

AGREEMENT BETWEEN THE CITY OF OVERLAND PARK, KANSAS, AND THE CITY OF LEAWOOD, KANSAS, FOR THE PUBLIC IMPROVEMENT OF NALL AVENUE FROM COLLEGE BOULEVARD TO 119TH STREET.

THIS AGREEMENT, made and entered into this _____ day of _____, 2010, by and between the CITY OF OVERLAND PARK, KANSAS (hereinafter "OVERLAND PARK"), and the CITY OF LEAWOOD, KANSAS (hereinafter "LEAWOOD"), 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 Nall Avenue from College Boulevard to 119th Street 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 _____, 2010; and

WHEREAS, the governing body of LEAWOOD did approve and authorize its mayor to execute this Agreement by official vote of the body on the _____ day of _____, 2010.

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 Nall Avenue as heretofore described by performing the following work: The street improvement of Nall Avenue from College Boulevard to 119th Street including microsurfacing the existing street and repair of asphalt pavement, pavement markings and other items incidental to the street reconstruction (hereinafter "Improvement").

2. ESTIMATED COST OF PROJECT.

A. The estimated cost of construction for the Improvement covered by this Agreement is

ONE HUNDRED SEVENTY EIGHT THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$178,400.00).

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 public improvement. These costs include but are not limited to project administration, construction inspection, material testing and utility relocations.

C. The local share of the cost for construction of said Improvement, as described hereinabove, shall be distributed as follows:

- (1) LEAWOOD shall pay **50%** of the local share of said Improvement **(estimated to be \$89,200.00).**

- (2) OVERLAND PARK shall pay **50%** of the local share of said Improvement **(estimated to be \$89,200.00)**.
3. FINANCING. OVERLAND PARK and LEAWOOD 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 Director of Public Works for OVERLAND PARK, who shall be the principal public official designated to administer the Improvement; provided, that the Director of Public Works 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 appropriate combination of best bids shall be determined by the aforesaid governing body administering the project, except that the governing body of LEAWOOD 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 LEAWOOD shall have the right to reject the bid. In such case, the project shall rebid at a later date.
- B. Submit to LEAWOOD 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 LEAWOOD 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 Director of Public Works shall submit to LEAWOOD 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. LEAWOOD shall be named as additional insured on all applicable certificates of insurance issued by the contractor 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 LEAWOOD, 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.
- G. OVERLAND PARK shall include in contracts for construction a requirement that the contractor defend, indemnify and save OVERLAND PARK and LEAWOOD 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 Director of Public Works advising that the Improvement has been accepted by him as constructed; provided that upon the occurrence of such certification by the Director of Public Works, 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 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 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.

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
SENIOR ASSISTANT CITY ATTORNEY

CITY OF LEAWOOD, KANSAS

By _____
PEGGY J. DUNN, MAYOR

ATTEST:

DEBRA HARPER, CITY CLERK

APPROVED AS TO FORM:

PATRICIA A. BENNETT, CITY ATTORNEY