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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

