

## SIDEWALK CONSTRUCTION PARTICIPATION AGREEMENT

This Agreement is entered into by and between the City of Southlake, Texas, a municipal corporation (hereinafter referred to as "the City"), and the \_\_\_\_\_ Homeowners Association acting through its duly elected President (hereinafter referred to collectively as "Participant"), the Owners of that certain real property generally known and described as Lot \_\_\_\_\_, Block \_\_\_\_\_, Southlake, Tarrant County, Texas and which property is more particularly described as \_\_\_\_\_, Southlake, Texas 76092, which is located contiguous to the proposed sidewalk to be built under this agreement by the City of Southlake, Tarrant County, Texas, and which is shown on the exhibit attached hereto and incorporated herein as Exhibit A.

### WITNESSETH:

WHEREAS, Participants are the collective owners (otherwise known as the \_\_\_\_\_) of property which is located with the above-referenced real property, which real property is located in the City of Southlake, Texas and is adjacent to \_\_\_\_\_; and

WHEREAS, In accordance with the City of Southlake Sidewalk Plan, adopted by the City of Southlake City Council, November 6, 2007, residents can formally request the City to participate in up to 50% of the cost of designing and constructing sidewalks within their neighborhoods; and,

WHEREAS, the Participants have made application for the above mentioned program by which the City will construct the sidewalk adjacent to \_\_\_\_\_, approximately \_\_\_\_\_ linear feet in length. The participant has agreed to issue payment in the amount 50% of the cost of the design and construction of said sidewalk; and,

WHEREAS, the construction of the sidewalk will take place within the previously dedicated right-of-way of \_\_\_\_\_ (hereafter referred to as the "Right-of-Way"), which right of way easement is more particularly shown on the plat of the \_\_\_\_\_, attached hereto and incorporated herein as Exhibit A; and

WHEREAS, The City of Southlake City Council approved the 201\_ Sidewalk Priority Plan which included this section of proposed sidewalk on \_\_\_\_\_; and,

WHEREAS, pursuant to Section II, Paragraph D.1.a, of City Ordinance 683, Participants (Owners of adjacent real property) are responsible for the maintenance of the constructed sidewalks (under this agreement) adjacent to Participants' property; and,

WHEREAS, for the benefit of Participants, and at Participants' request, the City is willing to and desires to undertake certain construction activities as described herein with respect to the sidewalk within the Right-of-Way adjacent to the Participants' property on the terms and conditions set forth herein; and

NOW, THEREFORE, for and in consideration of the covenants herein, the said parties do hereby agree as follows:

I. Sidewalk Construction Work.

Provided Participants and other affected Participants of real property along \_\_\_\_\_ make the payments described herein, as an accommodation to Participants, the City shall construct, or retain a private contractor to construct, an approximate \_\_\_-foot wide sidewalk within the right-of-Way adjacent to \_\_\_\_\_, according to the terms and specifications attached hereto and incorporated herein as Exhibit B. The City anticipates that such construction work will be completed no later than ninety (90) days after the date payments of the various Participants' portion of the costs have all been received by the City.

II. Maintenance Obligations of Participants

The City's agreement herein to perform the construction work described herein is based upon Participants' agreement to reimburse the City for a portion of such construction work as provided herein. Nothing contained in this Agreement shall alter or diminish Participants' obligations under any City Ordinance, including Ordinance 683, or to maintain, at Participants' sole cost and expense, including the furnishing of all labor, materials, equipment, accessories and services necessary, the sidewalk within the Right-of-Way in a condition and standard equal to or greater than the minimum standards for maintenance of such sidewalk, except as expressly provided herein.

III. Participants' Obligation to Pay Portion of Costs to City for Construction Work.

The City estimates that the cost to the City for the construction work described herein will be at least \_\_\_\_\_ dollars and no cents per each linear foot (\$\_\_\_\_\_/linear foot). As consideration for the City's agreement to perform the construction work described herein, Participants, jointly and severally, agree to pay to the City an amount equal to \_\_\_\_\_ dollars and no cents per each linear foot (\$\_\_\_\_\_/linear foot) of Participants' property that abuts the Rights-of-Way, as shown on the plat attached hereto as Exhibit A, for a total of \_\_\_\_\_ Dollars and \_\_\_\_\_ cents (\$\_\_\_\_\_). Such amount is to be paid no later than sixty (60) days from the effective date of this Agreement.

IV. Miscellaneous Provisions

A. Participants, on behalf of Participants, and Participants' heirs, successors, and assigns, hereby covenant and agree that no claim, loss, cause of action, suit or other action for damages resulting from death or personal injury to third party, or damage to personal property belonging to any of the above, and based in any manner upon the construction work described herein will ever be instituted by Participants, Participants' heirs, successors, or assigns against City.

B. The City will take efforts to minimize damage to Participants' improvements in the vicinity of the proposed improvements, including but not limited to Participants' irrigation system. However, should damage occur to Participants' improvements, Participants agree that all costs of repair and/or relocation will be the sole responsibility of Participants and the City shall have no liability for such costs or damage.

**C. PARTICIPANTS JOINTLY AND SEVERALLY COVENANT AND AGREE TO INDEMNIFY, AND DO HEREBY INDEMNIFY, HOLD HARMLESS AND DEFEND CITY, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KIND OF CHARACTER, WHETHER REAL OR ASSERTED, (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND OTHER CONSULTANTS), ARISING OUT OF OR IN CONNECTION WITH, DIRECTLY OR INDIRECTLY, THE MAINTENANCE OF THE RIGHTS-OF-WAY AND/OR THE CONSTRUCTION WORK DESCRIBED HEREIN, WHETHER OR NOT CAUSED, IN WHOLE OR IN PART, BY ALLEGED NEGLIGENCE OF THE CITY, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES OR INVITEES; AND PARTICIPANTS JOINTLY AND SEVERALLY HEREBY ASSUME ALL LIABILITY AND RESPONSIBILITY FOR SUCH CLAIMS OR SUITS. PARTICIPANTS SHALL LIKEWISE ASSUME ALL LIABILITY AND RESPONSIBILITY AND SHALL INDEMNIFY CITY FOR ANY AND ALL INJURY OR DAMAGE TO CITY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH ANY AND ALL ACTS OR OMISSIONS OF PARTICIPANTS, PARTICIPANTS' AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, OR INVITEES.**

D. This Agreement and all requirements hereunder may be modified or amended only by written agreement of the parties.

E. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement. This Agreement shall be fully performable in Tarrant County, Texas, and Tarrant County shall be the exclusive venue for bringing any action to enforce the terms and conditions of the Agreement.

F. If any provision of this Agreement is held to be illegal, invalid, void or unenforceable under present or future laws effective during the term of this Agreement, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such illegal, invalid, void or unenforceable provision, there shall be added automatically as part of this Agreement a provision as similar in terms to such illegal, invalid, void or unenforceable provisions as may be legal, valid and enforceable.

G. Each signatory hereto expressly asserts that he or she has proper authority to enter into this Agreement.

H. The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant or right with respect to further performance.

I. The parties hereto agree that this Agreement was jointly drafted and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Thus, this Agreement shall be considered neither against nor in favor of either party, but shall be construed in a neutral manner.

J. The provisions of this Agreement, which by their nature are intended to survive the termination, cancellation, completion or expiration of this Agreement, including, but not limited to, the indemnity and hold harmless provisions of this Agreement, and any express limitation of or releases from liability, shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, cancellation, completion or expiration.

K. Both parties agree that time is of the essence in the performance of this Agreement.

L. This Agreement shall supersede any prior agreements between City and Association relating to the maintenance of Rights-of-Way and to the extent any such agreements exist, they are specifically amended so this Agreement shall be controlling.

M. Nothing contained in this Agreement shall constitute a waiver of the City's governmental immunity or of any limitation on liability or damages created by law.

N. The effective date of this Agreement shall be the date the Agreement has been fully executed by all parties.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

ATTEST:

**CITY OF SOUTHLAKE, TEXAS**

\_\_\_\_\_  
Alicia Richardson, City Secretary

By: \_\_\_\_\_  
City Manager  
1400 Main Street, Suite 400  
Southlake, Texas 76092

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_, **PARTICIPANT**

Address for notice: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ACKNOWLEDGEMENT**

**STATE OF TEXAS  
COUNTY OF TARRANT**

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purpose and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this \_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
Notary Public in and for the State of Texas

My commission expires:  
\_\_\_\_\_