

PROJECT NO. 23 U-2117-01
STP-U211(701)

GRADING, SURFACING

CITY OF LAWRENCE, KANSAS

A G R E E M E N T

PARTIES: **DEBRA L. MILLER, Secretary of Transportation**, hereinafter referred to as the "Secretary"
Kansas Department of Transportation (KDOT)

The City of Lawrence, Kansas, hereinafter referred to as the "City"

PURPOSE: The Secretary has authorized a Non-National Highway System city street project, hereinafter referred to as the "Project." The City has requested the Project. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city streets utilizing federal funds. The Secretary and the City desire to construct the Project on 31st Street from Haskell Avenue to O'Connell Road in the City. Cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets and state highways, provided however, that in order to be eligible for such federal aid, such work is required to be done in accordance with the laws of Kansas.

PROJECT: The Secretary and the City desire to enter into this Agreement for the construction of the Project, which is described as follows:

31st Street from Haskell Avenue to O'Connell Road.

EFFECTIVE

DATE: The parties in consideration of the premises and to secure the approval and construction of the Project shall mutually agree to perform in accordance with this Agreement as of the _____ day of _____ 20____.

ARTICLE I

THE SECRETARY AGREES:

1. To provide technical information upon request to help the City acquire rights of way in accordance with the laws and with procedures established by the Bureau of Right of Way and the Office of Chief Counsel of the Kansas Department of Transportation and as required by Federal Highway Administration directives such that the City may obtain participation of federal funds in the cost of the Project.

2. To let the contract for the Project and shall award the contract to the lowest responsible bidder upon concurrence in the award by the City. The Secretary further agrees, as agent for the City, to administer the construction of the Project in accordance with the final design plans, as required by the Federal Highway Administration, to negotiate with and report to the Federal Highway Administration and administer the payments due the contractor, including the portion of the cost borne by the City.

3. To require the contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act or omission of the contractor, the contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party's claim, the contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses that either the Secretary or the City or both incur in defending the claim.

4. The Project shall use federal funds consisting of STP Earmark funds from the 2006 Federal Transportation Appropriations Legislation as allocated by the Secretary to the Project.

- STP Earmark Funds

The Project STP Earmark funds were identified *as a maximum* of \$792,000.00. The City is advised by the Secretary that said \$792,000.00 is subject to being modified and reduced by federal action. The Secretary shall not be responsible for reimbursing the City for *any difference* between the original apportionment of \$792,000.00 and federal reduction in STP Earmark funds for the Project. The City shall be solely responsible for *any such difference* in STP Earmark funds for the Project.

By *[Signature]*
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The Secretary agrees to reimburse the City *up to* one hundred percent (100%) of the total actual costs of preliminary engineering, rights of way, construction (which includes the costs of all construction contingency items) and construction engineering *up to* a Project construction cost of \$792,000.00. In no event shall the Secretary's reimbursement exceed *a maximum* of \$792,000.00 from STP funds. The Secretary's maximum reimbursement is subject to federal reduction in the STP funds. The Secretary shall not be responsible to reimburse the City for the total actual costs of preliminary engineering, rights of way, construction that exceed \$792,000.00 and any federal reduction in the STP funds for the Project.

- Utility Adjustment Cost

The Secretary shall not be responsible for the total actual costs of utility adjustments for the Project.

5. That after receipt of the Federal Highway Administration acknowledgement of final voucher claim, the Secretary's Chief of Fiscal Services will, in a timely manner, prepare a complete and final billing of all Project costs for which the City is responsible and shall then transmit the complete and final billing to the City.

ARTICLE II

THE CITY AGREES:

1. That the Project shall be undertaken, prosecuted and completed for and on behalf of the City by the Secretary acting in all things as its agent, and the City hereby constitutes and appoints the Secretary as its agent, and all things hereinafter done by the Secretary in connection therewith are hereby by the City authorized, adopted, ratified and confirmed to the same extent and with the same effect as though done directly by the City acting in its own individual corporate capacity instead of by its agent.

2. That the Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this Project.

3. To design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current Project Development Manual for Non-National Highway System Local Government Road and Street Projects, Volume I, Bureau of Local Project's (BLP's) project memorandums, memos, the KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), the current version of the Bureau of Traffic Engineering's Traffic Engineering Guidelines, and the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and any necessary Project Special Provisions, and with the rules and regulations of the Federal Highway Administration pertaining thereto.

4. To make or contract to have made design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Upon completion thereof, the design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project shall be submitted to the Secretary by a licensed professional engineer attesting to the conformity of the design plans with the items in paragraph 3 above. Contracts between the City and any consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement shall contain language requiring conformity with paragraph 3 above. In addition, any contract between the City and any consultant retained by them to do the design for the Project covered by this Agreement shall also contain the following:

- a. Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the consultant's control.
- b. Language requiring the consultant to submit to the City (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

5. That the City and any consultant retained by the City shall have the sole responsibility for the adequacy and accuracy of design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Any review of these items that may be performed by the Secretary or his or her representatives is not intended to and shall not be construed to be an undertaking of the City's and its consultant's duty to provide adequate and accurate design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Such reviews are not done for the benefit of the consultant, the construction contractor, the City, or other political subdivision, nor the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, or any other work performed by the consultant or the City.

6. That a duly appointed representative of the City is authorized to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project undertaken under this Agreement. The design plans must be signed and sealed by the licensed professional engineer responsible for preparation of the design plans. Geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies. Right of way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the right of way descriptions.

7. That it will, in its own name, as required by law, acquire by purchase, dedication or condemnation all the rights of way, easements, and access rights shown on the final design plans in accordance with the schedule established by the Kansas Department of Transportation. The City agrees that the necessary rights of way, easements, and access rights shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R., pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary, on forms provided by the Bureau of Local Projects, that such rights of way, easements, and access rights have been acquired. The City further agrees that it will have recorded in the Office of the Register of Deeds all rights of way, deeds, dedications, permanent easements and temporary easements.

8. To contact the Secretary if there will be any displaced person on the Project prior to making the offer for the property. The parties mutually agree that the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R., pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in

general accordance with K.S.A. 58-3501 to 58-3507, inclusive, and Kansas Administrative Regulations 36-16-1 *et seq.*

9. To provide all legal descriptions required for right of way acquisition work. The City further agrees to acquire rights of way, easements, and access rights in accordance with the laws and with procedures established by the Bureau of Right of Way and the Office of Chief Counsel of the Kansas Department of Transportation and as required by Federal Highway Administration directives for the participation of federal funds in the cost of the Project. The City agrees that copies of all documents, including recommendations and coordination for appeals, bills, contracts, journal entries, case files, or documentation requested by the Office of Chief Counsel will be sent to the Office of Chief Counsel within the time limits set by the Secretary.

10. That if federal funds are used in the acquisition of rights of way, any disposal of or change in the use of rights of way or in access after Project construction will require prior written approval by the Secretary.

11. That the Secretary shall have the right to utilize any land owned or controlled by the City, lying inside or outside the limits of the City as shown on the final design plans, for the purpose of constructing the highway Project. Neither the Secretary nor the Federal Highway Administration shall participate in the cost of these rights of way or easements.

12. That it will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing structures, pole lines, pipe lines, meters, manholes, and other utilities, publicly or privately owned, which may be necessary to construct the Project in accordance with the final design plans. New or existing utilities that have to be installed, moved, or adjusted will be located or relocated in accordance with the current version of the KDOT Utility Accommodation Policy (UAP), as amended or supplemented.

Except as provided by state and federal laws, the expense of the removal or adjustment of the utilities located on public rights of way shall be borne by the owners. The expense of the removal or adjustment of privately owned utilities located on private rights of way or easements shall be borne by the City except as provided by state and federal laws.

13. That it will expeditiously take such steps as are necessary to facilitate the early adjustment of utilities, will initiate the removal or adjustment of the utilities, and will proceed with reasonable diligence to prosecute this work to completion. The City further agrees to move or adjust or cause to be moved or adjusted all necessary utilities sixty (60) days prior to the scheduled construction letting except those necessary to be adjusted during construction and those which would disturb the existing street surface. The City further agrees to certify to the Secretary on forms supplied by the Secretary that all utilities that are required to be moved prior to construction have either been moved or a date provided by the City as to when, prior to construction, they will be moved. The City will initiate and proceed to complete adjusting the remaining utilities that are not required to be moved during construction in order that the contractor shall not be delayed in construction of the Project. The City will indemnify, hold harmless, and save the Secretary and the

construction contractor for damages incurred by the Secretary and construction contractor because identified utilities have not been moved or adjusted timely or accurately.

14. To furnish the Secretary a list of existing and known utilities affected, together with locations and proposed adjustments of the same and designate an individual to be responsible for coordinating the necessary removal or adjustment of utilities.

15. To certify to the Secretary that all privately owned utilities occupying public rights of way required for the construction of the Project are permitted thereon by franchise, ordinance, agreement or permit and the instrument shall include a statement as to which party will bear the cost of future adjustments or relocations that may be required as a result of street or highway improvements.

16. To provide the construction inspection in accordance with the rules and guidelines developed for the current KDOT approved construction engineering program and in accordance with the current edition of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions and any necessary Project Special Provisions. The detailed inspection is to be performed by the City forces or the consultant. The Secretary does not undertake for the benefit of the City, the contractor, the consultant or any third party the duty to perform the day-to-day detailed inspection of the Project, or to catch the contractor's errors, omissions, or deviations from the final design plans and specifications.

17. To deposit with the Secretary its estimated share of the total Project expenses based upon estimated approved contract quantities. The City will remit its estimated share by the date indicated on the resolution form Authorization to Award Contract, Commitment of City Funds received by the City from the Secretary. The date indicated for the City to deposit its estimated share of the total Project expenses is fifty (50) days after the letting date.

18. The Project shall use federal funds consisting of STP Earmark funds from the 2006 Federal Transportation Appropriations Legislation as allocated by the Secretary to the Project.

- STP Earmark Funds

The Project STP Earmark funds were identified *as a maximum* of \$792,000.00. The City is advised by the Secretary that said \$792,000.00 is subject to being modified and reduced by federal action. The City agrees, ^gthe Secretary shall not be responsible for the City for *any difference* between the original apportionment of \$792,000.00 and any federal reduction in STP Earmark funds for the Project. The City shall be solely responsible for *any such difference* in STP Earmark funds for the Project.

The City agrees to be responsible *for at least a minimum* of zero percent (0%) of the total actual costs of preliminary engineering, rights of way, construction (which includes the costs of all construction contingency items) and construction engineering *up to* a Project construction cost of \$792,000.00, for the Project from STP Earmark funds and *any difference* between the original apportionment and federal reduction in STP funds for the Project. The City shall be solely responsible for 100% of the preliminary engineering, rights of way, construction costs (which

By this agreement

includes the costs of all construction contingency items) and construction engineering that exceed \$792,000.00 and any difference between the original apportionment and federal reduction in STP funds for the Project.

- Utility Adjustment

The City shall be one hundred percent (100%) responsible for total actual costs of utility adjustment for the Project.

19. That if any payment is due to the Secretary, such payment be made within thirty (30) days after receipt of a complete and final billing from the Secretary's Chief of Fiscal Services.

20. To participate and cooperate with the Secretary in an annual audit of the Project. The City shall make its records and books available to representatives of the Secretary and/or the Federal Highway Administration for audit for a period of five (5) years after date of final payment under this Agreement. That if any such audits reveal payments that have been made with federal funds by the City for items considered non-participating, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.

21. That if it cancels the Project, it will reimburse the Secretary for any costs that are incurred by the Secretary prior to the cancellation of the Project. The City agrees to reimburse the Secretary within thirty (30) days after receipt by the City of the Secretary's statement of the cost that were incurred by the Secretary prior to the cancellation of the Project.

22. To adopt an ordinance requiring the removal of all encroachments either on or above the limits of the right of way shown on the final design plans for this Project, and it will initiate and proceed with diligence to remove or require the removal of the encroachments. It is further agreed that all such encroachments be removed before the Project is advertised for letting (provided, however, that if the Secretary is satisfied, with respect to any encroachment, that the physical removal thereof has been fully provided for between the City and the owner thereof and will be accomplished within a time sufficiently short to present no hindrance or delay to the construction of the Project, the Secretary may cause the Project to be advertised for letting before such encroachment is fully removed). The City further agrees that it will not in the future permit the erection of gas and fuel dispensing pumps upon the rights of way of the Project, and it will require that any gas and fuel dispensing pumps erected, moved, or installed along the Project be placed no less than twelve (12) feet back of the right of way line. All rights of way provided for the Project shall be used solely for public street purposes and no signs, posters, billboards, roadside stands, fences, structures, or other private installations shall be permitted within the right of way limits except as provided by state and federal laws.

23. To adopt all necessary ordinances and/or resolutions and to take such legal steps as may be required to give full effect to the terms of this Agreement.

24. To locate and be responsible for all costs necessary to remedy or clean up any hazardous waste site, including, but not limited to, leaking underground storage tanks that are discovered on rights of way, easements, and access rights acquired by the City. The City shall be

responsible to the Secretary for all damages, fines or penalties, expenses, claims, and costs incurred by the Secretary from any hazardous waste site discovered on rights of way, easements, and access rights acquired by the City prior to commencement of construction of the Project. The City shall take appropriate action to contain or remediate any identified hazardous waste site within the Project limits prior to letting of the Project. The City will investigate any and all hazardous waste sites discovered during construction of the Project on City owned land within the Project boundary and shall take appropriate action to contain or remediate such hazardous waste sites.

That for any hazardous waste site, including, but not limited to, leaking underground storage tanks, the City shall hold harmless, defend, and indemnify the Secretary, its agents and employees against and from all damages, expenses and costs incurred by any person, the State of Kansas, or the United States Government for determining and undertaking remedial action, any fines or penalties assessed under state or federal laws, contract claims, personal injury claims, and damage of or loss of natural resources.

It is specifically agreed between the parties executing this Agreement that any provision of this hazardous waste clause is not intended to make the public, or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party of this Agreement to maintain a suit for personal injuries, property damages, or hazardous waste claims. The duties, obligations and responsibilities of the parties to this Agreement with respect to third parties shall remain as imposed by law.

The City, by signing this Agreement with the Secretary has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any hazardous waste on any rights of way, easements, and access rights acquired by the City. The City reserves the right to bring any action against any third party for any hazardous waste site on any rights of way, easements, and access rights acquired by the City.

The term hazardous waste includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, are incorporated by reference and include but not limited to: (1) 40 C.F.R. § 261 *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 1990 Supp. 65-3431 *et seq.*, Hazardous Waste.

The standards to establish cleanup of a hazardous waste site include, but is not limited to, federal programs administered by the E.P.A., State of Kansas environmental laws and regulations, and city and county standards where the hazardous waste site is located.

25. To control parking of vehicles on the city street throughout the length of the Project covered by this Agreement. On-street parking will be permitted until such time as parking interferes with the orderly flow of traffic along the street.

26. That the arterial characteristics inherent in the Project require uniformity in information and regulations to the end that traffic may safely and expeditiously be served and shall adopt and enforce such rules and regulations governing traffic movements as may be deemed necessary or desirable by the Secretary and the Federal Highway Administration.

27. To maintain the control of access rights and to prohibit the construction or use of any entrances or access points along the Project within the City other than those shown on the final design plans, unless prior approval is obtained from the Secretary.

28. That upon request by the Secretary, to provide the Secretary an accounting of all actual non-participating costs which are paid directly by the City to any party outside of the KDOT and all costs incurred by the City not to be reimbursed by the KDOT for preliminary engineering, rights of way, utility adjustments, construction, and construction engineering work phases, or any other major expense associated with the Project. This will enable the Secretary to report all costs of the Project to the legislature.

29. That when the Project is completed and final acceptance is issued that the City will, at its own cost and expense, maintain the Project and will make ample provision each year for such maintenance. Upon notification by the State Transportation Engineer of any unsatisfactory maintenance condition, the City will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

ARTICLE III

THE SECRETARY AND THE CITY MUTUALLY AGREE:

1. That plans for handling traffic during construction must be included in the design plans provided by the City and must be in conformity with the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD). Detour routes and road closings, if necessary, shall be noted on the design plans. The Secretary or his or her authorized representative may act as the City's agent with full authority to determine the dates when any road closings shall commence and terminate. The Secretary or his or her authorized representative shall notify the City of the determinations made pursuant to this section.

2. That the final design plans for the Project are by reference made a part of this Agreement.

3. That if any items are found to be non-participating by the Secretary, acting in his or her own behalf and on the behalf of the Federal Highway Administration, the total cost of these items will be paid by the City.

4. That the location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. 8-2005, shall conform to the manual and specifications adopted under K.S.A. 8-2003, and any amendments thereto are incorporated by reference and shall be subject to the approval of the Federal Highway Administration.

5. That the Special Attachment No. 1 attached hereto, pertaining to the implementation of the Civil Rights Act of 1964, is hereby made a part of this Agreement.

6. That this Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the City and their successors in office.

7. That no third party beneficiaries are intended to be created by this Agreement, nor do the parties herein authorize anyone not a party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be signed by their duly authorized officers on the day and year first above written.

ATTEST:

THE CITY OF LAWRENCE, KANSAS

CITY CLERK

MAYOR

(SEAL)

Kansas Department of Transportation
Debra L. Miller, Secretary of Transportation

By: _____
Jerome T. Younger, P.E.
Assistant Secretary and
State Transportation Engineer

