

**COWLEY COUNTY, KANSAS**  
**Request for Board Action**

**Date:** 8/27/2021

**Requested By:** Public Works and Engineering Office

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**Action Requested:**

Review by the County Commission and approval of project agreement with Kansas Department of Transportation for replacement of Hackney Bridge.

**Analysis:**

We submitted the Hackney Bridge replacement project to the Kansas Local Bridge Improvement Program earlier this year and were granted \$150,000 towards the project. We also plan to submit the bridge project to the Off-System Bridge Program later this fall, which would provide a considerably larger grant. If we are awarded the latter grant, this agreement will be voided.

**Fiscal Impact:**

None at this time; funds are available and will eventually be taken from Special Highway Fund.

- |   |
|---|
| <input type="checkbox"/> Budgeted item with available funds                   |
| <input type="checkbox"/> Non-budgeted item available through reprioritization |
| <input type="checkbox"/> Non-budgeted item with additional funds requested    |
| <input checked="" type="checkbox"/> Not Applicable                            |

**Attachments:**

1. Agreement

PROJECT NO. 18 C-5104-01  
KANSAS LOCAL BRIDGE IMPROVEMENT PROGRAM  
BRIDGE RECONSTRUCTION/REHABILITATION  
COWLEY COUNTY, KANSAS

**A G R E E M E N T**

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

**RECITALS:**

- A. The Kansas Legislature, through K.S.A. § 68-2314c, authorized the Secretary to provide funding for programs to assist local units of government in the administration of transportation projects to aid local public authorities in replacing or repairing bridges throughout the state. The Kansas Local Bridge Improvement Program (KLBIP) has been authorized by the Governor of the State of Kansas and the Kansas Secretary of Transportation under this legislation.
- B. The Secretary and the LPA are empowered by the laws of Kansas to enter into agreements for the construction and maintenance of city and county bridges in the State of Kansas.
- C. The LPA has requested, and the Secretary has authorized, a project under the KLBIP, as further described in this Agreement.
- D. Cities and counties are, under certain circumstances, entitled to receive assistance in the financing of the construction and reconstruction of roads and state highways, provided however, in order to be eligible for such state aid, work is required to be done in accordance with the laws of Kansas.

**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. **“Construction Contingency Items”** mean unforeseeable elements of cost within the defined project scope identified after the Construction phase commences.
4. **“Construction Engineering”** means inspection services, material testing, engineering consultation and other reengineering activities required during Construction of the Project
5. **“Consultant”** means any engineering firm or other entity retained to perform services for the Project.
6. **“Contractor”** means the entity awarded the Construction contract for the Project and any subcontractors working for the Contractor with respect to the Project.
7. **“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
8. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
9. **“Encroachment”** means any building, structure, farming, vehicle parking, storage or other object or thing, including but not limited to signs, posters, billboards, roadside stands, fences, or other private installations, not authorized to be located within the Right of Way which may or may not require removal during Construction pursuant to the Design Plans.
10. **“Hazardous Waste”** means includes, but is not limited to, any substance which meets the test of hazardous waste characteristics by exhibiting flammability, corrosivity, or reactivity, or which is defined by state and federal laws and regulations, and any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, including but not limited to leaking underground storage tanks. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, is incorporated by reference and includes but is not limited to: (1) 40 C.F.R. § 261 *et seq.*, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristics Revisions; Final Rule; (2) 40 C.F.R. § 280 *et seq.*, Underground Storage Tanks; Technical Requirements and State Program Approval; Final Rules; (3) 40 C.F.R. § 300, National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule; and (4) K.S.A. 65-3430 *et seq.*, Hazardous Waste.
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. **“Local Public Authority” or “LPA”** means Cowley County, Kansas, with its place of business at 311 E. 9th Avenue, Winfield, KS 67156.
14. **“NBI”** means the National Bridge Inventory, under the jurisdiction of the U.S. Department of Transportation, Federal Highway Administration.
15. **“Non-Participating Costs”** means the costs of any items or services which the Secretary reasonably determines are not Participating Costs.
16. **“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.
17. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the LPA.
18. **“Preliminary Engineering”** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.
19. **“Project”** means all phases and aspects of the Construction endeavor to be undertaken by the LPA, being: **Replace Bridge No. 000180853906920 located on 222<sup>nd</sup> Road, 0.5 mile south of Hackney over BNSF Railroad, in Cowley County, Kansas**, and is the subject of this Agreement.
20. **“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.
21. **“Responsible Bidder”** means one who makes an offer to construct the Project in response to a request for bid with the technical capability, financial capacity, human resources, equipment, and performance record required to perform the contractual services.
22. **“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.
23. **“Secretary”** means the Secretary of Transportation of the State of Kansas, and his or her successors and assigns.
24. **“Utilities” or “Utility”** means all privately, publicly or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, and other similar commodities, including non-transportation fire and police communication systems which directly or indirectly serve the public.

**ARTICLE II**

**FUNDING:**

1. **Funding.** The table below reflects the funding commitments of each Party. The Total Actual Costs of Construction include Construction Contingency Items. The Parties agree estimated costs and contributions are to be used for encumbrance purposes and may be subject to change.

Party	Responsibility	Total Projected Contribution (\$)
Secretary	90% of Total Actual Costs of Preliminary Engineering (PE), Construction, and Construction Engineering (CE), not to exceed \$150,000.00.	150,000.00
LPA	10% of Total Actual Costs of PE, Construction, and CE until Secretary’s funding limit is reached.  100% of Total Actual Costs of PE, Construction, and CE after Secretary’s funding limit is reached.  100% of Right of Way, Utility Adjustments, and Non-Participating Costs.	
Total Estimated Project Cost		2,361,872.00

2. **Funding Limitation.** If Preliminary Engineering, Construction Engineering, Right of Way, and/or Utility Adjustments are included as eligible phases in this Project, reimbursement for those costs shall be made only after the Project has been Let. No reimbursement shall be made for these phases for amounts exceeding 15% of total Construction costs. Those amounts paid by the LPA for costs exceeding the 15% limit will not count toward the LPA’s required 10% match. No reimbursement will be made for work performed by LPA staff for project administration, engineering, or inspection.

3. **Reimbursement Payments.** The Secretary will make partial payments to the LPA for amounts not less than \$1,000.00 and no more frequently than monthly. Such payments will be made after receipt of proper billing provided, however, the Secretary will not make reimbursement payments for Preliminary Engineering, Right of Way, or Utility adjustments until the Project has been Let.

**ARTICLE III**

**LPA RESPONSIBILITIES:**

1. **Legal Authority.** By his or her signature on this Agreement, the LPA certifies that the signatory has legal and actual authority as representative and agent for the LPA to enter into this Agreement. The LPA agrees to adopt all necessary ordinances or resolutions, and to take any administrative and/or legal steps as may be required to give full effect to the terms of this Agreement.

2. **Letting and Administration by the LPA.** The LPA will prepare or contract to have prepared the Design Plans for the Project, Let the contract, and award the Construction contract to the lowest responsible bidder. The LPA agrees to construct or have constructed the Project in accordance with the final Design Plans; inspect or have inspected the construction; administer the Project; and make the payments due the Contractor, including the portion of cost borne by the Secretary.

3. **Design and Specifications.** The LPA shall design the Project or contract to have the Project designed in conformity with the appropriate design criteria for the Project in accordance with the LPA's established procedures, criteria, and industry standards. Specifically, the LPA agrees to comply with the technical and other requirements listed in Exhibit A, Structure and Design Requirements, which is attached and incorporated into this Agreement by this reference. The Design Plans must be signed and sealed by the licensed professional engineer responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer who is responsible for the preparation of the geological investigations or studies. All technical professionals involved in the Project are required to meet the applicable licensing and/or certification requirements as stated in K.S.A. § 74-7001, *et seq.*

4. **Conformity with State and Local Requirements.** The LPA shall be responsible to design the Project or contract to have the Project designed in conformity with the state and local design criteria appropriate for the Project as well as in conformity with state, local, and federal law appropriate for the Project.

5. **Consultant Contract Language.** The LPA shall include language requiring conformity with Article III, paragraph 4 above, in all contracts between the LPA and any Consultant with whom the LPA has contracted to perform services for the Project. In addition, any contract between the LPA and any Consultant retained by them to perform any of the services described or referenced in this paragraph for the Project covered by this Agreement must contain language requiring conformity with Article III, paragraph 4 above. In addition, any contract between the LPA and any Consultant with whom the LPA has contracted to prepare and certify Design Plans for the Project covered by this Agreement must also contain the following provisions:

- (a) **Completion of Design.** Language requiring completion of all plan development stages no later than the current Project schedule's due dates as issued by KDOT, exclusive of delays beyond the Consultant's control.
- (b) **Progress Reports.** Language requiring the Consultant to submit to the LPA (and to the Secretary upon request) progress reports at monthly or at mutually agreed intervals in conformity with the official Project schedule.

- (c) **Third Party Beneficiary.** Language making the Secretary a third party beneficiary in the agreement between the LPA and the Consultant. Such language shall read:

“Because of the Secretary of Transportation of the State of Kansas’ (Secretary’s) obligation to administer state funds, federal funds, or both, the Secretary shall be a third party beneficiary to this agreement between the LPA and the Consultant. This third party beneficiary status is for the limited purpose of seeking payment or reimbursement for damages and costs the Secretary or the LPA or both incurred or will incur because the Consultant failed to comply with its contract obligations under this Agreement or because of the Consultant’s negligent acts, errors, or omissions. Nothing in this provision precludes the LPA from seeking recovery or settling any dispute with the Consultant as long as such settlement does not restrict the Secretary’s right to payment or reimbursement.”

6. **Responsibility for Adequacy of Design.** The LPA shall be responsible for and require any Consultant retained by it to be responsible for the adequacy and accuracy of the Design Plans for the Project. Any review of these items performed by the Secretary or the Secretary’s representatives is not intended to and shall not be construed to be an undertaking of the LPA’s and its Consultant’s duty to provide adequate and accurate Design Plans for the Project. Reviews by the Secretary are not done for the benefit of the Consultant, the construction Contractor, the LPA, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans for the Project, or any other work performed by the Consultant or the LPA.

7. **Authorization of Signatory.** The LPA shall authorize a duly appointed representative to sign for the LPA any or all routine reports as may be required or requested by the Secretary in the completion of the Project.

8. **Inspections.** The LPA will provide the Construction Engineering necessary to determine substantial compliance with the final Design Plans and this Agreement. The LPA will require at a minimum all personnel, whether LPA or Consultant to comply with the high visibility requirements of the MUTCD, Chapter 6E.02, High-Visibility Safety Apparel. If the LPA executes an agreement for Construction Engineering, the agreement must contain this requirement as a minimum. The LPA may set additional clothing requirements for adequate visibility of personnel.

9. **General Indemnification.** To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act (K.S.A. § 75-6101, *et seq.*) as applicable, the LPA will defend, indemnify, hold harmless, and save the Secretary and the Secretary’s authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property, or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the LPA, the LPA’s employees, agents, subcontractors or its consultants. The LPA 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.

10. **Indemnification by Contractors.** The LPA agrees to require the Contractor to indemnify, hold harmless, and save the Secretary and the LPA from personal injury and property damage claims arising out of the act or omission of the Contractor, the Contractor's agent, subcontractors (at any tier), or suppliers (at any tier). If the Secretary or the LPA defends a third party's claim, the Contractor shall indemnify the Secretary and the LPA for damages paid to the third party and all related expenses either the Secretary or the LPA or both incur in defending the claim.

11. **Additional Structure Removal.** If the Secretary's share of the Project costs will exceed \$150,000.00, the LPA is obligated to permanently close and request NBI removal of the additional structure identified for such removal on the KDOT Project Authorization Form. The LPA acknowledges that once the additional structure is removed from the NBI, that structure will no longer be eligible to receive state or federal funding.

12. **Reimbursement Requests.** The LPA shall submit invoices to the Secretary for reimbursement of costs incurred by the LPA for the Project. Invoices shall be submitted in amounts not less than \$1,000.00 and no more frequently than once per month. Invoices for reimbursement of costs for Preliminary Engineering, Right of Way, and Utility adjustments, are not eligible for reimbursement prior to the award of the Construction contract to the Contractor.

13. **Audit.** The LPA will participate and cooperate with the Secretary in an annual audit of the Project. The LPA shall make its records and books available to representatives of the Secretary for audit for a period of five (5) years after date of final payment under this Agreement. If any such audits reveal payments have been made with state funds by the LPA for items considered Non-Participating, the LPA shall promptly reimburse the Secretary for such items upon notification by the Secretary.

14. **Accounting.** Upon request by the Secretary and in order to enable the Secretary to report all costs of the Project to the legislature, the LPA shall provide the Secretary an accounting of all actual Non-Participating Costs which are paid directly by the LPA to any party outside of the Secretary and all costs incurred by the LPA not to be reimbursed by the Secretary for Preliminary Engineering, Right of Way, Utility adjustments, Construction, and Construction Engineering work phases, or any other major expense associated with the Project.

15. **Maintenance of Project.** When the Project is completed and final acceptance is issued the LPA will, at its own cost and expense, maintain the Project and will make ample provision each year for such maintenance. If notified by the State Transportation Engineer of any unsatisfactory maintenance condition, the LPA will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

16. **Cancellation by LPA.** If the LPA cancels the Project, it will reimburse the Secretary for any costs incurred by the Secretary prior to the cancellation of the Project. The LPA agrees to



reimburse the Secretary within thirty (30) days after receipt by the LPA of the Secretary's statement of cost incurred by the Secretary prior to the cancellation of the Project.

17. **Failure to Let.** The LPA acknowledges and agrees that the LPA's failure to award the construction contract for the Project by December 1, 2022 (within two (2) years from the Project Award), will be considered a constructive act of cancellation by the LPA and the LPA will be deemed to have cancelled the Project for purposes of this Agreement. In such instance, the LPA will be subject to the reimbursement requirements set forth in this Article III, paragraph 16.

18. **Final Review.** Upon completion of the Project, the LPA shall notify Secretary and allow the Secretary or Secretary's designee to participate in a final review of the Project to confirm compliance with the terms of this Agreement. Reviews by the Secretary are not done for the benefit of LPA or its contractors, or agents, or other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the design plans, specifications, estimates, surveys, and any necessary investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project, or any other work performed by LPA.

## ARTICLE IV

### GENERAL PROVISIONS:

1. **Incorporation of Final Plans and Attachments.** The final Design Plans, specifications, special provisions, Construction Contract Proposal (as available), the agreement estimate for Construction Engineering (if applicable), and other Special Attachments are all essential documents of this Agreement and are hereby incorporated by reference into this Agreement and are made a part of this Agreement.

2. **Compliance with Federal and State Laws.** The LPA shall comply with all applicable federal, state, and local laws, regulations, executive orders, and ordinances governing the projects undertaken pursuant to this Agreement.

3. **Civil Rights Act.** The "Special Attachment No. 1, Rev. 09.20.17" pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.

4. **Contractual Provisions.** The provisions found in the most current version of the "Contractual Provisions Attachment (Form DA-146a)," which is attached hereto, are hereby incorporated into this Agreement and made a part thereof.

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

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

7. **Binding Agreement.** This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary, the LPA, and their successors in office.

8. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement, nor do the Parties herein authorize anyone not a Party to this Agreement to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

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

**IN WITNESS WHEREOF** the Parties have caused this Agreement to be signed by their duly authorized officers as of the Effective Date.

ATTEST:

COWLEY COUNTY, KANSAS

\_\_\_\_\_  
COUNTY CLERK (Date)

\_\_\_\_\_  
CHAIRPERSON

(SEAL)

\_\_\_\_\_  
MEMBER

\_\_\_\_\_  
MEMBER

Kansas Department of Transportation  
Secretary of Transportation

BY: \_\_\_\_\_  
Burt Morey, P.E. (Date)  
Deputy Secretary and  
State Transportation Engineer

**KANSAS LOCAL BRIDGE IMPROVEMENT PROGRAM  
(Structure and Design Requirements)**

- The County will acquire the services of a Professional Engineer, licensed in the state of Kansas to perform the design and analysis of the project. All plans shall have the seal and signature of the licensed engineer in charge of their development.
- Minimum of one (1) geology core sample and analysis report sealed and signed by a qualified licensed professional at each project site.
- Basic Hydraulic Analysis using as a minimum HY-8.
- Item 113 Justification Form (Scour Vulnerability).
- Minimum Allowable Stress Design (ASD) foundation design/construction (Modified Engineering News Record (ENR) Formula for Pile Driving).
- Load and Resistance Factor Design (LRFD) HL-93 Superstructure Design.
- Load and Resistance Factor Rating (LRFR) Superstructure Load Ratings (including Federal Highway Administration (FHWA) mandated “Specialized Hauling Vehicles” and “Emergency Vehicles”) using AASHTO Bridge Design and Rating (BrDR) (or compatible) design/rating model. All bridges shall have a completed KDOT Bureau of Local Projects Load Rating Summary Sheet sealed and signed by a licensed Professional Engineer.
- Within 90 days of completion of construction, a complete inventory inspection, including Load Rating Summary Sheet and Item 113 Justification form, shall be submitted to KDOT Bureau of Local Projects.
- The owner is responsible for acquiring permits and clearances needed for the Project.
- Submission of total project costs to KDOT Bureau of Local Projects upon project completion.

For longer structures, larger channels, higher volume roads, the “minimum” requirements may not suffice. Standard industry practice and sound engineering judgment in accordance with Kansas State Board of Technical Professions should be exercised at all times throughout the design and analysis phases of the Project.

**All plans will bear the seal of a Professional Engineer licensed in Kansas.**

### 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. 07-19), 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 thirty (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 ninety (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 Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (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) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

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, its 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)