

**FIFTH AMENDMENT TO CAPITAL IMPROVEMENTS AGREEMENT  
(Rose District Improvements)**

THIS FIFTH AMENDMENT TO CAPITAL IMPROVEMENTS AGREEMENT (this "Amendment") is entered into as of \_\_\_\_\_, 2017, by and between the BOARD OF COUNTY COMMISSIONERS OF TULSA COUNTY, OKLAHOMA (the "Board") and the CITY OF BROKEN ARROW, OKLAHOMA, a municipal corporation (the "Contracting Party").

**WITNESSETH:**

WHEREAS, the Board and the Contracting Party have heretofore entered into that certain Capital Improvements Agreement, dated January 25, 2016, as amended by Amendment to Capital Improvements Agreement, dated June 6, 2016, by Second Amendment to Capital Improvements Agreement, dated as of July 18, 2016, by Third Amendment to Capital Improvements Agreement, dated as of August 23, 2016, and by Fourth Amendment to Capital Improvements Agreement, dated November 1, 2016 (collectively, the "Agreement"); and

WHEREAS, the Board and the Contracting Party now desire to further amend the Agreement.

NOW, THEREFORE, for and in consideration of the premises, the Board and the Contracting Party hereby agree as follows:

1. The words and terms not expressly defined herein and used herein with initial capitalization where rules of grammar do not otherwise require capitalization shall have the meanings set forth in the Agreement.

2. Paragraph E of the Recitals of the Agreement is hereby amended and restated in its entirety as follows:

"E. On October 7, 2015, the Vision Authority, pursuant to the Resolution, adopted a resolution (the "Vision Authority Resolution"), wherein it approved the funding from Excess Sales Tax of Two Million Seven Hundred Thirty-Seven Thousand Five Hundred and no/100ths DOLLARS (\$2,737,500) for the construction of capital improvements described within Exhibit "A" attached hereto (the "Improvements") on real property originally described within Exhibit "B" attached hereto (the "Land"). (The Improvements and the Land being hereinafter collectively referred to as the "Project"); on August 2, 2016, the Vision Authority, pursuant to the Resolution, adopted an additional resolution (the "Additional Vision Authority Resolution"), wherein it approved the funding

from Excess Sales Tax of an additional Two Million Nine Hundred Sixteen Thousand One Hundred Twenty-eight and no/100ths Dollars (\$2,916,128.00) for the construction of the Improvements on the Land; and on September 7, 2017, the Vision Authority, pursuant to the Resolution, adopted an additional resolution (the "Second Additional Vision Authority Resolution"), wherein it approved the funding from Excess Sales Tax of an additional Four Hundred Nine Thousand Three Hundred Eighty and 30/100ths Dollars (\$409,380.30) for the construction of the Improvements on the Land."

3. Paragraph F of the Recitals of the Agreement is hereby amended and restated in its entirety as follows:

"F. The Contracting Party has requested the Board to make, pursuant to the Resolution, the Vision Authority Resolution, the Additional Vision Authority Resolution, and the Second Additional Vision Authority Resolution, disbursements of Excess Sales Tax to the Contracting Party for the costs to acquire, design and construct the Project (the "Advances")."

4. Section 1.29 of the Agreement is hereby amended and restated in its entirety as follows:

"1.29. "Maximum Amount of Advances" means \$6,063,008.30."

5. Section 6.6 of the Agreement is hereby amended and restated in its entirety as follows:

"6.6 Date after which Advances Cease. Notwithstanding anything herein to the contrary, the Board shall have no duty to make or cause the making of Advances hereunder to the Contracting Party after March 1, 2020."

6. Section 10 of the Agreement is hereby amended and restated in its entirety as follows:

"10. COMPLETION OF THE PROJECT. The contracting Party shall complete the construction, equipping and furnishing of the Improvements in accordance with the Plans and submit to the Board a certificate of Completion on or before March 1, 2020."

7. Section 18 of the Agreement is hereby amended by deleting from the eighth line thereof "(12.426%)" and inserting thereat "(13.325%)."

8. The Board and the Contracting Party acknowledge and agree that the Agreement, as amended hereby, is in full force and effect and is hereby ratified and confirmed.

9. This Fifth Amendment may be executed in as many counterparts as may be required and all counterparts shall collectively constitute a single instrument. An executed copy of this Fifth Amendment delivered by facsimile shall have the effect of an original executed instrument.

EXECUTED as of the date first set out above.

ATTEST:

"Contracting Party"

\_\_\_\_\_  
City Clerk

**CITY OF BROKEN ARROW, OKLAHOMA**

APPROVED AS TO FORM:

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

\_\_\_\_\_  
City Attorney

"Board"

**BOARD OF COUNTY COMMISSIONERS OF  
TULSA COUNTY**

By \_\_\_\_\_  
Name Ron Peters  
Title Chairman