

**A RESOLUTION RELATING TO BENEFITS
OBTAINABLE BY CITIES UNDER PROGRAM FOR
FEDERAL AID ON HIGHWAY CONSTRUCTION**

Be it Resolved by the Governing Body of the City of / Columbus Kansas:

That the Mayor and City Clerk are authorized and directed to execute for and on behalf of the City of / Columbus Kansas, Agreement No. / 11701 between the City and Kansas Department of Transportation, giving the Secretary of Transportation of the State of Kansas authority to act for the City, and in its place and stead, to obtain of the City such benefits as are obtainable under the program of the Federal Aid Plan of Highway Construction and obtain the benefits of such legislation for the City on the terms and conditions set forth in such agreement as may be prepared and approved by the Secretary of Transportation for the purpose of securing approval by the Federal Highway Administration of a Project for the improvement of / US-69 in the City and known as Project No. / (US)69-11 K 6799-01

Passed by the (Council)(Commission) this 2nd day of December, 2002

(Approved)(Signed) W E Sheriff, Mayor

(SEAL)

ATTEST: Bushel Wram
City Clerk

PROJECT NO. (US)69-11 K-6799-01
STP-K679(901)

ROADWAY RECONSTRUCTION BASED ON A 13.4 METER ROADWAY INCLUDING 3.0 METER PAVED SHOULDERS, EXTEND EXISTING CULVERTS AS WARRANTED. UPGRADE GUARD FENCE. BRIDGE 007 (BRUSH CREEK DRAINAGE), REPLACE. SIGNING.

CITY OF COLUMBUS, KANSAS

AGREEMENT

This Agreement, made and entered into this 2nd day of December 2002, by and between the City of Columbus, Kansas, hereinafter referred to as the City, and the Secretary of Transportation of the State of Kansas, hereinafter referred to as the Secretary.

RECITALS:

WHEREAS, The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city connecting links of the State Highway System through the City, 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 responsible charge of the Department of Transportation of such state, and

WHEREAS, the Secretary and the City desire to enter into an agreement for the construction of a Project for the improvement of US-69, a connecting link of the State Highway System in the City and is described as follows:

From the Jct. of US-166, north to the south city limits of Columbus.

Total length of Project is approximately 15.6 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. That the Project shall be undertaken and completed by the Secretary except as otherwise modified by this Agreement. That the City, by resolution, shall authorize the Secretary to undertake and complete the Project within the corporate limits of the City. The plans for the Project, when approved by the City, the State Transportation Engineer, acting on his or her behalf

and on behalf of the Federal Highway Administration, are by reference made a part of this Agreement.

2. The Secretary will, in the name of the Secretary, perform appraisal and acquisition work including condemnation, if necessary, for rights of way and easements as shown on the Project plans.

3. It is mutually agreed that the Secretary will receive and disburse all funds directly to the parties involved in acquisition of rights of way and easements.

4. It is agreed that all costs for rights of way and easements as shown on the Project plans will be paid for with state funds.

5. The City agrees 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 approved 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 that the City will incur an unnecessary hardship. The City shall execute the appropriate deeds and easements transferring its property rights to the Secretary. Further, the City acknowledges that the execution and transferring of the deeds and easements by the City to the Secretary is an obligation of the City for the agreement and construction of the Project.

6. The Secretary 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 construct 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, (1998)" as amended or supplemented. The expense of removal or adjustment of utilities located on public rights of way or easements shall be borne by the owners. The expense of removal or adjustment of privately owned utilities located on private right of ways or easements shall be reimbursed to the owner by the Secretary utilizing state funds or federal funds or a combination of federal and state funds.

7. It is understood that 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.

8. It is agreed that all construction items included in the Project plans shall be paid for with state funds or federal funds or a combination of federal and state funds.

9. The Secretary agrees 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.

10. The Secretary and the City 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 that 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.

11. The City agrees that it will adopt an ordinance requiring the removal of all encroachments either on or above the limits of the rights of way shown on the Project plans for this Project, and it will initiate and proceed with diligence to remove or require the removal of encroachments. It is further agreed that all such encroachments be removed before the Project is advertised for letting (provided, however, that if the Secretary is satisfied, with respect to any encroachment, that 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 that 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 that any gas and fuel dispensing pumps erected, moved or installed along the Project be placed no less than 3.7 meters 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.

12. The City agrees 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 that the Secretary may deem necessary to permit free flowing traffic throughout the length of the improvement covered by this Agreement.

13. The City agrees 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. Any exceptions therefrom must be approved by the Secretary.

14. 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.

15. The City agrees 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.

16. The Secretary hereby expressly agrees and covenants that he or she will defend, indemnify, hold harmless, and save the City and his or her authorized representatives from any and all costs, liabilities, expense, 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 or sub-contractors. The Secretary shall not be required to defend, indemnify and hold the City harmless for negligent acts of the City or its authorized representatives or employees.

17. The parties do hereby agree that 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.

18. It is further understood that this Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the City and their successors in office.

19. It is expressly agreed that 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.

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 COLUMBUS, KANSAS

Jasha Abram
CITY CLERK

E. Dean Carlson
MAYOR

E. Dean Carlson
Secretary of Transportation

(SEAL)

BY: _____
Warren L. Sick, P.E.
Assistant 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. 3555) 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 insure 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 seven "Nondiscrimination Clauses".

CLARIFICATION

Where the term "consultant" appears in the following seven "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 relative to nondiscrimination in federally-

assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Parts 21, 23 and 27, hereinafter referred to as the Regulations), which 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 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 contractor complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (7) Disadvantaged Business Obligation
- (a) Disadvantaged Businesses as defined in the Regulations, shall have a level playing field to compete fairly 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 contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Federally-assisted contracts. Failure by the contractor 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 this Order.
- (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.