

PROJECT NO. 87 C-4925-01
ER-C492(501)
EMERGENCY REPAIR
SEDGWICK COUNTY, KANSAS

**AGREEMENT FOR
EMERGENCY RELIEF
FEDERAL-AID ROAD CONSTRUCTION**

This Agreement is between the **Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the “Secretary”) and **Sedgwick County, Kansas** (“County”), **collectively**, the “Parties.”

RECITALS:

A. Under the terms of the 23 C.F.R. 125, funds are available for the repair or reconstruction of roads and bridges on Federal-Aid Highway Systems that suffered serious damage from natural disasters or catastrophic failures from external causes. Provided such work is done in accordance with the laws of the state and under the responsible charge of the Department of Transportation of such state.

B. The County has requested assistance and the Governor of Kansas has officially proclaimed an emergency in the County, and the Secretary has made application for emergency funds to restore roadways and bridges in the County located on the Federal-aid Major Collector System, and

C. The County hereby requests the Secretary to take such steps as are necessary or deemed advisable for the purpose of securing approval of the Federal Highway Administration (FHWA) of Project(s) located, described, and estimated in Special Attachment 2, and

D. The Secretary and the County are empowered by the laws of Kansas to enter into agreements for the repair or reconstruction of county roads and bridges utilizing federal funds.

NOW, THEREFORE, in consideration of these premises and the mutual covenants set forth herein, the Parties agree to the following terms and provisions:

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. **“Construction”** means the work done on the Project after Letting, consisting of building, altering, repairing, improving or demolishing any structure, building or highway; any drainage, dredging, excavation, grading or similar work upon real property.
3. **“Consultant”** means any engineering firm or other entity retained to perform services for the Project.

4. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.
5. **“County”** means Sedgwick County, Kansas, with its place of business at 525 N. Main Suite 320 Wichita, KS 67203.
6. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.
7. **“Detailed Damage Inspection Report”** means the report prepared by FHWA which contains the description of emergency repair work performed and permanent restoration work to be performed by the County.
8. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
9. **“Emergency Repairs”** means repairs made during or right after a disaster to restore essential traffic, to minimize the extent of damage, or to protect the remaining facilities. Repairs that go beyond these three objectives are permanent repairs.
10. **“FHWA”** means the Federal Highway Administration, a federal agency of the United States.
11. **“KDOT”** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS, 66603-3745.
12. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.
13. **“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 Participating Costs.
14. **“Participating Costs”** means expenditures for items or services which are an integral part of highway, bridge and road construction projects, as reasonably determined by the Secretary.
15. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the County.
16. **“Permanent Repairs”** means repairs undertaken after the occurrence of a disaster to restore the highway to its pre-disaster condition. They occur after emergency repairs have been completed and usually require the development of plans, specifications and estimates. They will likely require some design effort and may require geotechnical studies or other engineering studies, structural analysis or environmental reviews. The replacement of bridges, construction of retaining structures, highway relocations or the addition of significant protective measures are usually considered permanent repairs. Work outside of the roadway section and repairs to non-essential facilities such as rest areas are considered permanent repairs

17. **“Project”** means all phases and aspects of the Construction endeavor to be undertaken by the County, as and when authorized by the Secretary prior to Letting, being: **repairing a bridge and culverts on 61st Street North between Oliver and Woodlawn in Sedgwick County, Kansas**, and is the subject of this Agreement.
18. **“Project Limits”** means that area of Construction for the Project, including all areas between and within the Right of Way boundaries as shown on the Design Plans.
19. **“Right of Way”** means the real property and interests therein necessary for Construction of the Project, including fee simple title, dedications, permanent and temporary easements, and access rights, as shown on the Design Plans.
20. **“Secretary”** means the Secretary of Transportation of the state of Kansas, and his or her successors and assigns.

ARTICLE II

1. **Performance.** By executing this Agreement, the County certifies it now has available sufficient equipment of suitable type and the necessary employees adequately trained to perform the work required under the terms of this Agreement in an economical and workmanlike manner, and the County further certifies the use of the forces and equipment required for the performance of this work will not interfere with other work which is necessary to be performed by such forces and equipment on other roads in the County.

2. **Design and Specifications.** The County shall be responsible to make or contract to have plans and specifications prepared, where necessary, and accomplish the work as defined on the Detailed Damage Inspection Report (DDIR) as approved by the Federal Highway Administration (FHWA) and in accordance with 23 C.F.R. §668.101 *et seq.* All construction work performed and materials incorporated therein shall be in accordance with the plans and specifications. The plans and specifications approved by the Secretary for the Project are on file in the offices of KDOT in Topeka, Kansas.

3. **Completion Date.** The County will commence work upon notification by the Secretary and said work shall be completed within one-hundred twenty (120) working days thereafter.

4. **Inspections.** The County agrees to supervise and inspect the work to insure compliance with the plans and specifications, and administer the payment(s) due the engineering Consultant and/or Contractor. The County will require at a minimum all personnel, whether County or Consultant to comply with the high visibility apparel requirements of the KDOT Safety Manual, Chapter 4, Section 8 Fluorescent Vests. If the County executes an agreement for inspection, the agreement shall contain this requirement as a minimum. The County may set additional clothing requirements for adequate visibility of personnel.

5. **Records and Record Retention.** The County will keep detailed and accurate records of actual labor, materials, and equipment used on the Project. The Secretary's personnel will verify the major items of labor, materials, and equipment on a daily basis. The County shall retain all records of Project expenditures for a period of five (5) years after the County has received final payment and will give access to such records at reasonable times and places for inspection and audit by authorized representatives of the Secretary and of the Federal Highway Administration (FHWA).

6. **Project Costs.** The cost involved in accomplishing the work and the reimbursement of any cost due the County is dependent upon the availability of federal funds. The amount of Federal-Aid participation reimbursable to the County for intermediate payment has been established as a maximum of \$345,442.00 subject to the following terms: 1) the first \$10,658.00 in Emergency Repairs is reimbursed at one hundred percent (100%); and 2) the remaining \$334,784.00 in Emergency Repairs is reimbursed at eighty percent (80%). Permanent Repairs are reimbursed at eighty percent (80%).

(a) Labor and fringe benefits will be charged at the County's actual cost. If an employee is paid monthly, their hourly rate will be computed by dividing their salary by the hours per month they work. Costs of general administration and other overhead, including but not limited to those necessary for directors, department heads, legal, accounting, budgeting, personnel, procurement, clerical, secretarial, management, supervision, and other support services are not allowable; provided, however, if such employees are assigned for specific identifiable periods of time to perform Project-related activities in the same manner as other operating personnel, and if prior written approval is obtained from the Secretary, then these costs will be allowable.

(b) Allowed equipment rates will be as shown in the KDOT Equipment Rate Table which is in effect at the time of approval of this Agreement by the Secretary. No other rates are allowed or may be approved. Any equipment proposed to be used on the Project which is not listed in this rate table, and for which reimbursement is desired, must have prior written approval of a rate by the Secretary before being used on the Project.

(c) Materials will be estimated at the price of low quotes and will be paid for at actual invoiced costs. Copies of invoices shall be furnished to the Secretary's representatives. Materials such as traffic signing, barricades, field offices and labs, test equipment, hand tools, engineering equipment and other such items used from or to be returned to the County's inventory or stock, are not allowable costs, except by prior written approval of the Secretary.

7. **Itemized Statements.** After completion of the Project, the County will furnish the Secretary's representative with one (1) certified itemized statement of the actual cost of such force account work detailed as follows:

(a) **Labor:** the total actual hours, rates and extension for each classification documented by Project-specific time sheets.

(b) **Equipment:** the total actual hours, KDOT rates and extension for each approved unit of machinery and equipment; or, if occasional, specialized equipment (prior written approval required) is rented, actual invoice costs.

(c) **Materials:** the actual quantities of materials, prices and extensions as invoiced by the suppliers.

(d) **Transportation:** actual costs for the delivery of materials, if any.

(e) **Miscellaneous:** cost of property damage, liability and workers' compensation insurance premiums, unemployment insurance contributions, social security, health and retirement payments, and/or other eligible direct Project-related costs. The certified, itemized

statements shall be accompanied and supported by invoices for all materials used, specialized equipment rented, and transportation charges.

8. **Reimbursement Payments.** If requested by the County and approved by the Secretary, intermediate payments may be made to the County for work performed. The County agrees to request cost reimbursement only for the work approved in the DDIR(s). The County will be reimbursed based on Federal-aid participation in the amount noted above in Section six (6). Upon receipt of the County's statement and verification, a voucher will be prepared for payment, reviewed, and a warrant issued to the County for all of the approved or eligible actual costs vouchered to the Secretary (not to exceed the Federal-aid share of the Project estimate). When the final voucher is processed it will be paid by the Secretary less a \$500 retainage. When the claims submitted on the payment voucher have been audited, the Secretary will issue the County a warrant for the remaining amount of the voucher up to the maximum of the Federal-aid share of the Project estimate.

9. **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 County agrees to the following provisions:

(a) **Audit.** It is the policy of the Secretary to make any final payments to the County 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 County'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 County, 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 County agrees to refund payment made by the Secretary to the County for items subsequently found to be not eligible for reimbursement by audit.

(c) **Agency Audit.** If the County 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 County 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 County for items considered Non-Participating Costs, the County shall promptly reimburse the Secretary for such items upon notification by the Secretary.

10. **Organizational Registration Requirements.**

(a) **Dun & Bradstreet.** If it has not already done so, the County 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 County agrees it shall maintain current registrations in the System for Award Management (<http://www.sam.gov>) at all times during which they have active federal awards.

11. **Maximum Participation.** The Project estimate, which is included in an attachment hereto, is made solely to enable the County to utilize available equipment and personnel and is not intended to allow the County to make a profit. It is intended, as nearly as can be estimated, to cover only actual costs as agreed upon in order for the Secretary, as agent for said County, might obtain the benefits of Federal funds for the Project. The County is then able to do such work as set forth in the plans and specifications and within the provisions of the Code of Federal Regulations. The total amount of reimbursement of actual costs to the County is \$345,442.00; however, if unusual and unforeseen circumstances should arise which require a major revision of plans or specifications, revision of the upper limit may be made by application to the Secretary. The upper limit can only be revised by supplemental agreement.

12. **Workers' Compensation.** The County will elect to follow the provisions within the Workers' Compensation Act K.S.A. § 44-505 *et seq.* for all work to be done on the Project and will provide such Workers' Compensation Insurance as shall be required by the Commissioner of Workers' Compensation.

13. **Non-Discrimination Laws.** The County will: (a) comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 *et seq.*)(ADA) and not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; and (d) include those provisions in (a) through (c) in every contract, subcontract or purchase order so they are binding upon such contractor, subcontractor or vendor. If the County fails to comply with any applicable requirements of (a) through (d) above or if the County is found guilty of any violation by federal or state agencies having enforcement jurisdiction for those Acts, such violation will constitute a breach of this Agreement. If the Secretary determines the County has violated applicable provisions of the ADA, the violation will constitute a breach of this Agreement. If any violation under this paragraph occurs, this Agreement may be cancelled, terminated or suspended in whole or in part.

14. **Representations by County.** The County has carefully examined the plans, specifications, and special provisions or supplements thereto, if any, and is satisfied as to the requirements of the Agreement for the Project. The County has inspected the actual location of the proposed work and has investigated local or other sources of materials and supplies, and is satisfied as to all quantities and conditions and understands in signing this Agreement, it waives all right to plead any misunderstanding regarding the same. The County hereby declares it shall present no claim or demand against either the Secretary or the Federal Highway Administration (FHWA) for any cost or

expense incurred or sustained in the performance of the work for nonparticipating costs, but shall bear and absorb the same out of the County's road and bridge fund or any other County funds.

15. **Indemnification.** To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act as applicable, the County will defend, indemnify, hold harmless and save the Secretary and the Secretary's authorized representatives harmless 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, or any subcontracts entered into in connection therewith, or the acts of the County, or the County's authorized representatives, agents or employees when acting under the provisions of this Agreement or subcontracts thereto. The County shall not be required to defend, indemnify, or hold the Secretary harmless for negligent acts or omissions of the Secretary or the Secretary's authorized representatives or employees.

16. **Termination.** If, for justifiable reasons which are in the public interest, the Secretary or the County decides to terminate this Agreement before the Project is completed, the extent of participation in the Agreement costs, including final settlement, will depend upon the merits of the individual case. In no event will the Secretary participate in any allowance for work not performed or accepted for Federal-aid participation.

17. **Incorporation of Documents.** It is understood and agreed that 23 C.F.R. 668A, DDIR(s), Project plans and specification(s), FHWA authorization(s), and contract document(s) are all essential to this Agreement and are hereby incorporated by reference into this Agreement and are a part thereof.

18. **Attachment Index.** The County agrees the Special Provision – Specifications, as listed on the "Attachment Index," where it refers to the Contractor will also apply to the County. The "Attachment Index" with associated documents are incorporated by reference and made a part of this Agreement.

19. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon all Parties to this Agreement and their successors in office.

The signature page immediately follows this paragraph.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their duly authorized officers.

ATTEST:

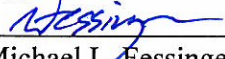
SEDGWICK COUNTY, KANSAS.
BOARD OF COUNTY COMMISSIONERS

Kelly B. Arnold
County Clerk

(Date)

David T. Dennis, Chairman
Commissioner, Third District

Approved as to Form



Michael L. Fessinger
Assistant County Counselor

Kansas Department of Transportation
Secretary of Transportation

BY:

Catherine M. Patrick, P. E. (DATE)
State Transportation Engineer

ATTACHMENT INDEX

1. Estimated Hourly Equipment and Labor Costs and Project Estimate
2. Special Provision - Certification of Nonsegregated Facilities and Certification of Insurance
(County must sign)
3. Special Attachment No. 1, Rev. 09.20.17 – Title VI of the Civil Rights Act of 1964
4. DA-146a – Contractual Provisions Attachment, Rev. 06-12

<div style="text-align: center;"> DETAILED DAMAGE INSPECTION REPORT (Title 23, Federal-aid Highways) </div>					Report Number 13		
					Sheet 1 of 1		
Location (Name of Road and Milepost) Bridge on 61st St. North between Oliver and Woodlawn (approximately 2,000 feet east of Oliver)					FHWA Disaster Number KS16-1		
Description of Damage Eroded soils around the culverts which allowed upward buckling in the floor and inward bulging in the walls of the culverts. The damage was severe and resulted in significant loss of load capacity for the structures.					Inspection Date 4/12/17		
					Federal-aid Route Number 06610		
					State KS	County Sedgwick	
Cost Estimate							
Emergency Repair	Description of Work to Date (Equipment, Labor, and Materials)			Unit	Unit Price	Quantity	Cost Completed Remaining
	Detour Signage			ea	\$5,000.00	1	\$5,000.00
	Bridge Monitoring, Cleanup, Misc.			ea	\$5,658.07	1	\$5,658.07
				ea			
				ea			
				ea			
				ea			
				ea			
				ea			
				ea			
				ea			
				ea			
				ea			
				ea			
	Method <input checked="" type="checkbox"/> Local Forces <input type="checkbox"/> State Forces <input checked="" type="checkbox"/> Contract				Subtotal PE/CE		\$10,658.07
Emergency Repair Total						\$10,658.07	
Permanent Restoration	Pump and Hoses for Structure Inspection			ea	\$709.00	1	\$709.00
	Design (County Forces)			ea	\$12,247.76	1	\$12,247.76
	Survey (County Forces)			ea	\$934.08	1	\$934.08
	CAD (County Forces)			ea	\$2,528.69	1	\$2,528.69
	County Equipment Charges			ea	\$4,837.44	1	\$4,837.44
	Construction Inspection (County Forces)			ea	\$10,000.00	1	\$10,000.00
	Right of Way			ea	\$15,021.00	1	\$15,021.00
	RCBCs, Gaskets and Geotextile (WCP)			ea	\$47,176.28	1	\$47,176.28
	Construction Contract (Klaver)			ea	\$325,025.61	1	\$325,025.61
				ea			
				ea			
				ea			
Method <input checked="" type="checkbox"/> Local Forces <input type="checkbox"/> State Forces <input checked="" type="checkbox"/> Contract				Subtotal PE/CE		\$418,479.86	
Right-of-Way							
Perm. Repair Totals						\$418,479.86	
Environmental Assessment Recommendation <input checked="" type="checkbox"/> Categorical Exclusion <input type="checkbox"/> EA/EIS				Estimated Total		\$429,137.93	
Recommendation <input checked="" type="checkbox"/> Eligible <input type="checkbox"/> Ineligible				FHWA Engineer Steven E. Toillion		Date 4/12/17	
Concurrence <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				State Engineer Adam Fernier		Date 4/12/17	
Concurrence <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				Local Agency Representative Jim Weber		Date 4/12/17	

CERTIFICATION OF NONSEGREGATED FACILITIES
And
CERTIFICATION OF INSURANCE

The County hereby certifies the prosecution of the Project pursuant to the rules and regulations contained in the Federal Register Volume 33, No. 33, Pages 3064-3067 dated Friday, February 16, 1968 and the May 9, 1967 order (32 F.R. 7439, May 19, 1967) by the Secretary of Labor, the above named County does certify as follows:

They will not maintain or provide for their employees any segregated facilities at any of their establishments and they will not permit their employees to perform their services at any location, under their control, where segregated facilities are maintained.

The County hereby certifies at the time of execution of this contract, the County carries workers' compensation and employers liability insurance, standard form comprehensive public liability and property damage insurance as recognized by the Commissioner of Insurance of the State of Kansas with special coverage for additional hazards as may be required by the Kansas Department of Transportation 2007 Standard Specification for State Road and Bridge Construction (Page 56; Subsection 107.10).

The County agrees to carry the necessary insurance as required by the 2007 Standard Specifications until this Project receives final acceptance.

Board of County Commissioners

Chairperson

Member

Member

3/26/96

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.

KANSAS DEPARTMENT OF TRANSPORTATION

Special Attachment
To Contracts or Agreements Entered Into
By the Secretary of Transportation of the State of Kansas

PREAMBLE

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4) and other nondiscrimination requirements and the Regulations, hereby notifies all contracting parties that it will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, color, national origin, sex, age, disability, income-level or Limited English Proficiency ("LEP").

CLARIFICATION

Where the term "contractor" appears in the following "Nondiscrimination Clauses", the term "contractor" is understood to include all parties to contracts or agreements with the Secretary of Transportation, Kansas Department of Transportation. This Special Attachment shall govern should this Special Attachment conflict with provisions of the Document to which it is attached.

ASSURANCE APPENDIX A

During the performance of this contract, the contractor, for itself, it's assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in its Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration (FHWA), the Federal Transit Administration ("FTA") or the Federal Aviation Administration ("FAA") as they may be amended from time to time which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, Including Procurements of Material and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, Federal Transit Administration ("FTA"), or Federal Aviation Administration ("FAA") to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or, the FHWA, FTA, or FAA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA, FTA, or FAA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of the paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any

subcontract or procurement as the Recipient or the FHWA, FTA, or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

ASSURANCE APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- The Federal Aid Highway Act of 1973 (23 U.S.C. § 324 et. seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et. seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL No. 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with LEP, and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681)