

PROJECT NO. 235-87 KA-0161-04  
ACIM-2351(197)  
INTERCHANGE IMPROVEMENTS  
CITY OF WICHITA, KANSAS  
COUNTY OF SEDGWICK, KANSAS

## AGREEMENT

**PARTIES:** **MICHAEL S. KING, Secretary of Transportation**, Kansas Department of Transportation (KDOT), hereinafter referred to as the “Secretary,”

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

**Sedgwick County, Kansas**, hereinafter referred to as the “County,”

**Collectively** referred to as the “Parties.”

**PURPOSE:** The Secretary has authorized an interchange improvement project, hereinafter referred to as the “Project.” The Parties are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of the State Highway System through the City. The Secretary desires to construct the Project on I-235 and US-54. The City agrees to the Project in the City. The Parties desire to enter into an Agreement to make improvements to the state highway through the use of state or federal funds or a combination of state and federal funds.

**PROJECT:** The Secretary and the City desire to enter into this Agreement for the construction of a Project for the improvement of I-235 and US-54 in the City and is described as follows:

Reconstruction of the I-235/US-54/US-400/Kellogg Ave interchange and reconstruction of West Street interchange.

### 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 \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

## ARTICLE I

### THE SECRETARY AGREES:

1. The Project shall be undertaken and completed by the Secretary except as otherwise modified by this Agreement.

2. In the name of the Secretary, to perform appraisal and acquisition work including condemnation, if necessary, for rights of way and easements as shown on the Project plans. All costs for rights of way and easements as shown on the Project plans will be paid for with state funds or federal funds or a combination of state and federal funds.

3. To receive and disburse all funds directly to the Parties involved in acquisition of rights of way and easements.

4. To prepare the Project plans, let the contract for the Project and administer the construction of the Project as required by the Federal Highway Administration to negotiate with and report to the Federal Highway Administration and administer the payments due the contractor.

5. All construction items included in the Project plans shall be paid for with state funds, federal funds and County funds or a combination of state and federal and County funds.

6. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the Secretary will defend, indemnify, hold harmless, and save the City, County 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 the provisions or performance of this Agreement by the Secretary, the Secretary's employees, agents, or subcontractors. The Secretary shall not be required to defend, indemnify, hold harmless, and save the City and County for negligent acts or omissions of the City and County or their authorized representatives or employees.

7. To require the contractor to indemnify, hold harmless, and save the Secretary, the County 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, the County 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, the County or the City or both incur in defending the claim.

8. To be responsible for one hundred percent (100%) of the total actual costs of construction (which includes the costs of all construction contingency items) that exceed \$11,600,000.00. Furthermore, the Secretary shall be responsible for one hundred percent (100% of the total actual costs of construction engineering, preliminary engineering, rights of way, and utility adjustments for the Project.

9. To withhold the County's Fiscal Years' 2016, 2017, and 2018 federal fund appropriations allocated by KDOT, in the manner described in Article III, paragraph 3, as the County's share of costs for the Project.

## ARTICLE II

### THE CITY AGREES:

1. It shall, by resolution, authorize the Secretary to undertake and complete the Project within the corporate limits of the City.
2. 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, unless the Secretary determines the City will incur an unnecessary hardship. The City shall provide Secretary with a copy of all appropriate legal descriptions, deeds and easements for any land utilized by the Secretary. Further, the City acknowledges that providing these copies of the legal descriptions, deeds and easements by the City to the Secretary is an obligation of the City for this Agreement and construction of the Project.
3. To initiate and proceed with diligence, under City ordinance 10.04.010, the removal of all encroachments either on or above the limits of the right of way shown on the Project plans. 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 12 feet back of the right of way line. All rights of way provided for the Project shall be used solely for public highway purposes and no signs, posters, billboards, roadside stands, fences, structures or other private installations shall be permitted within the rights of way limits except as provided by state laws.
4. 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.
5. To prohibit parking of vehicles on the city connecting link and on the acceleration and deceleration lanes of all connecting streets and highways and on additional portions of the connecting streets and highways the Secretary may deem necessary to permit free flowing traffic throughout the length of the improvement covered by this Agreement.
6. To maintain the control of access rights and to prohibit the construction or use of any entrance or access points along the Project other than those shown on the Project plans. The City agrees any exceptions therefrom must be approved by the Secretary.

7. 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.

8. The City and the Secretary shall determine the manner in which traffic is to be handled during construction. It is therefore agreed between the Parties that before Project plans have been completed, detour routes and street closings, if necessary, shall be agreed upon by authorized representatives of the City and the Secretary, and noted on the Project plans. If revisions to the traffic handling plan are proposed during the progress of construction, the City and the Secretary shall approve such revisions before they become effective.

### **ARTICLE III**

#### **THE COUNTY AGREES:**

1. 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.

2. Upon request by the Secretary, to provide the Secretary an accounting of all actual non-participating costs which are paid directly by the County to any party outside of the KDOT and all costs incurred by the County 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.

3. To be responsible for \$11,600,000.00 of the total actual cost of construction (which includes the costs of all construction contingency items) for the Project. The County commits its Fiscal Years' 2016, 2017, and 2018 federal fund appropriations to offset the County's share of costs for the Project. Specifically, the County shall deposit with the Secretary: (i) an amount equal to the difference between \$4,000,000.00 and its allocated 2016 federal funds fifty (50) days after the letting date of the Project but no sooner than January 31, 2016; (ii) an additional amount equal to the difference between \$4,000,000.00 and its allocated 2017 federal funds one year after the letting date of the Project but no sooner than January 31, 2017; and (iii) an additional amount equal to the difference between \$3,600,000.00 and its allocated 2018 federal funds two years after the letting date of the Project but no sooner than January 31, 2018. The County shall not be responsible for the total actual costs of construction engineering, preliminary engineering, rights of way, and utility adjustments for the Project.

4. To participate and cooperate with the Secretary in an annual audit of the Project. The County 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

County for items considered non-participating, the County shall promptly reimburse the Secretary for such items upon notification by the Secretary.

#### **ARTICLE IV**

##### **THE PARTIES MUTUALLY AGREE:**

1. Under the terms of the Federal-Aid Highway Acts 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, in order to be eligible for such federal aid, such work is required to be done in accordance with the laws of the state of Kansas and federal requirements.

2. The Secretary 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 Kansas Department of Transportation Utility Accommodation Policy (UAP), as amended or supplemented.

If the City has a population of less than 2,501 (based on the U.S. Bureau of Census-2010 Census), the Secretary agrees to be responsible for the expense to remove or adjust City owned utility facilities located on public rights of way as necessary to construct the Project in accordance with the final design plans. The payment of such expense by the Secretary shall be by a separate utility adjustment agreement between the Secretary and the City. If the City has a population of more than 2,500 (based on the U.S. Bureau of Census-2010 Census), the utility owners shall be responsible for the expense to remove or adjust all utility facilities on public rights of way as necessary to construct the Project in accordance with the final design plans. The expense of removal or adjustment of utility facilities located on private easements shall be reimbursed to the utility owners by the Secretary. The payment of such expense by the Secretary shall be by separate utility adjustment agreement between the Secretary and the utility owners.

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

4. They have in the past entered into an agreement covering routine maintenance of the city connecting link, and it is the intention of the Secretary and the City the agreement for routine maintenance shall remain in full force and effect and the mileage set out thereon shall not be affected by this Agreement.

5. 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.

6. 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.

7. This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary, the County 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.

***The signature page immediately follows this paragraph.***

**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 WICHITA, KANSAS

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

(SEAL)

ATTEST:

BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
COUNTY CLERK (Date)

\_\_\_\_\_  
CHAIRMAN

(SEAL)

\_\_\_\_\_  
MEMBER

\_\_\_\_\_  
MEMBER

Kansas Department of Transportation  
Michael S. King, Secretary of Transportation

**Approved As To Form**

*[Signature]*

By: \_\_\_\_\_

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

## 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,  
49 C.F.R. Part 26.1 (DBE Program), 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, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure 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 "Nondiscrimination Clauses".

### CLARIFICATION

Where the term "Consultant" appears in the following "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"), agrees as follows:

- 1) Compliance with regulations: The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations 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, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the 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 Material 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 and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 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 the Transportation of the State of Kansas will be permitted access to the Consultant's 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 Consultant complies, and/or
  - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) Disadvantaged Business Obligation
  - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for 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 equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
  - (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) Executive Order 12898
  - (a) To the extent 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 programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.
- 9) Incorporation of Provisions: The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and 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.

### CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (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 every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.