

**AGREEMENT BETWEEN THE CITY OF OLATHE, KANSAS, AND  
BOARD OF COUNTY COMMISSIONERS OF JOHNSON COUNTY,  
KANSAS, FOR THE PUBLIC IMPROVEMENT OF THE INTERSECTION  
OF 159TH STREET, AND BLACK BOB ROAD (OLTHE PROJECT  
NUMBER 3-C-006-16).**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF OLATHE, KANSAS (hereinafter "OLATHE"), and BOARD OF COUNTY COMMISSIONERS OF JOHNSON COUNTY, KANSAS (hereinafter "JOHNSON COUNTY"), each party having been organized and now existing under the laws of the State of Kansas (hereinafter OLATHE and JOHNSON COUNTY 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 THE INTERSECTION OF 159TH STREET AND BLACK BOB ROAD (OLATHE PROJECT NUMBER 3-C-006-16) as such improvement is hereinafter described; and

WHEREAS, K.S.A. 12-2908 and K.S.A. 68-169 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 JOHNSON COUNTY did approve and authorize its Chairman of the Board of Commissioners to execute this Agreement by official vote of the Body on the 7<sup>th</sup> day of March, 2019; 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 \_\_\_\_\_, 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 at THE INTERSECTION OF 159TH STREET AND BLACK BOB ROAD (OLTHE PROJECT NUMBER 3-C-006-16) as heretofore described by performing the following work:

Re-construct the intersection at 159th Street and Black Bob Road to include a traffic signal, left turn lanes in all directions and right turn lanes in all directions. The Project will also include storm sewer, curb and gutter, street lighting, and all other work

necessary to complete the Project. This work is hereinafter referred to collectively as the "Improvement."

## 2. ESTIMATED COST OF THE IMPROVMENT.

A. The total cost for the Improvement covered by this Agreement, exclusive of the cost of right-of-way and easement acquisition, is estimated to be Six Million Three Hundred Twenty-Five Thousand DOLLARS (\$6,325,000).

B. The cost of making the Improvement shall include:

(1) Labor and material used in making the Improvement; and

(2) Such other expenses that are necessary in making the Improvement include but not limited to design, construction inspection, material testing and utility relocations.

C. The Parties anticipate receipt of Federal CMAQ Funding in the amount of One Million DOLLARS (\$1,000,000) to help pay a portion of the Improvement.

D. The remaining cost of making said Improvement, exclusive of the cost of right-of-way or easement acquisition, shall be distributed between the Parties as follows:

(1) JOHNSON COUNTY shall pay 25% of the actual local share of the Improvement.

(2) OLATHE shall pay 75% of the actual local share of the Improvement.

(3) Each Party shall acquire and pay all costs associated with the right-of-way and 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. OLATHE and JOHNSON COUNTY shall each pay their portion of the cost with monies budgeted and appropriated funds.

4. Maintenance. OLATHE agrees to operate and maintain all infrastructure constructed as a part of the PROJECT.

5. OLATHE 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, the other entity 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 OLATHE acting by and through the OLATHE 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 her 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 OLATHE. In the solicitation of bids, the most favorable bid shall be determined by OLATHE administering the project and the Governing Body of OLATHE approving the lowest responsible bidder for the project, except that the Governing Body of JOHNSON COUNTY shall have 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 OLATHE or JOHNSON COUNTY shall have the right to reject the bid. In such case, the project shall rebid at a later date.

B. Provide preliminary construction documents (at approximately 30% complete) and draft final construction documents (at approximately 95% complete) to JOHNSON COUNTY in PDF format for a maximum of fourteen (14) days review. Final construction documents (at 100% complete) to Johnson County in PDF format for a maximum of seven (7) days review.

C. Upon completion of the Improvement, the PW Director shall submit to JOHNSON COUNTY a final accounting of all costs incurred in making the Improvement for the purpose of apportioning the same among the Parties as provided herein. JOHNSON COUNTY shall remit their portion of the accrued costs to OLATHE as herein agreed.

D. JOHNSON COUNTY shall be named as additional insured on all applicable certificates of insurance issued by any contractor for this Improvement (the "Contractor(s)").

E. OLATHE 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. OLATHE shall require that any Contractor provide a two-year performance and maintenance bond for the Improvement. As Administrator, OLATHE will, upon request of JOHNSON COUNTY, 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. OLATHE shall include in contracts for construction a requirement that the Contractor defend, indemnify and save OLATHE and JOHNSON COUNTY 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.

**6. DURATION AND TERMINATION OF AGREEMENT.** The Parties hereto agree that except for the obligations of OLATHE which may arise after completion of the Improvement as set forth in Section 4, Paragraph G, 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 her 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.

**7. 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.

**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.

**10. TERMINATION.** Either OLATHE or JOHNSON COUNTY may terminate this Agreement by giving ten (10) days written notice to the non-terminating party upon failure of the Improvement to receive federal CMAQ funding as contemplated herein.

**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 OLATHE, KANSAS**

By: \_\_\_\_\_

MICHAEL E. COPELAND, MAYOR

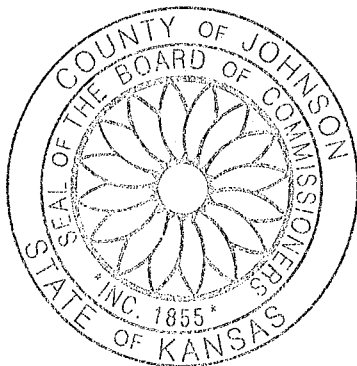
ATTEST:

\_\_\_\_\_  
CITY CLERK

(Seal)

APPROVED AS TO FORM:

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



**BOARD OF COUNTY COMMISSIONERS OF  
JOHNSON COUNTY, KANSAS**

By \_\_\_\_\_

ED EILERT, CHAIRMAN

ATTEST:

LYNDA SADER

DEPUTY COUNTY CLERK

APPROVED AS TO FORM:

ROBERT FORD

ASSISTANT COUNTY COUNSELOR

*Approved 7-0*

FILED

MAR - 7 2019

DEPUTY COUNTY CLERK  
JOHNSON COUNTY KANSAS