

PROJECT NO. (US) 40-23 KA-1869-01

US-40 AND K-10 INTERCHANGE AREA TRANSPORTATION PLAN

CITY OF LAWRENCE

DOUGLAS COUNTY

LAWRENCE-DOUGLAS COUNTY METROPOLITAN PLANNING ORGANIZATION

AGREEMENT

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

CITY OF LAWRENCE, KANSAS, hereinafter referred to as "CITY;”

DOUGLAS COUNTY, KANSAS, hereinafter referred to as “COUNTY;”

LAWRENCE-DOUGLAS COUNTY METROPOLITAN PLANNING ORGANIZATION, hereinafter referred to as “MPO;”

Collectively referred to as the “Parties.”

AUTHORITY:

The Parties are empowered by K.S.A. 12-2901 *et seq.* to enter into agreements for such a Plan. The Parties have determined the Plan will benefit the traveling public.

PURPOSE: Recognizing the mutual desire of the Parties for orderly, quality and sustainable development within the area of the US-40 and K-10 interchange, the Parties desire to cooperatively participate in a planning process and to cause the preparation of an Area Transportation Plan (“Plan”) that will serve as a framework for potential highway enhancements, identification and preservation of right-of-way that may be necessary to accommodate projected enhancements, access management objectives for the highway and for the inter-facing local network, and effective inter-connectivity of the local street/road network with the highway. The Parties further desire to cause the preparation of a plan that also will set forth the roles each of the Parties will agree to undertake, both individually and jointly, to preserve this area’s integrity and enhance opportunities for economic development within the area for all Parties. The Parties understand they will negotiate, at the conclusion of this process, an Interlocal Cooperation Agreement, wherein the Parties agree to cooperatively implement the Plan collaboratively developed through their participation in this planning process.

PROJECT: The Parties desire to enter into this Agreement for the Plan described as follows:

Develop a transportation plan for the area surrounding the US-40/K-10 interchange, to include the US-40 corridor beginning at East 800 Road, proceeding east one and one half mile, terminating at George Williams Way and approximately one half mile either side of the centerline(s) of said highway facilities, hereinafter the "Planning Area."

CONSULTANT:

The Parties have selected BG Consultants, Inc. ("Consultant") to develop the Plan.

The Plan will be developed by the Consultant, pursuant to a KDOT consultant contract, as the same is amended from time to time in accordance with its terms, hereinafter, the "Consultant Contract." The Consultant Contract is deemed to be incorporated into this Agreement by reference as if fully included herein.

EFFECTIVE DATE:

The Parties, in consideration of the premises, shall mutually agree to perform in accordance with this Agreement on _____, _____.

ARTICLE I

SECRETARY AGREES:

1. To contract, on behalf of the Parties, to make or secure the making of studies, designs, plans, estimates, surveys, and any necessary studies or investigations, and supervise the Plan and administer the payments due the consultant pursuant to the Consultant Contract, including any portion of cost borne by the remaining Parties pursuant to this Agreement;
2. Secretary agrees to furnish each Party one (1) paper copy and one (1) electronic copy of the final Plan for each Party's records;
3. To have a designated representative attend monthly meetings organized by the Parties to discuss the progress of the Plan and the quality of the materials being prepared;
4. To administer the Consultant Contract. The Secretary further agrees, as representative for the Parties, to manage the Consultant's development of the Plan and ensure the provision of the final deliverables, as described in the agreed to project scope which is attached to the Consultant Contract as Exhibit A, and administer the payments due the Consultant, pursuant to the Consultant Contract, including the portion of the cost borne by the other Parties;

5. To require the Consultant to indemnify, hold harmless, and save the Parties from personal injury and property damage claims arising out of the acts or omissions of the Consultant, the Consultant's agent, sub-consultants (at any tier), or suppliers (at any tier). If the Parties are required to defend a third party's claim, the Consultant shall indemnify the Parties for damages paid to the third party and all related expenses that the Parties incur in defending the claim;

6. To be responsible for sixty seven percent (67%) of the contract amount, as set forth in the Consultant Contract, not to exceed a maximum of \$67,000. The Secretary shall not be responsible for any costs incurred pursuant to the Consultant Contract that exceed \$67,000; and

7. After receipt of the final voucher claim, the Secretary's Chief of Fiscal Services, in a timely manner, will prepare a complete and final billing of all costs incurred pursuant to the Consultant Contract, for which the remaining Parties are responsible, as provided for in this Article, and shall then transmit the complete and final billing to the remaining Parties. Any amount of overpayment by the remaining Parties shall be refunded to them in a timely manner.

8. The Secretary reserves the right not to make payment for work performed pursuant to the Consultant Contract that is not in substantial compliance with the agreed upon scope and it not performed in accordance with generally recognized professional standards and based on sound engineering and planning judgment.

9. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, Secreatry, will defend, indemnify, hold harmless, and save the remaining Parties and their 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 negligent acts or omissions of the Secretary's authorized representatives or employees;

ARTICLE II

CITY AGREES:

1. To deposit with the Secretary its estimated share of the costs to be incurred pursuant to the Consultant Agreement. The date indicated for City to deposit its estimated share of the total Plan expenses is fifty (50) days after the date of execution by the Secretary of the Consultant Contract;

2. To be responsible for eleven percent (11%) of the total actual costs of the Plan, up to \$11,000; and

ARTICLE III

COUNTY AGREES:

1. To deposit with the Secretary its estimated share of the costs to be incurred pursuant to the Consultant Agreement. The date indicated for County to deposit its estimated share of the total Plan expenses is fifty (50) days after the date of execution by the Secretary of the Consultant Contract;
2. To be responsible for eleven percent (11%) of the total actual costs of the Plan, up to \$11,000; and

ARTICLE IV

MPO AGREES:

1. To deposit with the Secretary its estimated share of the costs to be incurred pursuant to the Consultant Agreement. The date indicated for MPO to deposit its estimated share of the total Plan expenses is fifty (50) days after the date of execution by the Secretary of the Consultant Contract;
2. To be responsible for eleven percent (11%) of the total actual costs of the Plan, up to \$11,000; and

ARTICLE V

NON-KDOT PARTIES AGREE THAT:

1. The Plan shall be undertaken for and on behalf of the Parties by the Secretary acting as their representative;
2. The Secretary is authorized to take such steps that are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of state aid for this project;
3. The Parties and the Consultant shall be jointly and severally responsible for the adequacy of the Plan;
4. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, City, County and MPO, 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 negligent acts or omissions of their authorized representatives or employees;
5. If any payment is due to the Secretary, that payment shall be made within thirty (30) days after receipt of a billing from the Secretary's Chief of Fiscal Services;

6. To adopt all necessary ordinances and/or resolutions and to take those legal steps as may be required to give full effect to the terms of this Agreement, which legal steps include, but are not limited negotiation of the Interlocal Cooperation Agreement;

7. To participate and cooperate with the Secretary in an annual audit of Plan costs. City, County and MPO shall make their records and books available to representatives of the Secretary for audit for a period of five (5) years after date of final payment under this Agreement and, if any such audits reveal payments that have been made to City, County and MPO for items considered non-participating, they shall promptly reimburse the Secretary for those items upon notification by the Secretary;

8. To, upon request by the Secretary, provide the Secretary an accounting of all actual non-participating costs paid directly by City, County and MPO to any party outside of KDOT for any other major expense associated with the Plan, thus enabling the Secretary to report all costs of the Plan to the legislature.

ARTICLE VI

THE PARTIES MUTUALLY AGREE THAT:

1. The Plan will focus on integrating current and future land use and transportation demands, with the minimum Plan objectives being to:

- Create a public involvement/visioning plan that will achieve informed consent among the general public and other stakeholders.
- Identify current and future land uses along the Planning Area and identify areas that are likely to experience traffic management issues.
- Address current and anticipated access and traffic management issues;
- Identify opportunities for coordination of general, comprehensive and area plans and development codes, including, but not limited to zoning ordinances and subdivision regulations, among the jurisdictions;
- Develop a Planning Area identity;
- Establish the framework for a formalized and sustainable partnership among the Parties; and
- Produce cost-effective and practical strategies for balancing land use and transportation, and outline the Parties' responsibilities for plan implementation.

2. To comply with all appropriate state and federal laws and regulations;

3. Each Party will be individually responsible for one hundred percent (100%) of any costs related to the Plan incurred by that Party prior to the execution of the Consultant Contract by the Secretary;

4. If any items are found to be non-participating by the Secretary, acting on his or her own behalf, the total cost of these items will be paid for by the responsible Party;

5. If, in the judgment of the Secretary, sufficient funds are not appropriated to fulfill the payment obligations of the Secretary, as set forth in Article 1 of this Agreement, the Secretary may terminate this Agreement at the end of the then current fiscal year; provided that, the Secretary will participate in all approved Consultant Contract costs incurred prior to the termination of the Agreement, however, the Secretary will not participate in cost that are not in substantial compliance with the agreed upon scope of the Consultant Contract and is not performed in accordance with generally recognized professional standards and based on sound engineering and planning judgment;

6. This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Parties, and their successors in office;

7. 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 of provisions of this Agreement;

8. The Special Attachment No. 1, attached hereto as Exhibit A, pertaining to the implementation of the Civil Rights Act of 1964, is hereby made a part of this Agreement;

9. The provisions found in Contractual Provisions Attachment Form DA-146a, which is attached hereto as Exhibit B and executed by the parties in this Agreement are hereby incorporated into this Agreement by reference and made a part hereof;

10. It is mutually understood and agreed that nothing contained in this Agreement is intended or shall be construed, in any manner or under any circumstances whatsoever, as creating or establishing the relation of co-partners or creating or establishing the relationship of joint venture between the parties;

11. The interests of individual property owners are recognized under law. These interests are not, however, paramount. The traveling public has rights to a safe and efficient public highway system and to efficient expenditure of public funds. Thus, the Parties have a responsibility to regulate access and preserve corridors, which arises from their duty to administer and maintain the public highway system; and

12. This Agreement may be executed at different times and in any number of counterparts, each of which, when so executed, shall be deemed to be an original, and all of which taken together shall constitute one and the same 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.

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

CITY OF LAWRENCE
ATTEST:

Jonathan Douglass, Acting City Clerk
(SEAL)

David Corliss, City Manager

DOUGLAS COUNTY
ATTEST:

Jamie Shew, County Clerk
(SEAL)

Nancy Thellman, Commission Chair

LAWRENCE-DOUGLAS COUNTY METROPOLITAN PLANNING ORGANIZATION
ATTEST:

Scott McCullough, MPO Secretary
(SEAL)

Lisa Harris, MPO Chair