

**STATE'S
ORIGINAL**

Agreement No. 367-16

**CONTRACT FOR
FEDERAL-AID CONSTRUCTION ENGINEERING BY
CITY OF DERBY
(FORCE ACCOUNT AGREEMENT)**

CMS Contract No. _____

**PROJECT NO. 87 U-0164-01
CITY OF DERBY, KANSAS**

Parties to this Agreement for Federal-Aid Construction Engineering are the **City of Derby, Kansas**, (the "Local Public Authority" or "LPA") and the **Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the "Secretary"), collectively referred to as the "Parties."

I. PURPOSE OF AGREEMENT

A. Pursuant to authority vested in K.S.A. 68-402b and K.S.A. 68-401 et seq. the Secretary authorizes the LPA to perform certain engineering and technical services for the above noted Project requiring inspection, sampling and testing of materials and workmanship as well as other technical services (Services); however, the Secretary's engineering and technical forces will be unable to perform all of the Services within the desired completion dates. The best alternative is to use a qualified firm to perform the Services needed through this Agreement.

B. The LPA represents that it has now available sufficient equipment of suitable type and the necessary employees with the education, training, and experience necessary to perform the Services this Agreement requires in an accurate and timely manner. The LPA's individual employees are licensed by the Kansas Board of Technical Professions as required by Kansas law. The LPA represents that all personnel utilized in performance of Services have appropriate training, qualifications and certifications to perform Services. The LPA further represents the use of the forces and equipment required for the performance of the Services will not interfere with other work which is necessary to be performed by such forces and equipment on other roads in the LPA.

II. DEFINITIONS

A. Construction Contract. A written agreement between the LPA and a Contractor, requiring the Contractor to construct or reconstruct a portion of the LPA's roadway system for the Project for which the LPA is providing Services. The Construction Contract includes the following Contract Documents, all of which constitute one instrument and are incorporated by reference into this Agreement: proposal, Exploratory Work Documents, addenda, amendments, contract form, contract bond, Standard Specifications, Special Provisions, Project Special Provisions, general plans, detailed plans, drawings, the notice to proceed, material test methods, material test reports, material certifications, Part V of the KDOT Construction Manual, change orders, payment vouchers, guarantees, warranties, and other agreements, if any, that become required for construction and completion of a Project.

B. Construction Project. The specified location where a Contractor shall perform construction together with all improvements the Contractor shall be constructing under a Construction Contract.

C. Contractor. The individual, partnership, corporation, joint venture, or other legal entity performing the Construction Contract.

- D. Documents. Written, printed papers and electronic files.
- E. Exploratory Work Documents. Documents developed by KDOT, local governments, or consultants to determine a Project's subsurface conditions, engineering requirements, or both. These may include geotechnical foundation investigation reports; soils reports; geology reports; hydraulic investigations; hydrological investigations; bridge reports; earth work computations; boring logs; surveys; rock investigations; soils investigations; environmental investigations; building investigations; bridge investigations; and other geological, geotechnical, or design information for a Project.
- F. FHWA. The Federal Highway Administration.
- G. KDOT. The Kansas Department of Transportation and its authorized employees.
- H. KDOT Area Engineer. For administrative control of this Agreement, Area Engineer means the KDOT Area Engineer, the KDOT Field Engineering Administrator, or Construction Manager, or other designee of the KDOT District Engineer.
- I. KDOT District Engineer. The KDOT District Engineer or designee who will perform KDOT's administrative functions for the Project
- J. LPA. The Local Public Authority (LPA) is City of Derby and its authorized employees.
- K. Manuals. The current version of the KDOT Documentation Manual, Construction Manual, Form Manual, CMS Procedures Manual, the Manual on Uniform Traffic Control Devices (MUTCD) as adopted by the Secretary and all other current relevant documents adopted by KDOT.
- L. Notice to Proceed. A written notice from KDOT authorizing the LPA to begin performance of Services.
- M. Plans. Unless noted as "preliminary," the plan profiles, typical cross sections, and other detail sheets showing the location, character, dimensions, and details of a Contractor's work on a Project.
- N. Project. A portion of the LPA's roadway system to be constructed or reconstructed under a Construction Contract and for which the LPA will perform Services.
- O. Project Special Provisions. Documents that modify the Standard Specifications for a particular Project.
- P. Reports. Formal documents that detail or summarize information analyzed, generated or gathered for the Project or for a Construction Contract. Any document or information which is or should be produced by the exercise or practice of a technical profession, as defined in K.S.A. (2012 Supp.) 74-7003(a), is considered a Report. Any record of inspection, sampling or testing of materials or workmanship is a Report.
- Q. Services. The engineering and associated technical services necessary or required for the LPA's performance of this Agreement.

R. Special Provisions. Documents that modify the Standard Specifications, such as details not covered by KDOT's Standard Specifications, special fabrication or construction features.

S. Standard Specifications. The Kansas Department of Transportation Standard Specifications for State Road and Bridge Construction (2007 Edition).

III. SECRETARY'S GENERAL RESPONSIBILITIES.

A. For the Services which the LPA performs under this Agreement, the Secretary will do the following.

1. Issue a written Notice to Proceed to LPA. The Secretary assumes no obligation to pay for Services the LPA performs prior to KDOT's issuance of a Notice to Proceed for such Services.
2. Furnish or make available to the LPA a sufficient supply of blank field diaries, logs, recordkeeping books, reporting forms and other documents KDOT requires the LPA to utilize in the performance of Services.
3. Furnish or make available all Manuals requested by the LPA if unavailable online.
4. Assign such KDOT personnel to the Project as the Secretary determines are needed.
5. Perform, or provide KDOT-furnished laboratory for, testing of materials when a laboratory is required.
6. Pay the LPA according to Article VI.

B. The Secretary has the authority to review, approve, reject, eliminate, or modify some or all of the Services. When reviewing the Services, issuing approvals/rejections, or taking any other action, the Secretary and the Secretary's representatives are not undertaking the LPA's responsibility for its Services. When reviewing the Services, issuing approvals/rejections, or taking any other action, the Secretary and the Secretary's representatives make no representations, no express warranties, and no implied warranties to any persons or entities regarding the Services.

IV. THE LPA'S GENERAL RESPONSIBILITIES.

A. For all Services performed under this Agreement, the LPA shall be responsible for the following obligations.

1. Furnish all labor materials, equipment, supplies, transportation, and incidentals necessary to perform the Services necessary and incidental to the accomplishment of the Project to the satisfaction of the Secretary, and as more detailed in Special Attachment – Specific Construction Provisions. The LPA represents that it is adequately staffed, properly qualified and suitably equipped to perform the Services in a timely manner. The LPA shall perform all Services: (a) in conformance with the terms of this Agreement; (b) in compliance with applicable laws, rules and regulations; and (c) with the degree of care, skill and diligence ordinarily exercised by professional engineering firms performing services of a similar nature.

2. Follow Quality Assurance Procedures in checking or testing equipment the LPA will use to perform its Services. The LPA shall conduct this checking or testing before use of the equipment on the Project.

3. Documentation and Deliverables.

a. Reports and other technical data collected, recorded or prepared by the LPA shall be maintained in form and substance, as well as in formats (electronic or otherwise), approved by KDOT.

b. LPA personnel shall perform Services and maintain Reports, records and other Documents in an accurate and timely fashion. LPA personnel shall record, submit and process such Reports, records and Documents on a current basis.

c. LPA personnel shall neither allow nor accept any inspection, sampling or testing of materials from any individual without first confirming such individual is currently qualified by KDOT to perform such inspection, sampling or testing. No inspection, sampling or testing will be attributed to any individual unless such individual actually performed such inspection, sampling or testing. No test results shall be accepted unless the test results are submitted in writing with the name of the technician and the technician ID number along with the expiration date of the technician's certification.

B. The LPA shall perform its inspection Services in conformity with all the terms, conditions, plans and specifications of the applicable Construction Contract.

C. The LPA shall have sole responsibility for the adequacy and accuracy of Reports, technical data and all other Services. The Secretary's performance under this Agreement is not intended to fulfill the LPA's obligations under this Agreement.

V. CONTRACT ADMINISTRATION AND AUTHORITY

A. GENERAL

1. The KDOT Area Engineer will designate a KDOT representative to monitor, oversee, and coordinate the LPA's Services. The LPA shall communicate and coordinate its Services with the KDOT representative. KDOT's monitoring, oversight, and coordination of the LPA's Services is not an undertaking of the LPA's duty to provide adequate and accurate Services but rather to fulfill the Secretary's obligations.

2. The LPA will provide progress reports to the KDOT representative.

3. The KDOT representative will make decisions regarding changes in the work, unacceptable work, unauthorized work, defective work, and the LPA's compliance with all federal, state, and local laws, regulations, and ordinances.

4. The KDOT District Engineer or KDOT Area Engineer may order the LPA to remove from the Project any personnel of the LPA who are unable to perform Services in a competent or timely manner.

5. LPA personnel shall communicate and coordinate the Services with the KDOT representative. Consultant personnel shall transmit all Reports, documentation and paperwork to the KDOT representative.

6. If the LPA furnishes all inspection, sampling and testing for a Project, the LPA shall furnish and designate a Project Manager or Project Engineer as well as other inspection personnel or technicians to inspect, sample and test materials and workmanship under the Construction Contract. The Project Manager/Project Engineer shall not act as the Contractor's superintendent or foreman. The Project Manager/Project Engineer shall not issue the instructions contrary to the Construction Contract. For such Project, the Project Manager/Project Engineer shall:

- a. Supervise all LPA personnel and Services and shall act as a liaison among the Contractor, the LPA, and KDOT.
- b. Have the responsibility and authority to reject unacceptable work, including unacceptable materials, until the KDOT representative resolves any questions or disputes.
- c. Have the responsibility and authority to suspend all or part of the Contractor's work on a Project because of unsafe site conditions or unsafe work practices.
- d. Provide guidance in interpreting Contract Documents and refer issues of interpretation to the KDOT representative.
- e. The Project Manager/Project Engineer shall not alter or waive Construction Contract provisions. If a controversy arises, the Project Manager shall notify the KDOT representative without delay.
- f. The Project Manager/Project Engineer shall transmit to the Contractor the orders and instructions of the KDOT representative. If the Project Manager/Project Engineer is unavailable and the matter needs prompt attention, the KDOT representative will transmit to the Contractor such orders or instructions and then notify the Project Manager/Project Engineer of the situation.

B. THIRD PARTIES

1. If the Project work requires contact or coordination with third parties, then KDOT will contact and, if necessary, coordinate activities with third parties, such as affected local, state and federal agencies, the general public, utilities, railroad companies, private consultants, businesses, and contractors.

2. The LPA shall cooperate fully with KDOT, the LPA, local agencies, state agencies, federal agencies, including the FHWA, the general public, utilities, railroad companies, private consultants, businesses, and contractors. The LPA recognizes that its actions or inactions may adversely impact or affect KDOT as well as other third parties, including but not limited to other consultants in plan development, any Contractor on the Construction Project, public utilities, private utilities, public landowners, private landowners, or others. The LPA shall do, or require to be done, all things reasonably necessary to: (a) avoid or mitigate unavoidable delays, costs, losses or damages which may arise out of, be caused by or attributed to the LPA's actions or inactions in performance of Services under this Agreement and (b) effectively coordinate with KDOT and third parties so as to enable KDOT to implement the Project in a timely and cost-effective manner.

C. CONSTRUCTION CONTRACT PERFORMANCE

1. At the Secretary's request, the LPA shall attend conferences or meetings that occur during performance of a Construction Contract, including but not limited to, pre-construction conferences held with potential bidders and other third parties interested in or involved in the Project. The Secretary may hold such conferences/meetings to discuss the LPA's Services, the Contractor's operations, third parties' concerns, or other relevant Project or Construction Contract issues. KDOT may hold a close-out conference with the LPA to evaluate the LPA's performance.
2. The LPA shall require its personnel that are KDOT-certified inspectors and technicians to be present on the Project any time the Contractor performs work requiring inspection, sampling or testing under the Construction Contract.

D. TERM AND TERMINATION OF AGREEMENT

1. Unless terminated sooner under Article V.D.2. or V.D.3., the term of this Agreement will commence upon the effective date described in Article VII.H.1 and expire upon notice of written release from the Secretary.
2. The Secretary may terminate this Agreement, in whole or in part, upon ten (10) days advance written notice delivered to the LPA.
 - a. If the Secretary terminates this Agreement in whole or in part, for the Secretary's own convenience, then the Secretary will pay the LPA the LPA's costs incurred before the termination date as Article VI provides.
 - b. If the Secretary terminates this Agreement, in whole or in part, because of the LPA's failure to comply with its contract obligations or because of the LPA's negligent acts, errors, or omissions, then the Secretary will pay the LPA the reasonable value of Services performed before the termination date.
3. The LPA may terminate this Agreement upon ten (10) days advance written notice to the Secretary and delivered to KDOT's Bureau of Local Projects.
4. The Secretary or the LPA may or may not claim the other Party breached the contract when exercising their right to terminate this Agreement. Termination, in any case, does not prevent the Secretary from recovering damages for the LPA's failure to comply with its obligations under this Agreement or for the LPA's negligent acts, errors, or omissions (see Article VII.F.) or prevent the LPA from seeking payment for additional Services under Article VI.B.
5. Regardless of which Party terminates this Agreement, the Secretary may require the LPA to complete some of the remaining Services. The LPA's obligations to perform shall not end until such Services are completed.

VI. PAYMENT

A. GENERAL

1. Subject to the upper limit of compensation (Article VI.A.3.), disallowed costs (Article VI.A.6.) applicable to the Project, and sums withheld for liquidated damages (Article VI.A.12.), the Secretary will pay the LPA the supported actual costs for the performed Services. Additionally, the Secretary will pay the LPA its other direct costs expended on the Project, such as contract labor, approved subcontractor/subconsultant costs as necessary, equipment costs, transportation costs, lodging costs, and meal expenses.
2. Subject to the upper limit of compensation (Article VI.A.3), the Secretary will pay for additional Services according to Article VI.B. The Secretary will not pay the LPA for any costs the LPA incurred because of the LPA's negligent acts, errors, or omissions or because of the LPA's failure to comply with its obligations under this Agreement.
3. Initially, the Parties shall identify the upper limit of compensation on the Special Attachment-Special Construction Provisions. The Parties may thereafter adjust the upper limit of compensation through a revised Special Attachment- Special Construction Provisions, CMS Change Order or Supplemental Agreement. The LPA shall notify the KDOT District Engineer before the LPA's Services exceed the upper limit of compensation so the Parties may consider an adjustment. The Secretary has no obligation to pay costs that exceed the upper limit of compensation unless and until any adjustment thereof is agreed in writing between the Parties.
4. To initiate payment for Services, the LPA shall submit to the KDOT District Engineer an itemized billing in the form approved by the KDOT District Engineer. The LPA shall not submit a billing more frequently than once a month or for less than \$500.00 during the progress of the work, for partial payment on account for the approved work completed by the LPA to date. For each billing cycle the LPA shall:
 - a. Submit payroll documentation identifying all tasks and employees that worked on such tasks for the Project during that billing period, all hours each of these employees worked, the rate of pay for each of these employees, and all monies paid to each of these employees; and
 - b. Itemize the direct expenses and provide adequate supporting documentation therefor.

In cases where the LPA submits billings which include costs incurred by a subconsultant, the same requirements of subparagraphs a. through b. above will apply.

5. The Secretary will pay for the Services within 30 days after receiving, reviewing, and generally approving the LPA's itemized billing and accompanying documentation. This approval does not prevent the Secretary from adjusting a previous payment(s) for disallowed costs (Article VI.A.6.) discovered after the Secretary has made that payment.
6. The LPA shall incur and invoice its costs in conformity with generally accepted accounting principles and the cost principles established in the Federal-Aid Policy Guide and the Code of Federal Regulations, Title 48, Chapter 1, Subchapter E, Part 31 (48 CFR Section 31.000 *et seq.*). The Secretary will not pay for disallowed costs. Disallowed costs include costs the Secretary determines are

unreasonable, not actually incurred, caused by the LPA's failure to comply with its obligations under this Agreement, caused by the LPA's negligent acts, errors, or omissions, or otherwise unallowable. The LPA shall reimburse the Secretary if the Secretary previously paid any disallowed costs.

7. For Services performed, accumulated partial payments shall not exceed ninety-five percent (95%) of the federal-aid share of the upper limit of compensation.
8. The LPA shall submit its final invoice (clearly marked and designated as "final") for final payment following completion of Services, but no later than one hundred eighty (180) days from completion of such Services. The LPA shall clearly designate and label such invoice as "final" so as to enable KDOT to proceed to close out the Project in accordance with its own internal procedures.
9. 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 City agrees to the following provisions:
 - a. Audit. It is the policy of the Secretary to make any final payments to the City 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 City'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 City, 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 City agrees to refund payment made by the Secretary to the City for items subsequently found to be not eligible for reimbursement by audit.
 - c. Agency Audit. If the City 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 City 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 City for items considered Non-Participating Costs, the City shall promptly reimburse the Secretary for such items upon notification by the Secretary.
10. If it has not already done so, the LPA 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>).

11. The LPA 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.

12. Upon receiving the final invoice and verifying the LPA completed its Services, the Secretary will pay the LPA the next-to final payment for that portion of the eligible remaining five percent (5%) of the upper limit (up to the maximum of the federal-aid share and as allowed by provision of state law), withholding the retainage specified in Article VI.A.13. The LPA will not have completed its Services until the LPA has completed and returned all records, Reports, and other such documents this Agreement requires. If the LPA fails to complete and return all such documents to the KDOT District Engineer, then the LPA shall owe the Secretary liquidated damages of five hundred dollars (\$500.00) which shall be withheld from final payment.

13. Once the LPA has earned ninety-five percent (95%) of the federal-aid share of the upper limit of compensation, the Secretary will withhold as retainage one percent (1%) of the upper limit or \$500.00, whichever is greater. If partial payments never reach ninety-five percent (95%) of the federal-aid share of the upper limit, the LPA may request payment one hundred percent (100%) of the federal-aid share minus a retainage equal to one percent (1%) of the upper limit or \$500, whichever is greater. The Secretary will hold the retainage until the Secretary or the Secretary's authorized representative has performed a final audit of the LPA's Services. The Secretary will make final payment, if any, within ninety (90) days after KDOT completes the final audit. If the LPA owes the Secretary no money after audit, the final payment will equal the retainage. However, if the final audit reveals the LPA owes the Secretary money, the Secretary will apply the retainage to the amount owed before paying the LPA any remaining funds. The amount owed to the Secretary may include liquidated damages under Article VI.A.12, overpayments, or other sums. If the retainage is insufficient to pay the amount owed, then the Secretary will issue a notice of deficiency, demanding that the LPA pay the balance owed. The LPA then shall pay the balance owed promptly after receiving notice of the deficiency. The Secretary will consider no claim for additional compensation submitted after KDOT has completed the final audit.

B. CHANGE IN SERVICES

1. The KDOT Area Engineer may change the LPA's Services by increasing, decreasing, or otherwise modifying the Services this Agreement requires.

2. The LPA may request payment for increased or modified Services as "extra Services" by written request to the KDOT Area Engineer. No additional payment will be made to the extent "extra services" were caused by the LPA's breach of its contract obligations or the LPA's negligent acts, errors, or omissions. If the Secretary determines the "extra Services" are reasonable and necessary, then the Secretary may authorize payment for these "extra Services" and increase the upper limit of compensation if necessary to compensate for the "extra Services." Such increases may include adding structures, increasing the Construction Contract scope, increasing Project termini, or changing the duration of Services, among others.

3. If the KDOT Area Engineer decreases the Services or decreases the expected duration of Services, then the LPA shall have no claim for additional compensation. Such decreases may include eliminating structures, decreasing the Construction Project scope, decreasing Construction Project termini, or changing the duration of Services, among others.

4. For changes in Services, the LPA will submit in writing its opinion and justification for extra Services and the estimated amount of additional compensation and submit to the KDOT representative.
5. If the KDOT Area Engineer denies additional compensation for “extra services”, in whole or in part, the LPA may appeal this denial to the Deputy Secretary of Transportation/State Transportation Engineer. The State Transportation Engineer’s decision represents KDOT final agency action under the Kansas Judicial Review Act (KJRA), K.S.A. 77-601 *et seq.*

VII. MISCELLANEOUS PROVISIONS

A. OWNERSHIP OF DOCUMENTS

1. Upon completion or termination of Services, the LPA shall furnish to the KDOT Area Engineer all Documents KDOT provided to the LPA for such Services.
2. Upon completion or termination of Services, the LPA shall furnish to the KDOT Area Engineer all original Documents and Reports the LPA compiled and prepared in performing such Services.
3. Any Documents, procedures, specifications, engineering calculations, information, Reports or any other work products developed by the LPA as deliverables to KDOT as part of the Services performed and paid for under this Agreement shall become the property of KDOT, but the LPA shall have the right to retain copies thereof for its own internal recordkeeping and for the purposes of performing Services for a Project.
4. Upon completion or termination of Services and at the Secretary’s request, the LPA shall furnish to the KDOT Area Engineer copies of all correspondence, memoranda, instructions, receipts, invoices, e-mails, and any other Documents pertaining to such Services and the Project. These Documents are KDOT’s property.
5. Any or all Services performed under this Agreement may result in the LPA using Documents (such as reports, surveys, schedules, lists, or data) the Secretary’s authorized representatives prepared, compiled, or collected that are use restricted pursuant to 23 U.S.C. § 409. Such Documents are watermarked “Use Restricted 23 U.S.C. § 409,” providing the Secretary with an evidentiary privilege that only counsel for KDOT may assert in litigation against KDOT. The LPA shall use these watermarked Documents only to perform Services on the Project. The LPA shall not remove or otherwise damage the 23 U.S.C. § 409 watermark. The requirements of this paragraph shall be included by the LPA in its subcontract agreements, if any, for the performance of any Services.

6. Documents collected or prepared by the LPA in the performance of this Agreement may be used without restriction by the Secretary for any public purpose. Any such use shall be without compensation to the LPA.

B. ACCESS TO RECORDS; AUDITS

1. The LPA shall keep all Project Documents arising out of or related to performance of Services for a five-year retention period beginning with the LPA’s final payment date. The final payment date is the voucher date on the Secretary’s last payment to the LPA. This final payment occurs after the LPA

submits its request for final payment and KDOT has completed the final audit. The LPA shall make all Documents available at the LPA's principal office.

2. The Secretary, FHWA, or both, may inspect and review all Documents pertaining to the LPA's Services during the LPA's performance and the five-year retention period.

3. The LPA shall maintain all cost documentation according to generally accepted accounting principles and the cost principles contained in Code of Federal Regulations, Title 48, Chapter 1, Subchapter E, Part 31 (48 CFR Section 31.000 *et seq.*).

4. Within five (5) years after the LPA has submitted its invoice for final payment on Work Estimate for a Project, having completed its Services, the Secretary or the Secretary's authorized representatives may perform a final audit of the LPA's costs conducted according to generally accepted governmental auditing standards and in compliance with cost principles contained in Code of Federal Regulations, Title 48, Chapter 1, Subchapter E, Part 31 (48 CFR Section 31.000 *et seq.*). Without limitation, the auditors may determine whether costs incurred were actual and necessary, reasonable, allowable, and in compliance with regulations and whether the compensation did not exceed the applicable upper limit of compensation. The auditors may review all subconsultant records and costs, if any, as well. The LPA shall reimburse the Secretary for overpayments.

5. The LPA shall include the provisions of Articles VII.B.1—B.4. above in all subconsultant agreements, if any.

C. AGREEMENT ITEMS

1. This Agreement includes the items referenced in Article II.A.

2. The Exhibits and Attachments identified below are essential parts of and incorporated into this Agreement. The LPA shall complete and sign where indicated on the forms contained therein. The Exhibits and Attachments are:

Special Attachment No. 1, Specific Construction Provisions

Special Attachment No. 2, The Civil Rights Act of 1964

Special Attachment No. 3, Contractual Provisions Attachment (Form DA-146a)

Special Attachment No. 4, Listing of KDOT Certified Inspectors

(Updated upon request or at least annually)

Special Attachment No. 5, Estimate of Engineering Fee

Special Attachment No. 6, Certification -- Federal Funds -- Lobbying

3. No Party may alter or amend this Agreement except by a revised Work Estimate, CMS Change Order or Supplemental Agreement evidencing written agreement between the Parties for such alteration or amendment.

D. LEGAL RELATIONS

1. The LPA shall observe and comply with all applicable federal, state, and local laws, ordinances and regulations.

2. This Agreement binds the Parties and the Parties' successors and assigns. The LPA shall not assign this Agreement without the prior written permission of the Secretary. Notwithstanding any other provision of this Agreement, the LPA shall not subcontract any part of the Services without prior written approval by the Secretary.
3. This Agreement creates no third party beneficiaries.
4. In the event any disagreement, dispute or claim of the LPA arising out of or in connection with the LPA's performance of this Agreement, the LPA shall make written request to the KDOT District Engineer to review the matter. If dissatisfied with the review and decision of the KDOT District Engineer, then the LPA may appeal, in writing, to the Deputy Secretary of Transportation/State Transportation Engineer within fifteen (15) calendar days of receipt of the decision of the KDOT District Engineer. The State Transportation Engineer's decision represents KDOT final agency action under the Kansas Judicial Review Act (KJRA), K.S.A. 77-601 *et seq.*
5. Kansas law governs this Agreement.

E. WORKERS' COMPENSATION

The LPA will elect to come within the provisions of the Workers' Compensation Act (K.S.A. 44-505) for all Services performed for the Project and will provide such workers' compensation insurance as is required by the Commissioner of Workers' Compensation..

F. ERRORS AND OMISSIONS; INDEMNIFICATION; INSURANCE

1. The LPA shall promptly correct, without additional compensation, the LPA's failure to perform its obligations under this Agreement. The LPA shall promptly correct its negligent acts, errors, or omissions without additional compensation. If the Services affect a third party, then the LPA shall perform corrections in a manner that minimizes delay to the third party and other damages.
2. The LPA shall pay for or reimburse the Secretary for damages and costs the Secretary has incurred or will incur, because the LPA failed to comply with its obligations under this Agreement and LPA's negligent acts, errors, or omissions arising out of or in connection with the LPA's performance of this Agreement. These damages include personal injury to KDOT employees, damage to KDOT property, and economic loss whether the economic loss arises in contract, tort, or equity. Economic loss encompasses direct and consequential damages Kansas law permits the Secretary to recover, including monies the Secretary pays or owes to construction contractors, monies the Secretary pays or owes to consulting firms, delay damages, or other damages arising from the LPA's failure to comply with its obligations. This Agreement does not authorize third parties to seek recovery as third party beneficiaries of this Agreement or in any other capacity.
3. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the LPA will defend, indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all claims, suits, damages (whether property damages, personal injury damages, or economic damages), and costs (reasonable attorney's fees and defense costs) resulting from the LPA's failure to comply with its obligations under this Agreement, resulting from the LPA's negligent acts, errors, or omissions in performing its Services, or all of the above. The

LPA shall have no obligation 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.

G. CONFLICT OF INTEREST

1. The LPA warrants it has no public or private interest, and shall not acquire (directly or indirectly) any such interest, which would conflict with the Services performed under this Agreement.
2. The LPA shall not hire persons in KDOT's employment to provide Services under this Agreement without the Secretary's prior written permission.

H. EFFECTIVE DATE; REPRESENTATION OF AUTHORITY

1. This Agreement will become effective on the date when both Parties have signed the Agreement. It is intended that the LPA will sign first, and the Secretary (or the Secretary's designated representative) will sign last; therefore the effective date of the Agreement will be the latter date.
2. In signing this Agreement, the Parties and the individual person signing on behalf of such Party represent that the person signing is duly authorized, having the authority and capacity to execute and legally bind the respective entity to this Agreement.

NOW THEREFORE, the Parties cause their duly authorized representatives to enter into this Agreement.

RECOMMEND FOR APPROVAL:

CITY OF DERBY, KANSAS

DERBY CITY ENGINEER

ATTEST:

MAYOR

DERBY CITY CLERK (Date)

(SEAL)

MEMBER

Kansas Department of Transportation
Secretary of Transportation

By: _____
Catherine M. Patrick, P.E. (Date)
State Transportation Engineer

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SPECIFIC CONSTRUCTION PROVISIONS

I. SCOPE OF SERVICES

A. SERVICES TO BE PERFORMED BY THE CONSULTANT

The LPA agrees to:

- (1) Attend all conferences designated by KDOT, or required under the terms of the Agreement.
- (2) Designate a Project Engineer/Project Manager who shall report and transmit Project activity and documents to KDOT's Construction Office.
- (3) Assign a sufficient number of KDOT Certified Inspector(s) of the appropriate classifications to the Project to perform the services required under the Agreement in a timely manner to avoid delay to the Contractor.
- (4) Become familiar with the standard practices of KDOT, the Contract Documents (Specifications, Construction Contract Proposal, Special Provisions and Plans), and the Contractor's proposed schedule of operations prior to beginning field work under the Agreement.
- (5) Perform the LPA's field operations in accordance with accepted safety practices.
- (6) Furnish all equipment required to accomplish the LPA's work and to check or test it prior to use on the Project.
- (7) Provide for LPA personnel such transportation, supplies, materials and incidentals as are needed to accomplish the services required under the Agreement.
- (8) Undertake the following:

Transmit orders from KDOT to the Contractor and provide guidance in the proper interpretation of the Specifications and Plans.

Perform or provide construction surveys, staking, and measurements needed by the Contractor (unless contractor construction staking is to be performed as a bid item by the Contractor) and perform measurements and surveys that are involved in the determination of final pay quantities.

Inspect all phases of construction operations to determine the Contractor's compliance with Contract Documents and to reject such work and materials which do not comply with Contract Documents until any

questions at issue can be referred to and be decided by the KDOT Field Engineer.

Take field samples and/or test materials to be incorporated in the work, and reject those not meeting the provisions of the Contract Documents until any questions at issue can be referred to and be decided by the Field Engineer.

Make certain that test report records or certificates of compliance for materials tested off the Project site and required, prior to the incorporation in the work, have been received.

Keep such daily diaries, logs and records as are needed for a complete record of the Contractor's progress.

Measure and compute all materials incorporated in the work and items of work completed, and maintain an item account record.

Provide measurement and computation of pay items.

Prepare and submit, or assist in preparing, such periodic, intermediate and final reports and records as may be required by KDOT and as are applicable to the Project, which may include:

- a. Progress Reports
- b. Weekly statement of working days
- c. Notice of change in construction status
- d. Report of field inspection of material
- e. Test report record
- f. Contractor pay estimates
- g. Pile driving data
- h. Piling record
- i. Final certification of materials
- j. Explanation of quantity variation
- k. State of contract time
- l. Other records and reports as required by the Project

Review, or assist in reviewing and preparing of documents, all Contractor submittals of records and reports required by KDOT and as are applicable to the Project to assure the Project is constructed in accordance with Federal and State requirements and which may include:

- a. Requests for partial and final payment
- b. Other reports and records as required by the individual Project

- (9) Prepare and submit, if desired by the LPA, partial payment invoices for services rendered by the LPA, but not to exceed one submittal per month.
- (10) Collect, properly label or identify, and deliver to KDOT all original diaries, logs, notebooks, accounts, records, reports and other documents prepared by the LPA in the performance of the Agreement, upon completion or termination of the Agreement.
- (11) Return, upon completion or termination of the Agreement, all Manuals, Contract Documents, guides, written instructions, unused forms and record keeping books, and other documents and materials furnished by KDOT. The LPA shall be responsible for replacing lost documents or materials at the price determined by KDOT.
- (12) Prepare and submit a certification of Project completion.
- (13) Prepare and submit a final payment voucher for services rendered by the LPA.
- (14) Prepare and deliver (when Project is completed) one copy of major changes to the plans (by letter) to KDOT. The letter should contain such items as the following:
 - a. Earthwork and Culverts
 1. A revised list of benchmarks
 2. Location of government benchmarks
 3. Major changes in alignment
 4. Major changes in grade line
 5. Established references on cornerstones
 6. Major changes in location of drainage structures
 7. Major changes in flow-line of drainage structures
 8. Drainage structures added or deleted
 9. Any change of access control
 - b. Bridges
 1. Changes in stationing
 2. Changes in type, size or elevation of footings
 3. Changes in grade line

B. SERVICES TO BE PROVIDED BY THE SECRETARY

- (1) The Secretary agrees to:
 - a. Make available to the LPA sufficient copies of the Contract Documents, shop drawings, plan revisions, written instructions and other information and data considered by KDOT to be necessary to

enable the LPA to perform the work under this Agreement, for the Project to the same standards required of KDOT's personnel.

- b. Provide for the use of the LPA a sufficient supply of the blank diaries, logs, record keeping books and reporting forms considered by KDOT to be necessary for the LPA to perform the services under this Agreement to the same standards required of KDOT'S personnel.
 - c. Provide space in the field office and field laboratory furnished by the Contractor under the terms of the Construction Contract Proposal, for the occupancy and use of the LPA until completion of the construction work.
 - d. Perform or provide for laboratory testing of materials requiring off-site testing facilities, and obtain test reports or certificates of compliance hereof.
 - e. Perform all necessary weld inspection when there is welding for bridge beam connections and splices, and for sign supports. This includes all cross frames, diaphragm connections, and stud welding.
 - f. Designate a Construction Engineer/Construction Coordinator in the Construction Office with the duties and responsibilities set forth in Section IC of the General Construction Provisions of the Agreement.
 - g. Provide, through the Field Engineer and the District Staff, such assistance and guidance to the LPA as may be reasonably necessary to perform and complete the Agreement in conformance with standard construction engineering practices of KDOT.
- (2) KDOT reserves the right to assign and charge to the Project such KDOT personnel as may be needed.

II. PROSECUTION AND PROGRESS

- A. It is anticipated work under the construction contract will start in 2016, and be completed by 2017.
- B. The LPA shall complete all services to be rendered under this Agreement no later than two months after completion of Project construction. Failure to comply may result in disqualification of the LPA's Project Engineer/Project Manager or Chief Inspector until proper documentation is submitted and accepted.

III. BASIS OF PAYMENT

- A. Compensation of services provided by the LPA under the terms of the Agreement shall be the incurred and reimbursable actual costs to the LPA not to exceed the Agreement Estimate and as allowed by State Law and the Federal Share which will be limited to the applicable Federal-aid cost sharing formulae and availability of Federal-aid funds for engineering services. Federal-aid participation for this project is 90%.
- B. Reimbursement for costs will be limited to those which are allowable under the Code of Federal Regulations (CFR) Title 23 and Title 48, Chapter 1 and the Federal-aid Highway Policy Guide, Volume 1, Chapter 7, Section 2, except to the extent the provisions of that subpart are clearly inappropriate to the Agreement.
- C. The estimated hourly equipment and labor costs and Project estimates are included as special attachments.
 - (1) Labor and fringe benefits will be charged at the LPA's actual cost. If an employee is paid monthly, his hourly rate will be computed by dividing his salary by the hours per month that he works.
 - (2) Equipment rental rates shall be KDOT's actual operating costs (excluding depreciation) of equipment used for the Project.
 - (3) Materials will be estimated at the price of the low quotes (when necessary) and paid for at invoice prices. (Copy of invoices to be furnished to the Secretary's Construction Engineer/Construction Coordinator).
- D. After completion of the Project, the LPA will furnish the Construction Engineer/Construction Coordinator with seven (7) certified itemized statements of the actual cost of construction engineering force account work detailed as follows:
 - Labor: The total hours, rates and extension for each classification.
 - Equipment: The total hours, KDOT's rates and extension for each unit of machinery and equipment.
 - Materials: The quantities of materials, prices and extensions.
 - Transportation: Cost of delivery of materials, if any.
 - Miscellaneous: Cost of property damage, liability and worker's compensation insurance premiums; unemployment insurance contributions, social security, health and retirement payments, and/or other eligible Project related costs. Administrative costs are not eligible for reimbursement.

The statements shall be accompanied and supported by invoices for all materials used and transportation charges. However, if materials used for this Project are not specifically purchased for such work, but are taken from the LPA's stock,

inventory records must support quantities and process for materials from stock used for this Project.

The Secretary shall reserve the right to approve or disapprove the LPA's submitted claims for equipment actual operating cost.

- E. The Agreement Estimate of **\$59,589.59** has been agreed upon as the upper limit for compensation. It is intended as nearly as can be estimated to cover only actual costs and was agreed upon in order that the Secretary, as agent for said LPA, might permit the LPA to do such work as set forth in the Contract Documents, provided, however that if extra work has been authorized it will be reimbursed as per terms of the supplemental agreement(s).

IV. MISCELLANEOUS PROVISIONS

A. AUTHORIZED REPRESENTATIVES

- (1) The Field Engineer for KDOT will be Mr. Hideki Fields, P.E., whose work address is 3200 East 45th Street, N, Wichita, Kansas 67220 and work telephone is 316-744-1271.
- (2) The Project Engineer/Project Manager for the LPA will be Mr. Ky Louanghaksaphone, P.E., Certification Number N/A (expiration date is N/A), whose work address is 611 North Mulberry, Suite 300, Derby, Kansas 67037 and work telephone is 316-788-6632.
- (3) The Chief Inspector for the LPA will be Mr. Randy Downs, Certification Number 5 (expiration date is 1/1/2017), whose work address is 1144 South Seneca, Wichita, Kansas 67213 and work telephone is 316-210-4756.

B. ACCESS TO RECORDS

- (1) All documents and evidence pertaining to costs incurred under this Agreement will be available for inspection during normal business hours in the LPA's office, for a period of three (3) years following final Agreement payment.

KANSAS DEPARTMENT OF TRANSPORTATION

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

NOTE: Whenever this Special Attachment conflicts with provisions of the Document to which it is attached, this Special Attachment shall govern.

THE CIVIL RIGHTS ACT OF 1964, and any amendments thereto,
REHABILITATION ACT OF 1973, and any amendments thereto,
AMERICANS WITH DISABILITIES ACT OF 1990, and any amendments thereto,
AGE DISCRIMINATION ACT OF 1975, and any amendments thereto,
EXECUTIVE ORDER 12898, FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY
POPULATIONS AND LOW INCOME POPULATIONS 1994, and any amendments thereto,
49 C.F.R. Part 26.1 (DBE Program), and any amendments thereto

NOTIFICATION

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (78 Stat. 252), §504 of the Rehabilitation Act of 1973 (87 Stat. 355) and the Americans with Disabilities Act of 1990 (42 USC 12101), the Age Discrimination Act of 1975 (42 USC 6101), the regulations of the U.S. Department of Transportation (49 C.F.R., Part 21, 23, and 27), issued pursuant to such Act, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994), and the DBE Program (49 C.F.R., Part 26.1), hereby notifies all contracting parties that, the contracting parties will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, religion, color, gender, age, disability, national origin, or minority populations and low income populations as more specifically set out in the following "Nondiscrimination Clauses".

CLARIFICATION

Where the term "Consultant" appears in the following "Nondiscrimination Clauses", the term "Consultant" is understood to include all parties to contracts or agreements with the Secretary of Transportation of the State of Kansas.

Nondiscrimination Clauses

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

- 1) Compliance with regulations: The Consultant will comply with the regulations of the U.S. Department of Transportation relating to nondiscrimination in its federally-assisted programs and codified at Title 49, Code of Federal Regulations, Parts 21, 23 and 27, (hereinafter referred to as the "Regulations"). The Regulations are herein incorporated by reference and made a part of this contract.
- 2) Nondiscrimination: The Consultant, with regard to the work performed by the Consultant after award and prior to the completion of the contract work, will not discriminate on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations in the selection and retention of subcontractors, including in the procurements of materials and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- 3) Solicitations for Subcontractors, including Procurements of Material and Equipment: In all solicitations, either competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract including procurements of materials and equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligation under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, gender, age, disability, national origin or minority populations and low income populations.

- 4) Information and Reports: The Consultant will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and the Secretary of the Transportation of the State of Kansas will be permitted access to the Consultant's books, records, accounts, other sources of information, and facilities as may be determined by the Secretary of Transportation of the State of Kansas to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Secretary of Transportation of the State of Kansas and shall set forth what efforts it has made to obtain the information.
- 5) Employment: The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, gender, age, disability, or national origin.
- 6) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Secretary of Transportation of the State of Kansas shall impose such contract sanctions as the Secretary of Transportation of the State of Kansas may determine to be appropriate, including, but not limited to,
 - (a) withholding of payments to the Consultant under the contract until the Consultant complies, and/or
 - (b) cancellation, termination or suspension of the contract, in whole or in part.
- 7) Disadvantaged Business Obligation
 - (a) Disadvantaged Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
 - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
 - (c) The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of Federally-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate.
- 8) Executive Order 12898
 - (a) To the extent permitted by existing law, and whenever practical and appropriate, all necessary and reasonable steps shall be taken in accordance with Executive Order 12898 to collect, maintain, and analyze information on the race, color, national origin and income level of persons affected by programs, policies and activities of the Secretary of Transportation of the State of Kansas and use such information in complying with Executive Order 12898.
- 9) Incorporation of Provisions: The Consultant will include the provisions of paragraphs (1) through (8) in every subcontract, including procurements of materials and equipment, unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Secretary of Transportation of the State of Kansas may direct as a means of enforcing such provisions including sanctions for noncompliance: PROVIDED, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State.

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.

Project No. 87 U-0164-01

City of Derby

Sedgwick

County

Supporting Data Sheet
for
ESTIMATE OF ENGINEERING FEE

A. Direct Payroll

Contract Administration

<u>Work Type</u>	<u>Employee</u>	<u>Est. Hrs.</u>	<u>Rate</u>	<u>Extension</u>
1. City Inspection and Management	City Engineer	15 @	\$49.54 =	\$743.10
	Proj. Engineer	75 @	\$31.52 =	\$2,364.00
	Inspector	215 @	\$20.11 =	\$4,323.65
	Subtotal			\$7,430.75
2. On-site Testing	Chief Inspector	0 @	=	\$0.00
	Inspector	0 @	=	\$0.00
3. Surveying	Surveyor	0 @	=	\$0.00
	Techn(s)	0 @	=	\$0.00
4. Cleanup	Inspector	@	=	\$0.00
	Subtotal			\$0.00
5. Final Paper Preparation	Constr. Engineer	@	=	\$0.00
	Chief Inspector	@	=	\$0.00
	Inspector	@	=	\$0.00
	Subtotal			\$0.00

Total Direct Payroll Costs

\$7,430.75

Project No. 87 U-0164-01

City of Derby

Sedgwick

County

Summary Total Direct Payroll Costs

	Hours	Rate	Extension
City Engineer	15 @	\$49.54 =	\$743.10
City Proj. Engineer	75 @	\$31.52 =	\$2,364.00
City Inspector	215 @	\$20.11 =	\$4,323.65
Constr. Engineer	0 @	\$0.00 =	\$0.00
Chief Inspector	0 @	\$0.00 =	\$0.00
Inspector	0 @	\$0.00 =	\$0.00
Surveyor	0 @	\$0.00 =	\$0.00
Techn(s)	0 @	\$0.00 =	\$0.00
Total Direct Payroll Costs			\$7,430.75
B. Salary Related Overhead	35 %		\$2,600.76
C. Total Payroll plus Overhead			\$10,031.51
D. Direct Expenses (Travel, Postage, Misc.)			
Mileage	miles		
Full Size SUV	0 @		\$0.00
Pickup	0 @		\$0.00
Postage & Telephone	Hours @	Rate	\$0.00
Testing Laboratory or Consulting Firm to Assist Sedgwick County Public Works (See Attached Breakdown)	1 @	\$49,558.08 =	\$49,558.08
Equipment Rental	@		\$0.00
Total Other Direct Expenses			\$49,558.08
TOTAL FORCE ACCOUNT ESTIMATE			\$59,589.59

Project No. 87 U-0164-01

City of Derby

Sedgwick

County

Supporting Data Sheet
for
ESTIMATE OF ENGINEERING FEE

A. Direct Payroll

Contract Administration

<u>Work Type</u>	<u>Employee</u>	<u>Est. Hrs.</u>	<u>Rate</u>	<u>Extension</u>
1. Field Inspection daily contract documents	Constr. Engineer	<u>15 @</u>	<u>\$35.50 =</u>	\$532.50
	Chief Inspector	<u>38</u>	<u>\$31.00</u>	\$1,178.00
	Inspector	<u>750 @</u>	<u>\$28.00 =</u>	\$21,000.00
Subtotal				\$22,710.50
2. On-site Testing	Chief Inspector	<u>8 @</u>	<u>\$31.00 =</u>	\$248.00
	Inspector	<u>150 @</u>	<u>\$28.00 =</u>	\$4,200.00
Subtotal				\$4,448.00
3. Surveying	Surveyor	<u>8 @</u>	<u>\$28.00 =</u>	\$224.00
	Techn(s)	<u>8 @</u>	<u>\$18.50 =</u>	\$148.00
Subtotal				\$372.00
4. Cleanup	Inspector	<u>200 @</u>	<u>\$28.00 =</u>	\$5,600.00
5. Final Paper Preparation	Constr. Engineer	<u>2 @</u>	<u>\$35.50 =</u>	\$71.00
	Chief Inspector	<u>8</u>	<u>\$31.00</u>	\$248.00
	Inspector	<u>75 @</u>	<u>\$28.00 =</u>	\$2,100.00
Subtotal				\$2,419.00
Total Direct Payroll Costs				\$35,549.50

Project No. 87 U-0164-01

City of Derby
Sedgwick County

Summary Total Direct Payroll Costs

	Hours	Rate	Extension
Constr. Engineer	<u>17 @</u>	<u>\$35.50 =</u>	\$603.50
Chief Inspector	<u>54</u>	<u>\$31.00</u>	\$1,674.00
Inspector	<u>1175</u>	<u>\$28.00</u>	\$32,900.00
Surveyor	<u>8</u>	<u>\$28.00</u>	\$224.00
Techn(s)	<u>8 @</u>	<u>\$18.50 =</u>	\$148.00
Total Direct Payroll Costs			\$35,549.50
B. Salary Related Overhead <u>35 %</u>			\$12,442.33
C. Total Payroll plus Overhead			\$47,991.83
D. Direct Expenses (Travel, Postage, Misc.)			
Mileage	miles	\$0.100/mile	
Full Size SUV	<u>175 @</u>	<u>\$0.47</u>	\$82.25
Pickup	<u>2800 @</u>	<u>\$0.53</u>	\$1,484.00
Postage & Telephone	<u>Hours @</u>	<u>Rate</u>	\$0.00
Testing Laboratory or Consulting Firm to Assist (Name of Lab or Firm)	<u>Hours @</u>	<u>Rate</u>	\$0.00
Equipment Rental	<u>Hours @</u>	<u>Rate</u>	\$0.00
Total Other Direct Expenses			<u>\$1,566.25</u>
TOTAL FORCE ACCOUNT ESTIMATE			<u>\$49,558.08</u>

[illegible]