

AGREEMENT BETWEEN THE CITY OF OLATHE, KANSAS, AND THE CITY OF OVERLAND PARK, KANSAS, FOR THE PUBLIC IMPROVEMENT OF THE INTERSECTION OF 135TH STREET AND PFLUMM ROAD.

THIS AGREEMENT, made and entered into this _____ day of _____, 2020, by and between the CITY OF OLATHE, KANSAS (hereinafter "OLATHE"), and the CITY OF OVERLAND PARK, KANSAS (hereinafter "OVERLAND PARK"), each party having been organized and now existing under the laws of the State of Kansas (hereinafter OLATHE and OVERLAND PARK 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 public improvements to the intersection of 135th Street and Pflumm Road as such improvement is hereinafter described; and

WHEREAS, K.S.A. 12-2908 authorizes the parties hereto to cooperate in making public improvements; and

WHEREAS, the Governing Bodies of each of the Parties hereto have determined to enter into this Agreement for the aforesaid public improvements, 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 _____, 2020; 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 _____, 2020.

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 public improvements at the intersection of **135th Street and Pflumm Road**, hereinafter "Intersection", by performing the following work:

- a) Construct geometric improvements at the Intersection to include widening in all directions to accommodate construction of three right turn lanes and dual left turn lanes on each leg of the Intersection;
- b) Review and potentially modify the existing storm sewer system at the Intersection;
- c) Design and install a traffic signal at the Intersection;
- d) Provide traffic control and placement of permanent pavement markings;
- e) Restore disturbed areas to include, but not limited to, sod or seeding, landscaping and irrigation systems; and
- f) Construct other incidental items associated and integral with the above referenced construction;

hereinafter "Improvement".

2. ESTIMATED COST OF PROJECT.

- A. The estimated cost for construction of the Improvement, exclusive of the cost of right-of-way, easement acquisition, utility relocation, engineering, inspection and staff time, is TWO MILLION FIVE HUNDRED THOUSAND DOLLARS (2,500,000).
- B. The additional cost of making the Improvement is estimated at EIGHT HUNDRED TEN THOUSAND DOLLARS (810,000). shall include:

Such other expenses which are necessary in making the Improvement, exclusive of the cost of acquiring real property for the location of the Improvement. These other expenses include but are not limited to engineering, project administration, construction inspection, material testing and utility relocations.
- C. The Parties anticipate receipt of Congestion Mitigation Air Quality (CMAQ) Funding of One Million Two Hundred Thousand DOLLARS (\$1,200,000.00) to help pay a portion of the cost of the Improvement.
- D. The Cities will distribute the costs of constructing the Improvement, as stated in item 2.A above, and the other additional costs of making the Improvement, as stated in item 2.B above.

- (1) OVERLAND PARK shall pay **40%** of the estimated combined costs of constructing the Improvement and making the Improvement for a total estimated cost share of EIGHT HUNDRED FORTY-FOUR THOUSAND DOLLARS (\$844,000).
 - (2) OLATHE shall pay **60%** of the estimated combined costs of constructing the Improvement and making the Improvement for a total estimated cost share of ONE MILLION TWO HUNDRED SIXTY-SIX THOUSAND DOLLARS (\$1,266,000).
 - (3) Each City shall acquire and pay all respective costs associated with the right-of-way or easement acquisition for that portion of the project located within its respective boundary. Additionally, each City shall pay the cost of financing and/or bonding its share of the project cost.
3. FINANCING. OLATHE and OVERLAND PARK shall each pay their portion of the cost of the Improvement with monies lawfully budgeted and appropriated funds.
4. 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 Improvement 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 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, that the PW Director shall, among their 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 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 OVERLAND PARK 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 OLATHE or OVERLAND PARK shall have the right to reject the bid. In such case, the project shall rebid at a later date.

- B. Submit to OVERLAND PARK 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 OVERLAND PARK shall within thirty (30) days after receipt of a statement of costs as aforesaid, remit their portion of the undisputed accrued costs to OLATHE as herein agreed.
- C. Upon completion of the Improvement, the PW Director shall submit to OVERLAND PARK a final accounting of all costs incurred in constructing the Improvement and making the Improvement for the purpose of apportioning the same among the parties as provided herein.
- D. OVERLAND PARK shall be named as additional insured on general liability and automobile liability insurance policies of the contractor(s) (the "Contractor(s)") as evidenced by certificates of insurance issued by the Contractor(s) for this Improvement.
- E. OLATHE shall include in contracts for construction a requirement that the Contractor defend, indemnify and save OVERLAND PARK 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.
- F. 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.

- G. OLATHE shall require that any Contractor provide a two-year performance and maintenance bond for the Improvement. As Administrator, OLATHE 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 termination of this Agreement and shall be in force and effect for the full term of the performance and maintenance bond.
- H. OLATHE shall include in contracts for construction a requirement that the Contractor defend, indemnify and save OLATHE and OVERLAND PARK 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 OLATHE 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 attorney for 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 nor 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 OLATHE, KANSAS

By _____
MICHAEL E. COPELAND, MAYOR

ATTEST:

OLATHE CITY CLERK

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY

CITY OF OVERLAND PARK, KANSAS

By _____
CARL R. GERLACH, MAYOR

ATTEST:

ELIZABETH KELLEY, CITY CLERK

APPROVED AS TO FORM:

TREVOR L. STILES
SENIOR ASSISTANT CITY ATTORNEY