

AGREEMENT

THIS AGREEMENT is made and entered into this 7th day of June, 2016, by and between Sedgwick County, Kansas, hereinafter referred to as "County" and the City of Valley Center, Kansas, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, County and City are authorized to enter into an agreement pursuant to K.S.A. 12-2908, as amended; and this is not an interlocal agreement as identified within K.S.A. 12-2901, *et seq.*; and

WHEREAS, County has approved a road paving project on 93rd Street North between Meridian and Seneca and City desires to make similar improvements to 93rd Street North between Seneca and Broadway which is located within the corporate limits of City; and

WHEREAS, City desires to have County complete the improvements to 93rd Street North between Seneca Street and Broadway Avenue at City's expense so that both City and County can benefit from cost savings due to economies of scale;

NOW, THEREFORE, for and in consideration of the parties' mutual promises and covenants, it is agreed as follows:

1. The purpose of this Agreement is to provide for the construction and financing of cement stabilized road base, roller compacted concrete pavement and replacement of various drainage structures on 93rd Street North from Meridian Street to Broadway Avenue, a portion of which is inside of the corporate limits of City and a portion which is a County-maintained road in the unincorporated area of Sedgwick County, and hereinafter referred to as "Project". County will be responsible for paving the intersection at 93rd Street North and Seneca Street, including 52 feet to the east of the section line on Seneca Street.
2. Cost of right of way or utility relocations required for portions of the Project within the corporate limits of City will be paid by City. County will provide project records to City upon City's request. County will provide inspection services and completed design services to City at no cost to the City, except that City shall be solely responsible for any costs associated with any redesign, construction, and construction engineering costs of the portion of the Project that the City has requested a change in the scope of work initially proposed in County's Request for Bids on the Project. Provided that any requested change in the scope of the work by the City from that work initially proposed in the County's Request for Bids shall be evidenced by the written authority of the City's mayor or if the mayor is not immediately available, by the City's administrator, as will any such City changes requested to the County's plans under Sub-paragraphs 3 (C) and (D). The City's responsibility for costs related to any City-initiated design modifications is to be considered separate from the division of responsibility for costs of change orders included within Paragraph 3.

3. County will contract for construction of the Project. County shall be responsible for all legal and engineering matters (except as otherwise noted in the Agreement) concerning the completion of the Project, including the required bid process and selection of a vendor for the Project. County's procedures for any contract change orders with the selected vendor shall also apply, subject to conditions included within this Paragraph. City would pay for one hundred percent (100%) of the cost of any change order related to the project east of (52 feet) Seneca Street. County would pay for one hundred percent (100%) of any change order related to any other portion of the project. For "Controlling Items of Work," as defined below and within the Project's Contract Documents that govern this Project, the County has sole authority to approve the completion of the improvements with the contractor on the Project and also for any potential change orders.

For purposes of this Agreement, "Controlling Items of Work" includes those work item(s) that are directly interrelated such that each has a definite influence on progress of the overall work.

A. Controlling Items of Work Less Than \$20,000.00

In recognition of the fact that any delay for Controlling Items of Work may cause the County to incur additional costs with its contractor for the Project, for any change orders regarding Controlling Items of Work that would in aggregate result in the City being responsible for less than \$20,000.00 in additional costs in excess of the estimated \$770,000.00 identified within Paragraph 5, the City authorizes the County to approve such change orders.

B. Controlling Items of Work for \$20,000.00 or More

In recognition of the fact that any delay for Controlling Items of Work would cause the County to incur additional costs with its contractor for the Project, for any change orders regarding Controlling Items of Work that would in aggregate (or once the aggregate total of any such change orders) result in the City being responsible for \$20,000.00 in additional costs in excess of the estimated \$770,000.00 identified within Paragraph 5, the City would have an opportunity to provide for an expedited response to be considered by County within twenty-four (24) hours of any consultation ("consultation" occurs at the time County would send an email to the City's representative). Regardless of City's stance indicated within its expedited response, County would retain ultimate discretion regarding whether to proceed with the change order(s). City agrees to be responsible for the initial \$19,999.99 in additional costs, as identified within this sub-paragraph, in excess of \$770,000.00, which are east of Seneca Street.

C. Non-Controlling Items of Work Less Than \$20,000.00

For matters that are not Controlling Items of Work, City would authorize County to approve any change orders that could incur aggregate additional costs to City of

less than \$20,000.00 in excess of the estimated \$770,000.00 identified within Paragraph 5, after consultation with the City's representative ("consultation" occurs at the time County would send an e-mail to the City's representative) and with City's approval by City mayor or (acting) City administrator in writing (e-mail would be sufficient) within two (2) business days after County sends the aforementioned email to City's representative. City also authorizes County to approve any such change orders and be responsible for said amount less than \$20,000.00 if, more than two (2) business days have elapsed after such consultation and City has failed to respond, or if the parties are unable to reach an accord within the same timeframe.

D. Non-Controlling Items of Work More Than \$20,000.00

For any change orders for non-Controlling Items of Work that would result in a \$20,000.00 or more aggregate increase in cost to City in excess of the estimated \$770,000.00 identified within Paragraph 5, County would be required to obtain written approval (e-mail would be sufficient) from City's mayor or (acting) city administrator within four (4) business days after County's consultation (as defined earlier within this Paragraph) with the City's representative. Regardless of City's stance indicated within its response, County would retain ultimate discretion regarding whether to proceed with the change order(s). City agrees to be responsible for the initial \$19,999.99 in additional costs, as identified within this sub-paragraph, in excess of \$770,000.00, which are east of Seneca Street.

4. County will coordinate with City to schedule the construction of the Project and traffic control required to accomplish the work. Pursuant to any standard procedures, County will be responsible for notifying the various emergency services of the temporary closure of portions of roads as a result of the Project.
5. City shall reimburse County for the work inside the corporate limits based on the unit prices bid and the actual quantities used to complete the work. Based on bids received on April 26, 2016, the estimated cost of the work within the corporate limits of City is \$770,000.00.
6. County will bill City for its share of the cost of completed work no more frequently than monthly except as outlined in section 7. City shall pay County within 30 days of receipt of said bills.
7. City and County acknowledge that there are uncertainties involved in construction and anticipate that the actual cost of City's portion of the project may exceed \$770,000.00 as a result of increases in costs identified within Paragraphs 2 and 3 of this Agreement. County agrees that City's project costs exceeding \$770,000.00 will not be billed to City until after March 1, 2017. City certifies that any such payments would not, based upon current and anticipated funding levels, result in City being in violation of Kansas Cash Basis Law (K.S.A. 10-1112 and 10-1113).
8. County will notify City when County deems construction work is completed so the City

may review the matter and consult with the County regarding whether City believes the work is satisfactorily completed according to the plans and specifications for the Project. County shall make the final determination as to whether the plans and specifications have been met. County shall notify City when construction of the improvements has been completed at which time City shall accept the improvements within the corporate limits of City and shall thereafter assume all liability for maintenance and repair. The agreement of City for maintenance and repair of the improvements shall survive the termination of this Agreement.

9. The duration of this Agreement is until the date that notice of completion of the improvements has been provided by County to City and City has made final payment.
10. The right of the parties to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that each of the parties shall at all times stay in conformity with such laws, and as a condition of this Agreement the parties reserve the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of their respective legal counsel, the Agreement may be deemed to violate the terms of such laws.
11. For the City, conformance with the Kansas Cash Basis Law as identified within Paragraph 10 of this Agreement is the sole basis for termination of this Agreement. In addition to the reasons indicated within Paragraph 10 of this Agreement, the County can terminate this Agreement with a 30-day notice, due to any failure by the City to make a timely payment required in this Agreement.
12. With respect to matters regarding engineering design and construction, including change orders, City shall indemnify County, and its elected and appointed officials, officers, managers, members, employees and agents, against any and all loss or damage to the extent such loss and/or damage arises out of City's negligence and/or willful, wanton or reckless conduct in the provision of goods and equipment or performance of services under this Agreement.
13. With respect to matters regarding engineering design and construction, including change orders, County shall indemnify City, and its elected and appointed officials, officers, managers, members, employees and agents, against any and all loss or damage to the extent such loss and/or damage arises out of County's negligence and/or willful, wanton or reckless conduct in the provision of goods and equipment or performance of services under this Agreement.

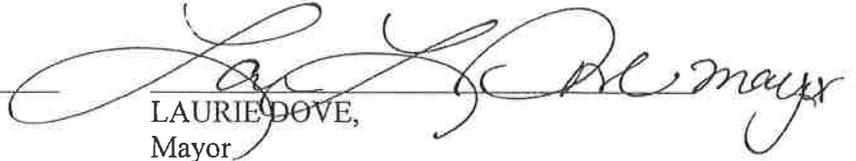
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

THE CITY OF VALLEY CENTER,
KANSAS

JAMES M. HOWELL,
Chairman, Fifth District

LAURIE DOVE,
Mayor



ATTEST:

ATTEST:

KELLY B. ARNOLD,
County Clerk

Kristi Carrithers
KRISTI CARRITHERS,
City Clerk



APPROVED AS TO FORM:

Misha Jacob-Wamen
~~JUSTIN WAGGONER, Misha Jacob-Wamen~~
Assistant County Counselor

