

AGREEMENT AMONG THE CITY OF ROELAND PARK KANSAS, THE CITY OF WESTWOOD, KANSAS, AND THE CITY OF FAIRWAY, KANSAS, FOR THE PUBLIC IMPROVEMENT OF MISSION ROAD FROM 47TH STREET TO 53RD STREET

THIS AGREEMENT is made and entered into this ____ day of _____, 2024, by and among the **City of Roeland Park, Kansas** (hereinafter "Roeland Park"), the **City of Westwood, Kansas** (hereinafter "Westwood") 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 Roeland Park, Westwood 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 certain public improvements to **Mission Road**, as such improvements are hereinafter described and defined as the Improvements;

WHEREAS, the Parties are also jointly applying to the Board of County Commissioners of Johnson County, Kansas (the "County") for funding through a CARS Agreement pursuant to which the Improvements constitute an eligible project under the County Assistance Road System Program ("CARS");

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 which authorizes any municipality to contract with any other municipality to perform any government service, activity or undertaking that each contracting municipality is authorized by law to perform;

WHEREAS, the governing bodies of Roeland Park and Westwood entered into an original Interlocal Agreement between themselves on September 5, 2023 and September 14, 2023, respectively, in substantially similar form as to now the obligations of those partners;

WHEREAS, the Governing Body of Fairway was not a party to that September 2023 Interlocal Agreement and the Parties desire now to include the City of Fairway in this Agreement and to terminate the previous Interlocal Agreement;

WHEREAS, the Governing Body of Fairway did approve and authorize its mayor to execute this Agreement by official vote of the Governing Body on the ____ day of _____, 20__; and

WHEREAS, the Governing Body of Roeland Park did approve and authorize its mayor to execute this Agreement by official vote of the Governing Body on the ____ day of _____, 20__; and

WHEREAS, the Governing Body of Westwood did approve and authorize its mayor to execute this Agreement by official vote of the Governing Body on the ____ day of _____, 20__.

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 those public improvements to **Mission Road from 47th Street to 53rd Street**, including a public sidewalk, a mill and overlay within the project limits, pavement marking, concrete repairs, stormwater improvements, street lighting and other related work (collectively, the "Improvements").

2. ESTIMATED PROJECT COST.

- A. As of the date of this Agreement, the estimated cost of construction and engineering services for the Improvements covered by this Agreement, exclusive of the cost of right-of-way or easement acquisition, is Two Million Four Hundred Eighty-Five Thousand Two hundred and Seventy-Eight Dollars and zero cents (\$2,485,278).
- 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 improvement thereon for the location of the Improvements. These expenses include engineering survey, design, bidding, construction services, and material testing.
- C. Pursuant to the CARS Agreement, the Parties anticipate receipt of County CARS funding in the maximum amount of One Million Two Hundred Eighty Three Thousand and 00/100 Dollars (\$1,283,000.00), currently estimated at One Million One Hundred Fifty Six Thousand Three Hundred Thirty Nine Dollars and 00/100 Dollars (\$1,156,339.00) to help pay a portion of the cost of the Improvements. Notwithstanding anything in this Agreement to the contrary, in the event such funding is not made available for the Improvements, then either Roeland Park, Fairway, or Westwood may terminate this Agreement upon written notice to the other Parties.
- D. The remaining cost of making the said Improvements shall be distributed among the Parties as follows:
- (1) Roeland Park shall pay for the quantities constructed in the City of Roeland Park, (the "Roeland Park Share") of the local share balance of said Improvements, estimated as of the date of this Agreement to be **\$748,954.55** after County CARS expenditures settled.
 - (2) Westwood shall pay for the quantities constructed in the City of Westwood, (the "Westwood Share") of the local share balance of said Improvements, estimated as of the date of this Agreement to be **\$570,129.27** after County CARS expenditures settled.
 - (3) Fairway shall pay for the quantities constructed in the City of Fairway, (the "Fairway Share") of the local share balance of said Improvements, estimated as of the date of this Agreement to be **\$24,989.37** after County CARS expenditures settled.
 - (4) Each Party shall pay the cost of financing and/or bonding its share of the project cost.

3. FINANCING. Roeland Park, Westwood, and Fairway shall each pay its portion of the cost with monies budgeted and appropriated funds.

4. ROELAND PARK ADMINISTRATION OF PROJECT. It is acknowledged and understood among the Parties that since there are three separate municipalities included within the proposed Improvements, it would be beneficial for one of the municipalities to have primary responsibility

for the project to provide for the orderly design and construction of the Improvements. However, all Parties 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 Improvements shall be constructed, and the work administered by Roeland Park acting by and through the Roeland Park Director of Public Works (hereinafter the "PW Director"), who shall be the principal public official designated to administer the Improvements. The PW Director shall, among his or her several duties and responsibilities, assume and perform the following:

- A. Make all contracts for the Improvements, including soliciting bids by publication in the official newspaper of Roeland Park. In the solicitation of bids, the most favorable bid shall be determined by Roeland Park administering the project and the Governing Body of Roeland Park approving the lowest responsible bidder for the project, except that the Governing Body of Westwood 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 either Roeland Park, Westwood, or Fairway shall have the right to reject the bid. In such case, the project shall be rebid at a later date.
- B. Upon completion of the Improvements, the PW Director shall submit to Westwood 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.
- C. Roeland Park shall require performance and completion bonds for the Improvements from all contractors performing work on this Improvements (the "Contractors") and require that all Contractors discharge and satisfy any mechanics or materialman's liens that may be filed.
- D. Roeland Park shall require that any Contractor provide a two-year performance and maintenance bond for the Improvements. As "Project Administrator," Roeland Park will, upon request of Westwood and/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 the termination of this Agreement and shall be in force and effect for the full term of the performance and maintenance bond.
- E. Roeland Park shall cause to be inserted in all contracts for construction a requirement that the Contractor defend, indemnify and save Westwood, Fairway and Roeland 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 its contract.
- F. Roeland Park shall cause to be inserted into all contracts for construction a requirement that the Contractor observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*).
- G. To the fullest extent permitted by law, including but not limited to K.S.A. 16-121, as amended from time to time, Roeland Park will cause any Contractor to name Westwood and Fairway as additional insureds on all insurance policies and as additional obligees on bonds issued for the Improvements; provided that any such "additional insured" coverage shall (1) be on a primary and noncontributory basis with respect to each Party's own coverage and (notwithstanding any general limits of insurance described in the contracts for construction) provide limits to each Party of no more (and no less) than \$500,000 per

occurrence, (2) contain a "severability of interests" or "separation of insureds" feature, and (3) not provide insurance for any Party's own negligence or intentional acts or omissions.

5. REIMBURSEMENT OF COSTS. Roeland Park will pay all project costs owed to any Contractor, as those costs become due. Roeland Park shall submit to Westwood 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 along with any supporting documentation that substantiates such costs; provided that Westwood and Fairway shall within thirty (30) days after receipt of a statement of costs as aforesaid, remit the Westwood and Fairway Share of the accrued costs to Roeland Park. Any costs accrued by Roeland Park in 2024 will be invoiced to Westwood in January 2025 with the above remittance terms.
6. CONSTRUCTION OBSERVATION. Roeland Park shall provide construction observation and administration services for the Improvements. Roeland Park shall be responsible for ensuring compliance with contract specifications under any contract for construction of the Improvements. The Westwood and Fairway Public Works Directors, or such directors' designees, shall promptly report any deviation from any contract specifications or any inappropriate construction practices relating to work within their respective municipal boundaries to the Roeland Park Public Works Director. Roeland Park will take all reasonable actions to inform the Westwood and Fairway Public Works Directors of project status and any deviation from any contract specifications or inappropriate construction practices relating to work within the Westwood and Fairway municipal boundaries.
7. DURATION AND TERMINATION OF AGREEMENT. The Parties hereto agree that except for the obligations of Roeland Park which may arise after completion of the Improvements as set forth in Section 4.D above, this Agreement shall exist until the completion of the Improvements. Upon completion of the project, Roeland Park shall notify Westwood and Fairway of the completion in writing. Westwood and Fairway, as soon thereafter as reasonably possible, shall inspect the work, and if it determines it is satisfactory, shall so notify Roeland Park in writing; upon such notification, Westwood and Fairway shall have no further obligation under this Agreement and this Agreement shall be deemed terminated. In the event Westwood and/or Fairway fails to notify Roeland Park of its acceptance or rejection of the work within thirty (30) days after receipt of Roeland Park's notice of completion, the work shall be deemed accepted.
8. PLACING AGREEMENT IN FORCE. 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 its 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 all Parties.
8. JURISDICTION; NATURE OF THE AGREEMENT. This Agreement shall be construed according to the laws of the State of Kansas and may be enforced in the District Court of Johnson County, Kansas. The Parties understand this Agreement is a contract between municipalities authorized pursuant to K.S.A. 12-2908 and is therefore not an interlocal cooperation agreement under the provisions of K.S.A. 12-2901 *et seq.*
9. CASH BASIS AND BUDGET LAWS. The right of the Parties to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1101 *et seq.*), the Budget Law (K.S.A. 79-2925 *et seq.*), and other laws of the State of Kansas. This Agreement shall be construed and

interpreted in such a manner as to ensure the Parties shall at all times remain in conformity with such laws.

10. AMENDMENT TO CARRY OUT INTENT. If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, the Parties shall take such reasonable measures including but not limited to reasonable amendment of this Agreement, to cure such invalidity where the invalidity contradicts the clear intent of the Parties in entering into this Agreement; provided, however, nothing herein is intended to bind a future governing body of the Parties in a manner prohibited by the laws of the State of Kansas.

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IN WITNESS WHEREOF, the above and foregoing Agreement has been executed by each of the Parties hereto on the day and year first above written.

CITY OF ROELAND PARK, KANSAS

By: _____
Michael Poppa, Mayor

ATTEST:

Kelley Nielsen, City Clerk

APPROVED AS TO FORM:

Steve Mauer, City Attorney

CITY OF WESTWOOD, KANSAS

By: _____
David E. Waters, Mayor

ATTEST:

Abby Schneweis, City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF FAIRWAY, KANSAS

By: _____
Melanie Hepperly, Mayor

ATTEST:

Abbie Aldridge, City Clerk

APPROVED AS TO FORM:

City Attorney