

CITY OF OVERLAND PARK, KANSAS

AGREEMENT BETWEEN

CITY OF OVERLAND PARK, KANSAS AND THE ARTS AND RECREATION  
FOUNDATION OF OVERLAND PARK, INC.

FOR FUNDING THE CONSTRUCTION OF A FOUNTAIN IN FOUNDERS PARK AT  
CORPORATE WOODS

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the City of Overland Park, Kansas, hereinafter the "City", and the Arts and Recreation Foundation of Overland Park, Inc. hereinafter the "Foundation";

WITNESSETH:

WHEREAS, the City and the Foundation have agreed to cooperate with respect to the construction of a fountain to be located in Founders Park at Corporate Woods;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto have agreed, and hereby agree, the City for itself and its successors, and the Foundation for itself, and its successors, as follows:

ARTICLE I. RESPONSIBILITIES OF FOUNDATION

- A. Foundation shall be responsible for contracting with a construction company to construct a fountain in Founders Park at Corporate Woods. The fountain is to be constructed in accordance with the design, site location, and total budget of \$300,000 as approved by the Overland Park City Council on April 10, 2006. The construction company selected by the Foundation to construct the fountain shall be approved by the Corporate Woods Office Park.
- B. Foundation shall work in partnership with the Corporate Woods Office Park to raise at least \$200,000 in cash and/or in-kind services to construct the fountain. Upon receipt of the cash portion of the \$200,000 and a binding commitment for the in-kind services portion of the \$200,000, if any, the Foundation shall provide documentation of such to the City and request in writing to the City Manager to transfer \$100,000 from the City Contingency Fund to the Foundation.
- C. Foundation shall be responsible for administering the construction contract, approving and paying all invoices, providing for full accounting of all expenses and expenditures, and approving the final work.
- D. Foundation shall be responsible for involving the City in the design, location, and access to the pumping systems, drains, lighting, electrical controls, water meters, etc., to provide ease of maintenance.
- E. Foundation agrees that once the fountain is constructed and accepted by the City, it will become the property of the City and ongoing maintenance and operation of the fountain shall be the responsibility of the City.

## ARTICLE II. RESPONSIBILITIES OF THE CITY

- A. The City will provide a staff person who will be responsible for reviewing submittals and giving final approval to the design, location, and access to pumping systems, drains, lighting, electrical controls, water meters, etc.
- B. Upon receipt of documentation satisfactory to the City that \$200,000 in cash and/or in-kind services have been received by the Foundation, and subsequent written request from the Foundation, the City will transfer \$100,000 from the City Contingency Fund to the Foundation to be used for the construction of the fountain.
- C. The City will be responsible for maintaining and operating the fountain after final acceptance of all work.
- D. The City will waive the cost of all required City permits.
- E. The City will provide a staff person to review requests for payment related to the construction of the fountain and to subsequently recommend payments in accordance with completed work.

## ARTICLE III. GENERAL PROVISIONS

- A. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. It is understood and agreed between the parties that there shall be no waiver or modification of the Agreement unless such waiver or modification is first reduced to writing and signed by all parties hereto.
- B. All notifications to the Foundation shall be sent to Vicki Lilly, 4209 W. 104<sup>th</sup> Terrace, Overland Park, KS 66207, unless a different contact is given to the City in writing. All notifications to the City shall be sent to Greg Ruether, Manager of Parks and Forestry, 8500 Santa Fe Drive, Overland Park, KS 66212, unless a different contact is given to the Foundation in writing.
- C. Either party may terminate this agreement if it becomes apparent during the planning process that there will be additional costs above what is outlined in this agreement. Either party may terminate this agreement during the planning process if any issues arise that are not acceptable or would make the project undesirable. Either party may terminate this agreement if final bids for the fountain and all the materials and services required to construct the fountain exceed the financial commitment of either party as outlined in this agreement.

IN WITNESS WHEREOF, the City of Overland Park, Kansas, has caused this Agreement to be executed on its behalf, thereunto duly authorized, and the Foundation have executed this Agreement in the prescribed form and manner, 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:

\_\_\_\_\_  
J. Bart Budetti, Senior Assistant City Attorney

THE ARTS AND RECREATION FOUNDATION OF OVERLAND PARK, INC.

By \_\_\_\_\_  
Vicki Lilly, President