

## AGREEMENT

This Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by and between City of Lawrence, Kansas, a municipal corporation ("Lawrence") and Baldwin City, Kansas, a municipal corporation ("Baldwin City").

WHEREAS; Lawrence has supplied water to Baldwin City and Rural Water District No. 4 ("RWD No. 4") through water systems lines owned and maintained by Lawrence;

WHEREAS; Kansas Department of Transportation ("KDOT") has proposed to make improvements to Kansas Highway 10, (Project No. 10-23k-8392-04) which requires Baldwin City and RWD No. 4 to relocate portions of their respective water systems;

WHEREAS; Baldwin City, Kansas, RWD No. 4, Lawrence and the Secretary of Transportation of the State of Kansas ("Secretary"), made and executed that certain Utility Agreement No. 006132021 dated December 12, 2012, which identifies and sets forth the consideration for and the respective duties and obligations of the parties thereto for said Project No. 10-23k-8392-04, a copy of which is attached hereto as Exhibit "1" and made a part hereof;

WHEREAS; Lawrence has as required by Exhibit "1" hereto, constructed the 16" and 4" water lines, with appurtenances thereto, to clear the proposed highway construction and satisfactorily provide water service to Baldwin City, and RWD No. 4;

WHEREAS; Lawrence has caused to be constructed on both public and private right-of-way a new metering station, together with all equipment and appurtenances thereto, for use in the delivery of and accounting for the water supplied by Lawrence to Baldwin City and RWD No. 4;

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

1. Upon completion of construction, and acceptance by Lawrence, of Project No. UT1206DS, Lawrence will transfer title to the metering station building to Baldwin City through a Bill of Sale substantially similar to Exhibit 2. Said Bill of Sale shall transfer the metering station only. The parties understand the following shall remain the property of Lawrence: (1) the real estate upon which the metering station building is located; (2) the master water meters; (3) the water meter strainers; (4) the master water meter valves immediately upstream and downstream of the master meters for Baldwin City and RWD No. 4; (5) the electronic communications equipment, placed by Lawrence, necessary for the collection and transmission of data related to the water distribution system and water usage; and (6) all other metering equipment and fixtures now located, or hereafter placed by the Lawrence, in and around said metering building. The parties understand the electronic communication equipment placed by Baldwin City and RWD No. 4 shall remain the property of the respective entities.
2. Upon transfer of the metering station building, Baldwin City shall enter into a separate agreement with Rural Water District No. 4 for all ongoing operation and maintenance of the metering station, which shall be subject to the terms, conditions and covenant of this agreement. Lawrence shall have no duty to operate, maintain,

rebuild, replace or reconstruct the metering station, including any access roads leading to the metering station, on and after its transfer to Baldwin City.

3. Lawrence shall timely schedule the one-year construction contract warranty inspection with the contractor for Project UT1206DS, and Lawrence shall oversee any repairs that are required as a result of said warranty inspection.
4. By an Access and Utility Easement recorded with the Douglas County Register of Deeds in Book 1098, Page 3338, Lawrence has granted to Baldwin City and Rural Water District No. 4 access for the maintenance of the metering station building and appurtenances thereto.
5. Baldwin City grants to Lawrence the right of ingress and egress to the metering station for the purpose of reading the master water meters and maintaining Lawrence's real and personal property, including any replacement or upgraded equipment, identified in Paragraph 1 above. Lawrence shall have a duplicate(s) of the keys or access to another method of entry into the metering station. Any alterations, additions, improvements or physical changes to the metering station shall not interfere with Lawrence's ability to safely exercise its right of ingress or egress for the purposes stated above.
6. This Agreement shall terminate at such time as the Agreement for the Sale of Treated Water to Baldwin City, and its Wholesale Customers, from City of Lawrence, Kansas is terminated or not renewed. Upon such termination, Baldwin City shall allow Lawrence to continue to use the metering station building to provide service to RWD No. 4 and any other Lawrence water customer.
7. Kansas law shall govern the interpretation and enforcement of this agreement. Arbitration shall not be available to the parties.
8. The above stated recitals are by reference adopted and made a part hereof.
9. The parties represent each to the other, that they have the authorization of their respective governing bodies to execute this agreement.

IN WITNESS WHEREOF, each party has caused their agreement to be executed and acknowledged on its behalf on the date written, with the date of the last to sign to be the effective date of this agreement.

City of Lawrence, Kansas,  
A Municipal Corporation

By: \_\_\_\_\_  
Michael Dever, Mayor

ATTEST:

\_\_\_\_\_  
Jonathan Douglass, City Clerk

THE CITY OF BALDWIN CITY, KANSAS  
A Municipal Corporation

By: \_\_\_\_\_  
Chris Lowe, City Administrator

ATTEST:

\_\_\_\_\_  
City Clerk

UTILITY AGREEMENT

Agreement No. 006132021

Dated: December 12, 2012

Douglas County

Project: 10-23 K-8392-04

General Location: City of Lawrence, 31<sup>st</sup> & 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(o)) 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) \_\_\_\_\_

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) \_\_\_\_\_

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

Executed by RWD4 this

02 day of January 2013

28<sup>th</sup> day of December 2012

CITY OF BALDWIN, KANSAS

RURAL WATER DISTRICT NO. 4  
DOUGLAS COUTNY, KANSAS

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

BY: [Signature]  
PRINT: RONALD A. SKAGGS  
TITLE: Chairman

Executed by Lawrence this

Executed by the SECRETARY this

3<sup>rd</sup> day of January 2013

16<sup>th</sup> day of January 2012/13

CITY OF LAWRENCE, KANSAS

MICHAEL S. KING  
SECRETARY OF TRANSPORTATION

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

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>