

INTERGOVERNMENTAL SERVICES AGREEMENT

Pertaining to Grant Applications and Right of Way Acquisition for the North Junction Project

THIS AGREEMENT is made and entered into this _____ day of _____, 2018, by and between Sedgwick County, Kansas ("County") and the City of Wichita, Kansas ("City").

WITNESSETH:

WHEREAS, the parties acknowledge that improvements are needed at the interchange of I-235, I-135, K-96 and K-254 known as the North Junction ("Project"); and

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

WHEREAS, pursuant to K.S.A. 68-169, the parties to this agreement have the authority to enter into written agreements for the maintenance of roads; and

WHEREAS, improvements to the North Junction have been a long standing high priority for local communities and the Kansas Department of Transportation; and

WHEREAS, the Kansas Department of Transportation has authorized construction of the first phase of the project but is not able to fund additional phases that have been deemed critical to the safety and efficiency of travel in the Wichita area; and

WHEREAS, the parties believe that certain administrative, engineering and right of way acquisition tasks for the Project could most appropriately and readily be completed through the shared resources of County and City as detailed within this Agreement; and

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

1. The four (4) purposes of this Agreement are to jointly fund the following project tasks for the Project:
 - a. Contract with an engineering consultant to prepare an application for a federal BUILD grant.
 - b. Contract with an engineering consultant to prepare right of way documents needed to acquire right of way for the gold phase of the project.
 - c. Acquisition by city staff of strategic right of way for the gold phase of the project. Included acquisition activities may include contracting for appraisals, title work, etc. as needed to prepare offers and complete transactions.
 - d. Contract with an engineering consultant to prepare an application for a federal INFRA grant after the Notice of Federal Funding Opportunity (NOFO) is published if the project appears to be eligible for funding.

2. City shall administer all contracts for engineering services and right of way acquisition for the Project. City shall follow federal requirements and guidelines for grant eligibility in all project related activities.
3. City shall make agreements as required with the Kansas Department of Transportation to obtain authority to acquire right of way for the project.
4. City shall have final authority and shall be responsible for all legal and engineering matters concerning the completion of the Project, including selection of vendors for the Project.
5. Costs of the Project shall be paid as follows:
 - a. City will pay all internal costs associated with Project management.
 - b. City will pay all internal costs associated with right of way acquisition.
 - c. City will pay one half of the costs for contracted engineering services, contracted right of way services and right of way purchases up to \$500,000.00.
 - d. County will reimburse City for one half of the costs for contracted engineering services, contracted right of way services and right of way purchases up to \$500,000.00.
6. The duration of this Agreement is until the total funding has been expended or until July 30, 2020, whichever occurs first.
7. County shall reimburse City upon request, based on actual expenses, no more frequently than once per month.

General Terms and Conditions

8. **Authority to Contract.** Each party assures it possesses legal authority to contract these services; that resolution, motion or similar action has been duly adopted or passed as an official act of each party's governing body, authorizing the signing of this Agreement, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of each party to act in connection with the application and to provide such additional information as may be required.
9. **Notification.** Notifications required pursuant to this Agreement shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

County: Sedgwick County Manager's Office
 Attn: Contract Notification
 Sedgwick County Courthouse
 525 N. Main, Suite 343
 Wichita, Kansas 67203-3731

and

Sedgwick County Counselor's Office

Attn: Contract Notification
Sedgwick County Courthouse
525 N. Main, Suite 359
Wichita, Kansas 67203-3731

City: City Manager's Office
Attn: Contract Notification
455 N. Main, 13th Floor
Wichita, Kansas 67202

and

City of Wichita Law Department
Attn: Contract Notification
455 N. Main, 13th Floor
Wichita, Kansas 67202

10. **Entire Agreement.** This Agreement and the documents incorporated herein contain all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on any party to this agreement, nor shall it be of any force or effect. This Agreement is not intended to confer upon any person or entity other than the Parties any rights or redress hereunder.
11. **Assignment.** Neither this Agreement nor any rights or obligations created by it shall be assigned or otherwise transferred by any party to this agreement without the prior written consent of the other. Any attempted assignment without such consent shall be null and void.
12. **Amendments.** Neither this Agreement nor any rights or obligations created by it shall be amended by any party to this agreement without the prior written consent of the other parties to this agreement. Any attempted amendment without such consent shall be null and void.
13. **Captions.** The captions and headings in this Agreement are for reference only and do not define, describe, extend, or limit the scope or intent of this Agreement.
14. **Severability.** In the event that any provision of this Agreement is held to be unenforceable, the remaining provisions shall continue in full force and effect.
15. **Waiver.** Waiver of any breach of any provision in this Agreement shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner by County shall not constitute a waiver.
16. **Anti-Discrimination.** All parties, and any contractors hired thereby, agree: (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 and 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 Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto; and (f) if it is determined that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by County, without penalty thereto.

- a. Parties to this Agreement understand that the provisions of this paragraph 13 (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 this Agreement or whose contracts with County or City cumulatively total \$5,000 or less during County's or City's fiscal year.

17. Retention of Records. Unless otherwise specified in this Agreement, County agrees to preserve and make available at reasonable times all of its books, documents, papers, records and other evidence involving transactions related to this Agreement for a period of five (5) years from the date of expiration or termination of this Agreement.

- b. Matters involving litigation shall be kept for one (1) year following termination of litigation, including all appeals, if the litigation exceeds five (5) years.

18. Choice of Law. This Agreement shall be interpreted under and governed by the laws of the State of Kansas. The parties agree that any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.

19. Arbitration, Damages, Jury Trial, and Warranties. Notwithstanding any language to the contrary, no interpretation shall be allowed to find any party to this agreement has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Notwithstanding any language to the contrary, no interpretation shall be allowed to find the parties have consented to a jury trial to resolve any disputes that may arise hereunder. All parties waive their right to a jury trial to resolve any disputes that may arise hereunder.

20. Cash Basis and Budget Laws. 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 K.S.A. 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 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 its legal counsel, the Agreement may be deemed to violate the terms of such laws.

21. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

22. **Termination.** Any party may terminate this Agreement with written notice provided to the other parties up and until construction on the Project has begun.

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

CITY OF WICHITA, KANSAS

DAVID T. DENNIS,
Chairman, Third District

JEFF LONGWELL
Mayor

ATTEST:

ATTEST:

KELLY B. ARNOLD,
County Clerk

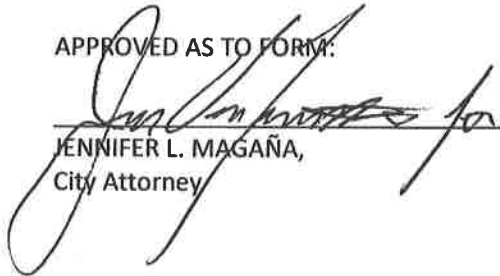
KAREN SUBLETT
City Clerk

APPROVED AS TO FORM:



MICHAEL L. FESSINGER,
Assistant County Counselor

APPROVED AS TO FORM:



JENNIFER L. MAGAÑA,
City Attorney