

**CONTRACT FOR  
ROAD CONSTRUCTION  
ENGINEERING BY CITY  
(FORCE ACCOUNT AGREEMENT)**

CMS Contract No. \_\_\_\_\_

**PROJECT NO. 10-23 KA-0134-01  
CITY OF LAWRENCE  
DOUGLAS COUNTY**

**THIS AGREEMENT** entered into and is effective the date signed by the Secretary or designee, by and between the City of Lawrence, hereinafter referred to as the "LPA" (Local Public Authority) as principal, and the Secretary of Transportation of the State of Kansas acting by and through the Kansas Department of Transportation (KDOT), hereinafter referred to as the "Secretary", as agent for the LPA pursuant to authority vested in the parties hereto by virtue of K.S.A. 68-402b and K.S.A. 68-401 *et seq.* and an agreement between parties dated February 13, 2007.

**WITNESSETH:**

**WHEREAS**, the Secretary of Transportation of the State of Kansas pursuant to federal and state law authorizes said LPA to perform certain construction engineering work on the above noted "Project consisting of 0.047 miles of Grading and Surfacing, located at the Intersection of K-10(23<sup>rd</sup>) and Harper Street

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

**WHEREAS**, the approved plans and specifications for said Project are available in the KDOT Headquarters in Topeka, and

**WHEREAS**, the LPA and the Secretary desire to set forth in this instrument their understanding and agreements relating to the construction engineering and allocation of costs for the said Project.

**NOW, THEREFORE**, in consideration of the covenants of the parties and to give this agreement full force and effect in providing the benefits hereinbefore mentioned, the parties hereto mutually agree as follows:

## **SCOPE OF SERVICES**

### **A. DEFINITIONS**

- (1) The term "KDOT" shall mean the Kansas Department of Transportation and its authorized representatives.
- (2) The term "LPA" shall mean the City of Lawrence and its authorized employees.
- (3) The term "FHWA" shall mean the Federal Highway Administration and its authorized representatives.
- (4) The term "Contractor" shall mean the individual, partnership, joint ventures, corporation, or agency undertaking the performance of the work designated under the terms of the construction contract.
- (5) The term "Specifications" shall mean the current Standard Specifications for Road and Bridge Construction of the Kansas Department of Transportation, as incorporated in the construction contract specifications and supplementals thereto.
- (6) The term "Construction Contract Proposal" shall mean the offer of the bidder or contractor on the Project, on the prescribed form, to perform the work and to furnish the labor and materials at the prices quoted.
- (7) The term "Special Provisions" shall mean the directions or requirements peculiar to a project and not otherwise thoroughly or satisfactorily included in the Specifications, and which are contained in the Construction Contract Proposal.
- (8) The term "Plans" shall mean the approved plan, profiles, typical cross sections, working drawings and supplemental drawings, or exact reproductions thereof, which show the location, character, dimensions, and details of the work to be done.
- (9) The term "Contract Documents" shall mean the Specifications, Construction Contract Proposal, Special Provisions and Plans, as defined above.
- (10) The term "Manual" shall mean the Construction Manual, the Forms and Documentation Manual, and all other publications of data and information produced by the KDOT for the instruction of its employees and furnished in bound or collected form.

- (11) The term "Field Engineer" shall for the administrative control of this Agreement is considered to mean Metro Engineer, Field Engineering Administrator and/or Area Engineer.

## **B. GENERAL RESPONSIBILITIES AND DUTIES**

- (1) The LPA shall perform engineering services necessary and incidental to the accomplishment of the Project to the satisfaction of KDOT, and as more detailed in Special Attachment - Specific Construction Provisions.
- (2) The LPA will require that all personnel comply with the high visibility apparel requirements of the KDOT Safety Manual, Chapter 4, Section 8, Fluorescent Vests, as a minimum, while inspection is being performed.
- (3) The LPA will require that all personnel comply with the high visibility apparel requirements of the KDOT Safety Manual, Chapter 4, Section 8, Fluorescent Vests, as a minimum, while inspection is being performed.
- (4) The LPA shall furnish services, labor, materials, equipment, supplies and incidentals, other than those hereinafter designated to be furnished by the KDOT, necessary to conduct and complete the services.
- (5) The work under this Agreement shall at all times be subject to the review and approval of KDOT.
- (5) The LPA's principal contact with the KDOT shall be with the construction field office.
- (6) The work under this Agreement shall comply with all applicable federal and state laws and regulations.
- (7) The LPA shall comply with OMB Circular No. A-133.
- (8) The FHWA shall have the right to participate in all conferences and reviews.
- (9) Compliance with all of the foregoing shall be considered to be within the purview of this Agreement and shall not constitute a basis for additional or extra compensation.

## **C. CONTROL AND AUTHORITY**

- (1) The authorized representative of the KDOT will be designated by the District's Construction Engineer and will be titled the "Field Engineer".

- (2) The Field Engineer will delegate to a construction office the overseeing of the Project where a Construction Engineer/Construction Coordinator will be assigned to monitor and coordinate all Project related activity to assure compliance with applicable Federal and State requirements of all work performed under this Agreement and all construction activities performed under the Contract Documents.
- (3) The LPA will designate a Project Engineer/Project Manager and other inspection personnel that are certified by the KDOT in the appropriate classification to inspect all work performed and materials furnished. The LPA may designate a Chief Inspector who will perform the duties and have the responsibilities of the Project Engineer/Project Manager. The Project Engineer/Project Manager is not authorized to alter or waive the provisions of these Specifications or the Construction Contract Proposal. The Project Engineer/Project Manager is not authorized to issue instructions contrary to the Plans and Specifications, or to act as foreman for the Contractor, however, he shall have the authority to reject work or materials until any questions at issue can be referred to and be decided by the Field Engineer.

The use of non-certified inspector(s) for this project will be limited to specific work after demonstrating satisfactory performance and obtaining written approval by the Field Engineer.

- (4) The Project Engineer/Project Manager shall serve as field supervisor of all LPA personnel and services performed under this Agreement, and to act as liaison between the LPA and the KDOT.
- (5) The Project Engineer/Project Manager shall transmit all reports and paperwork to, and communicate and coordinate project-related activity with the Construction Engineer/Construction Coordinator.
- (6) Orders or instructions issued by the Field Engineer will be transmitted through the Construction Engineer/Construction Coordinator and will in turn be transmitted through the Project Engineer/Project Manager to the Contractor. If in the absence of the Project Engineer/Project Manager a matter needs prompt attention, the Construction Engineer/Construction Coordinator will give the necessary orders and then notify the Project Engineer/Project Manager.
- (7) In the event of a controversy, the Project Engineer/Project Manager shall confer with the Construction Engineer/Construction Coordinator to determine proper course of action.

In the event the Construction Engineer/Construction Coordinator and the Project Engineer/Project Manager cannot agree the Construction

Engineer/Construction Coordinator will promptly contact the Field Engineer or the District Construction Engineer of KDOT who will determine the necessary course of action.

**D. AGENCY COORDINATION AND COOPERATION**

- (1) Contact and coordination with all affected local, state and federal agencies, including the FHWA; private consultants and contractors; the general public; utilities and railroad companies shall be the responsibility of the KDOT.
- (2) The LPA shall cooperate fully with the KDOT, with local, state and federal agencies, including the FHWA, private consultants and contractors, the general public, utilities and railroad companies when so directed by the KDOT. Such cooperation may include attendance at conferences.

**E. MEETINGS AND CONFERENCES**

- (1) Conferences as may be necessary for the discussion and review of the work under this Agreement shall be scheduled between the LPA and the KDOT. These conferences may include field review of the Project.
- (2) Conferences may be held upon the request of the LPA or the KDOT.

**II. PROSECUTION AND PROGRESS**

**A. GENERAL**

- (1) Written authority to proceed with the work on any construction Project under this Agreement will be given by the KDOT to the LPA. The KDOT will not be responsible for any work performed by the LPA prior to such authorization or liable for payment therefore.
- (2) Work under this Agreement will commence with attendance at a formal Construction Conference by the LPA and the KDOT, unless otherwise stated elsewhere in the Agreement or at the direction of the Construction Engineer/Construction Coordinator during an informal Construction Conference. Attendees at a formal Construction Conference shall include representatives of KDOT's Area Engineer and the Construction office (Construction Engineer/Construction Coordinator) and the LPA's Project Engineer/Project Manager and such other representatives as may be designated by each party to the Agreement. The KDOT will notify the LPA of the location, date and time and will make necessary arrangements for the conference. Topics for discussion shall include scope of the Contractor's construction operations and anticipated schedule, review of

necessary staffing by the LPA, lines of communication and authority, equipment needs, standard practices of the KDOT, and related subjects.

- (3) The LPA shall attend the formal Construction Conference held between the KDOT, the Contractor and involved utilities and agencies, unless otherwise stated elsewhere in the Agreement.
- (4) The LPA shall have KDOT Certified Project Inspector(s) of the appropriate classification on the project or plant site at all times when work, which requires inspection, is being performed. The inability of the LPA to provide appropriately certified inspectors for a project might at the Secretary's discretion, give cause for termination of this Agreement.
- (5) The Agreement shall be considered completed upon notice of written release from KDOT therefore unless previously terminated as provided in Section II C.
- (6) Should the KDOT deem it necessary for the LPA to render additional services for review of contract items, conditions, claims or litigation matters after completion of the Agreement, the LPA agrees to cooperate and render such requested services. Such services shall be paid for in the amount and manner mutually agreed upon by the KDOT and the LPA.
- (7) A close-out Conference may be held upon completion of this Agreement to evaluate the performance of the LPA. Attendees shall include the Field Engineer, representatives of the construction office (including Construction Engineer/Construction Coordinator) and LPA's Project Engineer/Project Manager and such other representatives as may be designated by each party to the Agreement. The KDOT will notify the LPA of the location, date and time and will make necessary arrangements for the conference. The evaluation shall consider the quality of the LPA's work, adequacy of staffing, extent of corrections, cooperation and related subjects.

#### **B. DELAYS AND EXTENSIONS**

- (1) Delays caused through no fault of the LPA may be cause for extension of time in completion of the work. Time extensions may be granted by KDOT upon reasonable claim and justification by the LPA and when necessary, approval has been given by the FHWA. Approved time extensions may also be cause for consideration of adjustments in payment, where warranted and approved by KDOT.

### **C. TERMINATION OF AGREEMENTS**

- (1) The right is reserved by the KDOT to terminate all or part of this Agreement at any time upon written notice to the LPA. Such notice shall be sent not less than ten (10) days in advance of the termination date stated in the notice.
- (2) The LPA may terminate this Agreement, in the event of substantial failure of other parties to perform in accordance with the terms hereof, upon ten (10) days written notice in advance of the effective date of such termination received by all parties to this Agreement.
- (3) In the event the Agreement is terminated by the KDOT without fault on the part of the LPA, the LPA shall be paid for the work performed or services rendered under the Basis of Payment determined for the Agreement.
- (4) In the event the services of the LPA are terminated by the KDOT for fault including but not limited to: unreasonable delays in performance; failure to respond to KDOT requests; and/or unsatisfactory performance on the part of the LPA, the LPA shall be paid the reasonable value of the work performed or services rendered and delivered to the KDOT up to the time of termination. The value of the work performed and services rendered and delivered will be determined by the KDOT.

### **D. SUBLETTING OR ASSIGNMENT OF CONTRACT**

- (1) The LPA shall not sublet or assign, outside of the LPA's departments, all or any part of the work under this Agreement without the prior written approval of the KDOT. Consent by the KDOT to assign, sublet or otherwise dispose of any portion of the Agreement shall not be construed to relieve the LPA of any responsibility for the fulfillment of the Agreement.
- (2) All the applicable terms of this Agreement remain in force and are a condition to any work approved to be sublet or assigned. Specific reference is made to Nondiscrimination and Equal Employment Opportunity, as applicable to the subcontract.

## **III. BASIS OF PAYMENT**

### **A. GENERAL**

- (1) For the completed and approved (by KDOT District) work or services rendered under this Agreement, the LPA will be paid the supported actual costs by the KDOT the total of which shall not exceed the Agreement

Estimate as set forth in the Special Construction Provisions (Special Attachment). Extra Work if any, shall be compensated as set forth in an approved supplement to this Agreement covering such work. Extra work will be paid for separately and in addition to Agreement Estimate. Such payment shall be full compensation for work performed or services rendered and for all labor, material, supplies, equipment and incidentals necessary to complete the work.

- (2) Should the Agreement contain more than one (1) construction project, any and all invoices and the final statement shall itemize charges by individual project.
- (3) The LPA may submit invoices to the KDOT, not more often than once per month during the progress of the work, for partial payment on account for the approved work completed to date by the LPA. The Secretary will pay 100 percent of all partial billings up to 95 percent of the federal-aid share of the upper limit compensation. Any further amount due will be held until all deliverables (field books, CMS disks, as built plans, etc.) are obtained by the KDOT field office from the LPA. When all deliverables are received by KDOT the remainder due may be paid if requested by the LPA minus a \$500.00 retainage or the amount earned in excess of 95 percent of the federal-aid share of the upper limit, whichever is less. If partial payments never reach 95 percent of the federal-aid share of the upper limit, the LPA may request payment of 100 percent of the federal-aid share minus a retainage not to exceed \$500.00. The retainage amount will be released to the LPA when the agreement has been audited by KDOT.
- (4) The LPA agrees to use a fixed overhead rate that shall be 80% for both this Agreement and any supplements to this Agreement for the purposes of billing the Secretary.

#### **B. FINAL PAYMENT TO GOVERNMENTAL ENTITIES**

- (1) The final claims should be transmitted to the Bureau of Fiscal Services through normal channels and include a statement that all conditions have been met for final payment.
- (2) When this claim, submitted on the payment voucher, has been audited and upon receipt of the survey notes, records, reports, final estimates, record drawings, Manuals, Contract Documents, guides, and other documents required to be returned or to be furnished under this Agreement, the Secretary will issue the LPA a warrant for that portion of the eligible additional five (5) percent of the voucher (up to the maximum of the federal share of the Agreement estimate and as allowed by provisions of State Law).



- (3) It is the policy of the Kansas Department of Transportation to make final payments to a LPA for services related to the Highway Program in a timely manner. The Single Audit Standards set forth in Federal O.M.B. Circular A-133, "Audits of State and Local Governments" and in 49 C.F.R. 18 (Common Rule), require that an audit be performed by an independent, certified public accountant in accordance with those standards.

KDOT may pay the final amount due for the authorized work performed based upon the LPAs most recent Single Audit Report available and a desk review of the claim by the Contract Audit Section of the Bureau of Fiscal Services. The LPA, by acceptance of this agreement, acknowledges that the final payment is subject to all single audits, which cover the time period of the expenses being claimed for reimbursement. The KDOT and the LPA agree that as the Single Audit Report becomes available for the reimbursement period (normally should occur within a period of 1-2 years), that the KDOT will review the Single Audit Report for items, which are declared as not eligible for reimbursement. The LPA agrees that if payment has been made to the LPA for items subsequently found to be not eligible for reimbursement by audit, that the LPA will refund to the KDOT the total amount of monies paid for same.

#### **IV. WORK ORDERS, EXTRA WORK, OR DECREASED WORK**

- (1) Written orders regarding the services to be performed will be given by the KDOT. Orders that do not change the scope of work in the Agreement, but increase or decrease the quantity of labor or materials or the expense of the work, shall not annul or void this Agreement.
- (2) The LPA must proceed with the work as directed by furnishing the necessary labor, equipment, materials and professional services to complete the services within the time limits specified in schedules or as adjusted by agreement of the parties.
- (3) If in the LPA's opinion such orders involve work not included in the terms or scope of this Agreement, the LPA must notify the KDOT in writing of this opinion if extra compensation is desired.
- (4) If in the LPA's opinion such orders would require the discarding or redoing of work which was based upon earlier direction or approvals, the LPA must notify the KDOT in writing of this opinion, and that if extra compensation is desired.
- (5) Such notification shall include the justification for the claim for extra compensation and the estimated amount of additional fee requested.

- (6) The KDOT will review the LPA's submittal and, if acceptable, approve a supplement to this Agreement. Work may only proceed upon authorization by the KDOT, which will be followed up with the execution of the supplemental agreement.

## **V. MISCELLANEOUS PROVISIONS**

### **A. CONSTRUCTION ENGINEERING STANDARDS**

- (1) All work under this Agreement shall be performed in accordance with the current standard practices of the KDOT as contained in the Specifications, Special Provisions, Manuals, guides and written instructions of the KDOT.
- (2) No variations will be permitted except by written order from the KDOT.

### **B. REVISION OF SPECIFICATIONS AND PLANS**

- (1) The KDOT may, by written notice and without invalidating this Agreement, require changes in the Specifications, Construction Contract, Plans or Special Provisions resulting in the revision or abandonment of work already performed by the LPA or resulting in work by the LPA not contemplated in the Agreement.
- (2) Claims by the LPA for compensation for work resulting from such revisions shall be submitted and processed in accordance with Section IV of this Agreement.

### **C. OWNERSHIP OF DOCUMENTS**

- (1) Upon completion or termination of this Agreement all plans, Manuals, Contract Documents, guides, written instructions, unused forms and record-keeping books, and other written data and information furnished to the LPA by the KDOT for the performance of the Agreement, and all survey notes, diaries, reports, records and other information and data collected or prepared by the LPA in the performance of this Agreement shall be properly arranged and delivered to the KDOT, and shall become the property of the KDOT.
- (2) Documents collected or prepared by the LPA in the performance of this contract may be used without restriction by the KDOT for any public purpose. Any such use shall be without compensation to the LPA.

### **D. CONTINGENT FEES**

- (1) The LPA warrants that they have not employed or retained any company or person, other than a bonafide employee working solely for the LPA to

secure this Agreement, and that they have not paid or agreed to pay any company or person, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

For breach or violation of this warranty the KDOT shall have the right to annul this Agreement without liability.

**E. AGREEMENT ITEMS**

- (1) It is also understood and agreed that the Project plans, Specifications, Special Provisions, and Construction Contract Proposal (as available), and the Agreement Estimate and other Special Attachments (Index provides List of Special Attachments) are all essential documents of this Agreement and are hereby incorporated by reference into this Agreement and are a part thereof.

**F. ACCESS TO RECORDS**

- (1) The LPA and subcontractors if any, agree to maintain for inspection by the KDOT and the FHWA all books, documents, papers, accounting records and other evidence pertaining to all costs incurred under this Agreement and to make such materials available at their respective offices at all reasonable times during the life of the Agreement and for three (3) years from the date of the final federal payment to KDOT under the Agreement, and to furnish copies thereof if requested.
- (2) If more than a nominal number of copies are requested the additional copies shall be furnished at the expense of the requesting agency.
- (3) The LPA will maintain these materials at the LPA offices.

**G. LEGAL RELATIONS**

- (1) The LPA shall become familiar with, and shall at all times observe and comply with, all applicable federal, state, and local laws, ordinances and regulations.
- (2) The LPA shall be responsible for any and all damages to property or persons arising out of an error, omission and/or negligent act in the LPA's performance of work under this Agreement.

**H. WORKER'S COMPENSATION**

- (1) The LPA will elect to come within the provisions of the Worker's Compensation Act (K.S.A. 44-505) for all work to be done on said Project

and will provide such Worker's Compensation Insurance as shall be required by the Commissioner of Worker's Compensation

**I. ERRORS AND OMISSIONS**

- (1) The LPA shall be responsible for the accuracy of the work performed by the LPA under the Agreement, and shall promptly make necessary revisions or corrections resulting from their negligent acts, errors or omissions without additional compensation.
- (2) The LPA shall give immediate attention to these revisions or corrections to prevent or minimize delay to the Contractor.
- (3) The LPA shall be responsible for any damages incurred as a result of their errors, omissions or negligent acts and for any losses or costs to repair or remedy construction.

**J. CONFLICT OF INTEREST**

- (1) The LPA warrants they have no public or private interest, and shall not acquire directly or indirectly any such interest, which would conflict in any manner with the performance of the work under the Agreement.
- (2) The LPA will not, without written permission from the KDOT, engage the services of any person(s) in the employment of the KDOT for any work required by the terms of this Agreement.

**K. HOLD HARMLESS CLAUSE**

- (1) 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 his or her 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, or subcontractors. The LPA shall not be required to defend, indemnify, hold harmless, and save the Secretary for negligent acts or omissions of the Secretary or his or her authorized representatives or employees.

**L. THIRD PARTY BENEFICIARY**

- (1) It is expressly agreed that 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.

**IN WITNESS WHEREOF:** The parties hereto have caused this Agreement to be signed by their duly authorized officers. It is further understood that this Agreement and all other Agreements entered into under the provisions of this Agreement shall be binding upon the parties to this Agreement and their successors in office.

RECOMMEND FOR APPROVAL:

Shoeb M. Nadeem  
Lawrence City Engineer 01/16/08

APPROPRIATE LOCAL OFFICIAL:

\_\_\_\_\_  
Mayor of the City of Lawrence

ATTEST:

\_\_\_\_\_  
Lawrence City Clerk

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

BY: \_\_\_\_\_ (Date)  
Jerome T. Younger, P. E.  
Deputy Secretary for Engineering/  
State Transportation Engineer



## **INDEX OF ATTACHMENTS**

Special Attachment No. 1	Specific Construction Provisions
Special Attachment No. 2	Civil Rights Act of 1964 Rehabilitation Act of 1973 Americans With Disabilities Act of 1990 Age Discrimination Act of 1975 Executive Order 12898 of 1994
Special Attachment No. 3	Contractual Provisions Attachment
Special Attachment No. 4	Estimate of Engineering Fee
Special Attachment No. 5	Listing of KDOT Certified Inspectors

## **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 the 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 the 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 the 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 the 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 the 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 the 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 the KDOT. The LPA shall be responsible for replacing lost documents or materials at the price determined by the 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 the 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 the KDOT to be necessary to enable the LPA to perform the work under this Agreement, for the Project to the same standards required of the 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 the KDOT to be necessary for the LPA to perform the services under this Agreement to the same standards required of the 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 the KDOT.
- (2) The 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 2008, and be completed by 2008.
- 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 80%.
- 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 priced 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 **\$34,105.50** 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 the KDOT will be Mr. Earl Bosak, P.E., whose work address is 322 South Martin, Osage City, Kansas 66523-0212 and work telephone is 785-528-3128.
- (2) The Project Engineer/Project Manager for the LPA will be Mr. Ed McNeive, Certification Number 2225 (expiration date is 1/30/2012), whose work address is 6E. 6th Street, Lawrence, Kansas 66044 and work telephone is 785-832-3195.
- (3) The Chief Inspector for the LPA will be Mr. Tim Driggs, Certification Number 2877 (expiration date is 2/25/2010), whose work address is 6E. 6th Street, Lawrence, Kansas 66044 and work telephone is 785-832-3195.

**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. 3555) 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 insure 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 seven "Nondiscrimination Clauses".

### **CLARIFICATION**

Where the term "consultant" appears in the following seven "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 relative to nondiscrimination in federally-

assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Parts 21, 23 and 27, hereinafter referred to as the Regulations), which 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 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 contractor complies, and/or
  - (b) cancellation, termination or suspension of the contract, in whole or in part.
- (7) Disadvantaged Business Obligation
  - (a) Disadvantaged Businesses as defined in the Regulations, shall have a level playing field to compete fairly 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 contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of Federally-assisted contracts. Failure by the contractor 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 this Order.
- (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.



State of Kansas  
Department of Administration  
DA-146a (Rev. 1-01)

## 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. 1-01), 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.
2. **Agreement With Kansas Law:** All contractual agreements shall be subject to, governed by, and construed according to the laws of 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 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:** Neither the State of Kansas nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred 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.  
  
Parties to this contract understand that 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 shall be allowed to find the State or any agency thereof has agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, the State of Kansas shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit 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 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 shall not be required to purchase, any insurance against loss or damage to any personal property to which this contract relates, nor shall this contract require the State to establish a "self-insurance" fund to protect against any such loss of damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the vendor or lessor shall bear the risk of any loss or damage to any personal property in which vendor or lessor 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."

23RD AND HARPER STREET  
GEOMETRIC IMPROVEMENTS

Exhibit A  
State Project No. 10-23KA-0134-01  
City Project No. 5-GI1-105(S)  
City of Lawrence  
Douglas County

Supporting Data Sheet for  
ESTIMATE OF CONSTRUCTION ENGINEERING FEE

Estimated 40 working days  
Direct Payroll - Contract Administration

Work Type	Employee	Estimated Hours	Average Wage	Extension
1. Field inspection and daily contact documents	Engineer	40	\$ 50.00	\$ 2,000.00
	Inspector	320	\$ 25.00	\$ 8,000.00
	Inspector (OT)	80	\$ 37.50	\$ 3,000.00
	Inspector	120	\$ 25.00	\$ 3,000.00
	Inspector (OT)	30	\$ 37.50	\$ 1,125.00
			<b>Subtotal</b>	<b>\$ 17,125.00</b>
2. On-site testing	Engineer	16	\$ 50.00	\$ 800.00
	Inspector	60	\$ 25.00	\$ 1,500.00
			<b>Subtotal</b>	<b>\$ 2,300.00</b>
3. Final paperwork	Engineer	16	\$ 50.00	\$ 800.00
	Inspector	80	\$ 25.00	\$ 2,000.00
			<b>Subtotal</b>	<b>\$ 2,800.00</b>
Total Direct Payroll Costs				\$ 22,225.00
Salary Related Overhead (42.00%)				\$ 9,334.50
Total Payroll Plus Overhead				\$ 31,559.50
Direct Expenses				
Materials Testing				\$ 2,546.00
<b>TOTAL FORCE ACCOUNT ESTIMATE</b>				<b>\$ 34,105.50</b>

FEE ESTIMATE  
 MATERIALS TESTING  
 23RD AND HARPER STREET  
 GEOMETRIC IMPROVEMENTS  
 LAWRENCE, KS

	Estimated Units	Unit Rate	Units	Estimated Fee
A. Earthwork Testing (Part time)				
1. Sample Pick Up Charge	1	\$ 150.00	trip	\$ 150.00
2. Atterberg Limits Test	1	\$ 70.00	ea.	\$ 70.00
3. Standard Proctor Test	1	\$ 180.00	ea.	\$ 180.00
			<b>Subtotal</b>	<b>\$ 400.00</b>
B. Concrete Testing (Part time)				
1. Sample Pick Up Charge	4	\$ 150.00	trip	\$ 600.00
2. Compressive Strength Tests 6 X 12 (4 Sets of 4)	16	\$ 16.00	ea.	\$ 256.00
3. Concrete Flexural Strength Testing	12	\$ 50.00	ea.	\$ 600.00
			<b>Subtotal</b>	<b>\$ 1,456.00</b>
C. Supervision & Report Preparation				\$ -
1. Project Manager (scheduling & supervision)	5	\$ 90.00	hr.	\$ 450.00
2. Project Manager (data summary & reports)	1	\$ 90.00	hr.	\$ 90.00
3. Sr. Project Engineer/Geologist	1	\$ 150.00	hr.	\$ 150.00
			<b>Subtotal</b>	<b>\$ 690.00</b>
<b>Estimated Total</b>				<b>\$ 2,546.00</b>

# Special Attachment No. 5

Updated: May 4, 2007

Listing of Inspection Staff for the City of Lawrence

The following list of personnel are available to perform the work on City Project No. 5-G11-105(S) / State Project No. 10-23KA-0134-01 when required.

## Certification and Expiration Dates

INSPECTION										TESTING										
Name	Cert. No.	BI	API	CPI	STR	IMSA	IIAC	ACI AGF	ACI AGL	AMF	ACI CF	ACI CS	PO	SF	SD	SOF	SOL	NUC	QC/QA ASPHALT	QC/QA CONCRETE
Wayne Hall	2604	2/3/09	2/5/09	2/6/09	2/4/09															
Steven Lashley	2075																			
Ed McNeive	2225	1/30/12	2/1/12	2/2/12	1/31/12			2/21/08			3/28/12	2/11/09	1/31/11				3/4/09		3/4/09	2/8/11
Charles Soules	500																			
Gerald Thomas	2597	2/3/09	2/5/09	2/6/09	2/4/09															
John Vannicola	2603	2/3/09	2/5/09	2/6/09	2/4/09															2/8/11
Tim Driggs	2877	2/15/10	2/15/10	1/18/10	2/16/10			1/21/10			6/7/10		1/31/11	3/27/11			1/17/08		3/22/11	2/8/11