

PROJECT NO. KA-3597-01  
INTELLIGENT TRANSPORTATION SYSTEMS (ITS) SET-ASIDE PROGRAM  
CITY OF LAWRENCE, KANSAS

**A G R E E M E N T**

This Agreement is between **MICHAEL S. KING, Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the “Secretary”) and the **City of Lawrence, Kansas** (“City”), collectively, the “Parties.”

**RECITALS:**

- A. The City has applied for and the Secretary has approved the City’s Intelligent Transportation Systems (ITS) Set-Aside Project for State Fiscal Year 2015, the Project being as further described in this Agreement.
- B. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for the development of such projects, and the Secretary is authorized to administer funds for such projects.
- C. The Parties desire to enter into this Agreement to participate in the cost of the Project by use of state and local funds.

**NOW THEREFORE**, the Parties agree as follows:

**ARTICLE I**

**DEFINITIONS:** The following terms as used in this Agreement have the designated meanings:

1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
2. **“City”** means the City of Lawrence, Kansas.
3. **“Contractor”** means the entity awarded the construction contract for the Project, if applicable, and any subcontractors working for the Contractor with respect to the Project.
4. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
5. **“KDOT”** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
6. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, reasonably determines are not eligible expenses for reimbursement.

7. **“Participating Costs”** means expenditures for items or services which are an integral part of ITS projects, as reasonably determined by the Secretary
8. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the City.
9. **“Project”** means West Lawrence ITS Connection-Phase 1, and is the subject of this Agreement.
10. **“Project Application”** means the City’s ITS Set-Aside Project final Application for Fiscal Year 2015 as approved by the Secretary for ITS Set-Aside funding assistance for the Project.
11. **“Right of Way”** means the real property and interests therein necessary for construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the plans.
12. **“Secretary”** means Michael S. King, in his official capacity as Secretary of Transportation of the state of Kansas, and his successors.
13. **“Utility” or “Utilities”** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities, including non-transportation fire and police communication systems which directly and/or indirectly serves the public.
14. **“Vendor”** means the entity awarded the contract to provide goods or services for the Project through the City’s documented procurement method.

## ARTICLE II

### SECRETARY RESPONSIBILITIES:

1. **Fiscal Year Allocation.** The Secretary has allocated ITS Set-Aside funds from state fiscal year 2015 for the Project.
2. **Reimbursement of Project Costs.** In accordance with the ITS Set-Aside Project guidelines, the Secretary agrees to reimburse the City for fifty five percent (55%) of the total actual and eligible costs incurred by the City for the Project, but not to exceed \$129,250 for the Project. The Secretary shall not be responsible for the total actual costs that exceed \$235,000 for the Project.
3. **Reimbursement Payments.** The Secretary agrees to make such payment to the City as soon as reasonably possible after the Project is completed and upon receipt of proper billing and the final report to be submitted pursuant to Article III, paragraph 8.

## ARTICLE III

### CITY RESPONSIBILITIES:

1. **Incorporation of Project Application.** The City shall undertake and complete the Project in conformance with the City's Project Application, which is incorporated into this Agreement by this reference, and in accordance with the terms and conditions of this Agreement.
2. **Design, Procurement, and Administration.** The City will prepare the plans, if required for the Project, the Project specifications, if required for the Project, and the Project cost estimate. The City will procure the system for the Project consistent with the City's documented procurement methods, deploy the Project in accordance with the plans and specifications, if applicable, test the system, participate in Vendor provided training and administer both the Project and the payments due the Vendor or the Contractor, including the portion of cost borne by the Secretary. The City shall separate and list apart the Participating Cost procurement items from the Non-Participating procurement items on final plans and procurement documents. The City will furnish KDOT's ITS Program Manager with a list of all Participating Cost items to be used in the Project. If the City submits an incomplete list of all Participating Cost items to be used in the Project, the incomplete list will be returned to the City, resulting in possible delay in reimbursement payments to the City.
3. **Equipment Procurement and Contract Award.** The City will purchase equipment for the Project as described in the Project Application. The City will furnish to KDOT's ITS Program Manager one (1) invoice showing the quantity and type of equipment purchased for the Project. The City shall inform KDOT's ITS Program Manager in writing of the date the contract is awarded, if applicable, and the total contract amount within two weeks of the award.
4. **Submission of Plans to Secretary.** If requested, the City shall furnish to KDOT's ITS Program Manager one (1) set of completed plans and/ or specifications for the Project.
5. **General Indemnification.** To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the City shall defend, indemnify, hold harmless, and save the Secretary and the Secretary's 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 City, the City's agents, employees, or subcontractors. The City shall not be required to defend, indemnify, hold harmless, and save the Secretary for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.
6. **Indemnification by Vendor/Contractor.** The City will require the Vendor and Contractor to indemnify, hold harmless, and save the Secretary and the City from personal injury and property damage claims arising out of the act of omission of the Vendor or Contractor, their agents, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the City defends a third party's claim, the Vendor or Contractor, as the case may be, shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.
7. **Movement of Utilities.** The City will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all Utilities, publicly or privately owned,

which may be necessary for construction of the Project in accordance with the approved plans. The expense of such removal or adjustment of the Utilities shall be borne by the Utility owner or the City.

8. **Reports.** The City will submit to the Secretary a final report, which will include a summary of Project deployment and expected outcomes, no later than six months following completion of the Project.

9. **Existing Right of Way.** The Project may be operated and/ or installed within the limits of any existing Right of Way either owned by the City or KDOT. Use of KDOT Right of Way for the Project may be requested and granted by permit only, in accordance with KDOT policies.

10. **Inspections.** During the Project deployment, representatives of the Secretary, if the Secretary deems necessary, may make periodic inspections of the Project and the records of the City as may be deemed necessary or desirable. The City will accomplish or direct or cause its Vendors, Contractors, or subcontractors to accomplish any corrective action or work required by the Secretary's representatives as needed for state participation. The Secretary does not undertake (for the benefit of the City, its Vendors, Contractors, subcontractors, or any third party) the duty to perform the day to day detailed monitoring of the Project, or to catch any errors, omissions, or deviations from the Project's scope of work by the City or its Vendors, Contractors or subcontractors.

11. **Legal Authority.** The City shall adopt all necessary ordinances and/or resolutions and take such administrative or legal steps as may be required to give full effect to the terms of this Agreement.

12. **Financial Obligation.** The City will be responsible for forty five percent (45%) of the total actual costs incurred, up to \$235,000. In addition, the City agrees to be responsible for one hundred percent (100%) of the total actual costs of the Project that exceed \$235,500. Further, the City agrees to be responsible for one hundred percent (100%) of all Non-Participating Costs incurred for the Project.

13. **Completion of Project.** The City will complete the project by **June 30, 2017**. If the project is not completed by that date, funding will be revoked. The City may request in writing that the project completion date be extended. Any extension must be granted by the Secretary in writing.

14. **Reimbursement Request.** The City shall not request any reimbursement or other payments from the Secretary for the Project prior to **July 01, 2014**. The City will request payment from the Secretary after the City has paid the Contractor or Vendor in full. No later than six (6) months after completion of the Project, the City will submit the payment request as a final billing along with the final report required pursuant to Article III, paragraph 8.

15. **Repayment Clause.** The City acknowledges and warrants equipment purchased under this Agreement shall be used in accordance within the Project scope detailed in the Project Application. If the equipment is not being used during its customary useful life under industry standards or not in accordance with the Project scope, the City shall reimburse the Secretary for the cost of such equipment less any depreciation value. The City shall make payment within thirty (30) days after receiving notice from the Secretary for reimbursement of the purchase cost minus depreciation.

16. **Prior Costs Incurred.** The City shall be responsible for one hundred percent (100%) of any Project costs incurred by the City for the Project prior to the funding for the Project being authorized, obligated, and approved by the Secretary.

17. **Annual Project Audit.** The City will participate and cooperate with the Secretary in an annual audit of the Project. The City 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 City for items considered Non-Participating Costs, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.

18. **Retention of Records.** The City shall maintain accounting records and other evidence pertaining to the costs incurred and to make the records available at its office at all reasonable times during the period of Agreement performance and for five (5) years thereafter. Such accounting records and other evidence pertaining to the costs incurred will be made available for inspection by the Secretary or the Secretary's authorized representatives, and copies thereof shall be furnished if requested.

19. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the City shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the City to any party outside of the Secretary and all costs incurred by the City not to be reimbursed by the Secretary for any phase or any other major expense associated with the Project.

## ARTICLE IV

### GENERAL PROVISIONS:

1. **Incorporation of Final Plans.** The final design plans and specifications, if applicable, are by this reference made a part of this Agreement.

2. **Compliance with Federal and State Laws.** The Parties agree to comply with all appropriate state and federal laws and regulations applicable to this Project.

3. **Project Modifications.** Any of the following Project changes require the City to send a formal notice to the Secretary for approval:

- a. Fiscal year the Project is to be awarded;
- b. Project description;
- c. Project scope; or
- d. Project completion date.
- e. Project funding

It is further mutually agreed, any changes in the plans and specifications during deployment, require the Secretary's written approval.

4. **Civil Rights Act.** The "Special Attachment No. 1," pertaining to the implementation of the Civil Rights Act of 1964, is hereby made a part of this Agreement.

5. **Contractual Provisions.** 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 hereof.

6. **Termination.** If in the judgment of the Secretary, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, the Secretary may terminate this Agreement at the end of its current fiscal year. The Secretary will participate in all costs approved by the Secretary incurred prior to the termination of the Agreement.

7. **Headings.** All headings in this Agreement have been included for convenience of reference only and are not be deemed to control or affect the meaning or construction or the provisions herein.

8. **Binding Agreement.** 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.

9. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

**IN WITNESS WHEREOF** the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST:

THE CITY OF LAWRENCE, KANSAS

\_\_\_\_\_  
CITY CLERK (Date)

\_\_\_\_\_  
MAYOR

(SEAL)

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

By: \_\_\_\_\_  
Jerome T. Younger, P.E. (Date)  
Deputy Secretary and  
State Transportation Engineer