

UTILITY AGREEMENT

Agreement No. 006132021

Dated: December 12, 2012

Douglas County

Project: 10-23 K-8392-04

General Location: City of Lawrence, 31st & Haskell Ave, South to NW ¼ Sec 20, T13S, R20E and O'Connell Road Sec 9, T13S, R20E southerly to Sec 21, T13S, R20E

THIS AGREEMENT is entered into in quadruplicate by and between the City of Baldwin, Kansas, hereinafter called "Baldwin", and the Rural Water District No. 4, Douglas County, Kansas, hereinafter called "RWD4" and the City of Lawrence, Kansas, hereinafter called "Lawrence" and the Secretary of Transportation of the State of Kansas, hereinafter called "Secretary".

WHEREAS, the Secretary proposes a highway improvement project on Highway No. 10, described above by Project Number and Location and shown on the Project Plans, and

WHEREAS, Baldwin certifies ownership of certain facilities as shown on the Project Plans (facilities) and these facilities are located on private right-of-way, in whole or in part, and not now entirely located upon existing highway right-of-way, and

WHEREAS, any rural water district created under the provisions of K.S.A. 82a-612 et seq., and amendments thereto, which, after excluding such water lines that cross a highway, has 90% or more of its remaining water lines on private right-of-way and is required to relocate such district's water lines shall be reimbursed for such district's costs for relocating such water lines;

WHEREAS, the parties desire to set forth in this instrument their understanding and agreements relating to the construction, maintenance and allocation of costs of said proposed work and the changes made necessary in connection therewith:

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Upon receipt of formal written authorization from the Secretary, Lawrence will proceed without unnecessary delay to construct new water line facilities described in Exhibit B (utility plans) in accordance with Paragraph 9 of this Agreement. Lawrence prepared Exhibit B which is attached to and incorporated into this Agreement.
2. This Agreement is subject to and the Parties agree to comply with the current Kansas Department of Transportation Utility Accommodation Policy (UAP). The UAP is incorporated by reference into this Agreement.
3. Lawrence is locating and maintaining the facilities upon city right-of-way and private right-of-way as shown on said Exhibit B.
4. Lawrence shall notify the Kansas Department of Transportation's (KDOT's) Area Engineer at Osage City, Kansas by phone 785-528-3128, five days in advance of the time it expects to start work under this Agreement.
5. Lawrence shall notify KDOT's Engineer in charge of said project when beginning, discontinuing, resuming, and upon completing the work.
6. All work contemplated in this Agreement shall be mutually scheduled and coordinated, commenced promptly and completed without undue delay. All work shall be performed in a good workmanlike manner.
7. The method of computing the agreed lump sum amount is supported by an adequate estimate

representative of the estimated actual and related indirect cost to adjust, alter or relocate facilities owned by Baldwin and RWD4 and currently in conflict with the project less estimated engineering cost to be borne by Baldwin and RWD4 which will be paid to Baldwin and RWD4 in a separate agreement. Calculation described by attached Exhibit A which was prepared by Lawrence and KDOT.

8. The Secretary agrees that upon completion of the adjustment in accordance with the Exhibits and attached Statement of Work, and upon presentation of an invoice and properly executed Department Voucher, KDOT will reimburse Lawrence for the lump sum amount of \$1,094,461. Lawrence further agrees to accept such lump sum amount as payment in full. Lawrence represents said amount as the acceptable amount to construct facilities to be used in replacement of Baldwin's and RWD4's existing facilities required to be relocated as a result of this agreement. Local governmental units and Indian Tribal governments shall comply with OMB A-133.

9. A. Description of work to be performed:

Construct 16" and 4" water lines and appurtenances thereto to clear the proposed highway construction and satisfactorily provide water supply service to Baldwin and RWD4 as shown on Exhibits B.

B. Method of accomplishing work shall be by Contract.

C. Time for Completion of Work: June 13, 2013 unless extended for unusually severe weather. Unusually severe weather is adverse weather that at the time of year in which it occurred is abnormal for the place in which it occurred.

D. Lawrence or Lawrence's contractor will furnish and erect the required traffic control signing and devices according to the attached Exhibits and the "Manual of Uniform Traffic Control Devices".

E. Special Provisions:

"All backfill within the highway right-of-way limits is to be compacted to a density equal to or greater than the density of the surrounding soil."

10. Lawrence shall maintain and pay all expenses necessary to maintain Lawrence facilities located on public right of way and private right of way as shown on Exhibit B. Lawrence shall take necessary and reasonable safety measures to protect the traveling public.

If Lawrence's maintenance obligation requires work within the highway right-of-way, Lawrence shall first obtain a written work permit from the proper authority. This permit shall contain reasonable regulations relating to such maintenance.

Lawrence may open and disturb the surface of the highway right-of-way without a work permit if an emergency exists that endangers the public's safety and requires immediate preventive action or repair. Immediately upon discovering the emergency, Lawrence shall notify the Kansas Highway Patrol and the KDOT Bureau of Construction and Maintenance. Lawrence shall request a work permit from the proper authority no later than the second working day following the emergency.

Lawrence shall not service its facilities from the highway, highway shoulder, or highway ramps. Exception: if an emergency exists that makes other ingress and egress temporarily impossible, Lawrence may use the surfaced area of the highway right-of-way to approach the distressed lines or facilities and Lawrence may use the surfaced shoulder for temporary parking.

11. Baldwin, RWD4 and Lawrence agree to hold the Secretary and the Secretary's authorized representatives harmless from and indemnify the Secretary for all claims, suits, damages (whether property damages,

personal injury damages, or economic damages) and costs (reasonable attorney's fees and defense costs) resulting from their failure to comply with contract obligations under this Agreement, resulting from their negligent acts, errors, or omissions in relocating its facilities as provided in Paragraph 9, or all of the above. Economic damages include direct and consequential damages Kansas law permits the Secretary to recover, including delay damages and other monies the Secretary pays or owes to its highway Contractor. If applicable, the liability of Baldwin, RWD4, and Lawrence for personal injuries and property damage shall not exceed the liability limits in the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.* Baldwin, RWD4 and Lawrence shall have no obligation to hold the Secretary or the Secretary's authorized representatives harmless from and indemnify these persons for the Secretary's or the Secretary's representatives' own negligence. Without limitation, this indemnity obligation includes: damages and costs that KDOT's highway Contractor, KDOT, or both incur because of Lawrence's delay in completing the work specified in Paragraph 9 and damages and costs KDOT's highway Contractor, KDOT, or both incur if Lawrence fails to accomplish the work specified in Paragraph 9 thereby requiring Baldwin and RDW4 facilities to be relocated to highway right-of-way within the Project limits. KDOT's recovery of its own damages and costs under a different relocation plan (not the recovery of damages and costs paid to KDOT's highway Contractor) is limited to the damages and costs KDOT incurs above the lump sum amount specified in Paragraph 8.

12. The Secretary agrees to hold Baldwin, RWD4 and Lawrence and their authorized representatives harmless from and indemnify them for all claims, suits, damages (whether property damages, personal injury damages, or economic damages) and costs (reasonable attorney's fees and defense costs) resulting from the Secretary's failure to comply with its contract obligations under this Agreement. The Secretary's liability for personal injuries and property damage shall not exceed the liability limits in the Kansas Tort Claims Act, K.S.A. 75-6101 *et seq.* The Secretary shall have no obligation to hold Baldwin, RWD4 and Lawrence or their authorized representatives harmless from and indemnify these persons for their or their representatives' own negligence.

13. Kansas law governs this Agreement.

14. Kansas law (K.S.A. 46-239(e)) requires this agency to report all contracts entered into with any legislator, or any member of a firm of which a legislator is a member, under which the legislator or member of the firm is to perform services for this agency for compensation. Consequently, please indicate below if this contract is being entered into with a legislator or a firm in which a legislator is a member.

_____ Yes, this contract is with a legislator or a firm in which a legislator is a member of Baldwin.

That legislator is: _____
Business Phone _____
Address (Street, City, State, Zip Code) _____

X _____ No, this contract is not being entered into with a legislator or a firm in which a legislator is a member of Baldwin.

_____ Yes, this contract is with a legislator or a firm in which a legislator is a member of Lawrence.

That legislator is: _____
Business Phone _____
Address (Street, City, State, Zip Code) _____

X _____ No, this contract is not being entered into with a legislator or a firm in which a legislator is a member of Lawrence.

____ Yes, this contract is with a legislator or a firm in which a legislator is a member of RWD4.

That legislator is: _____
Business Phone _____
Address (Street, City, State, Zip Code) _____

X No, this contract is not being entered into with a legislator or a firm in which a legislator is a member of RWD4.

15. This Agreement creates no third party beneficiaries and authorizes no third party to maintain a suit for damages under this Agreement as a third party beneficiary or in any other capacity.

16. This Agreement binds the Parties and the Parties' successors and assigns.

17. In signing this Agreement, the Parties and the individual person signing represent that the person signing has the authority and capacity to execute and legally bind the respective entity to this Agreement.

Executed by BALDWIN this

8th day of January 2013

CITY OF BALDWIN, KANSAS

BY: [Signature]
PRINT: Ken Wagner
TITLE: Mayor

Executed by RWD4 this

28th day of December 2012

RURAL WATER DISTRICT NO. 4
DOUGLAS COUTNY, KANSAS

BY: [Signature]
PRINT: Ronald A. Skaggs
TITLE: Chairman

Executed by Lawrence this

3rd day of January 2013

CITY OF LAWRENCE, KANSAS

BY: [Signature]
PRINT: DAVID L. LORUIS
TITLE: CITY MANAGER

Executed by the SECRETARY this

16th day of January 2012/13

MICHAEL S. KING
SECRETARY OF TRANSPORTATION

BY: [Signature]
JIM L. KOWACH, P.E.
CHIEF, BUREAU OF DESIGN

EXHIBIT A

KDOT Project 10-23 K-8392-04

From: Mike Lawless [mailto:mlawless@lawrenceks.org]
Sent: Thursday, November 01, 2012 12:00 PM
To: Jerry Barker
Cc: Scott Schultz; clowe_baldwincity.org; Dave Wagner
Subject: RE: SLT - O'Connell water line

Jerry,

Following up on our phone conversation this morning, another option for KDOT to consider would be for the City of Lawrence to construct the 16" O'Connell Road Water Main, the metering station to service Baldwin City and RWD #4, and the 4" water main for RWD #4 to serve the 8 customers left on the old 8" main.

KDOT would reimburse the three parties \$1,126,613 which is 95% of the Haskell Ave Relocation Estimates from Baldwin City and RWD #4. KDOT would enter into a three party agreement and reimburse Baldwin and RWD #4 for related engineering costs with the remaining balance to the City of Lawrence for the improvement mentioned above.

There are probably some additional details but I think this is enough to get the idea across.

Let me know if there are other details needed at this time.

Thanks!

Mike Lawless

Calculation of Lump Sum Amount to be paid to City of Lawrence:

Haskell Ave Relocation Est - Baldwin	\$	636,094
Haskell Ave Relocation Est - RWD4	\$	549,814
	\$	<u>1,185,908</u>
Apply 95% factor to estimate		95%
Total KDOT pays to the 3 parties	\$	<u>1,126,613</u>
Less Baldwin Engineering	\$	16,500
Less RWD4 Engineering	\$	<u>15,652</u>
Lump Sum Amount paid to Lawrence for constructing 16" and 4" lines and meters to supply water to RWD4 & Baldwin	\$	<u>1,094,461</u>