

BUILD KANSAS MATCHING GRANT AGREEMENT

This **BUILD KANSAS MATCHING GRANT AGREEMENT** (the “Agreement”) is entered into as of November 12, 2024, and is between the **TREASURER OF THE STATE OF KANSAS** (the “State Treasurer”) and the **CITY OF ANTHONY** (the “Recipient”).

RECITALS

1. The Kansas Legislature, through the Omnibus Appropriations Act of 2023, §§ 11(d) to 15, 2023 Kan. Sess. Laws 1530, 1535-45, authorized the State Treasurer to provide match funds required by the Bipartisan Infrastructure Law (“BIL”), through the Build Kansas Matching Grant Fund, to assist communities with accessing federal BIL funding for investments in sectors such as transportation, energy, water, broadband, and cybersecurity.
2. The Recipient applied for, and the Kansas Infrastructure Hub Steering Committee (the “HUB”) has recommended project number 2024-030-40101d (the “Project”) to the Build Kansas Advisory Committee (the “BKAC”) to participate in the Build Kansas Matching Grant Fund, as further described in this Agreement.
3. The BKAC met, reviewed the Project application, and recommended to the State Treasurer that it be funded with a Build Kansas Matching Grant in a matching amount not to exceed \$131,161.45.
4. The State Treasurer and the Recipient are empowered by the laws of Kansas to enter into agreements for the furtherance of federal BIL projects in the State of Kansas.
5. Local communities, and/or their private sector partners are, under certain circumstances, entitled to receive assistance in the provision of federal cost sharing requirements, provided however, to be eligible for such state aid, such work is provided a federal BIL share of funding and the work required is done in accordance with the laws of the State of Kansas.
6. The State Treasurer and the Recipient, in consideration of these premises and the mutual covenants set forth herein, agree to the following terms and provisions.

ARTICLE I DEFINITIONS

Section 101. Definitions. In addition to terms defined elsewhere in this Agreement, the following terms as used in this Agreement have the designated meanings:

“**Agreement**” means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the parties.

“**BIL**” means the federal Bipartisan Infrastructure Law, Pub. L. No. 117-58, 135 Stat. 429 (2021), also known as the Infrastructure Investment and Jobs Act.

“**BKAC**” means the Build Kansas Advisory Committee.

“**BKMGF**” means the Build Kansas Matching Grant Fund.

“**Effective Date**” means the date this Agreement is signed by the State Treasurer or the State Treasurer’s designee.

“**HUB**” means the Kansas Infrastructure Hub.

“**Non-participating Costs**” means expenditures for any items or services which the HUB, acting on the HUB’s own behalf or on behalf of the federal contracting agency, reasonably determines are not Participating Costs.

“**Participating Costs**” means expenditures by Recipient for items or services which are an integral part of the Project, as reasonably determined by the HUB.

“**Project**” means all phases and aspects of the BIL-funded endeavor to be undertaken by the Recipient, as and when authorized by the BIL Funding Agency being: Anthony Circuit Reconstruction located in or near Anthony, Kansas, assigned project number 2024-030-40101d, and is the subject of this Agreement.

“**Recipient**” means the City of Anthony, with its place of business at 124 S Bluff, Anthony, Kansas 67003 created pursuant to the laws of the State, and its successors and assigns or any agency, body, or instrumentality succeeding to or charged with the powers, duties, and functions of the original Recipient.

“**State**” means the State of Kansas.

“**State Treasurer**” means the State Treasurer of the State of Kansas or, if the functions and duties of the State Treasurer under K.S.A. 75-601 et seq. shall be given by law to any other person or entity, such person or entity.

ARTICLE II FUNDING

Section 201. Funding. The table below reflects the funding commitments of each party.

Party	Responsibility	Amount
Federal Grantor	BIL Grant Funds	\$271,368.55
State Treasurer	Build Kansas Funds	131,161.45
Recipient	Applying Entity Funds	0.00
Other	Other Funding Sources (if applicable)	0.00
Total		\$402,530.00

State Treasurer’s Commitment as % of BIL Grant Funds: 48.33%

ARTICLE III STATE TREASURER RESPONSIBILITIES

Section 301. Fund Disbursement.

- (a) The State Treasurer agrees to reimburse the Recipient out of the “Build Kansas Funds” (that is, funds appropriated to the BKMGF, approved by the HUB for the Project, and certified by HUB for payment as further set forth below), to match payments or reimbursements for Participating Costs received by the Recipient

through the Recipient's federal BIL grant award, but not to exceed the "Build Kanas Funds" identified in Section 201 above. The State Treasurer's matching reimbursements to Recipient will be paid proportionally to the BIL Grant Funds payments made to Recipient for Participating Costs, at the percentage specified in Section 201 above (with the total of all such reimbursements not to exceed the "Build Kanas Funds" identified in Section 201 above). For the avoidance of doubt, subject to certification by the HUB as set forth in subsection (b) below, the State Treasurer agrees to make such matching reimbursement payments to Recipient from Build Kansas Funds for all periods for which reimbursements or payments are owing to Recipient under the terms of the Recipient's federal BIL grant award, although such periods may have commenced prior to the Effective Date of this Agreement.

- (b) Except as otherwise stated in this Agreement, the terms of payment under this Agreement shall be consistent with the terms and conditions of the Recipient's federal BIL grant award. To the extent the Recipient's federal BIL grant award does not include specific payment terms, then the State Treasurer agrees to reimburse Recipient for Participating Costs in installments of not less than \$1,000.00 and no more frequently than monthly. In either case, such reimbursement payments will not be made prior to the State Treasurer's receipt of certification by the HUB based on a review of progress reports, financial reports, and other information submitted by the Recipient to the HUB, which certification indicates to the State Treasurer's satisfaction that the Recipient has satisfied all terms, conditions, and requirements applicable to Recipient's receipt of funds pursuant to the BIL, Recipient's federal BIL grant award, and Build Kansas Matching grant awards and the amount of reimbursements to be made under this Agreement. For reference only, a sample certificate in the form currently required by the State Treasurer is attached hereto as Exhibit A.
- (c) The Recipient shall provide to the State Treasurer, and any agencies or individuals designated by the State Treasurer, with all information and documentation reasonably requested to verify any applicable payment terms and conditions of the Recipient's federal BIL grant award and to facilitate reimbursements to the Recipient through the state's SMART accounting system.

ARTICLE IV RECIPIENT RESPONSIBILITIES

Section 401. Treasurer Authorization. The State Treasurer is authorized by the Recipient to take such steps as deemed necessary or advisable by the State Treasurer to secure the financial benefits of this project.

Section 402. Legal Authority. The Recipient 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.

Section 403. Conformity with State, Local, and Federal Requirements. The Recipient shall be responsible for compliance with the terms and conditions of the BIL grant award and further to comply with applicable federal, state, and local regulations. Failure to do so will jeopardize future disbursements of Build Kansas Matching Grant Funds.

- (a) Progress and Financial Reports. The Recipient shall provide copies of all progress and financial reports to the State Treasurer and the HUB when such reports are filed with the federal grantor agency.

Section 404. General Indemnification. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act (K.S.A. § 75-6101, *et seq.*) as applicable, the Recipient will defend, indemnify, hold harmless, and save the State of Kansas, the Kansas State Treasurer's Office and other agencies of the state of Kansas, and each of their officers, employees, and 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 Recipient, the Recipient's employees, agents, subcontractors or its consultants. The Recipient shall not be required to defend, indemnify, or hold the State Treasurer harmless for negligent acts or omissions of the State Treasurer or the State Treasurer's authorized representatives or employees.

Section 405. Records; Audit. Within 30 days of final completion of the Project, the Recipient shall deliver notice of the date of final completion to the State Treasurer and the HUB, together with any documentation confirming the completion of the Project as may be reasonably requested by either the State Treasurer or the HUB. Throughout the Recapture Period, as defined in Section 406 below, the Recipient shall reasonably cooperate with any inquiries by the State Treasurer, or its designee to verify the status of public use of the Project (including, without limitation, by providing any reasonably requested records and other information in connection therewith). The Recipient shall make its records and books available to representatives of the State Treasurer, and any agencies or individuals designated by the State Treasurer, for review for a period of five (5) years after date of final payment under this Agreement or, if the federal BIL review schedule is longer, for the review period of the federal BIL grant. If any such review reveals reimbursements made to the Recipient for Non-Participating Costs, the Recipient shall promptly reimburse the State Treasurer for such items upon notification by the State Treasurer.

Section 406. Cancellation by Recipient; Recapture of Funds. If the Recipient is required to repay or reimburse BIL grant funds for any reason under the terms and conditions of the Recipient's federal BIL grant award, then the Recipient shall also repay or reimburse the State Treasurer for payments made to the Recipient out of the BKMGF, on terms consistent with the terms and conditions of the Recipient's federal BIL grant award. If the terms and conditions of the Recipient's federal BIL grant award do not require, or are silent with respect to, repayment or reimbursement of federal BIL grant funds in such circumstance, then the following subsections (a) and (b) shall apply. Any amounts due to the State Treasurer pursuant to this Section 406 shall be paid within thirty days after the Recipient's receipt of the State Treasurer's demand therefor.

- (a) If the Project is terminated prior to final completion of Project construction, then the Recipient shall reimburse the State Treasurer for all funds paid to the Recipient out of the BKMGF.
- (b) "Recapture Period" means the ten-year period commencing on (and including) the date final construction of the Project is completed. If, during the Recapture Period, public use of the Project terminates or the use of the Project is changed from the public use originally contemplated in the Recipient's grant application to the HUB (unless such termination or change is approved in writing by the State Treasurer, such approval not to be unreasonably withheld, conditioned, or delayed) (such unapproved termination or change, a "Recapture Event"), then the State Treasurer

shall be entitled to repayment from Recipient for the applicable percentage of the total funds paid to the Recipient out of the BKMGF, as set forth in the table below.

Portion of Recapture Period in which the Recapture Event occurs	Applicable Percentage
First year	100%
Second year	90%
Third year	80%
Fourth year	70%
Fifth year	60%
Sixth year	50%
Seventh year	40%
Eighth year	30%
Ninth year	20%
Tenth year	10%

**ARTICLE V
GENERAL PROVISIONS**

Section 501. Acceptance. No contract provision or use of items by the State Treasurer shall constitute acceptance or relieve the Recipient of liability in respect to any expressed or implied warranties.

Section 502. Amendment. Any amendment to this Agreement shall be in writing and signed by the Parties.

Section 503. Binding Agreement. This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the State Treasurer and the Recipient and their successors in office.

Section 504. Compliance with Federal and State Laws. The Recipient shall comply with all applicable state and federal laws and regulations. The Recipient represents and warrants that any contractor and/or consultant performing any services on the Project will also comply with all applicable state and federal laws and regulations.

Section 505. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 506. Entire Agreement. This Agreement, with all attached exhibits, expresses the entire agreement between the Parties with respect to the Project. No representations, promises, or warranties have been made by the Parties that are not fully expressed or incorporated by reference in this Agreement.

Section 507. Headings. All headings in this Agreement have been included for convenience of reference only and are not to be deemed to control or affect the meaning or construction or the provisions herein.

Section 508. Industry Standards. Where not otherwise provided in this Agreement, materials or work called for in this Agreement shall be furnished and performed in accordance with best

established practice and standards recognized by the contracted industry and comply with all applicable federal, state, and local laws and rules and regulations promulgated thereunder.

Section 509. 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.

Section 510. Nondiscrimination and Workplace Safety. The Recipient shall comply with all federal, state, and local laws, and rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of applicable laws, rules, or regulations may result in termination of this Agreement.

Section 511. Notices. Any notice required or submitted under this Agreement shall be deemed given if personally delivered or mailed by registered or certified mail, return receipt requested and postage prepaid, to the following addresses of the Parties or such other addresses as either party shall from time to time designate by written notice.

The State Treasurer:
State Treasurer of Kansas
900 S.W. Jackson, Suite 201
Topeka, Kansas 66612
Attention: State Treasurer

The Recipient:
City of Anthony
124 S Bluff
Anthony, KS 67003

Section 512. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected, and each provision of this Agreement shall be enforced to the fullest extent permitted by law.

Section 513. Technical Advice and Assistance; Limitations. Technical advice, assistance, or both, provided by the State Treasurer or the HUB under this Agreement shall not be construed as an undertaking by the State Treasurer or the HUB of the duties of the Recipient or any other individual or entity, or the duties of any Consultant, Contractor, licensed professional engineer, or inspector hired by the Recipient.

Section 514. Termination. If, in the judgment of the State Treasurer, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, the State Treasurer may terminate this Agreement at the end of its current fiscal year. The State Treasurer will participate in all costs approved by the State Treasurer incurred prior to the termination of the Agreement.

Section 515. Waiver. A party's failure to exercise or delay in exercising any right, power, or privilege under this Agreement shall not operate as a waiver. Further, no single or partial exercise of any right, power, or privilege shall preclude any other or further exercise thereof.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names by their duly authorized officers, all as of November 12, 2024.

CITY OF ANTHONY

(SEAL)

By: _____

Name: _____

Title: _____

ATTEST:

By: _____

Name: _____

Title: _____

TREASURER OF THE STATE OF KANSAS

(SEAL)

By: _____

Name: _____

Title: _____

EXHIBIT A

SAMPLE
KANSAS INFRASTRUCTURE HUB STEERING COMMITTEE
CERTIFICATE FOR PAYMENT

(see following page)

KANSAS INFRASTRUCTURE HUB STEERING COMMITTEE CERTIFICATE FOR PAYMENT

Recipient: CITY OF ANTHONY

Project Number: 2024-030-40101d

Effective Date of Certificate: _____

The undersigned, acting on behalf of the Kansas Infrastructure Hub Steering Committee (the "HUB"), hereby certifies to the Treasurer of the State of Kansas (the "State Treasurer"):

1. In accordance with the Omnibus Appropriations Act of 2023, §§ 11(d) to 15 (as applicable), 2023 Kan. Sess. Laws 1530, 1535-45 (the "Act"), the Recipient identified above has applied for, and the Kansas Infrastructure Hub Steering Committee (the "HUB") has recommended the Project identified above to the Build Kansas Advisory Committee (the "BKAC") to participate in the Build Kansas Matching Grant Fund, as further described in the Build Kansas Matching Grant Agreement between Recipient and the State Treasurer.

2. The BKAC met, reviewed the Project application, and recommended to the State Treasurer that the Project be funded with a Build Kansas Matching Grant in an amount not to exceed \$131,161.45 (to proportionally match Recipient's federal grant award at **48.33%** of federal grant payments as further set forth in the Build Kansas Matching Grant Agreement between Recipient and the Treasurer of the State of Kansas).

3. The Recipient is an eligible entity pursuant to the federal Bipartisan Infrastructure Law, also known as the Infrastructure Investment and Jobs Act (the "BIL"), and has demonstrated a need for such grant, and has been approved by the federal government for a grant award pursuant to the BIL.

4. In connection with this Certificate, the HUB has reviewed progress reports, financial reports, and other information submitted by the Recipient. Based on that review and other information known to HUB members, the HUB has determined that, as of the Effective Date of this certificate:

- a. the Recipient has satisfied all terms, conditions, and requirements, applicable to Recipient's receipt of federal funds pursuant to the BIL, the Recipient's federal BIL grant award, and the Build Kansas Matching Grant Fund award pursuant to the Act; and
- b. the Recipient is entitled to payment in the amount of the "current payment" set forth below. The HUB has determined that the current payment is necessary to reimburse Recipient for expenditures by Recipient for items or services which are an integral part of the Project ("Participating Costs"); the current payment amount does not include expenditures for any items or services which the HUB determines are salaries and wages and other operating expenditures, including, but not limited to, hiring grant writers and consultants to provide technical assistance and educational opportunities or otherwise are not Participating Costs.

Total Build Kansas Funds commitment	\$	131,161.45
– Total of prior payments	\$	_____
± Adjustments (as applicable)	\$	_____
– Current payment	\$	_____
= Total remaining Build Kansas Funds commitment	\$	_____

The current payment is a progress payment / final payment for the Project.

5. The undersigned represents and warrants that he or she has the requisite authority to make this certification on behalf of the HUB.

Certified on behalf of the Kansas Infrastructure Hub Steering Committee, as of the Effective Date set forth above.

By: _____

Name: _____

Title: _____

Agency: _____