

**STATE'S
ORIGINAL**

**CONTRACT FOR
FEDERAL-AID ROAD CONSTRUCTION
ENGINEERING BY CITY
(CITY – NON FEDERAL-AID AGREEMENT)**

**PROJECT NO. 23 U-2117-01
CITY OF LAWRENCE
DOUGLAS COUNTY**

CMS Contract No. _____

THIS AGREEMENT entered into and is effective the date signed by the Secretary or designee, by and between 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," acts 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 May 23, 2012 (Original Agreement No. 12-12). The LPA and the Secretary are collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the Secretary pursuant to federal and state law authorizes said LPA to perform certain construction engineering work on the above noted Project consisting of 0.79 miles of Grading and Surfacing, located on 31st Street from Haskell Avenue to O Connell Road and

WHEREAS, in the execution of this Agreement, the LPA certifies 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 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:

I. 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/County 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 KDOT, 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 be 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 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 shall furnish services, labor, materials, equipment, supplies and incidentals, other than those hereinafter designated to be furnished by KDOT, necessary to conduct and complete the work.
- (4) The work under this Agreement shall at all times be subject to the review and approval of KDOT and shall be under the direction and control of its authorized representative.
- (4) The LPA's principal contact with KDOT shall be through the construction field office.
- (5) The work under this Agreement shall comply with all applicable federal and state laws and regulations.
- (6) The FHWA shall have the right to participate in all conferences and reviews.
- (7) Compliance with all of the foregoing shall be considered to be within the purview of this Agreement.

C. CONTROL AND AUTHORITY

- (1) The authorized representative of 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 who are certified by 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.

- (4) The use of non-certified inspector(s) for this project will be limited to specific work after the non-certified inspector(s) have demonstrated satisfactory performance to and obtained written approval by the Field Engineer.
- (5) 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.
- (6) 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.
- (7) 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.
- (8) 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 KDOT.

- (2) The LPA shall cooperate fully with KDOT; and with local, state and federal agencies including the FHWA, private consultants and contractors, the general public, utilities, and railroad companies, and private consultants and contractors when so directed by 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 services under this Agreement, shall be scheduled between the LPA and KDOT. These conferences may include field review of the Project.
- (2) Conferences may be held upon the request of the LPA or 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 KDOT to the LPA. KDOT will not be responsible for any work performed by the LPA prior to such authorization.
- (2) Work under this Agreement will commence with attendance at a formal Construction Conference by the LPA and 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. 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 KDOT, and related subjects.
- (3) The LPA shall attend the formal Construction Conference held between 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, may at the Secretary's discretion, give cause for termination of this Agreement.

- (5) The Agreement shall be considered completed upon final payment, and notice of written release from KDOT therefore unless previously terminated as provided in Section II B, Termination of Agreements.
- (6) Should 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.
- (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. 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. TERMINATION OF AGREEMENTS

- (1) The right is reserved by 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) The work of the LPA may be terminated by 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.

C. 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 KDOT. Consent by 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 not request any reimbursement of costs from KDOT.

IV. WORK ORDERS, EXTRA WORK, OR DECREASED WORK

- (1) Written orders regarding the work will be given by 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 work within the time limits specified in schedules or as adjusted by agreement of the Parties.

V. MISCELLANEOUS PROVISIONS

A. CONSTRUCTION ENGINEERING STANDARDS

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

B. REVISION OF SPECIFICATIONS AND PLANS

- (1) 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.

C. OWNERSHIP OF DOCUMENTS

- (1) All data provided to the Consultant by KDOT is the sole property of KDOT and is intended for use on this Project only. Any data provided shall not be disclosed to anyone outside the Consultants firm without the express, written permission of KDOT. 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 KDOT for the performance of the Agreement, and all survey notes, diaries, reports, records and other information and data collected or prepared the LPA in the performance of this Agreement shall be properly arranged and delivered to KDOT, and shall become the property of KDOT.

- (2) Documents collected or prepared by the LPA in the performance of this contract may be used without restriction by KDOT for any public purpose. Any such use shall be without compensation to the LPA.

D. CONTINGENT FEES

- (1) The LPA warrants 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 they have not paid or agreed to pay any company or person, any fee, commission, percentage, brokerage fees, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

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

E. AGREEMENT ITEMS

- (1) It is also understood and agreed 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. 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 errors, omissions and/or negligent acts in the LPA's performance of work under this Agreement.

G. 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.

H. 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.

I. 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 KDOT, engage the services of any person(s) in the employment of KDOT for any work required by the terms of this Agreement.

J. 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.

K. BINDING AGREEMENT

- (1) It is further understood 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.

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.

RECOMMEND FOR APPROVAL:

APPROPRIATE LOCAL OFFICIAL:

Lawrence City Engineer
David P. Cronin, P.E.

Mayor of Lawrence
Michael Dever

ATTEST:

Lawrence City Clerk
Diane M. Trybom

Kansas Department of Transportation
Michael S. King, Secretary of Transportation

BY: _____ (Date)
Jerome T. Younger, P. E.
Deputy Secretary and
State Transportation Engineer

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SPECIAL ATTACHMENT NO. 1

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 meet KDOT's certification policy and report and transmit Project activity 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 provided for where 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 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 record's 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, all Contractor submittals of records and reports required by the KDOT, and as applicable to the Project, which may include:

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

- (9) 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.
- (10) 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.
- (11) Prepare and submit a certification of Project completion.
- (12) Prepare and deliver (when Project is complete) 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 work 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 thereof.
- 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 2013, and be completed by 2014.
- 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. MISCELLANEOUS PROVISIONS

A. AUTHORIZED REPRESENTATIVES

- (1) The Field Engineer for the KDOT will be Mr. Jason Van Nice, P.E., whose work address is 1462 US-40 Highway, Lawrence, Kansas 66044 and work telephone is 785-842-0299.
- (2) The Project Engineer/Project Manager for the LPA will be Mr. David Cronin, P.E., Certification Number N/A (expiration date is N/A), whose work address is City Hall, 6th East 6th Street, Lawrence, Kansas 66044 and work telephone is 785-832-3124.
- (3) The Chief Inspector for the LPA will be Mr. John Vannicola, Certification Number 2603 (expiration date is 1/13/2014), whose work address is City Hall, 6th East 6th Street, Lawrence, Kansas 66044 and work telephone is 785-832-3124.

KANSAS DEPARTMENT OF TRANSPORTATION

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

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

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

NOTIFICATION

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

CLARIFICATION

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

Nondiscrimination Clauses

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

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

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