

Dwight D. Eisenhower State Office Building
700 S.W. Harrison Street
Topeka, KS 66603-3745

Calvin E. Reed, P.E., Secretary
Tod L. Salfrank, Chief



Phone: 785-296-3861
Fax: 785-296-6946
kdot#publicinfo@ks.gov
<http://www.ksdot.gov>
Laura Kelly, Governor

August 29, 2023

Project # 39 KA-6909-01
City of Anthony
Harper County

Kathy Vopat
Evans, Bierly, Hutchison & Assoc., P.A.
1105 Williams Street
Great Bend, KS 67530-4487

Dear Ms. Vopat :

Attached is the Cost Plus Net Fee Agreement for Engineering Services (Preliminary Engineering) on the above noted project that were prepared from your submitted proposal. Please review the entire nineteen - (19) page document with the twelve (12) special attachments. Specifically note the compensation to the Consultant (Article III) and reimbursement to the LPA by the Secretary (Article IV, paragraph 4). The Agreement and special attachments should then be completed, signed and/or attested as follows:

1. Agreement - Page 18 - signed and attested by the City.
2. Agreement - Page 18 - signed and attested the Consultant.
3. Certification Regarding Debarment & Suspension (Certification) – Anthony signs and dates the form designated for the City.
4. Certification Regarding Debarment & Suspension (Certification) – Consultant signs and dates the form designated for the Consultant.
5. Attachment – Certification of Contractor – signed and dated by Consultant.
6. Attachment – Certificate of Compliance with K.S.A. §46-239(c) - Consultant signs and dates.
7. Attachment – Policy Regarding Sexual Harassment (Certification) - Consultant answers questions, signs, and dates.

The Consultant, after executing the Agreement should immediately forward the signed Agreement to the City. The Anthony should execute the Agreement and email the digital copy to **Jen Brendel** at Jennifer.m.brendel@ks.gov in Bureau of Local Projects and Kansas Department of Transportation Legal Department at KDOTHCC.Contracts@ks.gov as soon as possible. **At each stage, the agreement should be kept intact as a complete document. Signature pages must be kept with the agreement and not forwarded to KDOT separately.** Processing of the Agreement will continue as noted in federal regulations 23 C.F.R.172.

When the Agreement has been fully signed and executed a copy the Agreement will be scanned and emailed to City and the Consultant for your records.

Sincerely,

Tod L. Salfrank, Chief
Bureau of Local Projects

TLS:jmb
Enclosures

**AGREEMENT FOR
PRELIMINARY ENGINEERING (PE) DESIGN SERVICES
BY CONSULTANT
(COST PLUS NET FEE AGREEMENT)**

CMS CONTRACT NO. _____

**PROJECT NO. 39 KA-6909-01
CITY OF ANTHONY, KANSAS HARPER COUNTY, KANSAS**

THIS AGREEMENT is by and among **City of Anthony, Kansas**, (the “LPA” or “Local Public Authority”), as principal, and the consulting engineering firm of **Evans, Bierly, Hutchison and Assoc., P.A.** (the “Consultant”), and the Secretary of Transportation of the State of Kansas acting by and through the **Kansas Department of Transportation (KDOT)** (the “Secretary”). The Secretary will act as agent for the LPA pursuant to authority set forth in K.S.A. § 68-169, *et seq.* The LPA, Consultant, and Secretary are collectively referred to as the “Parties.”

RECITALS:

- A. The Secretary and the LPA previously executed an agreement (Agreement No. 77-23) related to this Project dated April 10, 2023, which is incorporated by this reference as if set out in its entirety herein, including, but not limited to, any funding maximums established by the Secretary for the Project in its entirety. The final design Plans and specifications for said Project are available in the KDOT Headquarters in Topeka.
- B. The LPA has submitted an official request to the Secretary stating the LPA desires participation in the cost of the Preliminary Engineering (PE) services, as well as the construction cost for the Project. The Project will be financed with the aid of Federal and/or State and LPA funds. The Project will be developed following the rules and regulations promulgated by the U.S. Department of Transportation in the Federal-Aid Policy Guide.
- C. The LPA’s engineering forces will be unable to handle the work involved within the desired completion date and consequently, the LPA desires to utilize the PE services of the Consultant, as further described 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. **“Consultant”** means the consulting engineering firm of Evans, Bierly, Hutchison & Assoc., P.A., a Kansas professional association, with its place of business at 1105 Williams Street, Great Bend, KS 67530-4487.
3. **“Design Plans”** means design plans, specifications, estimates, surveys, and any necessary studies or investigations, including, but not limited to, environmental, hydraulic, and geological investigations or studies necessary for the Project under this Agreement.
4. **“Effective Date”** means the date this Agreement is signed by the Secretary or the Secretary’s designee.
5. **“FHWA”** means the Federal Highway Administration, a federal agency of the United States.
6. **“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.
7. **“Letting” or “Let”** means the process of receiving bids prior to any award of a Construction contract for any portion of the Project.
8. **“Local Public Authority” or “LPA”** means the City of Anthony, Kansas, with its place of business located at 124 S. Bluff Avenue, P.O. Box 504, Anthony, KS 67003-0504.
9. **“Non-Participating Costs”** means the costs of any items or services which the Secretary, acting on the Secretary’s own behalf and on behalf of the FHWA, reasonably determines are not Participating Costs.
10. **“Notice to Proceed”** means the written notice from the Secretary or designee authorizing the Consultant to begin performance of services.
11. **“Participating Costs”** means expenditures for items or services which are an integral part of highway, bridge, and road construction projects, as reasonably determined by the Secretary.
12. **“Parties”** means the Secretary of Transportation and KDOT, individually and collectively, the LPA, and the Consultant.
13. **“Preliminary Engineering” or “PE”** means pre-construction activities, including but not limited to design work, generally performed by a consulting engineering firm that takes place before Letting.
14. **“Project”** means Project No. 39 KA-6909-01 located at the intersection of K-44 and Anthony Avenue and consists of 0.010 miles of pavement reconstruction, replacing the curb and gutter, sidewalks, ramps and entrances, and is the subject of this Agreement.

15. **“Secretary”** means the Secretary of Transportation of the State of Kansas, and the Secretary’s successors and assigns.

ARTICLE II

SCOPE OF PE DESIGN SERVICES:

1. Phase I: Design and plan preparation of grading and surfacing for the above-described Project, including Special Specifications as required.

Phase II: The review and recommendations for approval of all shop drawings and drawings for falsework as may be required, except for items designed by others.

2. The LPA requested and has received a proposal for Phases I and II (PE services for plan preparation) from the Consultant for the following proposed construction improvements:

Grading : 0.05 Miles Surfacing: 0.05Miles

3. The LPA requires that the scope of PE services to be provided by the Consultant be in accordance with the Consultant's proposal and regulations prescribed by the Federal Highway Administration (FHWA) and the Secretary.
4. The PE services to be performed by the Consultant for Phase I and II* will include, but not necessarily be limited to, the following as indicated thusly (+):

Surveys

(X) Topographical Survey
() Relocation Survey
(X) Normal Field Survey

() Geological Survey
() Bridge Soundings
(X) R/W Survey

Plans, Specifications & Estimates

1) Road

(X) Balanced Grading Plan
(X) Pavement Design
() Culvert Designs
() R/W Descriptions
() R/W Strip Map
(X) Surfacing Plans
() Storm Sewers
(X) Special Provisions
(X) Construction Cost Estimate
() R/W Staking
(X) Traffic Control Plan
() Other ____
() Other phases if involved: ____

2) Bridges

() Contour Maps
() Bridge Layout Cost
() Cost Completion
() Bridge (Superstructure)
() Bridge (Substructure)
() Detailed Bridge Plans
() Special Provisions
() *Review Shop Drawings
() *Review Falsework Drawings
() Construction Cost Estimate

5. The proposed Project will be constructed on said route to equal or exceed the Secretary's approved design guidelines for the following:
 - (a) Average Annual Daily Traffic (AADT) = 785 for Design Year (2023) Traffic.
 - (b) Minimum Design Speed equal to or greater than posted speed.
 - (c) **Current Design Criteria Attachment.**

ARTICLE III

LPA RESPONSIBILITIES:

1. Secretary Authorization. The Secretary is authorized by the LPA 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.
2. Use of Consultant. The LPA will employ the Consultant to perform the PE described in Phases I and II of this Agreement for the fee, and in the manner stipulated in this Article III and in general accordance with the Consultant's proposal.
3. Progress Review. The LPA will review the Consultant's schedule, preliminary concepts and/or layouts prior to detailed progress of the work and will monitor the Consultant's actual progress throughout the period of this Agreement.
4. Compensation. The LPA will compensate the Consultant for the PE services for Phases I and II described in Article II and Article V of this Agreement as follows:
 - (a) Total Compensation. Total compensation for Phases I and II of the PE services may not exceed \$53,374.97. Compensation will be made based on a net fee amount of \$5,000 and the Consultant's reimbursable actual costs. The actual costs must be incurred in conformity with the cost principles established in the Federal-Aid Policy Guide and 48 C.F.R. Part 31, *et seq.*
 - (b) Reimbursement by the Secretary. The LPA will administer payments to the Consultant, including any portions borne by the Secretary. The Secretary will reimburse the LPA up to one hundred percent (100%) of the Participating Costs of PE, or \$53,374.97, whichever is less.
 - (c) LPA's Contribution. The LPA is responsible for zero (0%) of the total actual costs of PE for Phases I and II (PE services for plan preparation of the Project) up to the total compensation limit. The LPA will be responsible for any costs which may occur above the total compensation limit of \$53,374.97(overages).

5. Progressive Payments.

- (a) Partial Payment. During the progress of work covered by this Agreement, partial payments for Phases I and II may be made to the Consultant from the LPA within thirty (30) days of receipt of proper billing, but at intervals of not less than one calendar month. Progress billing must be supported by a progress schedule acceptable to the LPA and Secretary, which includes a statement of the percentage of work completed and the actual costs incurred during the billing period.
- (b) Retainage. The LPA will pay one hundred percent (100%) of all partial billings up to ninety-five percent (95%) of the upper limit of compensation. Any further amount due, including the voucher for final payment for Phase I under provisions of this Agreement, may be submitted by the Consultant to the LPA after the Secretary's award of the construction contract(s) for the LPA. After award of the construction contract(s), the Consultant may request any remainder due minus a \$500.00 retainage or the amount earned in excess of ninety-five percent (95%) of the upper limit, whichever is less. When partial payments do not reach ninety-five percent (95%) of the upper limit, the Consultant may request payment of one hundred percent (100%) of the amount earned minus a \$500.00 retainage. The retainage amount will be released to the Consultant when the Agreement has been audited by the Secretary.

6. Final Payment.

- (a) Voucher-Phase II. The voucher for final payment from the LPA for Phase II due under provisions of this Agreement may be submitted after the acceptance and approval of the work by the LPA and the Secretary.
- (b) Voucher-Phase I. In the event a construction contract has not been awarded for any Project segment within six (6) months from the date of approval of construction plans, the voucher for final payment of Phase I may be submitted without further delay.
- (c) Final Audit. Final payments for Phases I and II due under provisions of this Agreement will be made within ninety (90) days after completion of a final audit of the Consultant by representatives of the Secretary.

7. Hold Harmless Clause. To the extent permitted by law and subject to the Kansas Tort Claims Act (K.S.A. § 75-6101, *et seq.*) as applicable, the LPA shall indemnify, hold harmless, and save the Secretary and the Secretary's authorized representatives from any and all costs, liabilities, expenses, suits, judgments, and 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, its agents, employees, or subcontractors

resulting from negligent acts, errors, or omissions from the LPA's operation in connection with the PE services to be performed under this Agreement.

8. System for Award Management. The LPA agrees it shall maintain current registrations in the System for Award Management (<http://www.sam.gov>) at all times during which it has active federal awards.
9. Lobbying. If the total value of this agreement exceeds \$100,000.00, a **Certification for Federal Aid Contracts and accompanying Disclosure of Lobbying Activities Attachment** will be attached to and made a part of this Agreement. Such certification must state the LPA, as a recipient of Federal aid, will not and has not used Federally-appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. 2 C.F.R. § Pt. 200, App. II.
10. Suspension and Debarment. If the total value of this Agreement exceeds \$25,000.00, this Agreement is a covered transaction for purposes of 2 C.F.R. Parts 180 and 1200. Therefore, both the LPA and Consultant are required to verify that neither they nor their principals or agents is presently debarred, suspended, proposed for debarment, declared ineligible, disqualified, or voluntarily excluded from participation in this transaction by any federal department or agency. A **Certification as to Current History Regarding Debarment, Eligibility, Indictments, Convictions, or Civil Judgments Attachment** for both the Consultant and LPA will be attached to and made a part of this Agreement. 2 C.F.R. § 200.213.

ARTICLE IV

SECRETARY RESPONSIBILITIES:

1. Notice to Proceed. The Secretary will issue a written Notice to Proceed to the LPA and the Consultant regarding the approved date for the Consultant to begin work.
2. Available Drawings. Upon request, the Secretary will furnish to the Consultant any available design standard drawings or other plan sheets at actual cost.
3. Status Notification. The Secretary will notify the LPA and the Consultant of receipt and review status of received plans and documents.
4. Reimbursement to the LPA. The Secretary will reimburse the LPA for one hundred percent (100%) of the total contract compensation limit of 53,374.97 for Participating Costs of PE for Phases I and II (PE services for plan preparation of the Project) up to the compensation

maximum of \$53,374.97 including the net fee. The LPA will be responsible for the remaining zero percent (0%) and any overages.

5. Progressive Payments.

- (a) Partial Payment. During the process of work covered by this Agreement, partial payments may be made to the LPA after receipt of proper billing indicating payments to the Consultant and supported by a progress schedule all found acceptable to the Secretary.
- (b) Retainage. The Secretary will pay one hundred percent (100%) of all partial billings up to ninety-five percent (95%) of the upper limit of compensation after the LPA's share (if any) has been deducted. Any further amount due, including the voucher for final payment for Phase I under provisions of this Agreement, may be submitted by the LPA to the Secretary after the Secretary's award of the construction contract(s) for the LPA. After award of the construction contract(s), the LPA may request any remainder due minus a \$500.00 retainage or the amount earned in excess of ninety-five percent (95%) of the upper limit, whichever is less. When partial payments do not reach ninety-five percent (95%) of the upper limit, the LPA may request payment of one hundred percent (100%) of the amount earned minus a \$500.00 retainage. The retainage amount will be released to the LPA when the agreement has been audited by the Secretary.

6. Final Payment to the LPA.

- (a) Final payment to the LPA will be made within ninety (90) days after receipt of proper billing and final approvals, utilizing an accounting procedure similar to that as outlined in Article III, paragraph 6 provided all administrative audits and other procedures in connection therewith have been completed. If such procedures have not been completed within ninety (90) days, then payment will be made upon completion thereof.
- (b) It is the policy of the Secretary to make any final payments to the LPA for PE services related to the Project in a timely manner. The Single Audit Standards set forth in 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, and specifically the requirements in Subpart F, 2 C.F.R. § 200.500, *et seq.* require either a single or program specific audit be performed by an independent certified public accountant in accordance with these standards. All information audited and audit standards and procedures shall comply with 2 C.F.R. § 200.500, *et seq.*
- (c) The Secretary may pay any final amount due for the authorized work performed based upon the LPA's most recent Single Audit Report available

and a desk review of the claim by the Contract Audit Section of KDOT's Bureau of Fiscal Services. The LPA, 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 Parties agree as the Single Audit Report becomes available for the reimbursement period (normally should occur within a period of 1-2 years), the Secretary will review the Single Audit Report for items which are declared as not eligible for reimbursement. The LPA agrees to refund payment made by the Secretary to the LPA for items subsequently found to be Non-Participating or not eligible for reimbursement by audit.

ARTICLE V

CONSULTANT RESPONSIBILITIES:

1. PE Services. The Consultant agrees to perform the scope of PE services as indicated in Article II of this Agreement. More specifically, the Consultant agrees to design the Project as follows:
 - (a) The Consultant will prepare detailed design plans and construction drawings in conformity with the state and federal design criteria appropriate for the Project, in accordance with either the current version of the American Association of State Highway and Transportation Officials (AASHTO) "Green Book," A Policy on Geometric Design of Highways and Streets, or the current version of the KDOT Local Projects LPA Project Development Manual, the Bureau of Local Projects Memorandums (BLP Memos), the KDOT Design Manual, the Geotechnical Bridge Foundation Investigation Guidelines, the current version of the Bureau of Traffic Engineering's Traffic Engineering Guidelines, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), the Bureau of Road Design's Road Memorandums, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions and Project Special Provisions, and with the rules and regulations of FHWA pertaining to the Project.
 - (b) Upon their completion, the Consultant will submit the Design Plans to the Secretary by a licensed professional engineer attesting to the conformity of the design plans with the items in paragraph 1(a) above. The Design Plans must be signed and sealed by a licensed professional engineer responsible for preparation of the Design Plans. In addition, geological investigations or studies must be signed and sealed by either a licensed geologist or licensed professional engineer, who is responsible for the preparation of the geological investigations or studies. Rights of way descriptions must be signed and sealed by a licensed land surveyor responsible for the preparation of the rights of way descriptions. All technical professionals

involved in the Project are required to meet the applicable licensing and/or certification requirements as stated in K.S.A. § 74-7001, *et seq.*

- (c) The Consultant will prepare revised Design Plans, as requested by representatives of the LPA or the Secretary, made necessary by field check and/or office check review recommendations, errors, omissions, or negligence of the Consultant, at any time prior to the completion and final acceptance of the construction contract(s) covering the Project. Such revised Design Plans will be made by the Secretary or the LPA at the Consultant's expense.
- (d) The Consultant will prepare the Design Plans for the Project for such parts or sections, and in such order of completion, as designated by the LPA and in conformance with the Project's current official schedule as issued by the Secretary. Further, the Consultant agrees to complete all Design Plan development stages no later than the due dates on the Project's current official schedule as issued by the Secretary, exclusive of delays beyond the Consultant's control.
- (e) The Consultant will make the necessary field surveys to determine horizontal and vertical alignment for the proposed Project.
- (f) The Consultant will prepare and furnish one (1) set of plans (white background) of preliminary Design Plans for field check and review to the LPA and the Secretary. These preliminary Design Plans must, at a minimum, contain the plan sheets and information thereon as required in the KDOT Design Manual and contain such other special plan sheets as the Consultant and/or the Secretary deem necessary.
- (g) The Consultant will attend the field check of the Project with representatives of the Secretary and the LPA.
- (h) The Consultant will complete the Design Plans incorporating changes which may have been agreed to during the field check, and include with such Design Plans estimates of quantities, special provisions, supplemental specifications, and an updated estimate of cost.
- (i) The Consultant will submit one (1) complete set of plans (white background) to the LPA and the Secretary for office check review along with copies of special provisions, supplemental specifications, and the updated cost estimate.
- (j) The Consultant will submit one (1) set of final plans and copies of the updated construction cost estimate, special provisions, and supplemental specifications to the LPA and the Secretary.

- (k) Upon request, the Consultant will furnish one (1) copy of all design calculations to the Secretary.
- (l) The Consultant will prepare and furnish to the LPA preliminary plans, plats and descriptions of right-of-way required, (this item is optional but is included if so noted in Article II, paragraph 4 of this Agreement) or furnish preliminary design plans to the LPA sufficiently complete for the LPA's use in preparing descriptions for rights-of-way required.
- (m) The Consultant will provide staking of the rights-of-way boundary lines for use by the LPA in rights-of-way acquisition (this item is optional but is included if so noted in Article II, paragraph 4 of this Agreement).
- (n) The Consultant will furnish final and complete Design Plans to the LPA and the Secretary for final review no later than the due date in the Project's current official schedule as issued by the Secretary, exclusive of time required for reviews by the reviewing parties and delays beyond the Consultant's control.
- (o) The Consultant will prepare and furnish the Secretary with supplemental specifications covering all special fabrication or construction features not covered by the KDOT "Standard Specifications for State Road and Bridge Construction," except for items designed by others.
- (p) The Consultant will review shop drawings and falsework drawings, as may be required for the Project (if indicated in the scope of PE services in Article II, paragraph 4 of this Agreement).
- (q) The Consultant will have available at the Consultant's office all plans being prepared and supporting information for review by the LPA and the Secretary.
- (r) The Consultant will provide all plans, drawings, and documents pertaining to the Project to the LPA, prepared in accordance with the Secretary's standard practice. All such plans, drawings, and documents will become the property of the LPA upon their completion in accordance with the terms of this Agreement, without restrictions as to their future use.
- (s) The Consultant will provide traffic control signing on or along any road, street, or highway where the Consultant has crews working. The size, shape, color, and placement of all signs must comply with the current version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD) for Streets and Highways, as adopted by the Secretary.

- (t) The Consultant, the LPA, and Secretary may arrange for such conferences as may be deemed necessary or desirable and that work in progress may be viewed at the Consultant's offices.
 - (u) An extension of time shall be granted the Consultant for delays recognized by the LPA and Secretary as unavoidable; provided however, such extension of time must be requested by the Consultant in writing, stating the reasons for such delays.
2. Additional Obligations. In addition to the scope of PE services, the Consultant will assume the following obligations:
- (a) The Consultant will furnish two (2) copies of each proper billing to the LPA.
 - (b) The Consultant will accept compensation for the performance of PE services described in such amounts and at such intervals as indicated in Article III, paragraphs 4-6.
 - (c) In the event the scope of the Project changes to a point where, with the Secretary's concurrence, the Consultant and the LPA mutually agree a supplemental agreement to this Agreement is necessary to provide for authorized extras, all payments for work performed to that date will be due and payable within ninety (90) days after the date of the supplemental agreement, provided, however, a proper billing has been received from the Consultant.
 - (d) The Consultant will prepare an estimated schedule, if different from the official KDOT schedule, for performance of PE services (forward the schedule to the LPA and the Secretary) identified in Article V, paragraph 1, of this Agreement (may be bar chart or other acceptable method) and report to the LPA (and the Secretary upon request) actual progress at monthly intervals or at a mutually agreeable interval approved by the LPA and Secretary.
 - (e) The Consultant will not, without prior written approval from the Secretary, exceed the upper limit of the PE services fee described and agreed to by the Parties herein. Failure to receive written approval will result in loss of compensation for this work by the Consultant.
 - (f) The Consultant will make all documents and accounting records pertaining to the work covered by this Agreement available at the Consultant's office to representatives of the LPA and the Secretary for audit for a period of three (3) years after the date of final payment.

- (g) The Consultant will accept full responsibility for payment of Unemployment Insurance, Workers' Compensation and Social Security as well as income tax deductions and any other taxes or payroll deductions required by State and Federal Law for the Consultant's employees engaged in work authorized by this Agreement.
 - (h) The Consultant will become familiar with, and shall at all times observe and comply with, all applicable federal, state, and local laws, ordinances, and regulations.
 - (i) The Consultant will be responsible for any and all damages to property or persons arising out of negligent acts, errors or omissions in the Consultant's performance of PE services under this Agreement.
3. Responsibility for Adequacy of Design. The Consultant shall have the sole responsibility for the adequacy and accuracy of the Design Plans. Any review of these items performed by the LPA or the Secretary or their representatives is not intended to and shall not be construed to be an undertaking of the Consultant's duty to provide adequate and accurate Design Plans. Reviews by the Secretary are not done for the benefit of the Consultant, the construction contractor, the LPA, any other political subdivision, or the traveling public. The Secretary makes no representation, express or implied warranty to any person or entity concerning the adequacy or accuracy of the Design Plans, or any other work performed by the Consultant or the LPA.
4. Use Restricted Documents (23 U.S.C. § 409). This Agreement may result in the Consultant using the reports, surveys, schedules, lists, or data compiled or collected by the Secretary that are use restricted pursuant to 23 U.S.C. § 409. Such reports, surveys, schedules, lists, or data are watermarked "Use Restricted 23 U.S.C. § 409" which provides the Secretary with an evidentiary privilege that may only be asserted by counsel for KDOT as to evidence against KDOT in litigation. The Secretary requires any documents the Consultant receives which are watermarked "Use Restricted 23 U.S.C. § 409" shall only be used for this Agreement. Further, the Consultant must maintain and not remove the **23 U.S.C. § 409 Watermark Attachment**.
5. General Indemnification. To the extent permitted by law and subject to the Kansas Tort Claims Act (K.S.A. § 75-6101, *et seq.*) as applicable, the Consultant shall indemnify, hold harmless, and save the LPA, the Secretary, and their authorized representatives harmless from any and all costs, liabilities, expenses, suits, judgments, and 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 Consultant, its agents, employees, or subcontractors resulting from the Consultant's negligent acts, errors, mistakes, or omissions in performing the PE services under this Agreement.
6. Certification Against Contingent Fees: The Consultant warrants they have not employed or retained any firm or person, other than a bonafide employee working solely for the

Consultant 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, in consultation with the LPA, shall have the right to annul this Agreement without liability. See **Certification Against Contingent Fees Attachment**.

7. Certificate of Compliance with K.S.A. § 46-239(c). The Consultant certifies it is in compliance with K.S.A. § 46-239(c) Disclosure Statements by signing the **Certificate of Compliance Attachment**, which is attached to and made a part of this Agreement.
8. Certification Regarding Sexual Harassment. The Consultant agrees to comply with Executive Order 18-04 (February 5, 2018), by signing the **Policy Regarding Sexual Harassment Attachment**, which is attached to and made a part of this Agreement.
9. Certification Regarding No Boycott of Israel. If the total value of this Agreement exceeds \$100,000.00, a **Certification of Company Not Currently Engaged in a Boycott of Goods or Services from Israel Attachment** will be included with this Agreement and made a part thereof.

ARTICLE VI

GENERAL PROVISIONS:

1. No Assignment without Prior Consent. The PE services to be performed by the Consultant under the terms of this Agreement are personal and the Consultant shall not sublet or assign all or any part of the PE services under this Agreement without the prior written consent of the LPA and the Secretary. Consent by the LPA and the Secretary to assign, sublet or otherwise dispose of any portion of the Agreement shall not be construed to relieve the Consultant of any responsibility for the fulfillment of the Agreement. All the applicable terms of this Agreement remain in force and are a condition to any PE services approved to be sublet or assigned. Specific reference is made to Nondiscrimination and Equal Employment Opportunity, as applicable to the subcontract.
2. Termination by the LPA. The LPA reserves the right with the Secretary's approval to terminate all or part of this Agreement at any time upon written notice to the Consultant. Such notice will be sent not less than ten (10) days in advance of the termination date stated in the notice.
3. Termination by the Consultant. The Consultant 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.

4. Effect of Termination.

- (a) In the event the Agreement is terminated by the LPA and the Secretary without fault on the part of the Consultant, the Consultant shall be paid for the work performed or PE services rendered before the termination date as Article III provides.
- (b) In the event the PE services of the Consultant are terminated by the LPA and the Secretary for fault including, but not limited to: unreasonable delays in performance; failure to respond to LPA or the Secretary's requests; and/or unsatisfactory performance on the part of the Consultant, the Consultant shall be paid the reasonable value of the PE services performed or rendered and delivered to the Secretary up to the time of termination. The value of the PE services performed, rendered, and delivered will be determined by the Secretary in consultation with the LPA. The Consultant may appeal the determination to the Deputy Secretary of Transportation/State Transportation Engineer. The State Transportation Engineer's decision represents KDOT final agency action under the Kansas Judicial Review Act (KJRA), K.S.A. § 77-601, *et seq.*

- 5. Continuation of Services. In the event of the death of any member or partner of the Consultant's firm, the surviving member shall complete the PE services, unless otherwise mutually agreed upon by the LPA and the Secretary and the survivors, in which case the Consultant shall be paid as set forth in paragraph 4(b) above.
- 6. Employees of LPA and the Secretary. The Consultant will not, without written permission from the Secretary, engage the services of any person or persons in the employment of the LPA or the Secretary for any work required by the terms of this Agreement.
- 7. Audit. The Secretary may require the Consultant and subcontractors to be available for audit at the Secretary's discretion. Accounting methods, cost documentation, and books of said parties will be maintained in accordance with generally accepted accounting principles and will conform to the appropriate provisions of 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- 8. Overhead Rate Audit. The overhead rate will be submitted by the Consultant for audit within seventy-five (75) days after the completion of the Consultant's fiscal year. The Consultant will assemble work papers for audit at its normal place of business. The overhead rate may be audited on a yearly basis and adjusted at the time of the audit review. If the overhead rate increases or decreases, previous payments may be adjusted so the Consultant is reimbursed for the actual cost for that fiscal year.

9. Binding Agreement. This Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the Secretary, the LPA, the Consultant, and their successors and assigns.
10. 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.
11. Buy America Compliance. The Parties agree to comply with the Buy America requirements of 23 CFR § 635.410, as applicable, when purchasing items using Federal funds under this Agreement. Buy America requires the Parties to purchase only steel and iron produced in the United States unless a waiver has been granted by FHWA or the product is subject to a general waiver. Costs for applicable materials which are not certified either compliant or under waiver will not be reimbursed. Buy America requirements apply to all contractors/subcontractors and should be incorporated through appropriate contract provisions as needed.
12. Prohibited Use of Certain Technologies. All Parties agree that they will comply with 2 CFR § 200.216 and 2 CFR § 200.471 regulations. Such regulations provide that recipients and sub-recipients of federal funds are prohibited from obligating or expending loan or grant funds, if any, to 1) procure or obtain; 2) extend or renew a contract to procure or obtain, or; 3) enter into a contract to procure or obtain telecommunication or video surveillance equipment, services, or systems produced by: Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities); and Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). Any expenditures for such telecommunication or video surveillance equipment, services, or systems are unallowable costs and will not be reimbursed.
13. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.
14. Severability. If any provision of this Agreement is held invalid, the invalidity does not affect other provisions which can be given effect without the invalid provision, and to this end the provisions of this Agreement are severable.
15. Civil Rights Act. The **Civil Rights Attachment** pertaining to the implementation of the Civil Rights Act of 1964, is attached and made a part of this Agreement.
16. Incorporation of documents. The correlation, interpretation, and intent of the Agreement documents, including the Agreement and attachments thereto, shall be as follows:
 - a. All Attachments listed and checked on the Index of Attachments are made a part of and incorporated into this Agreement.

- b. The Agreement, the Notice to Proceed, and all supplemental agreements shall be included as the Agreement documents.
 - c. The Agreement documents comprise the entire Agreement between the Secretary, the Consultant, and the LPA; they may be altered only by supplemental agreement.
 - d. The Agreement documents are complimentary; that is, what is called for by one is binding as if called for by all. If the Consultant or the LPA finds a conflict, error, or discrepancy in the Agreement documents, the Consultant or the LPA will call it to the Secretary's attention before proceeding with the work affected thereby. In resolving such conflicts, errors, and discrepancies, the documents shall be given precedence in the following order: Supplemental Agreement, this Agreement, and Notice to Proceed.
17. Contractual Provisions. The provisions found in the current version of the **Contractual Provisions Attachment (Form DA-146a)**, which is attached, are hereby incorporated into, and made a part of this Agreement.

(This space is intentionally left blank)

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

RECOMMEND FOR APPROVAL:

CITY OF ANTHONY, KANSAS:

City Engineer (Date)

Mayor of Anthony (Date)

ATTEST:

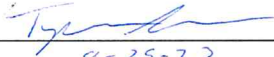
City Council Member

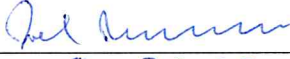
City Clerk (Date)

City Council Member

ATTEST:

Evans, Bierly, Hutchison & Assoc., P.A.:

BY 
Name 8-29-23


Name 8-29-23 (Date)

TITLE Eng. Tech.

TITLE President

Kansas Department of Transportation
Secretary of Transportation

Greg M. Schieber, P.E. (Date)
Deputy Secretary and
State Transportation Engineer

Approved as to form:

INDEX OF ATTACHMENTS

- ☒ Current Design Criteria
- ☐ Certification for Federal Aid Contracts and Accompanying Disclosure of Lobbying Activities
- ☒ Certification as to Current History Regarding Debarment, Eligibility, Indictments, Convictions, or Civil Judgments
- ☒ 23 U.S.C. § 409 Watermark
- ☒ Certification Against Contingent Fees
- ☒ Certificate of Compliance with K.S.A. § 46-239(c)
- ☐ Policy Regarding Sexual Harassment
- ☒ Certification of Company Not Currently Engaged in a Boycott of Goods or Services from Israel
- ☒ Civil Rights Act
- ☒ Supporting Engineering Fee Data Sheet
- ☒ Example Voucher for LPA to voucher KDOT
- ☒ Certification of Final Indirect Cost
- ☒ Certificate of Tax Clearance
- ☒ Contractual Provisions Attachment (DA-146a)

*Note – If left unchecked, then inapplicable.

CURRENT DESIGN CRITERIA

1. All projects shall comply with either the current version of the American Association of State Highway and Transportation Officials (AASHTO) "Green Book", A Policy on Geometric Design of Highways and Streets, or the current version of the KDOT Project Development Manual for Non-National Highway System (NHS) Local Government Road and Street Projects, Volume. I, the Bureau of Local Projects Memorandums (BLP Memos), the KDOT Design Manual, the Geotechnical Bridge Foundation Investigation Guidelines, the current version of the Bureau of Traffic Engineering's Traffic Engineering Guidelines, the latest version, as adopted by the Secretary, of the Manual on Uniform Traffic Control Devices (MUTCD), the Bureau of Design Road Memorandums, the current version of the KDOT Standard Specifications for State Road and Bridge Construction with Special Provisions and Project Special Provisions, and with the rules and regulations of the Federal Highway Administration pertaining thereto.
2. All efforts necessary to perform the preliminary engineering (PE) design services, including appropriate pavement design, etc., will be performed by the consultant. Projects developed will be processed through the Bureau of Local Projects (BLP) following procedures and items noted in the attachments that were sent to the Local Public Authority (LPA) at the time that consultant selection was initiated.
3. If right of way is required, the procedures shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act. These procedures will be discussed at the Field Check.
4. The project plans format should follow that used by the KDOT and described in the KDOT Design Manual.
5. The "Kansas" title sheet shall be used unless there is Federal-Aid in the project.
6. Each sheet shall have a sheet and project number box in the upper right hand corner. When a title block is used, it shall be located in the lower right hand corner.
7. When plans are designed by a consulting engineer, the firm's name should not be presented unless in an unobtrusive manner.
8. For full size sheets, the border size shall be 21 inches x 33.5 inches and the trim size shall be 22 inches x 36 inches.
9. All quantities shall be compiled using the proper KDOT bid item and shall be recapitulated on a separate summary of quantities sheet.
10. KDOT will retain the original plans or a complete set of reproducibles.

11. Adjustment of utilities, when required, shall comply with the KDOT Utility Accommodation Policy and certification of the completed adjustments must be made prior to the plans, specifications and estimates (PS&E) approval of the project.
12. KDOT will perform the appropriate environmental studies on the projects and will provide clearance on the projects that qualify as categorical exclusions. Should any project require further environmental action or public involvement, it will be the responsibility of those performing the PE design services.
13. An official field check involving affected parties will be held for each project.
14. The BLP will develop a city/county/state agreement addressing financial arrangements and City/County and State responsibilities.

For LPA Signature:

Sheet 1 of 1

Certification by Prospective Participants as to current history regarding debarment, eligibility, indictments, convictions, or civil judgments

President, Chairman, or Authorized Official

being duly sworn (or under penalty of perjury under the laws of the United States), certifies that, except as noted below, _____

Agency or Company

or any person associated therewith in the capacity of _____

Owner, partner, director, officer, principal investigator, project director, manager, auditor, or any other position involving the administration of federal funds

is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;

does not have a proposed debarment pending; and

has not been indicted, convicted, or had a civil judgment rendered against (it) by a court of competent jurisdiction in any manner involving fraud or official misconduct within the past three years;

Exceptions _____

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder or respondent responsibility. For any exceptions noted, indicate below to whom it applies, initiating agency, and dates of action.

Providing false information may result in criminal prosecution or administrative sanctions.

Signature

Sworn to before me, a Notary Public in and for
the County of _____, State of _____
this _____ day of _____, 20 ____.

Notary Public

My Commission expires _____

For Consultant Signature:

Sheet 1 of 1

Certification by Prospective Participants as to current history regarding debarment, eligibility, indictments, convictions, or civil judgments

Joel Krosschell
President, Chairman, or Authorized Official

being duly sworn (or under penalty of perjury under the laws of the United States), certifies that, except as noted below, ESH Engineering, P.A.

Agency or Company

or any person associated therewith in the capacity of _____

*Owner, partner, director, officer, principal investigator, project director, manager, auditor,
or any other position involving the administration of federal funds*

is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;

has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;

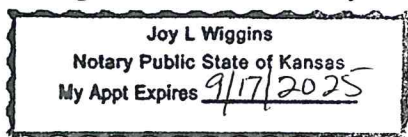
does not have a proposed debarment pending; and

has not been indicted, convicted, or had a civil judgment rendered against (it) by a court of competent jurisdiction in any manner involving fraud or official misconduct within the past three years;

Exceptions _____

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder or respondent responsibility. For any exceptions noted, indicate below to whom it applies, initiating agency, and dates of action.

Providing false information may result in criminal prosecution or administrative sanctions.



Joel Krosschell
Signature

Sworn to before me, a Notary Public in and for
the County of Chavez, State of Kansas
this 29th day of August, 2023.

Joy L. Wiggins
Notary Public

My Commission expires 9/17/2025

USE RESTRICTED 23 U.S.C. § 407

CERTIFICATION OF CONTRACTOR

I hereby certify that I am President and duly authorized representative of EBH Engineering P.A. (CONTRACTOR) and that neither I nor the above agency I here represent has:

- (a) employed or retained for the payment of a commission, percentage, brokerage, contingent fee, or other consideration, any person (other than a bona fide employee working solely for me or the CONTRACTOR) to solicit or secure this Agreement,
- (b) agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the agreement, or
- (c) paid, or agreed to pay, to any firm, organization of persons (other than a bona fide employee working solely for me or the CONTRACTOR) any fee, contribution, donation, or consideration of any kind, for, or in connection with, procuring or carrying out the Agreement;

except as here expressly stated (if any):

I acknowledge that this certificate is to be furnished to the Secretary of Transportation of the State of Kansas in connection with this Agreement and is subject to applicable State and Federal laws, both criminal and civil.

8-29-23

(Date)

Joel Krosschell

Name: Joel Krosschell

Title: President

KANSAS DEPARTMENT OF TRANSPORTATION

SPECIAL ATTACHMENT

CERTIFICATE OF COMPLIANCE WITH K.S.A. 46-239(c)

Kansas law (K.S.A. 46-239(c)) requires the Kansas Department of Transportation to report all contracts entered into with any legislator, or any member of a firm of which a legislator is a member, under which the legislator or member of the firm is to perform services for this agency for compensation. The following certification must be filled in by the signator of this contract:

_____ Yes, this contract is with a legislator or a firm in which a legislator is a member.

Legislator name _____

Business phone _____

Address (Street, City, State, Zip Code)

Purpose of Employment: _____

Method of determining compensation: _____

or

X No, this contract is not being entered into with a legislator or a firm in which a legislator is a member.

The signer understands that this certification is factual and reliable and is part of this transaction.

By: Joe Sumner

Date: 8-29-23

Contract/
Project No: _____
(if applicable)

County: _____
(if applicable)

**CERTIFICATION OF COMPANY
NOT CURRENTLY ENGAGED IN A BOYCOTT OF GOODS or SERVICES FROM ISRAEL**

In accordance with K.S.A. 75-3740f, the State of Kansas shall not enter into a contract with a Company to acquire or dispose of goods or services with an aggregate price of more than \$100,000, unless such Company submits a written certification that such Company is not currently engaged in a boycott of goods or services from Israel that constitutes an integral part of business conducted or sought to be conducted with the State.

As a Contractor entering into a contract with the State of Kansas, it is hereby certified that the Company listed below is not currently engaged in a boycott of Israel as set forth in K.S.A. 75-3740e and 75-3740f.

Joel Krosschell President
Signature, Title of Contractor

8-29-23
Date

Joel Krosschell
Printed

ES&H Engineering, P.A.
Name of Company

SUPPORTING DATA SHEET FOR ESTIMATE OF PRELIMINARY ENGINEERING FEE

| | |
|--------------------------------------------------------------|------------------------------|
| PROJECT NUMBER: 39 KA-6909-01 | COUNTY/CITY: City of Anthony |
| LOCATION: K 44 Highway at the intersection of Anthony Avenue | |
| WORK ITEM: Preliminary Engineering | DATE: 7-3-2023 |

| 1. DIRECT PAYROLL | | | | |
|------------------------------------------------------------------------------|-------|----------------------|----------|-----------|
| POSITION/TITLE | RATE | ESTIMATED HOURS | AMOUNT | TOTAL |
| Project Manager | 45.25 | 180.00 | 8,145.00 | |
| Survey Lead | 35.00 | 50.00 | 1,750.00 | |
| Survey Technician | 30.00 | 70.00 | 2,100.00 | |
| CADD Technician | 30.00 | 250.00 | 7,500.00 | |
| | | | 0.00 | |
| | | | 0.00 | |
| | | | 0.00 | |
| SUBTOTAL LINE 1 | | 550.00 | | 19,495.00 |
| 2. SALARY RELATED AND GENERAL OVERHEAD (137.69%) | | | | 26,842.67 |
| 3. SUBTOTAL (LINES 1 & 2) | | | | 46,337.67 |
| 4. NET FEE | | | 10.79 | 5,000.00 |
| 5. DIRECT EXPENSES (TRAVEL, MATERIAL, SUB-CONSULTANT, ETC.) (BE DETAILED) | | | | |
| ITEM | RATE | DAYS, MILES OTHER | AMOUNT | |
| Mileage (miles) | 0.585 | 1,380.00 | 807.30 | |
| Meals (days) | 40.00 | 12.00 | 480.00 | |
| Motel (days) | 75.00 | 10.00 | 750.00 | |
| | | | 0.00 | |
| | | | 0.00 | |
| | | | 0.00 | |
| | | | 0.00 | |
| | | | 0.00 | |
| SUBTOTAL LINE 5 | | | | 2,037.30 |
| TOTAL (LINES 3, 4 & 5) | | | | 53,374.97 |

"Example Billing - Cost Plus Net Fee Agreement"
Preliminary Engineering by Consultant

Detailed Itemized Statement of Amount being Claimed by Consultant

Date 09-30-2001

Project No. 109 C-0000-01

For services from August 1, 2001 through August 31, 2001.

Billing Statement No. 1

A. Direct Payroll

| Employee | Title | Hours | Rate | Extension | Totals |
|--------------|------------|-------|---------|-------------------|--------|
| Ron Roads | Engineer | 20 | \$18.00 | \$ 360.00 | |
| Bill Bridges | Technician | 100 | \$15.00 | \$1,500.00 | |
| Carla Curbs | Technician | 30 | \$12.00 | \$ 360.00 | |
| Mary Median | Clerical | 10 | \$ 9.00 | \$ 90.00 | |
| | | | | <u>\$2,310.00</u> | |

Sub-Total = **\$2,310.00**

B. Salary Related and General Overhead @ 100.00 % = **\$2,310.00**

C. Total Payroll plus Overhead (A + B) **\$4,620.00**

D. Net Fee **\$460.00**

E. Total Direct Payroll, Overhead and Net Fee (C + D) **\$5,080.00**

F. Direct Expenses

Per Diem & Subsistence

| | | |
|--------------|--------------------|-----------------|
| Bill Bridges | 10 days @ \$50/Day | \$500.00 |
| Carla Curbs | 3 days @ \$50/Day | <u>\$150.00</u> |
| | | \$650.00 |

Mileage

| | | |
|--------|-------------------------|-----------------|
| Auto | 500 miles @ \$0.20/mile | \$100.00 |
| Pickup | 500 miles @ \$0.20/mile | <u>\$100.00</u> |
| | | \$200.00 |

Equipment Rental

| | | |
|-----------------------|--|----------|
| Nuclear Density Meter | | |
| 15 hours @ \$20/hour | | \$300.00 |

Testing Laboratory (Rockshaker Testing Co., Inc.)

| | |
|-------------------------------------|----------|
| See Attachment with hours and costs | \$420.00 |
|-------------------------------------|----------|

Total Direct Expenses **\$1,570.00**

G. TOTAL COST CLAIMED (E + F) **\$6,650.00**

SIGNATURE:

Company Representatives Name

Date

Certification of Final Indirect Costs

Firm Name: EBH Engineering, P.A.

Indirect Cost Rate Proposal: 137.69%


Date of Proposal Preparation (mm/dd/yyyy): 07/03/23

Fiscal Period Covered (mm/dd/yyyy to mm/dd/yyyy): 01/10/2023 to 12/30/2023

I, the undersigned, certify that I have reviewed the proposal to establish final indirect cost rates for the fiscal period as specified above and to the best of my knowledge and belief:

- 1.) All costs included in this proposal to establish final indirect cost rates are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of title 48, Code of Federal Regulations (CFR), part 31.*
- 2.) This proposal does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR 31.*

All known material transactions or events that have occurred affecting the firm's ownership, organization and indirect cost rates have been disclosed.


Signature: _____

Name of Certifying Official (Print): Joel Krossschell, PE

Title: President

Date of Certification (mm/dd/yyyy): 03/03/2023



Laura Kelly, Governor
Mark A. Burghart, Secretary
www.ksrevenue.org

CERTIFICATE OF TAX CLEARANCE

Evans, Bierly, Hutchison & Associates, P
DBA as Evans, Bierly, Hutchison & Associates, P

ISSUE DATE
05/24/2023

TRANSACTION ID
TXBT-K587-5XNH

CONFIRMATION NUMBER
C33X-GKFR-7RXC

TAX CLEARANCE VALID THROUGH 08/22/2023

*Verification of this certificate can be obtained on our website, www.ksrevenue.org,
or by calling the Kansas Department of Revenue at 785-296-3199*

KANSAS DEPARTMENT OF TRANSPORTATION CIVIL RIGHTS ATTACHMENT

PREAMBLE

The Secretary of Transportation for the State of Kansas, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d to 2000d-4) and other nondiscrimination requirements and the Regulations, hereby notifies all contracting parties that it will affirmatively ensure that this contract will be implemented without discrimination on the grounds of race, color, national origin, sex, age, disability, income-level or Limited English Proficiency ("LEP").

CLARIFICATION

Where the term "contractor" appears in the following "Nondiscrimination Clauses", the term "contractor" is understood to include all parties to contracts or agreements with the Secretary of Transportation, Kansas Department of Transportation. This Attachment shall govern should this Attachment conflict with provisions of the Document to which it is attached.

ASSURANCE APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in its Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration (FHWA), the Federal Transit Administration ("FTA") or the Federal Aviation Administration ("FAA") as they may be amended from time to time which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontractors, Including Procurements of Material and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA, Federal Transit Administration ("FTA"), or Federal Aviation Administration ("FAA") to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or, the FHWA, FTA, or FAA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA, FTA, or FAA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of the paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any

subcontract or procurement as the Recipient or the FHWA, FTA, or FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

ASSURANCE APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- The Federal Aid Highway Act of 1973 (23 U.S.C. § 324 et. seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et. seq.) as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et. seq.), prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL No. 100-259), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with LEP, and resulting agency guidance, national origin discrimination includes discrimination because of LEP. To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681)

State of Kansas
Department of Administration DA-146a
(Rev. 07-19)

CONTRACTUAL PROVISIONS ATTACHMENT

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

The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 07-19), which is attached hereto, are hereby incorporated in this contract and made a part thereof.

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

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least thirty (30) days prior to the end of its current fiscal year and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001, *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111, *et seq.*) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), and Kansas Executive Order No. 19-02, and to not discriminate against any person because of race, color, gender, sexual orientation, gender identity or expression, religion, national origin, ancestry, age, military or veteran status, disability status, marital or family status, genetic information, or political affiliation that is unrelated to the person's ability to reasonably perform the duties of a particular job or position; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to

comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) Contractor agrees to comply with all applicable state and federal anti-discrimination laws and regulations; (g) Contractor agrees all hiring must be on the basis of individual merit and qualifications, and discrimination or harassment of persons for the reasons stated above is prohibited; and (h) if it is determined that the contractor has violated the provisions of any portion of this paragraph, such violation shall constitute a breach of contract and the contract may be canceled, terminated, or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

6. **Acceptance of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to, the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority to Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility for Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101, *et seq.*), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101, *et seq.*
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.