (UBAS) to the existing street, pavement markings, and other items incidental to the street improvement (hereinafter the "Improvement").

2. ESTIMATED COST OF PROJECT.

- A. The estimated cost of construction of the Improvement covered by this Agreement, exclusive of the cost of right-of-way or easement acquisition, is Four Hundred Eighty-Six Thousand and 00/100 DOLLARS (\$486,000.00).

- 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 expenses include but are not limited to design, project administration, construction inspection, material testing and utility relocations.
 - C. The cost of making the said Improvement shall be distributed between the Parties as follows:
 - (1) OLATHE shall pay 50.4% of the local share of said Improvement (estimated to be Two Hundred Forty-Five Thousand and 00/100 DOLLARS (\$245,000.00)).
 - (2) OVERLAND PARK shall pay 49.6% of the local share of said Improvement (estimated to be Two Hundred Forty-One Thousand and 00/100 DOLLARS (\$241,000.00)).
 - (3) 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 and OLATHE 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 two 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, both 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, the PW Director shall, among his several duties and responsibilities, assume and perform the following:
 - A. Make all contracts for the Improvement, including soliciting 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 and the Governing Body of OVERLAND PARK approving the lowest responsible bidder for the project, except that the Governing Body of OLATHE 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 either OVERLAND PARK or

OLATHE shall have the right to reject the bid. In such case, the project shall rebid at a later date.

- B. Submit to OLATHE 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 OLATHE 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 OLATHE 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. OLATHE shall be named as additional insured on all applicable certificates of insurance issued by any contractor for this Improvement (the "Contractor(s)").
 - 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 OLATHE, 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 and OLATHE 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 Section 4, Paragraph 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 Section 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.
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.

(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:

TAMMY M. OWENS
DEPUTY CITY ATTORNEY

CITY OF OLATHE, KANSAS

By _____
MICHAEL E. COPELAND, MAYOR

ATTEST:

DONALD T. HOWELL, CITY CLERK

APPROVED AS TO FORM:

THOMAS A. GLINSTRA, CITY ATTORNEY