

PROJECT NO. 23 TE-0321-01  
TEA- T032(101)  
TRANSPORTATION ENHANCEMENT PROJECT  
BURROUGHS CREEK RAIL TRAIL  
LAWRENCE, KANSAS

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

**PARTIES:** **DEBRA L. MILLER, Secretary of Transportation,** Kansas Department of Transportation (KDOT), hereinafter referred to as the "Secretary,"

**The City of Lawrence, Kansas,** hereinafter referred to as the "City,"

**Collectively** referred to as the "Parties."

**PURPOSE:** The Secretary is authorized by the current Federal-Aid Transportation Act to set aside certain portion of Federal funding for Transportation Enhancement (TE) projects. The Secretary is empowered to pass through Federal Surface Transportation Program (STP) funds for TE projects to eligible state agencies or local governments. The Secretary and the City are empowered by the laws of Kansas to enter into agreements for Federal STP funding under the Transportation Enhancement Provision of current the Federal-Aid Transportation Act. Under the terms of the current Federal-Aid Transportation Act and the rules and regulations of the Federal Highway Administration (FHWA), states and local governments are, under certain circumstances, entitled to receive assistance in the financing of TE projects, provided however, that in order to be eligible for such federal-aid, such work is required by Federal law to be done in accordance with the laws of the state.

**PROJECT:** The Secretary and the City desire to enter into this Agreement and take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for the construction of a TE project, hereinafter referred to as the Project, for the Burroughs Creek Rail Trail, in Lawrence, Kansas, described as follows:

The 8,700 feet long/10 feet wide, concrete pedestrian/bicycle path in east Lawrence north-south along an abandoned Burlington Northern Santa Fe Railroad corridor, from south of 23<sup>rd</sup> Street, connecting with the Haskell Rail Trail and terminating at 11<sup>th</sup> Street, including raised pedestrian crossings, signals and ADA ramps.

### **EFFECTIVE**

**DATE:** The Parties in consideration of the premises and to secure the approval and construction of the Project shall mutually agree to perform in accordance with this Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2009.

## **ARTICLE I**

### **THE SECRETARY AGREES:**

1. To provide technical information upon request to help the City acquire rights of

way in accordance with the laws and with procedures established by the Bureau of Right of Way and the Office of Chief Counsel of KDOT and as required by FHWA directives such that the City may obtain participation of Federal funds in the cost of the Project.

2. To reimburse the City for sixty percent (60%) of the total actual costs of construction, which includes the costs of all construction contingency items, and construction administration, up to a Project cost of \$833,334, but not to exceed a maximum amount of \$500,000, except in instances where the Project has significant non-participation construction costs. In such a case the reimbursement rate for the construction administration services will be reduced commensurate with the non-participating costs. The Secretary shall not be responsible for the total actual costs of construction, which includes the costs of all construction contingency items, and construction administration that exceeds \$833,334. Further, the Secretary shall not be responsible for the total actual costs of preliminary engineering, rights of way, and utility adjustments for the Project.

3. To make partial payments to the City for amounts not less than \$1,000 and no more frequently than monthly. Such payments will be made after receipt of proper billing and approval by a licensed professional engineer and/or licensed architect employed by the City that the Project is being constructed within substantial compliance of the plans and specifications. Billing shall be supported by a progress schedule acceptable to the Secretary, which should include the beginning/ending of the billing period, the percentage of work completed, and the actual costs incurred during the billing period. Accumulated partial payments shall not exceed the total fees earned less the \$500 retainage for each work phase, prior to approval and acceptance of completed work on the all phases by the Secretary.

## ARTICLE II

### THE CITY AGREES:

1. To make or contract to have made design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. The City shall design the Project or contract to have the Project designed in conformity with the state and federal design criteria appropriate for the Project in accordance with the current American Association of Highway and Transportation Officials (AASHTO) design standards, the American Institute of Architects (AIA) standards, the Secretary of the Interior's Standards for the Treatment of Historic Properties, the American Society of Landscape Architects guidelines and KDOT's Design Engineering Requirements, the current version of the City's standard specifications and the rules and regulations of FHWA pertaining thereto. The final design plans for the Project are incorporated by reference and hereby made a part of this Agreement. The City further agrees to follow the Kansas Transportation Enhancement Program Project Administration Guide for the administration of the Project.

2. To make or contract to have made design plans, specifications, estimates, and any necessary surveys, studies or investigations, including, but not limited to, environmental, hydraulic or geological investigations or studies for the Project which shall be submitted to the Secretary by a licensed professional engineer and/or a licensed professional architect attesting to the conformity of the design with the items in paragraph 1 above. The final design plans must be

signed and sealed by a licensed professional engineer and/or licensed professional architect responsible for preparation of the design plans.

3. The City and any consultant retained by the City shall have the sole responsibility for the adequacy and accuracy of design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Any review of these items performed by the Secretary or his or her representatives is not intended to and shall not be construed to be an undertaking of the City's and its consultant's duty to provide adequate and accurate design plans, specifications, estimates, and necessary surveys, investigations or studies, including, but not limited to, environmental, hydraulic, and geological investigations or studies for the Project. Such reviews are not done for the benefit of the consultant, the construction contractor, the City, or other political subdivision, nor 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 the consultant or the City.

4. Any design exception to the current version of the AASHTO Design Standards shall be in accordance with 23 C.F.R. § 625. For any design exception, the City agrees to the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, to 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 design exceptions for this Agreement by the City, the City's employees, or subcontractors.

5. The Secretary is authorized by the City to take such steps as are deemed by the Secretary to be necessary or advisable for the purpose of securing the benefits of the current Federal-Aid Transportation Act for this Project.

6. To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the City 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 City, the City's employees, or subcontractors. The City shall not be required to defend, indemnify and hold the Secretary harmless for negligent acts or omissions of the Secretary or his or her authorized representatives or employees.

7. To require the contractor to indemnify, hold harmless, and save the Secretary and the City 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 City defends a third party's claim, the contractor shall indemnify the Secretary and the City for damages paid to the third party and all related expenses either the Secretary or the City or both incur in defending the claim.

8. A duly appointed representative, or Chairperson of the City Commission is authorized to sign for the City any or all routine reports as may be required or requested by the Secretary in the completion of the Project undertaken under this Agreement.

9. The Secretary shall not participate in the cost of acquisition or lease of any real property or easements within, across or through any land owned in fee simple or controlled by the City. The City shall provide any real property, easements or land owned in fee simple or controlled by the City at no cost or charge to the Secretary.

10. To warrant at all times during the construction of the Project and for the period of its useful life, the City will coordinate with the Secretary on all matters involving use of highway right of way adjacent to or in the vicinity of the Project, including but not limited to access, traffic control, drainage and utilities, and shall abide by the Secretary's determination of any needs for joint use of right of way, easements or real property for state highway purposes which may arise from or in connection with this Project.

11. It will, in its own name, as required by law, acquire by purchase, dedication or condemnation all of the rights of way, easements, and access rights shown on the final design plans. The City agrees the necessary rights of way, easements, and access rights shall be acquired in compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and administrative regulations contained in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs. The City shall certify to the Secretary such rights of way, easements and access rights have been acquired. The City further agrees it will have recorded in the Office of the Register of Deeds all rights of way deeds, dedications, permanent easements and temporary easements.

12. To contact the Secretary if there will be any displaced persons on the Project prior to making the offer for the property. The Parties hereto agree the Secretary will provide relocation assistance for eligible persons as defined in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, and as provided in 49 C.F.R. pt. 24, entitled Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs, and in general accordance with K.S.A. §§ 58-3501 to 58-3507, inclusive, and K.A.R. 36-16-1 *et seq.*

13. To acquire rights of way in accordance with the laws and with procedures established by the Bureau of Right of Way and the Office of Chief Counsel of KDOT. The City further agrees copies of all documents including recommendations and coordination for appeal, bills, contracts, journal entries, case files or documentation requested by the Secretary will be sent to the Secretary within the time limits set by the Secretary.

14. Within its respective jurisdictions, it will move or adjust, or cause to be moved or adjusted, and will be responsible for such removal or adjustment of all existing structures, pole lines, pipe lines, meters, manholes, and other utilities, publicly or privately owned, which may be necessary to construct the Project in accordance with the final design plans. New or existing utilities to be installed, moved or adjusted will be located or relocated in accordance with the current version of the KDOT Utility Accommodation Policy (UAP), as amended or supplemented. The expense of the removal or adjustment of the utilities located on public rights of way shall be borne by the owners. The expense of the removal or adjustment of privately owned utilities located on private rights of way or easement shall be borne by the City.

15. It will expeditiously take such steps as necessary to facilitate the early adjustment of any utilities, will initiate the removal or adjustment of the utilities, and will proceed with reasonable diligence to prosecute this work to completion. The City further agrees to move or adjust or cause to be moved or adjusted all necessary utilities prior to the scheduled construction letting except those necessary to be adjusted during construction and those which would disturb the existing street surface. The City will initiate and proceed to complete adjusting any remaining utilities in order to ensure the contractor shall not be delayed in construction of the Project.

16. It is understood the City shall determine the manner in which traffic is to be handled during construction in accordance with the latest version, as adopted by the Secretary, of the Manual of Uniform Traffic Control Devices (MUTCD).

17. To let the contract for the Project and shall award the contract to the lowest responsible bidder upon concurrence in the award by the Secretary. The City further agrees to administer the construction of the Project in accordance with the final design plans, the standard specifications, a Construction Administration Agreement and administer the payments due the contractor, including the portion of the cost borne by the Secretary. Decisions about what construction costs are federal participating will be made in accordance with the requirements of the Federal Highway Administration and the Secretary.

18. To require the contractor to pay prevailing wages if required. The City will incorporate into the construction contract, if applicable, the following bid documents: The Davis-Bacon Certification Verification Agreement along with the current general wage decision for the county in which the Project is being constructed, Disadvantage Business Enterprises (DBE) Contract Goals, Certification of Understanding DBE Goal and Federal Aid Utilization of DBEs.

19. To incorporate into the construction contract, the following required bid documents: Certification Regarding Noncollusion & History of Debarment, Required Contract Provisions Certification-Federal Funds-Lobbying, Required Contract Provisions Certification Contractual Services with Current Legislator or Legislator's Firm, Kansas Department of Transportation Special Attachment (Civil Rights and Nondiscrimination), FHWA-1273 Required Contract Provisions Federal-Aid Construction Contracts, FHWA 11246- Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity, Required Contract Provision Specific Equal Employment Opportunity Contractual Requirement and Buy American Materials.

20. To construct the Project in accordance with the plans and specifications, and supervise the construction and administer the payment due the contractor, including the portion of cost borne by the Secretary. The participating items shall be shown separated and listed apart from the non-participating items on both the final design plans and the bid documents. The specifications will require the contractor to provide a performance bond in a sum not less than the amount of the contract as awarded.

21. To provide the construction inspection necessary to determine substantial compliance with the design plans, the specifications, Project provisions, this Agreement and a construction administration agreement. The City agrees to execute a construction administration agreement with the Secretary.

22. To be responsible for forty percent (40%) of the total actual costs of construction, which includes the cost of all construction contingency items, and construction administration, up to a project construction cost of \$833,334 and to be responsible for 100% of the total actual cost of construction and construction engineering that exceeds \$833,334. The City further agrees to be responsible for one hundred percent (100%) of the total actual costs for preliminary engineering, rights of way, and utility adjustments for the Project.

23. To maintain a complete set of final plans reproducible, as-built prints, approved shop drawings, and structural materials certification for five (5) years after the Project's completion. The City further agrees to make such reproducible, prints, drawings, and certifications available for inspection by the Secretary upon request. The City shall provide access to or copies of all of the above-mentioned documents to the Secretary.

24. When the Project is completed and final acceptance is issued by the City, it will, at its own cost and expense, maintain the Project. Upon notification by the State Transportation Engineer of any unsatisfactory maintenance condition, the City will begin the necessary repairs within thirty (30) days and will prosecute the work continuously until it is satisfactorily completed.

25. To adopt all necessary ordinances and/or resolutions and to take such legal steps as may be required to give full effect to the terms of this Agreement.

26. During the useful life of the Project any change in the use of the real property will require written approval by the Secretary. After the Project is completed and approved, the City agrees not to change the use of the real property for the Project. If the City determines the use of the real property for the Project is to be changed, the City agrees the change in the use of the real property will require prior written approval by the Secretary.

27. To adopt an ordinance requiring the removal of all encroachments either on or above the limits of the right of way within their respective jurisdictions as shown on the final design plans for this Project and they will initiate and proceed with diligence to remove or require the removal of the encroachments. It is further agreed all such encroachments be removed before the Project is advertised for letting providing, however, with respect to any encroachment, the physical removal thereof has been fully provided for between the City and the owner thereof and will be accomplished within a time sufficiently short to present no hindrance or delay to the construction of the Project. All right of way provided for the Project shall be used solely for public street purposes and no signs, posters, billboards, roadside stands, fences, structures or other private installations shall be permitted within the right of way limits except as provided by state laws.

28. To locate and shall be responsible for all costs necessary to remedy or clean-up any hazardous waste site, including, but not limited to, leaking underground storage tanks discovered on rights of way, easements and access rights acquired by the City. The City shall be responsible to the Secretary for all damages, fines or penalties, expenses, claims and costs incurred by the Secretary from any hazardous waste site discovered on rights of way, easements and access rights acquired by the City.

For any hazardous waste site, including, but not limited to, leaking underground

storage tanks, the City shall hold harmless, defend and indemnify the Secretary, its agents and employees against and from all damages, expenses and costs incurred by any person, the State of Kansas, or the United States Government for determining and undertaking remedial action, any fines or penalties assessed under state or federal laws, contract claims, personal injury claims, and damage of or loss of natural resources.

It is specifically agreed between the Parties executing this Agreement any provision of this hazardous waste clause is not intended to make the public, or any member thereof, a third party beneficiary hereunder, or to authorize anyone not a party of this Agreement to maintain a suit for personal injuries, property damages, or hazardous waste claims. The duties, obligations and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed by law.

The City by signing this Agreement with the Secretary has not repudiated, abandoned, surrendered, waived or forfeited its right to bring any action, seek indemnification or seek any other form of recovery or remedy against any third party responsible for any hazardous waste on any rights of way, easements, and access rights acquired by the City. The City reserves the right to bring any action against any third party for any hazardous waste site on any rights of way, easements, and access rights acquired by the City.

The term hazardous waste, 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. Any hazardous waste as defined by state and federal laws and regulations and amendments occurring after November 11, 1991, are incorporated by reference, and include, but 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. § 65-3431 *et seq.*, Hazardous Waste.

The standards to establish cleanup of a hazardous waste site, include, but is not limited to, federal programs administered by the E.P.A., State of Kansas environmental laws and regulations, and the City, and county standards where the hazardous waste site is located.

30. Upon request by the Secretary, the City agrees to provide the Secretary an accounting of all actual non-participating costs which are paid directly by the City to any party outside of KDOT and all costs incurred by the City not to be reimbursed by KDOT for preliminary engineering, construction engineering, rights of way, utility adjustments, or any other major expense associated with the Project. This will enable the Secretary to report all costs of the Project to the legislature.

### **ARTICLE III**

#### **THE PARTIES MUTUALLY AGREE:**

1. The estimated costs for construction is \$812,310, and for construction engineering is \$33,630, for a total estimated cost of \$845,940. It is further mutually agreed the maximum

allowable reimbursable cost figure of \$500,000 is to be used for encumbrance purposes by KDOT and no adjustments will be made based on the actual Project costs.

2. If any items are found to be non-participating by the Secretary, acting in his or her own behalf and on behalf of FHWA, the total cost of these items will be paid for by the City. If any construction items are found to be non-participating by the Secretary, the City agrees the Secretary can reduce the construction administration cost in its proportion to the reduction in the total participating construction cost.

3. All change orders shall be reviewed and approved by the Secretary prior to the City authorizing the work associated with such change order. If the City has not received prior approval, then the work will be considered non-participating and will be paid for by the City.

4. Representatives of the Secretary may make periodic inspection of the Project and the records of the City and as may be deemed necessary or desirable. The City will direct or cause its contractor to accomplish any corrective action or work required by the Secretary's representative as needed for a determination of federal participation. The Secretary does not undertake (for the benefit of the City, the contractor, the consultant, or any third party) the duty to perform the day-to-day detailed inspection of the Project, or to catch the contractor's errors, omissions, or deviations from the final design plans and specifications.

5. It is the policy of the Secretary to make any final payments to the City 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 States, Local Governments, and Non-Profit Organizations and in 49 C.F.R. § 18 *et seq.*, require an audit be performed by an independent certified public accountant in accordance with those standards. All information audited shall comply with 49 C.F.R. § 18 *et seq.*

The Secretary may pay any final amount due for the authorized work performed based upon the City's most recent Single Audit Report available and a desk review of the claim by the Contract Audit Section of the Secretary's Bureau of Fiscal Services. The City, by acceptance of this Agreement, acknowledges the final payment is subject to all single audits which cover the time period of the expenses being claimed for reimbursement. The Secretary and the City agree as the Single Audit Report becomes available for the reimbursement period (normally within a period of 1-2 years after the Project has closed), the Secretary will review the Single Audit Report for items which are declared as not been eligible for reimbursement. The City agrees if payment has been made to the City for items subsequently found to be not eligible for reimbursement by audit, the City will refund to the Secretary the total amount of monies paid for same. The City further agrees to make such payment to the Secretary within thirty (30) days after receipt of a complete and final billing from the Secretary's Chief of Fiscal Services.

6. It is not the intent of this Agreement or the Project provided herein to create or expand the status of any land involved in this Project as a "significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site," for purposes of 49 U.S.C. § 303 and 23 C.F.R. § 771.135 (hereinafter referred to as "4(f) status"), except as hereinafter expressly provided.

Unless otherwise stated below in this section, it is agreed the major purposes or functions of land involved in the Project are to preserve or enhance the scenic, historic,

environmental or archeological aspects, or the usefulness for intermodal users (including bicyclists, pedestrians, and other non-motorized transportation users) of existing or new transportation facilities. It is further agreed any park, recreation or refuge purposes or functions are secondary or incidental thereto.

The Parties agree for purposes of any future determinations of 4(f) issues as required by 49 U.S.C. § 303 or regulations adopted thereunder, the Secretary is hereby designated as the public official having jurisdiction of such determinations. However, it is not the intent of this section to affect the determination of whether a historic or archaeological site is on or eligible for inclusion on the National Register of Historic Places.

7. The location, form and character of informational, regulatory and warning signs, of traffic signals and of curb and pavement or other markings installed or placed by any public authority, or other agency as authorized by K.S.A. § 8-2005, shall conform to the manual and specifications adopted under K.S.A. § 8-2003, and any amendments thereto are incorporated by reference and shall be subject to the approval of the Secretary.

8. The provisions found in KDOT's Civil Rights Special Attachment No. 2 attached hereto are hereby incorporated into this Agreement by reference and made a part hereof.

9. The provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 1-01), which is attached hereto, are hereby incorporated into this Agreement by reference and made a part hereof.

10. If, in the judgment of KDOT, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, KDOT may terminate this Agreement at the end of its current fiscal year.

11. It is further understood this Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary, the City and their successors in office.

12. It is expressly agreed 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 of provisions of this Agreement.

13. It is mutually agreed the Project will be constructed within the limits of the existing public property. Necessary utility adjustments will be made prior to submission of final plans. The expense of removal or adjustment of utilities and encroachments located on public rights of way or easement shall be borne by the owner or the City.

*The signature page immediately follows this paragraph.*

**IN WITNESS WHEREOF** the Parties hereto have caused this Agreement to be signed by their duly authorized officers on the day and year first above written.

ATTEST:

THE CITY OF LAWRENCE, KANSAS

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

Debra L. Miller  
Secretary of Transportation

(SEAL)

BY: \_\_\_\_\_  
Jerome T. Younger, P.E.  
Deputy Secretary for Engineering and  
State Transportation Engineer

## **INDEX OF ATTACHMENTS**

- Attachment No. 1 - Design Engineering Requirements
- Attachment No. 2 - Civil Rights Act of 1964 & Rehabilitation Act of 1973
- Attachment No. 3 - Contractual Provisions Attachment

## **DESIGN ENGINEERING REQUIREMENTS**

### **Scope of Design Services:**

- (1) Prepare detailed drawings and specifications in accordance with the American Association of Highway and Transportation Officials (AASHTO) Design Standards. The KSHS shall provide for design exceptions in accordance with 23 C.F.R. § 625.
- (2) Make the necessary surveys to determine the extent of rehabilitation to meet the necessary requirements.
- (3) Prepare and furnish to KDOT the requested number drawings of preliminary construction plans for field/office check. These plans shall consist of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, material and such other elements as may be appropriate.
- (4) Field/Office check the Project with a representative of Program and Project Management.
- (5) Complete drawings and make necessary revisions made at a field check and/or an office check review or by recommendations, errors, or omissions at any time prior to the completion and final acceptance of the construction contract.
- (6) Complete the plans, include the specifications and necessary bidding and contract documents.
- (7) Submit required number of completed sets of plans to KDOT for final review along with an updated detailed cost estimate.

**KANSAS DEPARTMENT OF TRANSPORTATION**

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

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

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

**NOTIFICATION**

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

**CLARIFICATION**

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

**Nondiscrimination Clauses**

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

- 1) Compliance with Regulations: The consultant will comply with the Regulations of the U.S. Department of Transportation 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 natural 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 Business as defined in the Regulations shall have a level playing field to compete for contracts financed in whole or in part with federal funds under this contract.
  - (b) All necessary and reasonable steps shall be taken in accordance with the Regulations to ensure that Disadvantaged Businesses have equal opportunity to compete for and perform contracts. No person(s) shall be discriminated against on the basis of race, color, gender, or national origin in the award and performance of federally-assisted contracts.
  - (c) The 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 C.F.R. 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.

**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."