

AGREEMENT

THIS AGREEMENT is between the Secretary of Transportation for the State of Kansas, Kansas Department of Transportation (KDOT) (the “Secretary”) and the **City of Lawrence, Kansas** (“City”), collectively referred to as the “Parties.”

RECITALS:

- A. The Secretary intends to re-route State Highway US-40 on a different alignment, which will result in removal of the state highway route designation from a portion of the existing US-40 from West 6th and North 2nd and 3rd Streets within the City limits (the “Route”), as further described in this Agreement.
- B. Upon the highway route designation removal, the Route will no longer be a City Connecting Link and consequently, the City will no longer be eligible for receipt of state highway funds for maintenance of the Route under K.S.A. 68-416.
- C. In consideration of the City’s acceptance and assumption of all financial, operational, and maintenance responsibilities for the Route, the Secretary is willing to provide certain financial assistance to mitigate the fiscal impact to the City, as further specified in this Agreement.

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I

DEFINITIONS: The following terms as used in this Agreement have the designated meanings:

- 1. **“Agreement”** means this written document, including all attachments and exhibits, evidencing the legally binding terms and conditions of the agreement between the Parties.
- 2. **“City”** means the City of Lawrence, Kansas, with its principal place of business located at 6 E 6th Street, Lawrence, KS 66044.
- 3. **“City Connecting Link”** has the same meaning as set forth in K.S.A. 68-406(b) for “city connecting link.”
- 4. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
- 5. **“KDOT”** means the Kansas Department of Transportation, an agency of the state of Kansas, with its principal place of business located at 700 SW Harrison Street, Topeka, KS 66603-3745.

6. **“Local Route Condition”** means the condition of the route (roads and bridges) needed to maintain local traffic, as determined by the City.
7. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, and the City.
8. **“Right of Way”** means the real property and interests therein, including fee simple title, dedications, permanent and temporary easements held by the Secretary for the Route.
9. **“Route”** means that certain portion of existing State Highway US-40, consisting of approximately 3.991 miles within the City limits, to be removed from the State Highway System, as shown in Exhibit “A”, which is attached and incorporated into this Agreement for all purposes.
10. **“Secretary”** means Michael S. King, in his official capacity as Secretary of Transportation of the state of Kansas, and his successors.

ARTICLE II

PARTY RESPONSIBILITIES:

1. **Payment of Costs.** In consideration of the City’s acceptance and assumption of all financial, operational, and maintenance responsibilities for the Route, the Secretary agrees to:
 - a. Provide financial assistance for the transportation-related City projects listed below, as follows:
 - (i) To reimburse the City up to a maximum of \$1,500,000.00 toward the City’s actual costs to construct geometric improvements at the intersection of US-40 (West 6th Street) and US-59 (Iowa Street);
 - (ii) To reimburse the City up to a maximum of \$250,000.00 toward the City’s actual costs to construct traffic signalization improvements at the intersection of US-40 (West 6th Street) and George Williams Way; and
 - (iii) To reimburse the City up to a maximum of \$250,000.00 toward the City’s actual costs to construct traffic signalization improvements at the intersection of US-40 (West 6th Street) and Champion Lane.
 - b. Increase state participation in the following currently scheduled projects: KDOT Project No. 10-23 KA-1826-01 (K-10 and Bob

Billings Parkway interchange construction), by reducing local participation for that project from \$2,000,000 to \$1,528,000; and KDOT Project No. 59-23 KA-2611-01 (Intersection Improvements at 23rd Street and Iowa), by increasing the Secretary's participation in that project from \$700,000 to \$1,750,000. These funding adjustments will be accomplished by separate project agreements between the Parties or by supplemental agreements to existing project agreements, as applicable.

- c. By separate agreement, under the FY 2015 City Connecting Link (KLINK) Resurfacing Program, the Secretary will reimburse the City for fifty percent (50%) of eligible project costs, but not to exceed \$200,000, under KDOT Project No. 23-40 U-0223-01 for a City pavement resurfacing project on US-40 (West 6th Street) from Folks Road to K-10.

2. **Reimbursement Payments.** Subject to the terms of Article II, paragraph 1(a), the Secretary will make partial payments to the City for amounts not less than \$1,000.00 and no more frequently than monthly. Such payments will be made after receipt of proper billing and approval by a licensed professional engineer employed by the City that the referenced project is being constructed within substantial compliance of the design plans for that project.

3. **Route Removal.** Following substantial completion of the City projects identified in Article II, paragraph 1(a), but no sooner than **July 31, 2014**, the Secretary will execute a formal resolution to remove or withdraw the Route from the State Highway System, to include removal of the City Connecting Link designation for the Route. Upon execution, the resolution will be deemed incorporated into and made a part of this Agreement by this reference without the need for written amendment.

4. **Route Responsibilities.** The City agrees to accept and assume all financial, operational, and maintenance responsibilities for the Route upon its removal from the State Highway System. The effective date for the City's total responsibility for the Route will be a date and time certain, which is yet to be determined by the Secretary, but will be no sooner than **July 31, 2014**. The Secretary agrees to provide the City with written notice fourteen (14) days in advance of the designated date and time for the City's assumption of total responsibility for the Route. Notice to the City will be addressed as follows:

Charles E. Soules, P.E., Director of Public Works
City of Lawrence, Kansas
6 E 6th Street, Lawrence, KS 66044

5. **City Connecting Link.** The Parties have in the past entered into an agreement covering routine maintenance of City Connecting Links, and it is the Parties' intent that the agreement for routine maintenance will remain in full force and effect until the Route is removed from the State Highway System. Upon removal of the Route from the State Highway System, the Secretary and City shall enter into a new City Connecting Link

agreement for the remaining lane miles on the other routes designated as City Connecting Links in the City.

6. **Access Control.** The Parties agree that notwithstanding the state highway route designation removal for the Route, the Secretary will retain access control and control of access rights within the existing Right of Way controlled or owned by the Secretary along West 6th Street up to Station 10+542.851, as shown in Exhibit “B”, which is attached and incorporated into this Agreement for all purposes. The City acknowledges and understands the Secretary will prohibit or restrict the construction or use of any entrances or access points within approximately 0.25 miles, east to the US-40/K-10 (South Lawrence Trafficway) interchange.

7. **Route Conditions.** The City agrees to be responsible for any repair action that may be required to have the Route meet current Local Route Conditions.

8. **Assumption of Liability.** From and after the date and time designated by the Secretary in the Secretary’s written notice to the City per Article II, paragraph 4, the City will assume all responsibility for the Route.

9. **Mercato Access Opening Agreement.** The Parties have entered into an agreement dated March 30, 2011 concerning the eradication and removal of E. 902 Road, Douglas County, Kansas, which currently intersects with westbound US-40, in conjunction with the build-out of the Mercato development project in the vicinity of Mercato Lane, Lawrence, Kansas. It is the Parties’ intent that the March 30, 2011 agreement remain in full force and effect and that the Parties’ rights and obligations under that agreement shall not be affected or otherwise altered by this Agreement.

10. **General Indemnification.** To the extent permitted by law and subject to the maximum liability provisions of the Kansas Tort Claims Act, the City shall defend, indemnify, hold harmless, and save the Secretary and the Secretary’s authorized representatives from any and all costs, liabilities, expenses, suits, judgments, damages to persons or property or claims of any nature whatsoever arising out of or in connection with the provisions or performance of this Agreement by the City, the City’s agents, employees, or subcontractors. The City shall not be required to defend, indemnify, hold harmless, and save the Secretary for negligent acts or omissions of the Secretary or the Secretary’s authorized representatives or employees.

11. **Deed Recordation.** Within one year of the Route removal, KDOT’s Bureau of Right of Way will record a quitclaim deed in favor of the City at the County Register of Deeds Office transferring ownership to the City of any associated Right of Way, which is owned or controlled by the Secretary, **EXCEPT:** The Secretary will retain and reserve certain access control and control of access rights within the Right of Way, as shown in Exhibit “B”. A copy of the executed deed will be forwarded to the KDOT District Engineer.

ARTICLE III

GENERAL PROVISIONS:

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

2. **Contractual Provisions.** The provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12) which is attached hereto, are hereby incorporated into this Agreement and made a part thereof.

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

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

5. **No Third Party Beneficiaries.** No third party beneficiaries are intended to be created by this Agreement and nothing in this Agreement authorizes third parties to maintain a suit for damages pursuant to the terms or provisions of this Agreement.

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

ATTEST:

CITY OF LAWRENCE, KANSAS

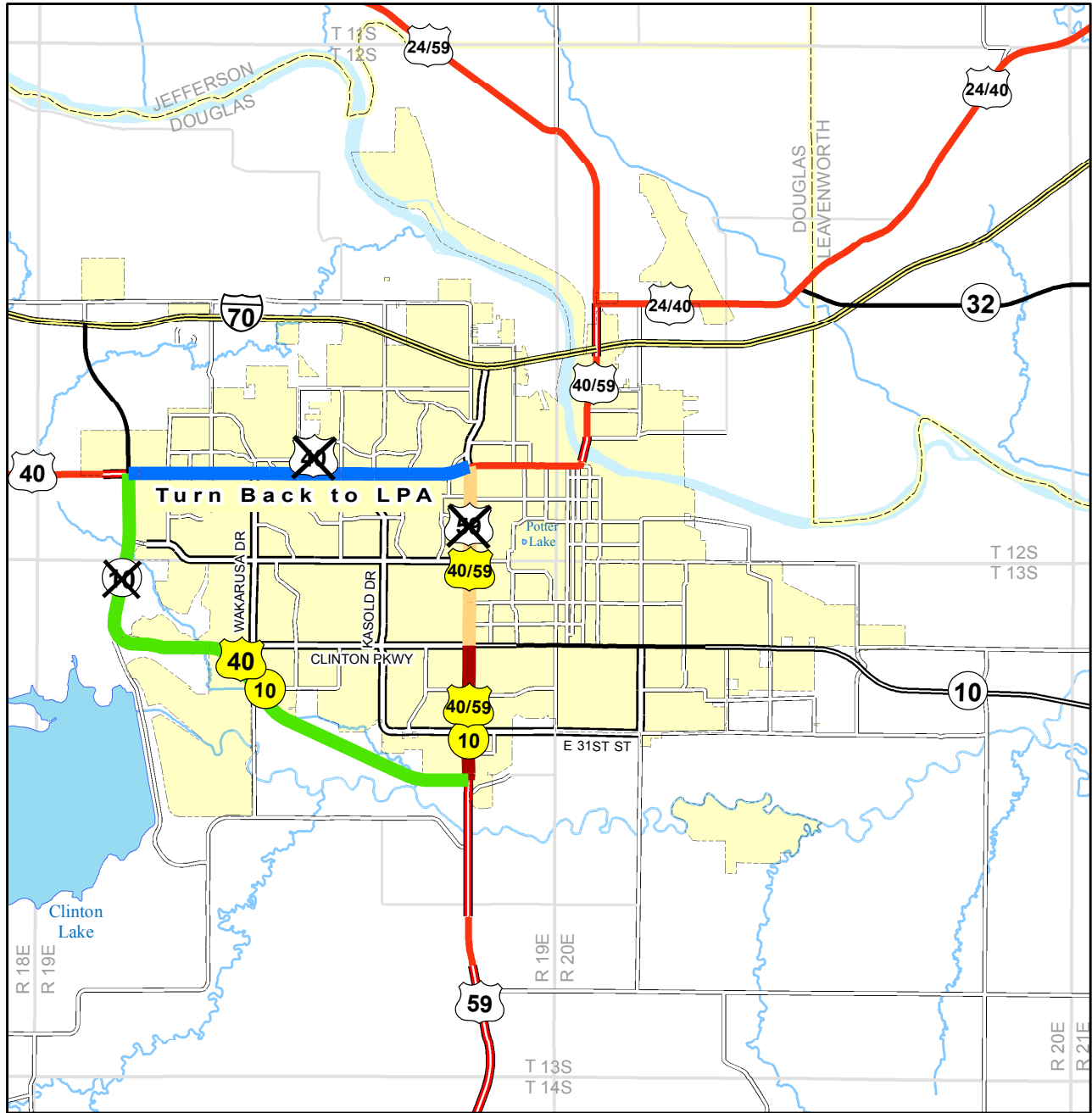
CITY CLERK
(SEAL) Diane M. Trybom

MAYOR
Michael Dever

MICHAEL S. KING, SECRETARY OF TRANSPORTATION
KANSAS DEPARTMENT OF TRANSPORTATION

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

Redesignation of US-40 in Lawrence, Douglas County, KS



- 3.991 miles of US-40 Withdrawn, Turnback
- 6.556 miles of K-10 redesignated as US-40 with K-10 Dual
- 2.081 miles of US-59 redesignated as US-40 with US-59
- 1.577 miles of US-59 redesignated as US-40 with US-59, K-10 Dual



EXHIBIT B

REFERENCES NOTED	BY	DATE
REFERENCES CHECKED		

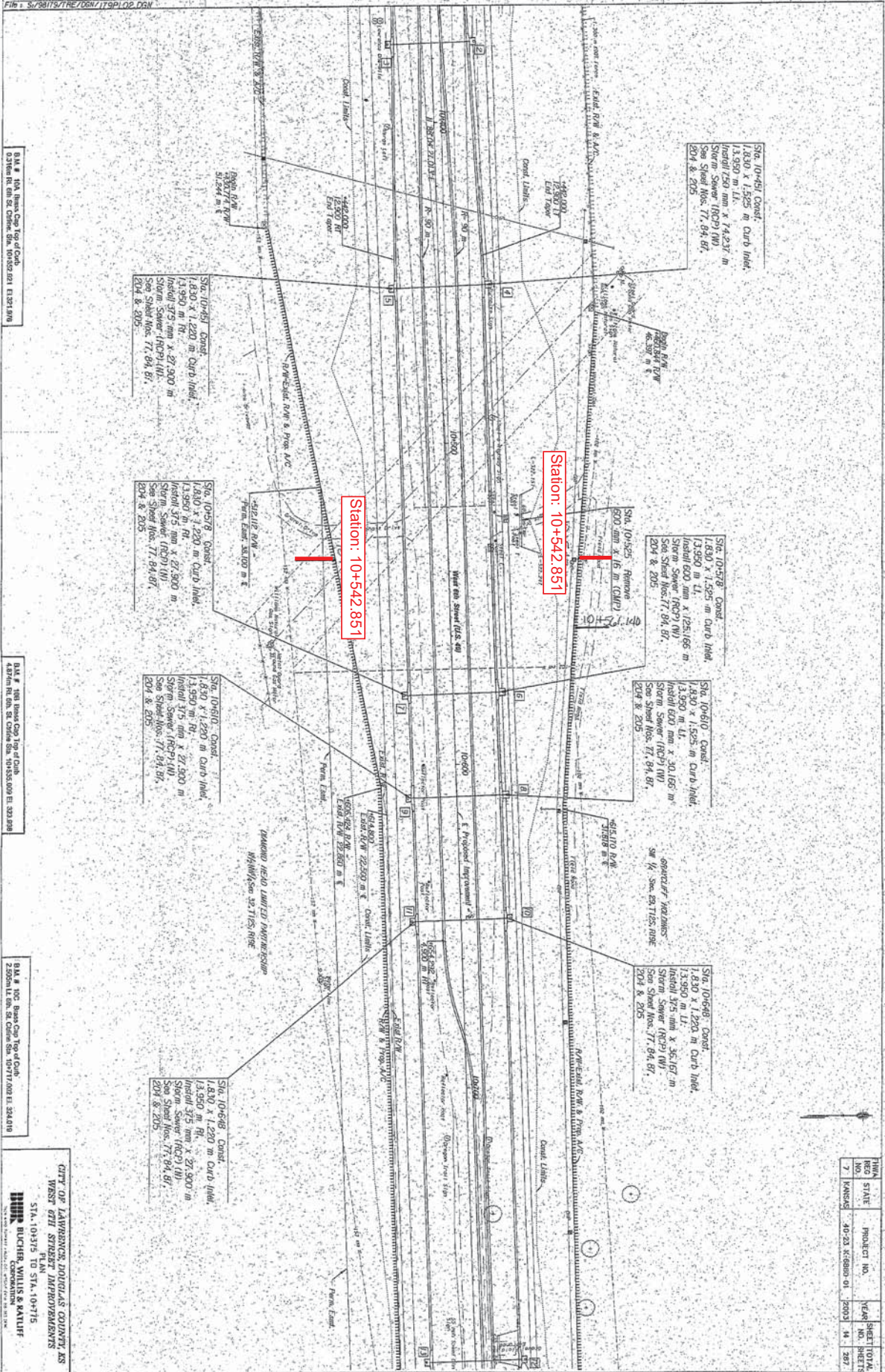
Drawn by: [Name] Plotted: [Date]
 File: S:\28119\TREN\106\11\SP102.DGN

814 # 104 Repair Cap Top of Curb
 13740 N. 11th St. Station 501.33000 El. 323.190

814 # 105 Repair Cap Top of Curb
 13740 N. 11th St. Station 501.33000 El. 323.190

814 # 106 Repair Cap Top of Curb
 13740 N. 11th St. Station 501.33000 El. 324.019

CITY OF LAWRENCE DODDGLAS COUNTY, KS
 WEST 6TH STREET IMPROVEMENTS
 STA. 10+517.5 TO STA. 10+715
HOR BUCHTER, WILLIS & KATLUF
 CORPORATION
 1000 WEST 10TH AVENUE, SUITE 200, LAWRENCE, KS 66044



IRRM NO.	7	PROJECT NO.	10-23-K1680-01	YEAR	2003	SHEET TOTAL	14
STATE	KANSAS					SHEETS	14

KANSAS DEPARTMENT OF TRANSPORTATION

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

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

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

NOTIFICATION

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

CLARIFICATION

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

Nondiscrimination Clauses

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

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

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

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

- Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
- Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
- Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
- Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
- Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

- Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
- Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
- 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.
- Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
- Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
- 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.
- 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."
- Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.