

7/7/99 orig: City Clerk
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PROJECT NO. 46 N-0103-01
STP-N010(301)

GRADING, BRIDGE, SURFACING, AND SEEDING
CITY OF OVERLAND PARK, KANSAS

A G R E E M E N T

This Agreement, made and entered into this 15th day of March, 1999, by and between the City of Overland Park, Kansas, hereinafter referred to as the City, and the Secretary of Transportation of the State of Kansas, hereinafter referred to as the Secretary.

R E C I T A L S:

WHEREAS, The Secretary and the City are empowered by the Laws of Kansas to enter into agreements to enable them to participate in the benefits to be secured from federal-aid funds, or funds made available from the federal government for road or street improvements, and

WHEREAS, under the terms of the Federal-Aid Highway Act and the rules and regulations of the Federal Highway Administration, states and cities are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of roads and streets, 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 the state and under the City approved "Project Procedures Manual for Non-NHS Projects," and

WHEREAS, the City requests the Secretary to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing approval by the Federal Highway Administration of a safety project for the construction of the Quivira Road in the City and is described as follows:

Quivira Road, from 143rd Street to 135th Street.

Total length of project is approximately 1.61 kilometers.

NOW, THEREFORE, in consideration of the premises and to secure the approval and construction of the project, the parties hereto mutually agree as follows:

1. The City agrees to prepare plans and specifications for the project, to let the contract, to construct the project in accordance with the plans specifications, and "Project Procedures Manual for Non-NHS Projects," to supervise the construction and administer the payments due the contractor, including the portion of cost borne by the Secretary. The plans and specifications, when approved by the City and the State Transportation Engineer, are by reference made a part of this Agreement. The City agrees to furnish the Secretary one (1) set of plans for his or her records. The City further agrees that the specifications will require the contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

2. The City agrees that it will, in its own name as provided by law, acquire by purchase, dedication or condemnation all of the rights of way, easements and access rights shown on the approved 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 be acquired in compliance with the Uniform Relocation 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 CFR, Part 24 entitled "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs." The City agrees to 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.

3. The City agrees to contact the Secretary if there will be any displaced person on the project prior to making the offer for the property. The parties hereto 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 CFR, Part 24 entitled "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," and in general accordance with K.S.A. 58-3501 to 58-3506, inclusive and Kansas Administrative Regulations 36-16-1 et. seq.

4. The Secretary agrees to provide technical assistance 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 to insure participation of federal funds in the cost of the project. The City agrees that copies of all documents including recommendations and coordination for appeal, 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.

5. The City agrees that any disposal of or change in the use of right of way or in the access after project construction will require prior written approval by the Secretary.

6. The City agrees to provide all legal descriptions required for right of way acquisition work.

7. The City agrees 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 construction of the project in accordance with the approved plans. New or existing utilities that have to be installed, moved or adjusted will be located or relocated in accordance with the Kansas Department of Transportation "Utility Accommodation Policy, Part Two-Utilities on Primary, Secondary and Urban Highways (1998)." The expense of the removal or adjustment of the utilities located on public right of way shall be borne by the owners. The expense of the removal or adjustment of privately owned utilities located on private right of way or easement shall be borne by the City.

8. The City agrees that it will immediately take such steps as are necessary to facilitate the early adjustment of utilities and upon notification by the Kansas Department of Transportation's District Engineer, 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, curbs or sidewalks.

9. The City agrees to certify to the Secretary that all privately owned utilities occupying public right 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.

10. It is understood that the City shall determine the manner in which traffic is to be handled during construction in accordance with the Manual of Uniform Traffic Control Devices.

11. The City agrees to let the contract for the project and shall award the contract to the lowest responsible bidder upon concurrence in the award by the Secretary. The City further agrees to administer the construction of the project in accordance with the approved plans, as required by the Federal Highway Administration, to negotiate with and report to the Secretary's representatives and administer the payments due the contractor, including the portion of the cost borne by the City.

12. The City agrees to provide the construction inspection in accordance with the rules and guidelines developed for the KDOT approved construction engineering program.

13. The Secretary agrees to reimburse the City for eighty percent (80%) of the total actual cost of construction, including the cost of all construction contingency items; and construction engineering, but not to exceed a maximum of \$4,360,000.00. The Secretary agrees to make partial payments to the City for amounts not less than one-thousand dollars (\$1,000) and no more frequently than monthly. Such payments will be made after receipt of proper billing and certification by the City that the project is being constructed within substantial compliance of the plans and specifications. However, if any items are found to be non-participating by the Secretary, acting in his own behalf and on behalf of the Federal Highway Administration, the total cost of these items will be paid for by the City.

14. The City agrees to be responsible for twenty percent (20%) of the total actual cost of construction, which includes the cost of all construction contingency items; and construction engineering, up to a maximum of \$4,360,000.00. The City also agrees to be responsible for one-hundred percent (100%) of all costs that exceed \$4,360,000.00, and further agrees to be responsible for one-hundred percent (100%) of the preliminary engineering, right of way, and utility adjustment costs for the project.

15. It is mutually agreed by the City and the Secretary that representatives of the Secretary may make periodic inspection of the project and the records of the City as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as necessary to the performance of this contract.

16. It is mutually agreed that any changes in plans or specifications during the progress of the work requires approval in writing by the City and the Secretary and no change in plans or materials substitution will be permitted by the City without such approval.

17. It is the policy of the Secretary to make any final payments to the City for services related to the Highway program in a timely manner. The Single Audit Standards set forth in Federal O.M.B. Circular A-133, "Audit of State and Local Governments" and in 49 C.F.R. 18 (Common Rule), require that an audit be performed by an independent certified public accountant in accordance with those standards. All information audited shall comply with 49 C.F.R. 18 (Common Rule).

The Secretary may pay any final amount due for the 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 Secretary's Bureau of Fiscal Services. The City, by acceptance of this agreement, acknowledges that 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 that as the Single Audit Report becomes available for the reimbursement period (normally should occur within a period of 1-2 years), that the Secretary will review the Single Audit Report for items which are declared as not been eligible for reimbursement. The City agrees to refund payments made by the Secretary to the City for items subsequently found to be not eligible for reimbursement by audit. The City further agrees to make such payment to the Secretary within thirty (30) days after receipt of a complete and final billing from the Secretary's Chief of Fiscal Services.

18. The City agrees that when the project is completed and approved that it 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.

19. The City agrees that it will adopt an ordinance requiring the removal of all encroachments either on or above the limits of the right of way shown on the approved 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 right 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 feet back of the right of way line. All right 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 laws.

20. The City agrees to locate and shall 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 right of ways, 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 right of ways, easements and access rights acquired by the City.

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 contract 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 contract to maintain a suit for personal injuries, property damages, or hazardous waste claims. The duties, obligations and responsibilities of the parties to this contract 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 right of ways, 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 right of ways, 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 federal and state laws and regulation, 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 Federal and State 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. Sec. 261 et. seq., Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. Sec. 280 et. seq., Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. Sec. 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., Kansas environmental laws and regulations, and city and county standards where the hazardous waste site is located.

21. The City agrees to control parking of vehicles on the city street throughout the length of the improvement 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.

22. The City agrees 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.

23. The City agrees to control the construction or use of any entrances along the project within the City other than those shown on the approved plans, unless prior approval is obtained from the Secretary.

24. 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 Secretary.

25. The City hereby expressly agrees and covenants that they will defend, hold and save harmless and indemnify 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 or subcontractors. The City shall not be required to defend, indemnify and hold the Secretary harmless for negligent acts of the Secretary or his or her authorized representatives or employees.

26. The City agrees to require the contractor to indemnify and save the Secretary and the City harmless from and against all liability for damages, costs, and expenses arising out of any claim, suite, action, or otherwise for injuries and/or damages sustained to persons or property by reason of the work performed by the contractor, his or her subcontractor, agents, or employees under this Agreement.

27. The City agrees 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.

28. The parties do hereby agree 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.

29. It is further understood 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.

30. It is expressly agreed 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 of 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:

CITY OF OVERLAND PARK, KANSAS

~~NORMA MOFFET~~, CITY CLERK

ED EILERT, MAYOR

(SEAL)

E. DEAN CARLSON
SECRETARY OF TRANSPORTATION

APPROVED AS TO FROM:

by _____

~~JANE NEFF BRAIN~~
SENIOR ASSISTANT CITY ATTORNEY



KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment

To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, AND ANY AMENDMENTS THERETO,
REHABILITATION ACT OF 1973, AND ANY AMENDMENTS THERETO,
AMERICANS WITH DISABILITIES ACT OF 1990, AND ANY AMENDMENTS THERETO
AGE DISCRIMINATION ACT OF 1975, AND ANY AMENDMENTS THERETO,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN
MINORITY POPULATIONS AND LOW INCOME POPULATIONS (1994) AND ANY AMENDMENTS
THERETO,

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the Regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23 and 27), issued pursuant to such Act, and Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations, and Low Income Populations (1994), hereby notifies all contracting parties that, the contracting parties will affirmatively insure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following nine "Nondiscrimination Clauses".

CLARIFICATION

Where the term "consultant" appears in the following seven "Nondiscrimination Clauses", the term "consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

During the performance of this contract, the consultant, or the consultant's assignees and successors in interest (hereinafter referred to as the "consultant's"), agrees as follows:

- (1) **Compliance with Regulations:** The consultant will comply with the Regulations of the U.S. Department of Transportation relative to nondiscrimination in federally-assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Parts 21, 23 and 27, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The consultant, with regard to the work performed by the consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** IN all solicitations either competitive bidding or negotiation made by the consultant for work to be performed under a subcontract including procurements of materials or equipment, each potential subcontractor or supplier shall be notified by the consultant of the consultants obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability or national origin.
- (4) **Information and Reports:** The consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of Transportation of the State of Kansas will be permitted access to the consultants books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a consultant is in the exclusive possession of another who fails or refuses to furnish this information, the consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- (5) **Employment:** The consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability or national origin.

- (6) **Sanctions for Noncompliance:** In the event of the consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the consultant under the contract until the contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract , in whole or in part.
- (7) **Disadvantaged Business Obligation**
 - (a) Disadvantaged Businesses as defined in the Regulations, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have the maximum opportunity to compete for and perform contracts. No person (s) shall be discriminated against on the basis of race, religion, color, gender, age, disability national origin in the award and performance of Federally-assisted contracts.
- (8) **Executive Order 12898**
 - (a) To the extend permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by the planning and environmental process.
- (9) **Incorporation of Provisions:** The consultant will include the provisions of paragraph (1) through (8) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the consultant may request the State to enter into such litigation to protect the interests of the State.