

AGREEMENT

THIS AGREEMENT is entered into as of November 12, 2013, by and between the **CITY OF LAWRENCE, KANSAS**, a municipal corporation (the "City") and **BAKER UNIVERSITY**, a private university ("Baker").

WHEREAS, the Kansas Department of Transportation (KDOT) and Baker University have entered into an agreement effective May 1, 2012, for mitigation of wetlands for construction of the South Lawrence Trafficway (SLT) as required by the U.S. Army Corps of Engineers ("Corps of Engineers"), and

WHEREAS, the City and KDOT have entered into an agreement to construct 31st Street between Haskell Avenue and O'Connell Road in conjunction with KDOT's construction of the SLT project; and

WHEREAS, KDOT has acquired on the City's behalf right-of-way and additional wetland mitigation property; and

WHEREAS, the construction of 31st Street will require the City's completion of the wetland mitigation plan approved by the Corps of Engineers, permit number NWK-2011-124; and

WHEREAS, the City and Baker University agree that having Baker construct, maintain and manage the mitigation plan related to the City's road improvement project will enhance KDOT's wetland project, and is mutually beneficial to the City and Baker.

NOW THEREFORE, for and in consideration of the premises, and the mutual covenants herein contained, the City and Baker agree as follows:

ARTICLE I

BAKER AGREES AS FOLLOWS:

1. To construct, maintain, and manage the wetland mitigation plan in accordance with all of the terms and conditions of U.S. Army Corps of Engineers Permit No. NWK-2011-124, attached hereto as Exhibit A and incorporated herein by reference.
2. To perform the work for the wetland mitigation plan in accordance with the mitigation plan developed by Vireo Consulting, dated May 2013, attached hereto as Exhibit B and incorporated herein by reference (hereinafter "the Mitigation Plan"). Further, Baker agrees to perform the work in compliance with the provisions of Baker's proposal attached hereto as Exhibit C and incorporated herein by reference.

3. To timely provide all necessary surveys, reports and compliance certifications for each project covered by this Agreement to the City and Corps of Engineer required by Permit No. NWK-2011-124. The parties understand that one annual report each year for three consecutive years is contemplated by this Agreement. If the Corps of Engineers requires more than the three annual reports or extends or revises the mitigation plan, Baker will submit a revised budget for the City's consideration and approval.
4. To accept transfer of the land parcels from KDOT with the Deed Restriction required by the Corps of Engineers.
5. To timely invoice the City for work performed and completed. The invoices shall contain, at a minimum, a description of the work completed including a brief narrative of the compliance with the permit requirements, an itemization of the costs billed, including a breakdown of the labor costs (hours billed and hourly rate), and a unit price for the materials.
6. To notify the City Engineer in writing immediately, if Baker has reason to believe the budget set forth in Exhibit B will not be sufficient to compensate Baker for the work in this Agreement.
7. To coordinate with KDOT and its design consultant(s) and contractor(s) to ensure any activities performed by Baker pursuant to this Agreement do not interfere with KDOT's design and/or construction of the SLT.
8. To establish and maintain a separate account in which the City's endowment payment for future maintenance of the wetlands and the associated riparian buffer shall be deposited. To keep accurate financial records of the fund, and to provide the City with full access to said financial records upon the City's request.
9. To use the endowment funds referenced in Article I, Paragraph No. 8 above exclusively for the long term care and maintenance needs of the wetlands and riparian buffer.
10. To complete and execute all required applications, permits and/or other documents, if any, required or made necessary by the Corps of Engineers, Kansas Department of Water Resources, any drainage or watershed districts, or any other legally recognized agency or body with regulatory power over the wetlands subject to this agreement.
11. Upon completion of the obligations under this Agreement, Baker shall take all necessary, reasonable actions to protect the habitat and restored wetlands created by Baker from man-induced disturbances that would affect the property's ability to function as a habitat. Baker shall also take all necessary actions to preserve the restored Wetlands.

12. To negotiate in good faith with the City if additional work outside of the scope of this Agreement is necessary ...for unforeseen reason.
13. To indemnify, hold harmless and save the City from any and all costs, liabilities, demands, expenses, suites, judgments or damages to persons or property for claims of any nature whatsoever arising out of or in connection with Baker's obligations under this Agreement, including, but not limited to the acts or omissions of Baker's agents, employees, contractors, and/or consultants.

ARTICLE II

CITY AGREES AS FOLLOWS:

1. To pay Baker University for the actual cost for the work, services, and materials for mitigation and long term care of the wetlands and associated riparian buffer in an amount not to exceed \$60,925 as outlined in the Budget Proposal (Exhibit C).
2. To facilitate or assist Baker and/or KDOT in KDOT's transfer of the land parcels to Baker with the deed restriction required by the Corps of Engineers.
3. To timely review invoices submitted by Baker for work performed under this Agreement, and to pay undisputed amounts due to Baker within 30 days of receipt of the invoice.
4. To pay to Baker the endowment payment set forth in Exhibit C.
5. To negotiate in good faith with Baker if additional work outside of the scope of this Agreement is necessary.
6. To indemnify, hold harmless and save Baker from any and all costs, liabilities, demands, expenses, suites, judgments or damages to persons or property for claims of any nature whatsoever arising out of or in connection with the City's obligations under this Agreement, including, but not limited to the acts or omissions of City's employees, contractors, and/or consultants.

ARTICLE III

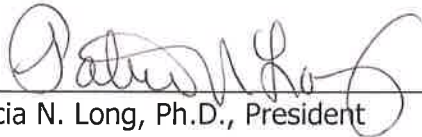
THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. This agreement is between the City and Baker and is not intended to alter any agreement that Baker has with the Secretary of KDOT.
2. This Agreement shall terminate upon the City's receipt from the Corps of Engineers notice of the Corps of Engineers' acceptance of the work completed under the Mitigation Plan.

3. Should unforeseen issues occur that extend the term or increase the costs of the work required under this Agreement, Baker University will provide to the City a revised budget for the consideration and approval.
4. Baker shall observe the provisions of the Kansas Act Against Discrimination and shall not discriminate against any person in the performance of work under this Agreement because of race, religion, color, sex, disability, national origin or ancestry and shall otherwise observe the requirements of K.S.A. 44-1030.
5. Except as set forth herein, the City shall have no further obligation, financial or otherwise to Baker, and Baker shall have no further obligation to the City, financial or otherwise, unless agreed to in writing by the City and Baker.
6. Any and all duties and obligations of the City and Baker stated herein shall be in compliance with all applicable, laws, rules, and regulations.
7. No third parties are intended to benefit from this Agreement. The City and Baker expressly state that no third party beneficiaries are created.
8. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.
9. This Agreement shall not be construed, interpreted or deemed as making either party to be a partner, joint venture with, or agent of the other party.
10. This Agreement contains the entire agreement between the parties regarding the subject matter of this Agreement. All prior oral or written statements relating to the subject matter are merged into this written Agreement, and no promise or agreement not herein expressed has been made by the parties. None of the provisions contained in the Agreement may be changed except by an instrument in writing signed by the City and Baker.
11. The laws of the State of Kansas shall govern the rights of the parties with respect to this Agreement.
12. Each of the persons executing this Agreement on behalf of the respective parties represents and warrants they have the legal authority to bind the party on behalf of

BAKER UNIVERSITY

A private university


By: 
Patricia N. Long, Ph.D., President

ACKNOWLEDGMENT

STATE OF KANSAS)
) SS
COUNTY OF DOUGLAS)

BE IT REMEMBERED that on this 13th day of November, 2013, before me, a notary public in and for said county and state, came Dr. Patricia N. Long, President of Baker University, who is personally known to me to be the same person who executed the within instrument on behalf of Baker University and duly acknowledged the execution of the same to be the act and deed of said University.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.


Notary Public

