

MEMORANDUM OF UNDERSTANDING

Now on this ____ day of _____, 2011, Debra L. Miller, Secretary of Transportation, hereinafter referred to as the “Secretary”, Kansas Department of Transportation (KDOT); the City of Overland Park, Kansas, hereinafter referred to as the “City”; and Clarkson Construction Company, hereinafter referred to as “Clarkson” enter in to this Memorandum of Understanding. The Secretary, the City and Clarkson are collectively referred to as the “Parties.”

WITNESSETH:

WHEREAS, the Secretary has authorized improvements to I-435 from I-35 to U.S. 69 highway as well as improvements to U.S. 69 from I-435 to 119th Street, hereinafter referred to as the “Project”; and

WHEREAS, the Project is being constructed within the City of Overland Park, Kansas; and

WHEREAS, the Secretary has contracted with Clarkson to construct the Project; and

WHEREAS, the construction of the Project will require the location of a concrete plant at or near the location of the Project to supply concrete for the Project, the concrete plant is hereinafter referred to as the “Batch Plant”; and

WHEREAS, the Batch Plant will be operated on property owned by KDOT in the Southwest Quadrant of U.S. 69 and I-435, hereinafter the “Property”; and

WHEREAS, the Property is located adjacent to City property; and

WHEREAS, the Parties agree that the Batch Plant will be located and operated subject to the terms and conditions outlined herein.

ARTICLE I

CLARKSON AGREES:

1. To only use the Batch Plant for construction of the Project.
2. To install tree preservation fencing around existing mature tree stands and maintain the same during the duration of the Project. No storage of materials or disturbance may occur within the bounds of the fencing.
3. To limit operations at the Batch Plant to daylight hours, Monday through Saturday with no Batch Plant operations on Sunday unless authorized by the Project Engineer.
4. To maintain the Stormwater Pollution Prevention Plan approved by KDHE for the Batch Plant throughout the duration of the active site use and to meet the performance expectations of the plan at all times.

5. To remove all structures associated with the Batch Plant and to return the Property to as near as is practicable to its original condition within sixty (60) days of completion of the Project. Said restoration to include scarifying the surface of the site, redistributing topsoil onsite, removing concrete pads, providing new vegetative cover, and restoring drainageways.

6. To replace barriers nightly at the median break on College Boulevard at the driveway to the storage area in the Northwest Quadrant of US 69 and College Boulevard.

ARTICLE II

THE SECRETARY AGREES:

To administer construction of the Project, including Clarkson's compliance with the terms and conditions related to the Batch Plant outlined herein.

ARTICLE III

THE CITY AGREES:

To not object to the location of the Batch Plant; provided, the Batch Plant is operated, maintained and ultimately removed at the conclusion of the Project consistent with the terms and conditions of this Memorandum of Understanding.

ARTICLE IV

THE PARTIES AGREE:

That this Memorandum of Understanding is and shall be binding and enforceable against the Parties hereto, and that in the event of a breach of the covenants and agreements herein set forth, each Party shall be entitled to exercise any and all rights and remedies it may have at law or in equity, including specific performance.

IN WITNESS WHEREOF the Parties hereto have caused this Memorandum of Understanding to be signed by their duly authorized officers on the day and year first above written.

Remainder of this page intentionally left blank.

CITY OF OVERLAND PARK, KANSAS

Carl Gerlach, Mayor

(SEAL)

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Tammy M. Owens
Senior Assistant City Attorney

CLARKSON CONSTRUCTION COMPANY

Name: W. E. Clarkson, Jr.
Title: Vice-President

ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____) ss.

BE IT REMEMBERED, That on this ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came W. E. Clarkson, Jr., Vice-President of Clarkson Construction Company, a corporation duly organized, incorporated and existing under and by virtue of the laws of Missouri; who is personally known to me to be the same person who executed as such officer the within instrument on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

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

Notary Public

My Commission Expires:

Kansas Department of Transportation
Debra L. Miller, Secretary of Transportation

By: _____
Jerome T. Younger, P.E.
Deputy Secretary for Engineering and State Transportation Engineer