

PROJECT NO. 23 U-2041-01
RECONSTRUCT 2nd AND LOCUST INTERSECTION
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 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 City desires to construct a Project at the 2nd/Locust Intersection in the City with federal funds. The Secretary is authorizing the use of federal recovery funds for this Project under the American Recovery and Reinvestment Act of 2009 (ARRA or Recovery Act). The City understands the United States Congress and Federal Highway Administration have placed conditions on the use of recovery funds. The City agrees to abide by all the conditions stated in this Agreement. The City understands lack of compliance could result in forfeiture or reimbursement of Recovery Act funds.

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

Reconstruct the 2nd/Locust Intersection in the City.

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.

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 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. As part of its administration functions and to comply with the Recovery Act, the Secretary will:

- a. Include and enforce contract language requiring contractors and subcontractors to comply with the Recovery Act's monthly employment reporting requirements as set forth in Required Contract Provision 03-10-09-R5. The KDOT Field Engineer assigned to the Project will monitor the Contractor's "MONTHLY EMPLOYMENT REPORT," DOT Form 1589, for compliance with Required Contract Provision 03-10-09-R5.
- b. Enforce contract language requiring consultants and subconsultants performing design services or construction inspection to comply with the Recovery Act's monthly employment requirements as set forth in Required Contract Provision 03-10-09-R5. The KDOT Field Engineer assigned to the Project will monitor the Consultant's "MONTHLY EMPLOYMENT REPORT," DOT Form 1589, for compliance with Required Contract Provision 03-10-09-R5. While KDOT will enforce the provision, it is the City's responsibility to include this provision in all consulting agreements (i.e. design and construction inspection) as provided in Article II, paragraphs 4 and 16.
- c. Include contract language requiring contractors and subcontractors to comply with the auditing requirements of Required Contract Provision 04-03-09-R3.

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

4. The Project shall use federal funds consisting of American Recovery and Reinvestment Act (ARRA) funds, Surface Transportation Project (STP) funds, and City funds as allocated by the Secretary to the Project.

- ARRA Funds

To be responsible for one-hundred percent (100%) 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 \$2,000,000.00 for the Project from ARRA funds. However, this reimbursement obligation is contingent upon the City's compliance with Article II, paragraph 2. 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 \$2,000,000.00 for the Project from ARRA funds.

- **STP Funds**

To be responsible for eighty percent (80%) 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 \$1,000,000.00 for the Project from STP funds. 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 \$1,250,000.00 for the Project from STP funds.

The Secretary shall not be responsible for the total actual costs of preliminary engineering, rights of way, and utility adjustments for the Project.

5. 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. 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. 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. The City agrees to take all steps necessary to obtain federal aid for this Project.

a. To secure Recovery Act funds, the City shall take the following steps:

- On or before November 1, 2009, complete the right-of-way acquisition, utility relocation arrangements, and preparation of plans, specifications, and estimates for the Project, so the Secretary may let the project in the December 16, 2009 letting.
- If the City's forces are performing the inspection services for the Project, complete the Recovery Act monthly employment reporting requirement, "MONTHLY EMPLOYMENT REPORT," DOT Form 1589, for City

employees who charge time to the Project rather than charging time to overhead. The City shall complete the "MONTHLY EMPLOYMENT REPORT," DOT Form 1589, electronically on KDOT's website by accessing the Economic Stimulus link at www.ksdot.org or using the link at www.ksdot.org/EconomicRecovery.asp. The City shall submit the completed on-line "MONTHLY EMPLOYMENT REPORT," DOT Form 1589, no later than 10 calendar days after the last Saturday in the month being reported. Further details are provided in Required Contract Provision 03-10-09-R5.

- Obtain a D-U-N-S number (Dun & Bradstreet Number) to include on the "MONTHLY EMPLOYMENT REPORT," DOT Form 1589. Acquire the D-U-N-S number using the following link: http://www.dnb.com/us/duns_update/.
 - Include and enforce contract language requiring consultants and subconsultants to comply with the monthly employment reporting requirements of Required Contract Provision 03-10-09-R5 (See Article II, paragraphs 4 and 16).
- b. The City understands the Secretary loses Recovery Act funds if the funds are not obligated within the 365 days the Recovery Act requires. Thus, if the City's failure to complete the right-of-way acquisition, utility relocation arrangements, and preparation of plans, specifications, and estimates for the Project on or before November 1, 2009 precludes KDOT from letting the project in the December 16, 2009 letting, the Secretary may remove the funds from the City's Project and allocate the funds elsewhere. If the Secretary removes Recovery Act funds from the City's Project and Recovery Act funds already have been expended on preliminary engineering, the City will be obligated to reimburse the Secretary for Recovery Act funds used for preliminary engineering expenses. This provision does not affect federal-aid funds from sources other than the Recovery Act.
 - c. The City understands that the Secretary loses Recovery Act funds if the reporting requirements are not met. Thus, if the City, for its own forces, fails to meet the reporting requirements, the City will have to reimburse the Secretary for Recovery Act funds lost because of such failure to comply.
 - d. The City understands that Required Contract Provision 03-10-09-R5 contains additional sanctions for the City's failure to meet the reporting requirements for City employees.

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.
- c. Because of the Secretary of Transportation of the State of Kansas (Secretary) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the City and the Consultant. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the City or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant's negligent acts, errors, or omissions. Nothing in this provision precludes the City from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary's right to payment or reimbursement.
- d. Language incorporating into the consultant contract Required Contract Provision 03-10-09-R5 which requires the consultant to complete on-line and submit electronically the "MONTHLY EMPLOYMENT REPORT", DOT Form 1589, but only if the design or other preliminary engineering services are being paid with Recovery Act funds.
- e. Language incorporating into the consultant contract Required Contract Provision 04-03-09-R3 which permits the United States Comptroller General, or the Inspector General and their representatives to audit Project records and interview

employees. Even if the design or other preliminary engineering services are not being paid with Recovery Act funds, these consultant records may be audited as documents that pertain to a contract using Recovery Act funds.

5. 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 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. 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. 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 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, such rights of way, easements, and access rights have been acquired. The City further agrees 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 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 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. 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. 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. 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 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. 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 all utilities 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 not required to be moved during construction in order 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 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 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. To complete the Recovery Act monthly employment reporting requirements for City employees performing construction inspection, to require consultants performing construction inspection to complete the reporting requirements, and to require consultants performing construction inspection to comply with the Recovery Act auditing requirements.

- a. 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.
- b. If the City performs some or all of the construction inspection with City employees who charge their time to the Project rather than overhead, the City will complete on-line and submit electronically the "MONTHLY EMPLOYMENT REPORT," DOT Form 1589 as required by Required Contract Provision 03-10-09-R5. This requirement applies even if the City limits the use of Recovery Act funds to the construction contract and fails to use Recovery Act funds for the City's construction inspection.
- c. If the City retains a third party to perform some or all of the construction inspection, the City will incorporate into the construction inspection contract the current Required Contract Provision 03-10-09-R5 which requires the consultant to complete on-line and submit electronically the "MONTHLY EMPLOYMENT REPORT," DOT Form 1589. This requirement applies even if the City limits the use of Recovery Act funds to the construction contract and fails to use Recovery

Act funds for the construction inspection contract.

- d. If the City retains a third party to perform some or all of the construction inspection, the City will incorporate into the construction inspection contract the current Required Contract Provision 04-03-09-R3 which permits the United States Comptroller General or the Inspector General and their representatives to audit Project records and interview employees.

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 American Recovery and Reinvestment Act (ARRA) funds, Surface Transportation Project (STP) funds, and City funds as allocated by the Secretary to the Project.

- ARRA Funds

To be responsible for zero percent (0%) of the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering, up to \$2,000,000.00 for the Project from ARRA funds. However, this obligation is contingent upon the City's compliance with Article II, paragraph 2.

- STP Funds

To be responsible for twenty percent (20%) of the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering, up to \$1,250,000.00 for the Project from STP funds.

The Secretary shall not be responsible for one hundred percent (100%) of the total actual costs of construction (which includes the costs of all construction contingency items) and construction engineering that exceeds \$3,250,000.00 for the Project from the combined ARRA and STP funds.

The Secretary shall not be responsible for one hundred percent (100%) of the total actual costs of preliminary engineering, rights of way, and utility adjustments for the Project.

19. If any payment is due to the Secretary, such payment shall 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. To participate and cooperate with the Secretary in any audit of the Project undertaken by FHWA, the United States Comptroller General, or the Inspector General and their representatives as provided in Required Contract Provision 04-03-09-R3. 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. If any such audits reveal payments have been made with federal funds by the City for items considered non-participating or if any such audits result in disallowance of costs for other reasons, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.

21. If it cancels the Project, it will reimburse the Secretary for any costs 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 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 all such encroachments be removed before the Project is advertised for letting (provided, however, if the Secretary is satisfied, with respect to any encroachment, 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 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 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 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.

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 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. 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. 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. When the Project is completed and final acceptance is issued 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.

30. To allow the contractor to work anytime during a twenty-four (24) hour period. The City agrees to grant all permits and licenses necessary to allow sound levels in excess of those set forth in local ordinances and/or to waive any and all local ordinances or restrictions on the contractor's working hours.

ARTICLE III

THE PARTIES MUTUALLY AGREE:

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

3. 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. 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. 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. The Project Special Provision 03-10-09-R5, **REQUIRED CONTRACT PROVISIONS, AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, REPORTING REQUIREMENTS FOR RECOVERY ACT CONTRACTS**, attached hereto, is hereby made a part of this Agreement.

8. The Project Special Provision 04-03-09-R3, **REQUIRED CONTRACT PROVISIONS, AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009, IMPLEMENTATION OF SECTION 902 AND 1515(b)**; attached hereto, is hereby made a part of this Agreement.

9. 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.

10. 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. (Date)
Deputy Secretary for Engineering and
State Transportation Engineer