

**TOPEKA METRO**

**REQUEST FOR BIDS  
Asphalt Paving Project  
TO-25-01**

**Appendix V  
City of Topeka Owner Agreement**

CITY OF TOPEKA CONTRACT NO. \_\_\_\_\_

OWNER AGREEMENT

THIS AGREEMENT entered into on \_\_\_\_\_ by and between the City of Topeka, Kansas, hereinafter referred to as “City” and Topeka Metropolitan Transit Authority, hereinafter referred to as “TMTA”.

WHEREAS, the City owns an area under the N. Kansas Avenue bridge located at 201 N. Kansas Avenue further shown in the map attached as Exhibit “A”; and

WHEREAS, TMTA employees park their vehicles at this location while working; and

WHEREAS, the TMTA, at its own cost, desires to make certain public improvements to all or a portion of the area including a 2” Mill & Overlay “Improvements” to improve the parking surface for their employees; and

WHEREAS, as the City desires to assure uniform compliance with City specifications for the Improvements, the parties agree, as follows:

1. **The Improvements; City Permission.** City agrees to allow TMTA to make the Improvements shown on Exhibit “A” and to allow TMTA to contract for such Improvements at its own cost. The Improvements include:
  - A. 2” Mill & Overlay
    - i. Area “A” 2,924 Sq. Yd.
    - ii. Area “B” 5,832 Sq. Yd.
    - iii. Area “C” 2,026 Sq. Yd.
  - B. Total – 10,782 Sq. Yd.
2. **The Improvements; Costs.** TMTA agrees to make all such Improvements at its own cost including but not limited to design, engineering, inspections and testing directed by City, as well as construction and associated costs of the Improvements.
3. **Compliance with City Regulations; Inspections.** TMTA agrees that all Improvements shall, in every respect, comply with City specifications, technical standards, policies, ordinances, and regulations (“the Standards”).
  - A. Plans shall be prepared by a Professional Engineer licensed in Kansas according to all City specifications and design standards and submitted to the City for review and approval prior to commencement of construction.

- B. All Improvements shall be subject to inspection by the City Engineer or other designated officials and employees (the “City Official”) responsible for establishing and enforcing the Standards.
  - C. The City Official may conduct on-site inspections to determine whether the work complies with the approved engineering plans and specifications. If, in the opinion of the City Official, the work does not comply the City Official shall have authority to order that all such work shall be terminated until such time as necessary steps are taken to correct any defects or deficiencies.
  - D. Upon completion of all Improvements, TMTA shall notify the City Official, who shall thereupon conduct a final inspection of all Improvements. If such final inspection indicates that there are any defects or deficiencies or deviations from the final engineering plans and specifications, the City Official shall notify the TMTA in writing and the TMTA shall, at its sole cost and expense, correct such defects or deviations within a reasonable period of time, not to exceed six months from the date of notification. When such defects, deficiencies, or deviations have been corrected, the TMTA shall notify the City Official that the Improvements are again ready for final inspection.
  - E. After the final inspection is made and before acceptance of any Improvements by City, the TMTA shall file a sworn statement with the City Official certifying that all obligations incurred in the engineering and construction of the Improvements have been properly installed and all costs paid.
  - F. If a final inspection indicates that all Improvements contain no defects, deficiencies, or deviations, within 10 days from the submittal of the TMTA’s sworn statement that all obligations are properly installed and paid, City Official shall, on behalf of City, accept the Improvements for maintenance.
4. **Title to Property.** Nothing in this Agreement shall be construed as the City relinquishing title to the Improvement area in exchange for the completed Improvements. Title shall remain with the City.
5. **Damages.** TMTA is responsible for any damages to the Kansas Avenue Bridge that extends over the Improvement area.
6. **Performance Bond.** Prior to commencement of any portion of the Improvements, TMTA, at its cost, shall provide evidence to the City Engineer that a performance bond, with the contractor, as the principal, has been executed by a licensed professional surety company that is rated “A” or better by AM Best and is listed by the United States Treasury Department as an acceptable surety on federal bonds. The performance bond shall obligate the surety to the City for the total price for constructing the Improvements in compliance with the final plans and specifications approved by the City. The performance bond shall be executed for an amount not less than the total construction cost of the Improvements, conditioned upon the prompt, full and complete performance by the contractor.

7. **Statutory Payment Bond; K.S.A. 60-1111.** Prior to commencement of any portion of the Improvements, TMTA, at its cost, shall provide evidence to the City Engineer that a statutory bond, with the contractor, as the principal, has been executed by a licensed professional surety company that is rated “A” or better by AM Best and is listed by the United States Treasury Department as an acceptable surety on federal bonds and that said bond has been filed with the Clerk of the District Court of the Third Judicial District (Shawnee County). The statutory bond shall bind and obligate the surety to the City for the total price for the payment of all labor, materials, supplies and other services provided by TMTA, contractor or any subcontractor or vendor providing goods, labor or other services for the construction of the Improvements.

8. **Permits.** No construction will be allowed on the Project unless the TMTA or the designated contractor has first obtained from the City Official the proper building and zoning permits.

9. **Notices.** Any written notices by either party to the other under Agreement shall be addressed as follows:

If for City:

City Clerk  
215 SE 7th Street  
Topeka, KS 66603

With a copy to:

Braxton Copley, Public Works Director  
620 S.E. Madison  
Topeka, KS 66607

For TMTA:

Topeka Metropolitan Transit Authority  
820 SE Quincy  
Topeka, KS 66612

10. **Termination.** This Agreement shall commence on the date stated above and will terminate upon completion of the Improvements, payment of all costs and acceptance for maintenance by City.

11. **Rights of Third Parties.** Nothing contained herein shall be construed as creating any rights of any party who is not party to this Agreement.

12. **Transfer and Assignment.** TMTA shall not assign any interest in this Agreement and shall not transfer any interest in the same, absent consent of City.

13. **Relationship Between Parties.** Nothing contained herein shall be construed or held to make City a partner, joint venturer, or associate of TMTA in the conduct of its business, nor shall either party be deemed the agent of the other, it being expressly understood and agreed that the relationship between the parties hereto is and shall at all times remain contractual as provided by the terms and conditions of this Agreement.

14. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties, supersedes any and all prior agreements between the parties, and neither party shall rely upon any verbal representations, either expressed or implied, not specifically stated herein. This Agreement shall not be amended or modified except by written agreement of both parties.

15. **Signatures.** This Agreement may be signed by faxed or electronic signature, which shall be deemed to be an original signature. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which shall be deemed to constitute one and the same instrument.

16. **Authorization.** By signing this Agreement, representative of the TMTA thereby represents that he is duly authorized by the organization to execute this Agreement on behalf of TMTA, and that TMTA agrees to be bound by the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands to this Agreement on the date and year first above written.

CITY OF TOPEKA, KANSAS

\_\_\_\_\_  
Robert M. Perez, Ph.D., City Manager

ATTEST:

\_\_\_\_\_  
Brenda Younger, City Clerk

**ACKNOWLEDGEMENT**

STATE OF KANSAS )  
                                  )      ss:  
COUNTY OF SHAWNEE)

BE IT REMEMBERED that on \_\_\_\_\_ before me the undersigned, a notary public in and for the County and State aforesaid, came Robert M. Perez, Ph.D. of the City of Topeka, Kansas, a municipal corporation, who is personally known to me to be the same person who executed the within instrument of writing on behalf of the City and such person duly acknowledged execution of the same to be the act and deed of said City of Topeka, Kansas.

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

\_\_\_\_\_   
Notary Public

My Commission Expires:  
  
\_\_\_\_\_

TMTA

By \_\_\_\_\_

Name (Printed) \_\_\_\_\_

**ACKNOWLEDGEMENT**

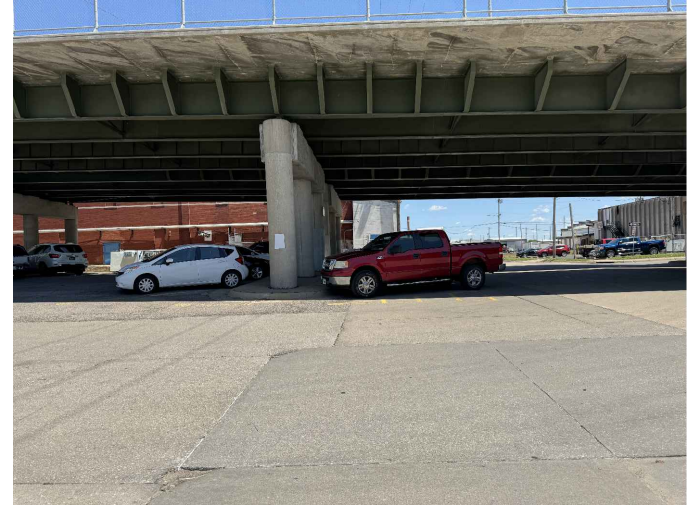
STATE OF KANSAS)

ss:

COUNTY OF SHAWNEE)

BE IT REMEMBERED that on \_\_\_\_\_ before me the undersigned, a notary public in and for the County and State aforesaid, came \_\_\_\_\_ a representative of Topeka Metropolitan Transit Authority who is personally known to me to be the same person who executed this instrument on behalf of and such person duly acknowledged execution of the same to be the act and deed of the limited partnership.

\_\_\_\_\_  
Notary Public

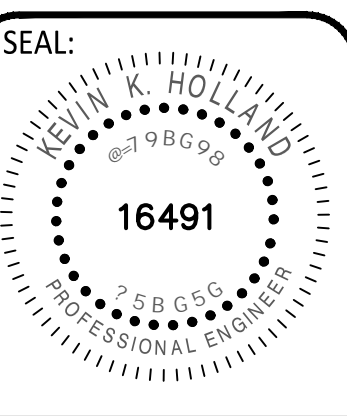
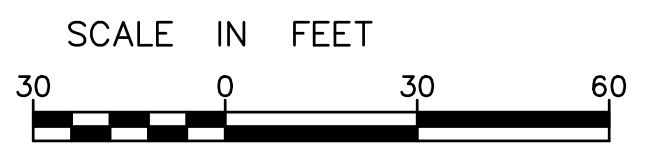


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QUANTITIES		
ITEM	QUANTITY	UNIT
2" Mill & Overlay		
Area "A"	2,924	Sq. Yd.
Area "B"	5,832	Sq. Yd.
Area "C"	2,026	Sq. Yd.
<b>Total</b>	<b>10,782</b>	<b>Sq. Yd.</b>



Cook, Flatt & Strobel Engineers, P.A.  
2930 SW Woodside Dr., Topeka, KS  
785-272-4706

DEVELOPER:

OWNER: METROPOLITAN  
TRANSIT AUTHORITY  
201 N Kansas Ave.  
Topeka, KS 66603

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REVISIONS:	
NO. DATE	DESCRIPTION

SHEET NUMBER:

ORIGINAL CONTRACT DOCUMENT