

PROJECT NO. KA-2589-01
CONSTRUCTION
THOMAS COUNTY, KANSAS

AGREEMENT

PARTIES: DEBRA L. MILLER, Secretary of Transportation, Kansas Department of Transportation (KDOT), hereinafter referred to as the "Secretary," and

Thomas County, Kansas, hereinafter referred to as the "County,"

Collectively referred to as the "Parties."

PURPOSE: The Secretary has authorized an Economic Development construction project, hereinafter referred to as the "Project." The Secretary and the County are empowered by the laws of Kansas to enter into agreements for the reconstruction and resurfacing of county streets. The County desires to reconstruct and resurface County Road 31 1400 feet south from the intersection with US-83 to the entrance of the McCarty Dairy. Counties are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of streets. However, to be eligible for above mentioned financing, such work is required to be done in accordance with the laws of Kansas.

PROJECT: The Secretary and the County desire to enter into this Agreement for construction of the Project, which is described as follows:

Reconstruct and resurface County Road 31 from US-83 South 1400 feet.

EFFECTIVE

DATE: The Parties, in consideration of the premises and to secure the approval and construction of the Project, mutually agree to perform in accordance with this Agreement on the 31st day of October, 2011.

ARTICLE I

THE SECRETARY AGREES:

1. To reimburse the County for one hundred percent (100%) of the total actual participating costs of construction (which includes the costs of all construction contingency items), excluding the on-site grading work which shall be the responsibility of the County. The Secretary agrees to make partial payments to the County for amounts not less than \$1,000 and no more frequently than monthly. Such payments will be made after receipt of proper billing and approval by a licensed professional engineer employed by the County that the Project is being constructed within substantial compliance of the plans and specifications. The Secretary shall not be responsible for the total actual costs of preliminary engineering, right of way acquisition, utility adjustments and construction engineering for the Project.

ARTICLE II

THE COUNTY AGREES:

1. To make or contract to have made design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, to let the contract, to construct the Project in accordance with the design plans, specifications, and the County's approved KDOT Project Procedures Manual, supervise the construction and administer the payments due the contractor, including the portion of cost borne by the Secretary. The County agrees to furnish to the Secretary one (1) set of plans for his or her records. The County further agrees 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. To design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current Project Development Manual for Non-National Highway System Local Government Road and Street Projects, Volumes I and II, Bureau of Local Project's (BLP) project memorandums, memos, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the County's approved Project Development Procedures for Non-NHS Projects/Project Procedures Manual, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable.

3. Upon completion thereof, the design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project shall be submitted to the Secretary by a licensed professional engineer attesting to the conformity of the design plans with the items in paragraph 2 above. Contracts between the County and any consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement shall contain language requiring conformity with paragraph 2 above. In addition, any contract between the County and any consultant retained by them to do the design for the Project covered by this Agreement shall also contain the following:

- a. Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the consultant's control.
- b. Language requiring the consultant to submit to the County (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

- c. Language making the Secretary of Transportation of the State of Kansas a third party beneficiary in the agreement between the County and the consultant. Such language shall read:

Because of the Secretary of Transportation of the State of Kansas' (Secretary's) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the County and the Consultant. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the County or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant's negligent acts, errors, or omissions. Nothing in this provision precludes the County from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary's right to payment or reimbursement.

4. To make or contract to have made design plans, specifications, estimates, and any necessary surveys, studies or investigations, including, but not limited to, environmental, hydraulic or geological investigations or studies for the Project which shall be submitted to the Secretary by a licensed professional engineer and/or a licensed professional architect attesting to the conformity of the design with the items in paragraph 1 above. The final design plans must be signed and sealed by a licensed professional engineer and/or licensed professional architect responsible for preparation of the design plans.

5. The County and any consultant retained by the County shall have the sole responsibility for the adequacy and accuracy of design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Any review of these items performed by the Secretary or his or her representatives is not intended to and shall not be construed to be an undertaking of the County's and its consultant's duty to provide adequate and accurate design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Such reviews are not done for the benefit of the consultant, the construction contractor, the County, or other political subdivision, nor the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, estimates, surveys, and any necessary investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, or any other work performed by the consultant or the County.

6. A duly appointed representative of the County is authorized to sign for the County any or all routine reports as may be required or requested by the Secretary in the completion of the Project undertaken under this Agreement. The design plans must be signed and sealed by the licensed professional engineer responsible for preparation of the design plans. Geological

investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer in accordance with K.S.A. 74-7042, who is responsible for the preparation of the geological investigations or studies. Right of way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the right of way descriptions.

7. To warrant at all times during the construction of the Project and for the period of its useful life, the County will coordinate with the Secretary on all matters involving use of highway right of way adjacent to or in the vicinity of the Project, including but not limited to access, traffic control, drainage and utilities, and shall abide by the Secretary's determination of any needs for joint use of right of way, easements or real property for state highway purposes which may arise from or in connection with this Project.

8. It will, in its own name, as required by law, acquire by purchase, dedication or condemnation all of the rights of way, easements, and access rights shown on the final design plans. The County agrees the necessary rights of way, easements, and access rights shall be acquired in compliance with 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 administrative regulations contained in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The County shall certify to the Secretary such rights of way, easements and access rights have been acquired. The County further agrees it will have recorded in the Office of the Register of Deeds all rights of way deeds, dedications, permanent easements and temporary easements.

9. To contact the Secretary if there will be any displaced persons on the Project prior to making the offer for the property. The Parties mutually agree 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 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. 58-3501 to 58-3507, inclusive and Kansas Administrative Regulations 36-16-1 *et seq.*

10. Within its respective jurisdictions, 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 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 KDOT Utility Accommodation Policy (UAP), as amended or supplemented. The expense of the removal or adjustment of the utilities located on public rights of way shall be borne by the owners. The expense of the removal or adjustment of privately owned utilities located on private rights of way or easement shall be borne by the County.

11. It will expeditiously take such steps as necessary to facilitate the early adjustment of any utilities, will initiate the removal or adjustment of the utilities, and will proceed with reasonable diligence to prosecute this work to completion. The County further agrees to move or

adjust or cause to be moved or adjusted all necessary utilities prior to the scheduled construction letting except those necessary to be adjusted during construction and those which would disturb the existing street surface. The County will initiate and proceed to complete adjusting any remaining utilities in order to ensure the contractor shall not be delayed in construction of the Project.

12. To certify to the Secretary 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 required as a result of street or highway improvements.

13. It shall determine the manner in which traffic is to be handled during construction in accordance with the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD).

14. Since Project selection and funding was based on actions designed to promote economic development, the County shall submit verification to the Secretary that the development necessitating the Project is underway. This verification must be provided prior to letting of the construction contract for the Project. Examples of appropriate verification documents are local-business agreements, building permits, or other such information confirming development is occurring as stated in the Project application. Failure to submit said verification may result in Secretary cancelling the Project.

15. 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 County further agrees to administer the construction of the Project in accordance with the final design plans, the current Project Development Manual for Non-National Highway System Local Government Road and Street Projects, Volumes I and II, Bureau of Local Project's (BLP) project memorandums, memos, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the County's approved Project Development Procedures for Non-NHS Projects/Project Procedures Manual, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable, and administer the payments due the contractor, including the portion of the cost borne by the Secretary and the County.

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

17. To require the contractor to indemnify, hold harmless, and save the Secretary and the County 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 or the County defends a third party's claim, the contractor shall indemnify the Secretary and the County for damages paid to the third party and all related expenses either the Secretary or the County or both incur in defending the claim.

18. To provide (or have provided by a consultant who is certified in construction inspection areas applicable to this Project) the construction inspection in accordance the current Project Development Manual for Non-National Highway System Local Government Road and Street Projects, Volumes I and II, Bureau of Local Project's (BLP) project memorandums, memos, the current KDOT Design Manual, Geotechnical Bridge Foundation Investigation Guidelines, Bureau of Design's road memorandums, the County's approved Project Development Procedures for Non-NHS Projects/Project Procedures Manual, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions, and with any necessary Project Special Provisions, and A Policy on Geometric Design of Highways and Streets of the American Association of State Highway and Transportation Officials Policy, the KDOT Corridor Management Policy, and the latest version, as adopted by the Secretary, of the Manual on Unified Traffic Control Devices (MUTCD), as applicable.

The project plans, specifications, special provisions, Construction Contract Proposal (as available), the Project Procedures Manuals, the agreement estimate for construction engineering services (if applicable) and other Special Attachments (Index provides List of Special Attachments) are all essential documents of this Agreement and are hereby incorporated by reference into this Agreement and are a part thereof.

If the County does not have sufficient qualified engineering employees to accomplish the construction engineering inspection services on this Project, it may engage the professional services of a qualified consulting engineering firm to do the necessary construction engineering inspection services. However, any consultant retained must represent it is in good standing and full compliance with the statutes of the State of Kansas for registration of professional engineers, the Federal Highway Administration and all Federal agencies, provide personnel who are fully qualified to perform the services in a competent and professional manner, and provide the Secretary with a list of assigned inspectors and their certifications. The County may provide personnel who are fully qualified to perform the services in a competent and professional manner, but must provide the Secretary with a list of assigned inspectors and their certifications.

The County will require at a minimum all personnel, whether County or consultant to comply with the high visibility apparel requirements of the KDOT Safety Manual, Chapter 4, Section 8 Fluorescent Vests. If the County executes an agreement for inspection, the agreement shall contain this requirement as a minimum. The County may set additional clothing requirements for adequate visibility of personnel.

19. To be responsible for one hundred percent (100%) of the on-site grading work for the construction of the Project. The County further agrees to be responsible for one hundred percent (100%) of the total actual costs for preliminary engineering, right of way acquisition, utility adjustments, and construction engineering for the Project.

20. To be responsible for one hundred percent (100%) of any Project costs incurred by the County for the Project prior to the funding for the Project being authorized, obligated, and approved by the Secretary.

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

22. To maintain a complete set of final plans reproducible, as-built prints, approved shop drawings, and structural materials certification for five (5) years after the Project's completion. The County further agrees to make such reproducible, prints, drawings, and certifications available for inspection by the Secretary upon request. The County shall provide access to or copies of all of the above-mentioned documents to the Secretary.

23. 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.

24. To adopt an ordinance requiring the removal of all encroachments either on or above the limits of the right of way within their respective jurisdictions as shown on the final design plans for this Project and they will initiate and proceed with diligence to remove or require the removal of the encroachments. It is further agreed all such encroachments be removed before the Project is advertised for letting providing, however, with respect to any encroachment, the physical removal thereof has been fully provided for between the County 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. 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.

25. To locate and be responsible for all costs necessary to remedy or clean up any hazardous waste site, including, but not limited to, leaking underground storage tanks discovered on right of way, easements and access rights acquired by the County. The County 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 way, easements and access rights acquired by the County prior to commencement of construction of the Project. The County shall take appropriate action to contain or remediate any identified hazardous waste site within the Project limits prior to letting of the Project. The County will investigate any and all hazardous waste sites discovered during construction of the Project on

County owned land within the Project boundary and shall take appropriate action to contain or remediate such hazardous waste sites.

For any hazardous waste site, including, but not limited to, leaking underground storage tanks, the County 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 Agreement 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 Agreement to maintain a suit for personal injuries, property damages, or hazardous waste claims. The duties, obligations and responsibilities of the Parties to this Agreement with respect to third Parties shall remain as imposed by law.

The County, 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 way, easements, and access rights acquired by the County. The County reserves the right to bring any action against any third party for any hazardous waste site on any right of way, easements, and access rights acquired by the County.

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 state and federal laws and regulations, 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 state and federal 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. § 261 *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 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., State of Kansas environmental laws and regulations, and City and County standards where the hazardous waste site is located.

26. 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, right 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.

27. To maintain the control of access rights and to prohibit the construction or use of any entrances or access points along the Project within the County other than those shown on the final design plans, and in accordance with the KDOT Corridor Management Policy, unless prior approval is obtained from the Secretary.

28. To control the construction or use of any entrances along the Project within the County including those shown on the final design plans.

29. 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.

30. In order to quantify the impact of the Project on economic development, the County shall submit information detailing the number of jobs created, average salary, and other economic benefits generated due to economic development activities and the Project. This information shall be submitted within one year of completion of the Project.

31. When the Project is completed and final acceptance is issued, 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 County will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

32. If it cancels the Project, it will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The County agrees to reimburse the Secretary within thirty (30) days after receipt by the County of the Secretary's statement of the cost incurred by the Secretary prior to the cancellation of the Project.

ARTICLE III

THE PARTIES MUTUTALLY AGREE:

1. Plans for handling traffic during construction must be included in the design plans provided by the County and must be in conformity with the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD). Detour routes and road closings, if necessary, shall be noted on the design plans.

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

3. If any items are found to be non-participating by the Secretary the total cost of these items will be paid for by the County.

4. Representatives of the Secretary may make periodic inspection of the Project and the records of the County as may be deemed necessary or desirable. The County will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of federal participation. The Secretary does not undertake (for the benefit of the County, the contractor, the consultant, or any third party) the duty to perform the day-to-day detailed inspection of the Project, or to catch the contractor's errors, omissions, or deviations from the final design plans and specifications.

5. The County agrees to comply with all appropriate state and federal laws and regulations for this Project.

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 their successors in office.

8. 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.

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

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 COUNTY OF THOMAS, KANSAS

Shelley A. Harms
COUNTY CLERK

Ken Christensen
COMMISSION CHAIRMAN

Byron Louren
COMMISSION VICE CHAIRMAN

Paul [Signature]
COMMISSION MEMBER

Kansas Dept of Transportation
Debra L. Miller, Secretary of Transportation



BY: [Signature]
Jerome T. Younger, P.E.
Deputy Secretary and
State Transportation Engineer

