

PROJECT NO. 10-23 U-2205-01
KLINK 1R RESURFACING PROJECT
CMS CONTRACT NO. 017115004
CITY OF LAWRENCE, KANSAS

A G R E E M E N T

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

The City of Lawrence, Kansas, hereinafter referred to as the “City,”

Collectively referred to as the “Parties.”

PURPOSE: The City has applied for and the Secretary has approved a KLINK 1R Resurfacing Project, hereinafter referred to as 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 connecting links of the State Highway System through the City. The City desires to construct a street resurfacing Project on K-10, from Haskell Avenue east to the east city limits, a city connecting link for State Highway K-10 in the City. The Secretary desires to enter into an Agreement with the City to participate in the cost of the Project by use of State Highway funds.

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 date signed by the Secretary or designee.

DEFINITIONS

City Connecting Link - a route inside the city limits of a city which: (1) connects a state highway through a city; (2) connects a state highway to a city connecting link of another state highway; (3) is a state highway which terminates within such city; (4) connects a state highway with a road or highway under the jurisdiction of the Kansas Turnpike Authority; or (5) begins and ends within a city's limits and is designated as part of the national system of Interstate and defense highways.

KLINK 1R Resurfacing Program - a city connecting link (KLINK) resurfacing program that is a part of the KDOT Local Partnership Program with cities and counties. The state's participation in the cost of construction and construction engineering will be seventy-five percent (75%) for cities with a population of less than 10,000 or fifty percent (50%) for cities with a population of 10,000 or greater, up to a maximum of \$200,000.00 per fiscal year of state funds. The KLINK 1R Resurfacing Program is for contract maintenance only.

Project - mill and overlay, reconstruction, minor patching, joint repair, slurry seal, microsurfacing, and any other pre-approved resurfacing methods for the KLINK 1R Resurfacing Program for a section of the city street as described in the current KDOT Project Authorization Form 883.

Project Description - the location of the Project from its point of beginning to its ending point, the street

resurfacing Project being located as described in the PURPOSE paragraph above or as described in the current KDOT Project Authorization Form 883.

Eligible/Participating Bid Items - all bid items that pertain to Project resurfacing and stripping along the connecting link only. The eligible resurfacing may include mill and overlay, reconstruction, minor patching, joint repair, slurry seal, microsurfacing, and any other approved resurfacing methods within the Project roadway. Shoulder resurfacing is participating bid item if a shoulder exists on the city-connecting link. Traffic loop replacement is eligible on the connecting link when milling will destroy the existing loop(s). Installation of a traffic signal video detection system is eligible along the connecting link if the City can demonstrate to the Secretary installation of such a system will be less expensive than replacing and maintaining traffic signal loops. The hauling of millings to one pre-arranged location within the City and minor adjustments of existing manhole rings to match the final surface are participating bid items.

Non-Eligible/Non-Participating Bid Items - roadway resurfacing does not include bridge deck patching, curb and gutter (repair or new construction), storm sewers, construction or repair of driveways or sidewalks, sidewalk ramps, major manhole adjustments or reconstruction of manholes, utility adjustments, adjustment of surveying monuments, any warranty contracts for the Project, mountable or barrier curbed medians, work performed outside the Project termini, work performed outside the city limits, items with unit price changes from the let price (other than items with a price adjustment specification in the bid documents) and any other items deemed non-eligible by the Secretary.

Fiscal Year (FY) - the state's fiscal year begins July 1 and ends on June 30 of the following calendar year.

TERMS OF AGREEMENT

ARTICLE I

THE SECRETARY AGREES:

1. To reimburse the City fifty percent (50%) of the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering, but not to exceed a maximum of \$200,000.00, as the Secretary's total share of the cost to construct the Project. The Secretary shall not be responsible for the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering that exceeds \$400,000.00. The Secretary shall not be responsible for the total actual costs of preliminary engineering, utility adjustments, and items not participating in the KLINK 1R Resurfacing Program.

2. To make such payment to the City as soon as reasonably possible after construction of the Project is completed, after receipt of proper billing, and attestation by a licensed professional engineer employed by the City that the Project was constructed within substantial compliance of the final design plans and specifications.

ARTICLE II

THE CITY AGREES:

1. The participating Project limits as described in the PURPOSE or Project Description above are on a city connecting link of the State Highway System and is limited to roadway resurfacing along the Project. The Project roadway resurfacing may include all eligible items as defined above. Roadway

resurfacing does not include such non-eligible items as defined above and any other items deemed non-eligible by the Secretary.

2. 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 KLINK 1R Resurfacing Program for this Project.

3. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the City will defend, indemnify, hold harmless, and save the Secretary and his or her authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the City, the City's employees, agents, or subcontractors. The City shall not be required to defend, indemnify, hold harmless, and save the Secretary for negligent acts or omissions of the Secretary or his or her authorized representatives or employees.

4. 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 of 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 either the Secretary or the City or both incur in defending the claim.

5. To prepare or contract to have prepared, the design plans, specifications, and cost estimate (PS&E) for the Project, to let the contract and award the contract to the lowest responsible bidder. The City agrees to construct or have constructed the Project in accordance with the final design plans and specifications; inspect or have inspected the construction; administer the Project; and make the payments due the contractor, including the portion of cost borne by the Secretary. The City shall design the Project or contract to have the Project designed in conformity with the Project's initially programmed fiscal year version of the KLINK 1R Resurfacing Program Guidelines. The City and any consultant retained by the City shall have the sole responsibility for the adequacy and accuracy of the design plans, specifications, and estimates. 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, and estimates. 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, expressed or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, and estimates or any other work performed by the consultant or the City.

6. To follow a schedule for design and development of plans that will allow the Project to be let to contract in the programmed fiscal year, otherwise, the City agrees the Secretary has the right to withdraw his or her participation in the Project.

7. To submit preliminary plans, specifications, and a cost estimate (PPS&E) to the KDOT KLINK Program Manager, Bureau of Local Projects electronically between November 1 and March 1 of the Project's programmed fiscal year. All correspondence must be sent by e-mail. Project PPS&E received later than May 1 of the programmed fiscal year shall require the Project to move into the future fiscal year.

8. The City 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, pipelines, meters, and other utilities, publicly or privately owned, which may be necessary for construction of the Project in accordance with the final design plans. The expense of the removal or adjustment of the utilities and encroachments located on public right of way or easement shall be borne by the owner or the City.

9. To prohibit future erection, installation or construction of encroachments either on or above the right of way, and it will not in the future permit the erection of fuel dispensing pumps upon the right of way of the connecting link. The City further agrees it will require any fuel dispensing pumps erected, moved or installed along the connecting link be placed no less than twelve (12) feet back of the right of way line.

10. 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.

11. It is understood the City (or the City's consultant) shall determine the manner in which traffic is to be handled during construction in accordance with the latest version, adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD)

12. 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 a 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 Secretary.

13. To maintain 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.

14. The final design plans shall depict the entire KLINK 1R Project location. The eligible/participating bid items shall be shown separated and listed apart from the non-eligible/non-participating bid items on the final design plans, bid documents, and on the detailed billing provided by the City. The City shall have the final design plans signed and sealed by a licensed professional engineer. **The City or the City's consultant shall receive a Final Review of PS&E notice from KDOT stating the final review of the plans, specifications, and estimates (PS&E) is complete before the City can advertise the Project for bid letting. If the City lets the Project to contract prior to receiving the Final Review of PS&E notice from KDOT, the City acknowledges and agrees the funding for Project may be cancelled for the Project.** The City agrees to furnish KDOT an electronic set of final design plans and specifications. The City further agrees the specifications will require the contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

The City agrees, immediately after the Project is let, to inform the KDOT KLINK Program Manager, Bureau of Local Projects and the KDOT Area Engineer the date the contract is let and the total contract amount. The City agrees to submit electronically the Bid Tabulations, the Notice of Award, and the Signed Contract Documents (scanned) to the KDOT KLINK Program Manager, Bureau of Local Projects before obtaining a "Notice of Work Starting" from the KDOT Area Engineer. The City shall obtain a "Notice of Work Starting" from the Area Engineer's office prior to beginning any construction on the Project. **Any work completed prior to receipt of a "Notice of Work Starting" shall be considered ineligible for participation and such costs shall be the responsibility of the City.**

15. With the following: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*)(ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in (a) through (c) in every contract, subcontract or purchase order so they are binding upon such contractor, subcontractor or vendor; (e) a failure to comply with any applicable requirements of (a) through (d) above or if the City is found guilty of any violation by federal or state agencies having enforcement jurisdiction for those Acts, such violation shall constitute a breach of the Agreement; (f) if the Secretary determines the City has violated applicable provisions of ADA, violation shall constitute a breach of the Agreement; (g) if (e) or (f) occurs, the Agreement may be cancelled, terminated or suspended in whole or in part.

16. To require the contractor to pay prevailing wages. The City will incorporate into the construction contract the current general wage decision for the county in which the Project is being constructed. The City may obtain the current wage decision from the KDOT Bureau of Construction and Maintenance website.

17. To provide the construction engineering/inspection necessary to determine substantial compliance with the final design plans, specifications, and this Agreement. The City will require at a minimum all personnel, whether City or consultant to comply with the high visibility apparel requirements of the KDOT Safety Manual, Chapter 4, Section 8 Fluorescent Vests. If the City executes an agreement for inspection, the agreement shall contain this requirement as a minimum. The City may set additional clothing requirements for adequate visibility of personnel.

18. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of the funding participation in the KLINK 1R Resurfacing Program. The Secretary does not undertake (for the benefit of the City, the contractor, the consultant, or any third party) the duty to perform 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.

19. The City upon completion of the Project shall have a licensed professional engineer employed by the City attest in an email to the KDOT Area Engineer and the KLINK Program Manager, Bureau of Local Projects that the Project was completed in substantial compliance with the final design plans and specifications.

20. It will obtain final acceptance of the Project via email from the KDOT Area Engineer.

21. 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 KDOT and costs incurred by the City not to be reimbursed by KDOT for preliminary engineering, utility adjustments, or any other major expense associated with the Project. This will enable the Secretary to report all costs of the Project to the legislature.

22. It will request payment from the Secretary after the City has paid the contractor in full, and a licensed professional engineer has attested in writing the Project has been completed in conformance with the plans and specifications.

ARTICLE III

THE PARTIES MUTUALLY AGREE:

1. The Project will be constructed within the limits of the existing right of way.
2. The final design plans and specifications are by reference made a part of this Agreement.

3. It is the policy of the Secretary to make final payments to the City in a timely manner. The Single Audit Standards set forth in federal O.M.B. Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations" require the City to comply in accordance with those standards.

The Secretary may pay the final amount due for authorized work performed based upon the City's most recent "Single Audit Report" available and a desk review of the claim by the Contract Audit Section of the Bureau of Fiscal Services. The City, by acceptance of this Agreement, acknowledges the final payment is subject to all single audits which cover the time period of the expenses being claimed for reimbursement. The Secretary and the City agree as the "Single Audit Report" becomes available for the reimbursement period, the Secretary will review the "Single Audit Report" for items which are declared as not eligible for reimbursement. The City agrees if payment has been made to the City for items subsequently found to be not eligible for reimbursement by audit, the City will refund to the Secretary the total amount of monies paid for same.

The City shall agree to comply with all appropriate state and federal laws and regulations applicable to this Project.

4. Any of the following Project changes require the City to send a formal notice to the Secretary for approval:

- a. Fiscal year the Project is to be let
- b. Project length
- c. Project location
- d. Project scope

Items b, c, and d require an attached map to scale.

It is further mutually agreed during construction, the City shall inform the Secretary of any changes in the plans and specifications.

5. 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. The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

7. If, in the judgment of KDOT, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, KDOT may terminate this Agreement at the end of its current fiscal year. KDOT will participate in all costs approved by KDOT incurred prior to the termination of the Agreement.

8. 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.

9. 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

(Date)

MAYOR

(SEAL)

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

By: _____

Jerome T. Younger, P.E.
Deputy Secretary for Engineering and
State Transportation Engineer

(Date)