

AGREEMENT BETWEEN THE CITY OF OVERLAND PARK, KANSAS, THE CITY OF ROELAND PARK, KANSAS, AND THE CITY OF FAIRWAY, KANSAS, FOR THE PUBLIC IMPROVEMENTS OF THE 2015 NE CITIES STREET IMPROVEMENTS PROJECT

THIS AGREEMENT, made and entered into this _____ day of _____, 2015, by and between the CITY OF OVERLAND PARK, KANSAS (hereinafter "OVERLAND PARK"), the CITY OF ROELAND PARK, KANSAS (hereinafter "ROELAND PARK"), and the CITY OF FAIRWAY, KANSAS (hereinafter "FAIRWAY"), each Party having been organized and now existing under the laws of the State of Kansas (hereinafter OVERLAND PARK, ROELAND PARK, and FAIRWAY, 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 improvements to the 2015 NE CITIES STREET IMPROVEMENTS PROJECT as such improvements are hereinafter described; and

WHEREAS, K.S.A. 12-2908 authorizes the Parties hereto to cooperate in making the 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 OVERLAND PARK did approve and authorize its mayor to execute this Agreement by official vote of the body on the _____ day of _____, 2015; and

WHEREAS, the governing body of ROELAND PARK did approve and authorize its mayor to execute this Agreement by official vote of the body on the _____ day of _____, 2015; and

WHEREAS, the governing body of FAIRWAY did approve and authorize its mayor to execute this Agreement by official vote of the body on the _____ day of _____, 2015; and

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:

A. PURPOSE OF AGREEMENT. The Parties hereto enter into this Agreement for the purpose of constructing the public improvements on 2015 NE Cities Street Improvements by performing the following work: cold milling of surface asphalt and overlay with same; reconstructing storm sewer pipe and inlets as required; installing new pavement markings; installing new sidewalk ramps as required by the Americans with Disabilities Act; asphaltic concrete base repairs; repairing or replacing deteriorated curbs and gutters; medians; and sidewalks as required; and other items incidental to the street reconstruction (hereinafter "Improvements"). The Improvements will be on the following streets:

ROELAND PARK:

47th Street - Roe Lane to Mission Road
Roe Avenue Turn-Around North of 48th Street

FAIRWAY:

57th Terrace- Howe to Cul-de-sac
Pawnee- 53rd to Shawnee Mission Parkway
Chadwick- State Park Rd to Shawnee Mission Parkway

Construct other incidental items associated and integral with the Improvements.

2. ESTIMATED COST OF PROJECT.

A. The estimated cost for construction of the Improvements covered by this Agreement is Three Hundred Thirteen Thousand Two Hundred Twenty-one and 44/100 Dollars **(\$313,221.44).**

B. The cost of making the Improvements shall include:

- (1) Labor and material used in making the Improvements; and
- (2) Such other expenses which are necessary in making the Improvements, exclusive of the cost of acquiring real property and any improvements thereon for the location of the Improvements. These costs include but are not limited to project administration, construction inspection, material testing and utility relocations.

C. The cost of making the said Improvements (the "Local Share") shall be allocated among the Cities as follows:

- (1) ROELAND PARK shall pay 100% of the Local Share of the Improvements located within ROELAND PARK, currently estimated at One Hundred Eighty-two Thousand Five Hundred Ninety-one and 36/100 Dollars (\$182,591.36).
- (2) FAIRWAY shall pay 100% of the Local Share of the Improvements located within FAIRWAY, currently estimated at One Hundred Thirty Thousand Six Hundred Thirty and 08/100 Dollars (\$130,630.08).
- (3) OVERLAND PARK shall pay 0% of the Local Share of the Improvements.
- (4) ROELAND PARK and FAIRWAY shall acquire and pay all costs associated with the right-of-way or easement acquisition for the project within each city's respective boundaries. Additionally, ROELAND PARK and FAIRWAY shall each pay the cost of financing and/or bonding each respective share of the project cost.

3. FINANCING. OVERLAND PARK, ROELAND PARK, and FAIRWAY shall each pay their portion of the cost with monies budgeted and appropriated funds.

4. OVERLAND PARK ADMINISTRATION OF PROJECT. The Improvements shall be constructed and the job administered by OVERLAND PARK acting by and through the Director of Public Works for OVERLAND PARK (the "PW Director"), who shall be the principal public official designated to administer the Improvements. OVERLAND PARK shall cause and instruct the PW Director to, among his several duties and

responsibilities, assume and perform the following:

- A. Provide for each of the Parties to have right of review and comment on project decisions at any time throughout duration of this Agreement, including a recommendation to accept or reject bids, and any subsequent agreements hereto.
- B. Make all contracts for the Improvements, 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 governing body of OVERLAND PARK. Prior to awarding the bid, OVERLAND PARK shall receive approval of the proposed award by the governing bodies of ROELAND PARK and FAIRWAY. The governing bodies of ROELAND PARK and FAIRWAY reserve 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 Improvements, then ROELAND PARK and FAIRWAY shall each have the right to reject the bid. In such case, the project shall rebid at a later date as agreed to by the parties.
- C. Provide administration services outlined in this Agreement and submit these costs, using hourly rates plus a direct expense cost of 25% of the hourly total, to ROELAND PARK and FAIRWAY, with the total administration amount not to exceed Twelve Thousand and 00/100 Dollars (\$12,000.00). Administration services shall be apportioned based on the cost of the Improvements within each city's respective boundaries.
- D. Submit to ROELAND PARK and FAIRWAY on or before the 10th day of each month, or as received, estimates of accrued costs of constructing the Improvements for the month immediately preceding the month the statement of costs is received; provided that each of ROELAND PARK and FAIRWAY shall, within thirty (30) days after receipt of a statement of costs as aforesaid, remit its respective portion of the accrued costs (its Local Share) to OVERLAND PARK as herein agreed.
- E. Upon completion of the Improvements, the PW Director shall submit to ROELAND

PARK and FAIRWAY a final accounting of all costs incurred in making the Improvements for the purpose of apportioning the same among the Parties as provided herein.

- F. ROELAND PARK and FAIRWAY shall be named as additional insured's on all applicable certificates of insurance issued by the contractor (the "Contractor(s)") for the Improvements and any portion thereof.
 - G. OVERLAND PARK shall require performance and completion bonds for the Improvements from all Contractors and require that all Contractors discharge and satisfy any mechanics or materialman's liens that may be filed.
 - H. OVERLAND PARK shall require that any Contractor provide a two (2) year maintenance bond for the Improvements. OVERLAND PARK will, upon request of ROELAND PARK or FAIRWAY, 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.
 - I. OVERLAND PARK shall include in contracts for construction a requirement that the Contractor defend, indemnify and save OVERLAND PARK, ROELAND PARK, and FAIRWAY 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, its employees, agents, and subcontractors, and the performance the Contractor's contract.
5. DURATION AND TERMINATION OF AGREEMENT. The Parties hereto agree that this Agreement shall exist until the completion of the aforesaid Improvements, which shall be deemed completed upon certification to each of the Parties hereto by the PW Director advising that the Improvements have 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. Should a Party hereto desire to terminate this Agreement prior to completion of the aforesaid Improvements, said Party shall provide written notice to the other Parties of its desire to terminate this Agreement. Within ten (10) days from the date of said notice, representatives for each Party hereto shall meet to negotiate in good faith the termination of this Agreement. If any Party terminates this Agreement prior to completion of the aforesaid Improvements, OVERLAND PARK will submit a final statement of accrued costs within thirty (30) days of termination and each of ROELAND PARK and FAIRWAY shall remit payment for its respective Local Share of the accrued costs within thirty (30) days of receipt of final statement of costs.

6. INDEMNIFICATION.

A. Definitions

For purposes of indemnification requirements, the following terms shall have the meanings set forth below:

- (1) "ROELAND PARK" means and includes the City of Roeland Park, Kansas, its employees and agents; and
- (2) "FAIRWAY" means and includes the City of Fairway, Kansas, its employees and agents; and
- (3) "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including reasonable attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim, whether real or spurious, for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the Parties hereto, which arise out of or are connected with, or are claimed to arise out of or be connected with, the performance of this

Agreement whether arising before or after the completion of the Improvements required hereunder.

B. Indemnity

For purposes of this Agreement, each of ROELAND PARK and FAIRWAY hereby agree to indemnify, to the extent permitted by law and subject to the loss limitations and immunity provisions of the Kansas Tort Claims Act, defend and hold harmless OVERLAND PARK, its employees and agents from any and all loss where, and to the extent that, such loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of ROELAND PARK and/or FAIRWAY, as the case may be. It is agreed as a specific element of consideration of this Agreement that this indemnity shall apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of OVERLAND PARK or any third Party and, further notwithstanding any theory of law including, but not limited to, a characterization of OVERLAND PARK's or any third Party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that ROELAND PARK and FAIRWAY's obligations hereunder shall not include amounts attributable, or alleged to be attributable, to the fault or negligence of OVERLAND PARK. Nothing in this Section shall be deemed to impose liability on ROELAND PARK and FAIRWAY to indemnify OVERLAND PARK for loss to the extent that OVERLAND PARK's negligence or other actionable fault is, or is alleged to be, the cause of loss. With respect to OVERLAND PARK's rights as set forth herein, to the extent permitted under applicable law, ROELAND PARK and FAIRWAY expressly waive all statutory defenses, including, but not limited to, those under workers compensation, contribution, comparative fault or similar statutes to the extent said defenses are inconsistent with or would defeat the duty of ROELAND PARK and FAIRWAY to indemnify OVERLAND PARK.

7. PLACING AGREEMENT IN FORCE. OVERLAND PARK 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 all Parties.

9. NOTICES. Any notices or other communications required or permitted to be given hereunder shall be in writing and shall be deemed given when delivered personally or deposited in the United States Mail, either certified or registered mail, postage prepaid, overnight delivery service, return receipt requested, or by facsimile, addressed as follows:

Overland Park: Director of Public Works
Overland Park City Hall
8500 Santa Fe
Overland Park, KS 66212

Roland Park: City Administrator
Roeland Park City Hall
4600 W. 51st St.
Roeland Park, KS 66205

Fairway: City Manager
Fairway City Hall
4210 Shawnee Mission Parkway
Suite 100
Fairway, KS 66205

10. 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.

Remainder of Page Intentionally Left Blank. Signature Pages Follow Directly.

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 ROELAND PARK, KANSAS

By: _____
JOEL MARQUARDT, MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

CITY OF FAIRWAY, KANSAS

By: _____
JERRY WILEY, MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY