

## WATER MAIN RELOCATION AGREEMENT

**THIS AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the City of Overland Park, a municipal corporation of the State of Kansas, hereinafter called the "City," and Water District No. 1 of Johnson County, a quasi-municipal corporation of the State of Kansas, hereinafter called the "WaterOne."

**WITNESSETH that:**

**WHEREAS**, the City has determined that it is appropriate to reconstruct Pflumm Road from 135<sup>th</sup> Street to 143<sup>rd</sup> Street; located in the **NW ¼, SEC 34, T-13-S, R-24-E AND THE SW ¼, SEC 34, T-13-S, R-24-E** and,

**WHEREAS**, as part of the said reconstruction project, it is necessary to reconstruct and otherwise relocate water facilities which are presently either located in existing private easements owned by WaterOne, or located outside private easements; and

**WHEREAS**, WaterOne has agreed to the relocation of the water facilities subject to the cost of the relocation of substituted facilities for those now located outside public right-of-way being paid by the City; and

**WHEREAS**, K.S.A. 68-169, and amendments thereto, authorizes the parties hereto to enter into a joint agreement for the improvement proposed herein; and

**WHEREAS**, the City and WaterOne have determined to enter into this Agreement for the aforesaid public improvement; and

**WHEREAS**, WaterOne has executed this Agreement by its General Manager who is authorized to approve and execute such relocation agreements by Resolution of the WaterOne Board dated June 13, 1995; and

**WHEREAS**, the City has executed this Agreement by its Director of Public Works, who is authorized to approve and execute such utility relocation agreements by Charter Ordinance No. 78 dated March 5, 2001, Ordinance No. CM-2290 dated May 14, 2001, and COP 247 dated June 13, 2001;

**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. The parties hereto enter into this Agreement for the purpose of relocating water facilities now situated in or adjacent to private easement by replacing such facilities to areas within the expanded public right-of-way or within remaining WaterOne easements or remaining portions of such easements not condemned by nor disclaimed to the City to avoid conflict with City construction and improvements within its street reconstruction project. The aforementioned water facilities are shown on the project plans which are incorporated herein by reference.

2. WaterOne hereby agrees to relocate the water facilities to an elevation and alignment compatible with the street improvements to be constructed by the City, and in a specific location to be agreed upon by both the City and WaterOne. WaterOne agrees to pay all costs associated with relocating that part of the existing water facilities now lying within public right of way.

The City agrees to pay all costs of relocating the existing water facilities now located outside public right-of-way. WaterOne's estimated cost for relocation of the facilities now located outside of public right-of-way is \$73,705.00.

Upon written request by the City for commencement of relocation activities by WaterOne, WaterOne will invoice the City for the amount of the estimated cost, which shall be paid by the City within thirty days.

3. WaterOne shall account to the City for all of its costs in constructing and connecting the relocated and replacement facilities which are to be relocated and paid for by the City. If, after completion and determination of the entire actual cost thereof, including overhead costs, it shall appear that said actual cost is less than said estimated cost, WaterOne shall forthwith repay to the City the difference between said actual cost of said relocation and said estimated cost. If the actual cost thereof is greater than the estimated cost, the City shall forthwith pay to WaterOne the difference between the actual cost and said estimated cost. WaterOne shall make no further claim for damages or indemnification except as provided in Sections 2 and 6 herein.

4. WaterOne agrees that subject to delays due to weather, and conditioned upon the City's ability to comply with its own construction schedule with respect to construction affecting the relocation by WaterOne, WaterOne shall complete the relocation of the water facilities within the Project time limits.

5. Unless previously condemned by the City, WaterOne hereby agrees to disclaim, by separate instrument, those parts of its easements originally granted and recorded in the following documents in the office of the Register of Deeds of Johnson County, Kansas, which lie within the expanded right-of-way acquired by the City and as shown on the project plans:

Partial Disclaimer:

Book 6541 Page 630, Book 6541 Page 624, & Book 5153 Page 847

6. The City may, in the future, elect to require WaterOne to again relocate its water facilities to other areas within the expanded street right-of-way to avoid conflict with any future road improvements by the City and to specific locations to be agreed upon by both

the City and WaterOne. In such event and regardless of whether the facilities originated from either:

- a) within private WaterOne easements; or
- b) within private property adjacent to private WaterOne easements; or,
- c) within public right-of-way adjacent to private WaterOne easements;

the entire cost of any such future relocation shall be borne entirely by the City. In such event, WaterOne shall account to the City for all of its costs in relocating, constructing and connecting those portions of the relocated facilities, which costs shall be fully indemnified to WaterOne by the City.

7. For purposes of this Agreement, any required notices shall be deemed sufficiently given the third day following deposit in the U.S. mail, certified, return receipt requested, postage prepaid, and addressed as follows:

If to WaterOne:

Water District No. 1 of Johnson County  
Daniel J. Smith, P.E.  
Director of Distribution Engineering  
10747 Renner Boulevard  
Lenexa, Kansas 66219

If to the City:

City of Overland Park  
Larry Blankenship  
Project Manager  
Public Works Department  
8500 Santa Fe Drive  
Overland Park, Kansas 66212

Notice shall also be deemed sufficiently given upon actual delivery by reliable courier service or other method.

8. This Agreement may be terminated only by mutual consent of the parties.

IN WITNESS WHEREOF, the above and foregoing Agreement has been executed by the authority of their respective governing bodies the day and year first above written.

CITY OF OVERLAND PARK

By: \_\_\_\_\_ 319-03  
Robert D. Lowry, P.E.  
Director of Public Works

APPROVED AS TO FORM:

ATTEST:

By: \_\_\_\_\_  
Jane Neff-Brain  
Senior Assistant City Attorney

\_\_\_\_\_  
Marian Cook, City Clerk

WATER DISTRICT NO. 1 OF JOHNSON COUNTY

By: \_\_\_\_\_  
Michael J. Armstrong, General Manager  
Water District Board

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Eric Arner, General Counsel

**MUNICIPAL CORPORATE ACKNOWLEDGMENT**

STATE OF KANSAS    )  
                                  ) SS.  
COUNTY OF JOHNSON )

BE IT REMEMBERED, That on this 19th day of March, 2003, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Robert D. Lowry, Director of Public Works for the City of Overland Park, a municipal corporation duly organized, incorporated and existing under and by virtue of the laws of Kansas, and Marian Cook, City Clerk of said municipal corporation, who are personally known to me to be the same persons who executed as such officials the within instrument on behalf of said municipal corporation, and such persons duly acknowledged the execution of the same to be the act and deed of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My Appointment expires 9-11-06



**ACKNOWLEDGEMENT**

STATE OF KANSAS        )  
                                  ) ss.  
COUNTY OF JOHNSON    )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, a Notary Public in and for the County and State aforesaid came Michael J. Armstrong, General Manager of Water District No. 1 of Johnson County, a quasi-municipal corporation of the State of Kansas, who is personally known to me to be such officer and same person who executed the foregoing instrument on behalf of said Water District, and said person duly acknowledged the execution of the same as the act and deed of WATER DISTRICT NO. 1 OF JOHNSON COUNTY.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires: