

PROJECT NO. 23 U-0464-01
SRTS-U046(401)
SAFE ROUTES TO SCHOOLS (SRTS) PROGRAM
TYPE OF PROJECT: Noninfrastructure Activities
CITY OF LAWRENCE, KANSAS

AGREEMENT

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

RECITALS:

- A. The Secretary is authorized by the current Federal-Aid Transportation Act to allocate federal Safe Routes to Schools (SRTS) funds to eligible state agencies, local governments, Metropolitan Planning Organizations (MPOs), and school districts for reimbursements for eligible SRTS expenses.
- B. The Secretary and the Local Sponsor are empowered by the laws of Kansas to enter into agreements for federal SRTS funding under the SRTS Provision of the current Federal-Aid Transportation Act.
- C. Under the terms of the current Federal-Aid Transportation Act and the rules and regulations of the Federal Highway Administration (FHWA), states, local governments, MPOs, and school districts are, under certain circumstances, entitled to receive assistance in the financing of SRTS projects, provided however, that in order to be eligible for such federal-aid, such work is required by federal law to be done in accordance with the laws of the state.
- D. The Secretary and the Local Sponsor desire to enter into this Agreement and take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for the administration of the Project.

NOW THEREFORE, in consideration of these premises and the mutual covenants set forth herein, 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. “**Effective Date**” means the date this Agreement is signed by the Secretary or the Secretary’s designee.
3. “**FHWA**” means the Federal Highway Administration, a federal agency of the United States.

4. **“Local Sponsor”** means the City of Lawrence, Kansas.
5. **“Noninfrastructure activities”** means events and activities related to education, encouragement, enforcement, and evaluation that promote walking and bicycling to school.
6. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, acting on the Secretary’s own behalf and on behalf of the FHWA, reasonably determines are not eligible expenses for reimbursement.
7. **“Notice to Proceed”** means the written notification to proceed with the Project sent by the Secretary to the Local Sponsor following execution of this Agreement.
8. **“Parties”** means the Secretary and KDOT, individually and collectively, and the Local Sponsor.
9. **“Project”** means certain Noninfrastructure activities in the City of Lawrence, Kansas, as specifically described in the Project Application, and is the subject of this Agreement.
10. **“Project Application”** means the Application submitted by the Local Sponsor to receive federal SRTS funds, as approved by the Secretary.
11. **“Project Costs”** means the allowable expenses for the Project to be incurred by the Local Sponsor.
12. **“Secretary”** means Michael S. King, in his official capacity as Secretary of the Kansas Department of Transportation, and his successors and assigns.

ARTICLE II

PARTY RESPONSIBILITIES:

1. **Performance of the Project.** The Local Sponsor shall undertake and complete the Project as described in the Project Application filed with and approved by the Secretary and in accordance with the terms and conditions of this Agreement.
2. **Period of Performance.** The Local Sponsor shall commence implementation of the Project upon receipt of a Notice to Proceed and complete the Project within two (2) years from the effective date of the Notice to Proceed.
3. **Scope of Project.** The scope of the Project is as described in the Local Sponsor’s Project Application, which is incorporated by this reference and made a part of this Agreement. To achieve SRTS goals, the Project must incorporate five components, referred to as the “5 E’s” or “5 E Program.” The 5 E’s are:
 - **Engineering** – Creating operational and physical improvements to the infrastructure surrounding schools that reduce speeds and potential conflicts with motor vehicle traffic, and establish safer and fully accessible crossings, walkways, trails and bikeways.

- Education – Teaching children about the broad range of transportation choices, instructing them in important lifelong bicycling and walking safety skills, and launching driver safety campaigns in the vicinity of schools.
- Enforcement – Partnering with local law enforcement to ensure traffic laws are obeyed in the vicinity of schools (this includes enforcement of speeds, yielding to pedestrians in crossings, and proper walking and bicycling behaviors), and initiating community enforcement such as crossing guard programs.
- Encouragement – Using events and activities to promote walking and bicycling.
- Evaluation – Monitoring and documenting outcomes and trends through the collection of data, including the collection of data before and after the intervention(s).

If the Project includes traffic education and enforcement activities, such activities must take place within approximately two miles of a primary or middle school (grades K-8).

4. **Project Modification.** Any of the following Project changes require the Local Sponsor to send a formal notice to the Secretary for approval:

- (a) Fiscal year the Project is to be awarded;
- (b) Project description; or
- (c) Project scope.

5. **Procurement.** The Local Sponsor will furnish or contract to have furnished the necessary personnel, facilities, materials, equipment and such other professional services as may be required to fulfill the work identified and described in the Project Application and to administer both the Project and payments due for the Project. The Local Sponsor shall undertake procurement related to the Project in accordance with the procedures established by the current K.S.A. 75-3739 *et seq.* and 49 C.F.R. 18.32, or the Local Sponsor's procurement policies or regulations if such policies or regulations are approved by KDOT's Bureau of Transportation Planning. The Secretary shall not be responsible for any obligations that the Local Sponsor has assumed with using the State of Kansas' procurement procedures. Furthermore, the Local Sponsor acknowledges and agrees its request to the Secretary to use the State of Kansas' procurement procedures shall not bind the Secretary to render or provide assistance in any manner associated with this Agreement.

6. **Project Reporting Requirements.** The Local Sponsor will prepare and deliver to the Secretary before and upon completion of the Project any and all reports as required by the Secretary. Further, the Local Sponsor will prepare and deliver the required SRTS Evaluation documentation in a form acceptable to the Secretary and in accordance with all form instructions for 5E Program surveys, available through the National Center for Safe Routes to School (currently <http://www.saferoutesinfo.org>).

7. **Inspections.** The Secretary's representatives, if the Secretary deems necessary, may make periodic inspections of the Project and the records of the Local Sponsor as may be deemed necessary or desirable. The Local Sponsor will accomplish or direct or cause its contractors or subcontractors to accomplish any corrective action or work required by the Secretary's representatives

as needed for federal participation. The Secretary does not undertake (for the benefit of the Local Sponsor, its 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 Local Sponsor or its contractors or subcontractors.

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

9. **Project Costs.** The Local Sponsor agrees to be responsible for one hundred percent (100%) of the Project cost that exceed the Secretary's maximum participation of \$15,000. Further, the Local Sponsor agrees to be responsible for one hundred percent (100%) of all costs of items found not eligible for reimbursement by the Secretary. The Local Sponsor will pay actual Project costs prior to any reimbursement claim being made to the Secretary.

10. **Reimbursement Payments.** The Secretary agrees to reimburse the Local Sponsor for one hundred percent (100%) of total eligible and participating costs incurred for the Project, but not to exceed \$15,000, subject to any federal reduction in SRTS funds. The Secretary shall not be responsible for Project Costs that exceed \$15,000. The Secretary agrees to make partial payments, for amounts not less than \$1,000 and no more frequently than monthly, to the Local Sponsor upon receipt of proper billings and progress reports. If a final report is required for the Project, the Local Sponsor must submit such final report to the Secretary and certification that the Project was completed in substantial compliance with the approved Project Application prior to the Local Sponsor's receipt of final payment.

11. **Use of Federal Funds.** The Local Sponsor shall not use the funds provided under this Agreement to supplant any activity or expenditure provided for by the Local Sponsor's current budget.

12. **Final Payment.** Any final amount due for the authorized work performed under the Project will be based upon the Local Sponsor's most recent Single Audit Report available and a desk review of the claim by the Contract Audit Section of the Secretary's Bureau of Fiscal Services.

13. **Audit.** All local governmental units, state agencies or instrumentalities, non-profit Organizations, institutions of higher education and Indian Tribal governments shall comply with Federal-Aid Transportation Act and the requirements of 2 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" (commonly known as the "Supercircular") Further, the Local Sponsor agrees to the following provisions:

(a) **Audit.** It is the policy of the Secretary to make any final payments to the Local Sponsor for services related to the Project in a timely manner. The Audit Standards set forth in 2 C.F.R. Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," and specifically the requirements in Subpart F, 2 C.F.R. §200.500 *et seq.* require either a single or program specific audit be performed by an independent certified public accountant in accordance with these standards. All information audited and audit standards and procedures shall comply with 2 C.F.R. §200.500 *et seq.*

(b) **Audit Report.** The Secretary may pay any final amount due for the authorized work performed based upon the Local Sponsor's most recent Single or Program Specific Audit

Report “(Audit Report”) available and a desk review of the claim by the Contract Audit Section of KDOT’s Bureau of Fiscal Services. The Local Sponsor, by acceptance of this Agreement, acknowledges the final payment is subject to all single or program specific audits which cover the time period of the expenses being claimed for reimbursement. The Parties agree as the Audit Report becomes available for the reimbursement period (normally should occur within a period of 1-2 years), the Secretary will review the Audit Report for items which are declared as not eligible for reimbursement. The Local Sponsor agrees to refund payment made by the Secretary to the Local Sponsor for items subsequently found to be not eligible for reimbursement by audit.

(c) Agency Audit. If the Local Sponsor is not subject to the Audit Standards set forth in 2 C.F.R. Part 200, the Secretary and/or the FHWA may request, in their sole discretion, to conduct an audit of the Project. Upon the request of the Secretary and/or the FHWA for an audit, the Local Sponsor will participate and cooperate in the audit and shall make its records and books available to representatives of the requesting agency for a period of five (5) years after date of final payment under this Agreement. If any such audit reveals payments have been made with federal funds by the Local Sponsor for items considered Non-Participating Costs, the Local Sponsor shall promptly reimburse the Secretary for such items upon notification by the Secretary.

14. **Retention of Records**. The Local Sponsor 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, FHWA, U.S. Department of Transportation (USDOT), and Office of Inspector General, or their authorized representatives, and copies thereof shall be furnished if requested.

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

16. **Organizational Registration Requirements**.

(a) Dun & Bradstreet. If it has not already done so, the Local Sponsor shall obtain a Data Universal Numbering System (DUNS) number, which may be obtained from Dun and Bradstreet, Inc. (D & B) by telephone (currently 866-705-5711) or the Internet (currently <http://fedgov.dnb.com/webform>).

(b) System for Award Management. The Local Sponsor agrees it shall maintain current registrations in the System for Award Management (<http://www.sam.gov>) at all times during which it has active federal awards.

17. **Indemnification**. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the Local Sponsor 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 Local Sponsor, the Sponsor's agents, employees, contractors or subcontractors. The Local Sponsor 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.

18. **Termination of Agreement.**

(a) **By Either Party.** In the event the Secretary or the Local Sponsor determines the Project should be should be abandoned or indefinitely postponed or otherwise terminated, this Agreement may be terminated by giving thirty (30) days written notice to the other party; provided, however, in such case the Local Sponsor shall be paid the amount due for the services rendered by the Local Sponsor for the Project up to the time of termination.

(b) **For Cause.** In the event the Local Sponsor fails to comply with any of the terms and conditions of this Agreement, the Project Application or the Project Budget, the Secretary may terminate this Agreement upon written notice to the Local Sponsor. The Local Sponsor shall be paid for expenses judged reasonable for the services rendered up to the date of termination; provided, however, the Local Sponsor shall not be paid more than that which would be received under the terms of this Agreement for that portion of services rendered to the date of termination.

ARTICLE III

GENERAL PROVISIONS:

1. **Civil Rights Act.** The "Special Attachment No. 1," pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.
2. **Contractual Provisions Attachment.** The provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached, are hereby incorporated in this Agreement and made a part hereof.
3. **Compliance with Federal and State Laws.** The Provider agrees to comply with all appropriate state and federal laws and regulations applicable to the Project.
4. **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.
5. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary and the Local Sponsor and their successors in office.
6. **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

Approved as to Form: